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A General Abridgment of Law and Equity

Alphabetically digested under proper Titles

With

Notes and References to the Whole.

By Charles Viner, Esq.

Favente Deo.

Aldershot in Hampshire near Farnham in Surry:
Printed for the Author, by Agreement with the Law-Patentees.
TO THE HONOURABLE

JAMES REYNOLDS, Esq;

ONE OF THE

Barons of the EXCHEQUER.

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

Your most Oblig'd

and Obedient Servant,

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

## University
- Chancellor of the University: A.2
- How consider’d: A
- Power and Privileges of the Universities before the Charter of 14 H. S. and by it, and since: A
- Vice-Chancellor’s Court as to Suits there, and of certifying &c. the same: A
- Privileges of the Universities: A
  - To present to the Livings of Popish Recusants; and whom: D
  - To preclude the Power and Privileges of the Universities: D
  - By what: D
  - Who, Heir &c: D
  - What, Title happening of later Time: D

## Paid and Voidable
- Pleadings: D
- Jurisdiction claim’d and allow’d: And

## Pleadings
- In what Actions: A
- In what Adions: A
- Bar, in what Actions: B
- Collateral: B
- Original Intention thereof: C
- Of all, or Part only: C
- Bar, in what Actions: C

## Voucher
- Warranty: D
- Personal: D
  - In Law: D
  - In what Cases the Law will create a Warranty: D
  - By what Words: E
  - Extent thereof: F
  - Express Warranty: G
  - Of Lands And Chattles, Good And what amounts to it: H

Good or not: Commencing by Difficult; and why so called: B.4
Bound by: B.5
Who, Heir &c: B.6
What, Title happening of later Time: B.7
To what Estate, or on what Conveyance it may be annex’d or created: B.7
Operation and Effect of the Warranty: B.8
Attach’d in what Cases it shall not attach: B.9
Extent thereof: B.9
To what Titles it shall not extend: B.9
Estate: B.9
Not more largely than the Estate: B.9
As to Heirs, Gavelkind &c: B.9
Created, upon what Conveyance: B.9
Suspends: In what Cases: B.9
Divided: B.9
Defeated, avoided or determined: B.9
By what Act: B.9
Destruction: B.9
Act of God: B.9
Act in Law: B.9
Extinguishment: B.9
By Act or Thing: B.9
Original Intention thereof: B.9
Of all, or Part only: B.9
Bar, in what Actions: B.9
Pleadings: B.9
Bar, in what Actions: B.9
Pleadings: B.9

## Extant
- In what Cases: U.4
- Original Intention thereof: U.4
- Of what Estates and Heirs, Gavelkind &c: U.4
- Of what Estates and Heirs: U.4
- Gavelkind &c: U.4
- Bar, in what Actions: U.4
- Pleadings: U.4
- Bar, in what Actions: U.4
- Pleadings: U.4
- In what Cases: U.4
- Of what Estates and Heirs, Gavelkind &c: U.4
- Created, upon what Conveyance: U.4
- Suspended: In what Cases: U.5
- Divided: U.5
- Defeated, avoided or determined: U.5
- By what Act: U.5
- Destruction: U.5
- Act of God: U.5
- Act in Law: U.5
- Extinguishment: U.5
- By Act or Thing: U.5
- Original Intention thereof: U.5
- Of all, or Part only: U.5
- Bar, in what Actions: U.5
- Pleadings: U.5
- Bar, in what Actions: U.5
- Pleadings: U.5

## Voucher
- What it is, and the several Sorts: H.4
- Voucher: H.4
- What Persons may vouch, and How: H.4
- By what Names: H.5
- In respect of their Estates: H.5
- Being but a Chattel: H.5
- Persons, In of other Estates: H.5
- Upon Warranty in Law: H.5
- As Heir: H.5

## Voucher
- What it is, and the several Sorts: K.4
- Voucher: K.4
- What Persons may vouch, and How: K.4
- By what Names: K.4
- In respect of their Estates: K.4
- Being but a Chattel: K.4
- Persons, In of other Estates: K.4
- Upon Warranty in Law: K.4
- As Heir: K.4

## Voucher
- What it is, and the several Sorts: L.4
- Voucher: L.4
- What Persons may vouch, and How: L.4
- By what Names: L.4
- In respect of their Estates: L.4
- Being but a Chattel: L.4
- Persons, In of other Estates: L.4
- Upon Warranty in Law: L.4
- As Heir: L.4
A TABLE of the several TITLES,

<table>
<thead>
<tr>
<th>Upon what Warranty it may be.</th>
<th>M</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warranty in Law.</td>
<td>M. 2</td>
</tr>
<tr>
<td>In Refect of the Words, and the Extent of them.</td>
<td>N. 2</td>
</tr>
<tr>
<td>At Affiance.</td>
<td>N. 2</td>
</tr>
<tr>
<td>Warranty.</td>
<td>N. 2</td>
</tr>
<tr>
<td>In Deed.</td>
<td>N. 2</td>
</tr>
<tr>
<td>T.</td>
<td>O.</td>
</tr>
<tr>
<td>Who shall be said Affiance.</td>
<td>P.</td>
</tr>
<tr>
<td>Upon what Conveyance it may be.</td>
<td>Q.</td>
</tr>
<tr>
<td>In what Actions.</td>
<td>Q.</td>
</tr>
<tr>
<td>For what Thing.</td>
<td>R.</td>
</tr>
<tr>
<td>In what Place. (K. a) (a) O.</td>
<td>a.</td>
</tr>
</tbody>
</table>

Of what Persons it may be.

| The King.                      | S. 2           |
| Corporations.                  | S. 2           |
| Infant.                        | S. 3           |
| Villain.                       | S. 4           |
| A Man's self.                  | S. 5           |
| The Demandant.                 | S. 6           |
| Strangers.                     | S. 7           |
| Baron or Reme, by each other.  | S. 8           |
| Parties.                       | S. 9           |
| Heir, Reversioner &c.         | S. 10          |

Off, or by what Persons within the Degrees or Lien, or not.

| How                           | T.             |
| Op.                           | T.             |
| As Heir.                      | T.             |

In Refect of the Possession, Greatkind, Borough English, Barbary, United.

Of a Person present, tho' it lies not in the Action.

| In Dower.                     | X. 2           |
| X.                            | X. 3           |
| In Ward, and how.             | Y. 2           |

When an Infant is vouch'd in Ward, in which Ward he ought to be vouch'd.

By the Statue.

| When it may be.               | X. 2           |
| After Aid.                    | D. a           |

In what Cases a Man may vouch where he cannot have Aid.

| How                           | D. a           |
| Without seeing Cause.         | E. a           |

Sufficient Cause, what is.

| Without seeing Deed of the Lien, or what Deed ought to be shewn. | G. a          |
| As Affiance.                 | G. a           |
| Without seeing Deed of Affi-   | H. a           |
| nement.                     | H. a           |
| Jointly.                     | H. a           |
| Of whom.                     | L. a           |
| Coparceners.                 | L. a           |
| Survivor, and Heir.          | L. a           |
| Or severally.                | N. a           |
| By whom.                     | N. a           |

At large, in what Cases.

| At large, in what Cases.      | N. a           |
| Voucher. How he shall come in. | T. a           |
| Without Process, or not.      | T. a           |

Counterpleas.

| In what Cases.                | E. a           |
| Of the Cause flown. Good.     | F. a           |
| By Tenant or Demandant to the Persons of the Voucher or Voucher. | P. a          |
| By Demandant.                 | Q. a           |
| Good.                         | Q. a           |
| To the Warranty.              | R. a           |
| By Voucher.                   | R. a           |
| To the Warranty.              | U. a           |
| At what Time.                 | X. a           |
| Efflopped. What is.           | X. a           |

Penalty of Voucher's denying the Warranty.

| Abatement.                    | X. a. 3        |
| By what Act or Thing.         | Y. a. 3        |
| Act of God.                   | Y. a. 3        |
| The Demandant.                | Y. a. 3        |
| Verdict.                      | Y. a. 3        |

Revoucher.

| In what Cases.                | Z. a           |
| Where Voucher after a Voucher may be at larger. | A. b          |
| By what Name.                 | B. b           |

Foreign Voucher, or Voucher of Foreigners.

| Entry into the Warranty.      | B. b. 2        |
| At what Time.                 | G. b           |
| How it may be.                | D. b           |
| Pleadings. What he shall plead after Entry into the Warranty. | G. b          |

Lien.

| When he comes in, by what Warranty he may be bound | E. b          |
| Failer of Voucher. What, and the Effect thereof. | E. b. 2       |
| One of the Vouchers only. | F. b           |
| Judgment. | Given in what Cases. | F. b |
| In what Cases. On Pleading between Tenant and Voucher. | G. b          |
| Against whom. | How it shall be given. | G. b |
| In Dower, where there is a Recovery in Value. | B. a          |
| At what Time, in Writ of Dower. | H. b          |
| Recovery in Value. | Against whom. | I. b |
| The King, and how. | In what Cases, and how and by what Persons in respect of Estate. | K. b |
| By Reason of others.          | M. b           |
| For collateral Respect.       | N. b           |
| In Respect of the Place where. | O. b          |
| What Estate shall be recovered. | P. b |
| At what Time.                 | Q. b           |
| After a former Recovery.      | Q. b. 2        |
| To what Time it shall relate. | R. b. 3        |
| To what Estate it shall go.   | R. b. 3        |
| in what Manner the Thing recover'd shall be had. | S. b |
| Remedy. For Recovery of the Value. | S. b |
| Where more is recover'd than ought. | T. b. 2 |
| To what Value Recovery shall be. | T. b |
| In Respect of the Pleading.   | U. b           |
| Rebutter. What it is.          | A. c. 3        |
| In what Cases it may be.      | B. c. 2        |
| How.                           | E. c           |

Without shewing Deed of Affi- nement.

| What, who may be rebutted. | C. c. 2 |
| Who may rebut. | C. c. 2 |

He that is in of other Estates.

| Process and Proceedings in Voucher &c. | G. c |
| Pleadings. |
With their Divisions and Subdivisions.

Pleadings by

Tenants
Vouchee.
Where there is a Voucher over. L. c
Tenant after Voucher &c. M. c

Uses.

What an Use is, and the Antiquity thereof. A. 3
The several Sorts of Conveyances to Uses, and their Operations. A. 4

At Common Law.

What Perfections shall be severed to the first Use, in respect of their Estates. Without Notice. A
With Notice. K
Averment of an Use. A. 2
Seized to an Use, who may be. C
And Truth now, and who shall have them. D

By Deponent.

Caffy que Use.

Dispand thereof by him B
And how, and in what Manner and Nature he shall have it. G
His Power. G. 2
A. to the Foeeffor. G. 3

Implication.

Who shall take by Implication of Law. F
Without any Limitation. See (O. 5)
A particular Eate by Implication by Covenant. See (A. b)

Consideration.

Necessary, in what Cases. G. 4
Good, to raise an Use. K
Against Law, or otherwise. H. 2
Where the Consideration is mixt. H. 2
What Consideration in one Capacity will raise an Use in another Capacity. S
To whom it may raise an Use. I
A stranger. L
For a collateral Respect. M
To what Use it shall be First to go. A. 2
Aver'd in what Cases. O. 6
Too general. Averment. N

Arise.

In what Cases.

By way of Use. By Bargain and Sale, O
Foeeffor &c. Z
The fome of the Uses are void, or take not Effect. Z
In Respect of the Intent. A. 2
Out of what Things.

Eate not in Eate. See (O. 6) pl. 5.
At what Time. C. 2
Relation. C. a
From what Time the Use shall be laid to arife. X
Out of what the Eate will arife. F. a

Barr'd.

How.

Without Deed. O. 2
Upon what Conveyance. O. 3
Improper Conveyance being construed as a proper, or other Kind of Conveyance. B. a
By what Words.

What Consideration in one Capacity will raise an Use in another Capacity. See (S)
To whose Use a Foeeffor &c. may be. E. a
Without any Limitation. See (O. 5)
Rules relating to Uses. G. a
Good or not. Upon what limited. H. a

Limitation of Use.

Upon what Conveyance. See (O. 5)
Of what Things an Use may be limited. See (D. a)
In futuro. I. a
To whom. See (E. a)
New Uses, where well limited, upon a Revocation, or Power refer'd. K. a

Good.

Upon a Fine, Foeeffor, or Recovery. O. 7
See after Fee. L. a
To bind a Foeeffor Covert. T
To whole Use it shall be without any Limitation. O. 5
Uses upon Uses. M. a
Springing Uses, what are; and good. N. a
Second or shifting Uses. O. a

Contingent Use.

Good.

What a Contingent, and not a settled Use. R
Revok'd or Destroy'd. S. 5
When the Contingent shall be laid to be happen'd to raise an Use. U
Revok'd. S. 2
What Uses or Estates may be. Q. 2
How

And new-limited. How. See (K. a)
Uses contingent. See (B. 3)

Declarion of Use.

What amounts to a Declaration of Uses of a Foeeffor. T. 4
Guided by the first Indenture, what Appearance shall be. T. 5
What shall be laid a Direction of the Uses on a Fine or Recovery. T. 2
Good.

In Respect of the Person making it, and the Manner. T. 5
Being made by some of the Parties only. T. 6

Relation. See (X)

Coffer of Uses. How, and in what Cases they may arise again. P. a
Interrupted. Q. a
Forfeited or barr'd. In what Cases. R. a
Chang'd. S. a

In what Cases.

Determined.

When the Uses shall be laid to be determined, in Respect of the Words of the Limitation. T. a
Reviv'd. U. a

Statute.

1 B. 3, cap. 1. W. a
27 H. 8. cap. 10. And what is executed thereby. X. a

Refusing Uses.

Covenant to stand fulfilled.

What amounts to it. See (B. a)
Good. In Respect of Eate of Covenant, or Manner of the Covenant. Z. a
Particular Eate by Implication. In what Cases, And in what Cases Uses by Implication are excluded. A. b
Pallies by it, what, and who shall take thereby, according to the Limitation. B. b
Power to direct future Limitations thereafter, by where good. C. b

Difference between a Foeeffor to Uses, and a Covenant to stand selfed as to Uses arising or Powers refer'd. D. b

Actions.
| Actions by or against Casly que Usr. | E b | F b | G b |
| Pleadings. | A b | D C | E F G H I J K L M N O P Q |
| Equity. | | | |
| Summary. | | | |
| In general. | | | |
| At Common Law. | A | B | C |
| By Statute. | D | E | F |
| What shall be said Summary. | G | H | I |
| In Respect of the Communication or Agreement. | J | K | L |
| By way of Amenity. | M | N | O |
| Upon a Hazard. | P | Q | R |
| Ex parte Facts. | S | T | U |
| Forfeiture or Avoidance. | V |
| In what Cases of the Security, Treble Value. | W |
| Purg'd as to Assignees &c. | X |
| Information &c. | Y |
| Good or not. | Z |
| Pleadings. | | | |
| Trial. | | | |
| Where. | | | |
| Found. How, and in what Cases it must be by Jury, or may be judged of by the Court. | | |
| Sareties panish'd or favour'd. | | |
| Relief. In what Cases given. | | |
| Forfeiture. | | | |
| What Persons may be outlaw'd. | A. 5 |
| In Respect of the Place where they are at the Time. | A. 4 |
| Who shall not be said outlaw'd. Feme. | A. 5 |
| At what Time one shall be said to be outlaw'd. | A. 6 |
| By whom the Judgment shall be given. | A. 7 |
| In what Actions or Cases. | A. 8 |
| At Common Law. | A. 8 |
| By Statute. | A. 9 |
| Writ. | | | |
| Directed to whom to make the Return. A. 10 |
| Certified. How the Outlawry is to be. A. 11 |
| Forfeiture. | | | |
| In Respect of the Person outlaw'd. | B | C | D |
| In Personal Actions. How the King shall take the Profits. | E | F | G |
| Of Freehold Land &c. | H |
| Of one, where it shall be Forfeiture as to another. | I |
| Who shall have it. How much. | K |
| Whole Goods may be taken. Stranger's Goods. | L |
| Stranger's Title affected by it. How far. | M |
| Prevented or ousted by Alienation &c. Actions. | N |
| What are forfeited, and what Actions the King may have in respect of the Outlaw. | O |
| What Actions Patentee may have. And in what Name he must sue for. Value. How to be considered on an Extent. | P |
| Relation to what Time. | Q |
| In what Cases in general. Advantage thereof. How to be taken. Remedies to get at it. | R |
| Sequestration. | S |
| For Office necessary in what Cases. And in what Case the King shall be said Free'd by Office. | T |

In what Cases the King may file, and when.

Of the different Writs of Sequestration, and their different Operations, and what may be raked by them.

Proces of Outlawry. Awarded by whom.

Upon what Return it shall issue.

Proces and Proceedings.

Where there are several Defendants. A. a

An outlaw a Feme who has a Baron. B. b

Capias Undatum. C. c

Exigent

De novo awarded, in what Cases. D. d

Superceded.

Pleadings. How the Outlawry ought to be pleaded or set forth.

Record shewn, how and when.

In Bar or Abatement.

In what Cases, and to what.

To whole Suit it shall be a Bar. N. a

At what Time. I. a

In what Courts. K. a

Where Strangers Goods are taken. L. a

By Officers in Justification. M. a

Good, in Avoidance of Outlawry, As no flesh Vill &c. or Dwelling at &c. P. a

Misdemeinor, or wrong Addition. Q. a

Other Pleas. R. a

In Support of the Outlawry in Advantage of the King. R. b

Reservation to Pleas of Outlawry. O. a

Effect of Outlawry S. a

Disharg'd by Pardon. T. a

Dishability

As to Actions. Of whom, and how far.

Of one, how far it shall dizable another. W. a

What Actions the Outlaw cannot bring X. a

As to other Matters than Actions. Y. a

Charg'd in Culpodia. Z. a

In what Cases one outlaw'd for Crimes may be.

Creditors of Outlaw. How far favour'd or affected. A. b

Revers'd.

What must be done in order to get an Outlawry revers'd. B. b

By Attorney. What must be done in Person, or may be done by Attorney, as to Reverfal. C. b

At the Plaintiff's own Charge. D. b

In what Cases.

By reverfing the Judgment &c. on which &c. E. b

By whom.

Executor, Heir &c. F. b

By Writ of Error, or by Plea. G. b

In what Cases.

In Respect of Appearance or Superficies. H. b

For what.

Variance. I. b

Wrong Abbreviation. K. b

Fall Latine. L. b

Errors. M. b

In the Proceeding and Proceedings. N. b

In the Proclamations. O. b

In the Return. P. b

Uncertainty in the Time. Q. b

R.

S.

T.
## With their Divisions and Subdivisions.

<table>
<thead>
<tr>
<th>In general.</th>
<th>O. b</th>
</tr>
</thead>
<tbody>
<tr>
<td>Against one. In what Cases another shall take Advantage thereof, And how.</td>
<td>P. b</td>
</tr>
<tr>
<td>Process and Proceedings after the Outlaw revers'd. How.</td>
<td>Q. b</td>
</tr>
</tbody>
</table>

| Reformation. In what Cases, and of what How granted or obtained. | T. b |
| Grant of Outlaw, what Interest he has after Reversal, and who bound by such Grant. | U. b |
| How to discover or get at the Effects of the Outlaw. | W. b |
| Executors or Administrators of Outlaw, their Power and Interest, and Pleadings by them. | X. b |

### Wages.
Servants Wages, recoverable in what Cases, and how before the Statute of 5 Eliz. and Orders of Justices relating thereto since that Statute good or not.

| Wails. | What shall be said Wails. Who shall have it. Pleadings. | A. b |
| WALES. | What Proceedings go into Wales. Trials there. Error of Judgments there. Jurisdiction allowed or not. | A. C |

### Warrants.
Lies.


### Warren.
Ancient Grants thereof.

### Wast.


### Pleasings.

### Count.
And where general or special, though the Writ be general. | B. |

### Proceedings.
Writs. Procedings. Pleadings. | B. a. 2. b. a. 3. |

### Bar.

### Discharge or Determination of the Action.

### Trial.

### Writ of Inquiry.
Awarded in what Cases, and how the Enquiry ought to be. Return thereof; Good or not. | N. a. O. a. |

### Joiner in Wast.
Who; and what shall be recovered; and How. | P. a. 2. |
## A TABLE of the several TITLES, &c.

<table>
<thead>
<tr>
<th>Voluntary or negligent. What. And of what.</th>
<th>Q</th>
<th>a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity.</td>
<td>R</td>
<td>a</td>
</tr>
<tr>
<td>Injunction granted. In what Cases.</td>
<td>S</td>
<td>A</td>
</tr>
<tr>
<td>Relief.</td>
<td>A</td>
<td>B</td>
</tr>
</tbody>
</table>

### Watch and Ward.

<table>
<thead>
<tr>
<th>Water-Courts.</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Original of them; and in what Cases they may be diverted.</td>
<td>A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Action. What Action lies of a Water-Courte, or for stopping or diverting it.</td>
<td>B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Declaration and Pleadings. Good or not.</td>
<td>C</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waiver.</td>
<td>D</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>How it may be.</td>
<td>E</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By whom Waiver may be. And of what, Pleas. What shall be said a Waiver in Pleadings.</td>
<td>F</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of Pleadings. In what Cases a Man may waive the Plea or Issue and plead another, or the General Issue after Plea entered.</td>
<td>G</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Weights and Measures.

<table>
<thead>
<tr>
<th>Windfalls.</th>
<th>A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woods.</td>
<td>A</td>
</tr>
<tr>
<td>Wreck.</td>
<td>A</td>
</tr>
<tr>
<td>Goods cast overboard or wreck'd, how to be ordered, and to whom they belong.</td>
<td>B</td>
</tr>
<tr>
<td>Pleadings.</td>
<td>A</td>
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<td>Necessary. In what Cases. And what must be done by Writ, or may be done by Bill, Commission, &amp;c.</td>
<td>A</td>
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<td>The several Sorts of Writs. And what an original or a judicial Writ.</td>
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<td>Altered. The Effect thereof.</td>
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<td>Special or general. In what Cases. And in what Cases the Writ shall be general and the Count special.</td>
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<td>Variance between the Writ and the Register.</td>
<td>A</td>
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<tr>
<td>Year, Day, and Waste.</td>
<td>A</td>
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</tbody>
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University.

(A) University. Power and Privileges before the Charter of 14 H. 8. and by it, and since.

1. The Universities have a Charter to imprison for Incontinency; but this their Charter is void. They have also an Act of Parliament to enable them to do this, viz. 32 H. 8. 10. and this is the Reason that the Proctors in Oxford and Cambridge may imprison for Incontinency; Per Coke Ch. J. 3 Bull. 110. Mich. 13 Jac. The King v. the University of Cambridge. 

2. In the 8th of H. 4. a Charter was granted to both the Universities of Oxford and Cambridge, to enable them in their Proceedings. They, by Force of their Charter, did proceed in temporal Causes in a Civil Manner, their Power being first by this Charter. Afterwards, by the means of the Earl of Leicester, they in 13 El. obtained a Confirmation from the Queen by Act of Parliament, by which their Charters were confirm'd, and that they might proceed by Force of their Charter, as before they had done, their Proceedings before by their Charter being against the Law of the Land. Popham was very much, and strongly against this; but afterwards, when he saw that the Act of Parliament was past for them, then he with'd that they would prove honest Men in their Proceedings. Per Coke Ch. Juit. 3 Bull. 212. Trin. 14 Jac. Anon.

This Patent was void. Jenk. 97. pl. 38 — Gibb. 155. — Jenk. 117. 17. — By the Grant of 8 H. 4. they were to hold Plea of all Causes arising within the Universities, according to the Course of the Civil Law. And all the Judges of England were then of Opinion that that Grant was not good, because the King could not by his Grant alter the Law of the Land. With this Case agrees 27 H. 6. 26. 2 E. 4. 16. and 7 H. 7. But now by special Act of Parliament made 13 Eliz. (not printed) the Universities have Power to proceed and judge according to the Civil Law; Per Coke Ch. J. Godd 221. pl. 285; in Case of Archbishop of York v. Bedingfield — Cases of Aliens, Life and Freedom, are excepted in the said Act. Jenk. 117. pl. 37. 

The University had an old Charter, which they surrender'd, and took a new Charter insufficient in some Parts with the old one; so that the Act of Parliament, which confirm'd the Charter, went only to so much as confined it with the new-granted Charter; for it could not be a Confirmation of a Repugnancy. Gibb. 295. Trin. 5 Geo. 2. C. B. Chapman v. With.

3. A Prohibition was mov'd for to a Suit in the Vice-Chancellor's Court against certain Brewers, for selling ill Beer and false Measure; and the particular Excess of Jurisdiction alleged was, the exailing Judicatory Contumy; and infin'd, that tho' they have the Affix of Bread and Beer by Charter, yet a Power to punish by Fine, and to proceed according to the Civil Law, cannot be by Charter. Holt Ch. J. said that before the 14 H. 8. the University had the Jurisdiction of a Lect, and exercised it in the Vice-Chancellor's Court; but the Charter of the 14 H. 8. grants them Power of Trespasses, and that over all Persons whatsoever, if a Scholar be Party. Adjornatur. Salk. 343. pl. 2. Trin. 1 Ann. B. R. Ruth v. The Chancellor and Scholars of Oxford.

B

(A. 2) Cham—
(A. 2) Chancellor of the University. How consider'd.

1. In Trespasses, two several Grants were pleaded from two several Kings, to f. 8. Chancellor of the University of Oxford, and his Successors; and admitted for good. And therefore it seems that the Chancellor is incorporated. But quere inde; for it seems to be only an Office &c. Br. Corporations, pl. 25. cites S H. 6. 18. 19.

(B) Power and Privileges of the Vice-Chancellor's Court, as to Suits there; and of certifying &c. the same.

1. The Chancellors of the Universities of Oxford and Cambridge may certify Excommunication; for they do it by the King's Charter. 8 Rep. 65. b. in Trollop's Cafe, cites F. N. B. 64. (C)

2. The Defendant pray'd his Privilege, and produc'd a Certificate from the Chancellor, that he was a Commoner of Exeter College, as appear'd to him by a Certificate of P. Rector of that College. This Certificate was objected to, as not being positive. Afterwards the Chancellor certified that he is now a Commoner of Exeter College, but did not say that at the Time of the Action brought he was. But the Privilege was allow'd. Godb. 404. pl. 485. Parkh. 3 Car. B. R. Fryer v. Dew.

3. By the Charters granted to the University of O. they may inquire of all Trespasses, Injuries, and of all Pleas and Quarrels &c. (except of Frankencement) where a Scholar &c. is one of the Parties &c. W. a Scholar, call'd the Wife of B. (Principal of a Hall there) Old Bawd, and call'd his Daughter Scurvy Whore and Jade; for which they fix'd him in the Vice-Chancellor's Court. W. pray'd a Prohibition; but the Court agreed that the Privilege of the University, as to Conunence of Pleas, extends to Cafes where Una pars eft Scholaris; and tho' the Defendant, who was the Scholaris, did not desire that Privilege, but would oppose it, and pray'd the Prohibition, yet the Cause was remanded. Cro. C. 73. pl. 1. Trin. 3 Car. C. B. Wilcocks v. Bradell.

4. The University of Cambridge claim'd by their Charter to be Clerks of the Market, and that they had Power by their Office to make Orders, and to execute them; and they made an Order that no Chandler should sell Candles for more than 4d. Halfpenny the Pound; and because one R. sold for 5d. the Pound, they imprison'd him. A Prohibition was granted; for that they could not imprisou without Course of Law, and as Clerks of the Market they had nothing to do but with Victuals, which Candles are not. Her. 145. Trin. 5 Car. C. B. The University of Cambridge's Cafe.

5. Bill in Chancery to be reliev'd against a Bond of the Penalty of 100 l. given by the Plaintiff's Father to the Defendant, who pleaded his Privilege that he is a Doctor in Divinity, Scholar, and Residentiary Student in the University of Oxford, and that he ought not to be sued but before the Chancellor of the said University, or his Deputy or Commissary...
military for the Time being; but the Plea, on Debate, was over-rul'd. Fin. R. 45. Mich. 25 Car. 2. Williams v. Roberts.

6. Bill to have a Bond delivered up of 100 l. Penalty, the Money being paid. Defendant pleaded that he is a privileged Person of the University of Oxford, viz. a Doctor of Laws, and Resident there; which the Chancellor certified, and demanded Confinement of the Matter in Question, as determinable before him, or before the Vice-Chancellor, his Deputy or Commisary, and not elsewhere. The Court dismis'd the Bill, and allow'd the Plea. Fin. Rep. 162. Mich. 25 Car. 2. Busby v. Crofts.

7. Bill by Administrator for an Account of Intestate's Estate, which Defendants had got into their Possession on Pretence of some Debits due to them from the Intestate. Defendants pleaded they are privileged Persons, and Members of the University of Oxford, and there Resident; which the Chancellor certified, and demanded Confinement, as examinable before him, his Vice-Chancellor, Deputy, or Commisary, and not elsewhere. Plea allow'd. Fin. Rep. 292. Patch. 29 Car. 2. Powell v. Hine and Adams.

8. A Bill was brought, setting forth a Contract under Seal with the Defendant, for making a Leafe of certain Lands in Middlesex, and to have Execution of the Agreement. The Defendant pleaded the Privileges of the University, to proceed in all Quarrels in Law and Equity, except concerning Freehold; and concluded to the Jurisdiction of the Court. But Lt. Keeper Guilford over-rul'd the Plea, because in this Case they cannot sequestrate Lands in Middlesex, and so can give no Remedy; and because the Charter of the University of Oxford, empowering them to proceed in all Pleas and Quarrels in Law and Equity &c. ought properly to be extended to Matters at Common Law only, or to Proceedings in Equity that might arise in such Cases, and not to meet Matters of Equity, which are originally such, as to execute Agreements in Specie. 2 Vent. 362. Hill. 35 & 36 Car. 2. Draper v. Crowther.

9. Upon a Motion for a Prohibition to the University of Cambridge, in a Suit there in the Vice-Chancellor's Court, for keeping a Tavern, it was said that the Charter of the University (tho' it be enacted is not confirm'd) and it does not extend to sit there for the Penalty of an Act of Parliament; but this Suit ought to be in the King's Court, and a Recovery or Judgment there is not pleadable in Bar in the Courts here. After, in Hill. Term 9 W. 3. there having been a Prohibition granted to the University in a Proceeding against P. for keeping a Tavern, and a Prohibition executed, it was now mov'd for a Superideeds to the Prohibition, or a Confinement; but the Court said that they ought to declare, and plead their Privilege, as was done in Fletcher's Case in the Exchequer; for it being a Cafe not yet refer'd, they would have their Privilege shewn; but when it has been pleaded, then they would take Notice of it upon a Motion; and it being said that they had not declared, the Court said that they ought to appear and demand a Declaration. And Rule was given, that they declare in a Week. Skin. 665. Mich. 8 W. 3. B. R. University of Cambridge v. Price.

(C) Pri-
(C) Privileges of the Universities favour'd.

1. The Privilege of the University of Cambridge ought to be maintained, and not infring'd by this Court; Per Cur. Chan. Rep. 86. To Car. 1. Byat v. Pickering.

2. A Painter that had dwelt long in Oxford, and had been for many Years of the Corporation, was chosen into an Office in the Corporation; but he refusing to hold, Debt was brought against him for the Penalty. It was mov'd to allow him the Privilege of the University, and a Certificate was produced from the Chancellor, that he was matriculated and register'd in the University, and a Servant to Dr. Irish. But it appearing to the Court that he was register'd but Two Days before his Election, and that he was no Servant attending Dr. Irish, but had his Dwelling-house, and kept Shop, in the Town, and that his getting himself admitted was to hinder the Remedy the Town had against him for [not] holding his Office; the Privilege was denied by the whole Court. 2 Vent. 106. Mich. 1 W. & M. in C. B. The City of Oxford's Cafe.

(D) Privilege. To present to the Livings of Popish Recusants, and whom.

If one grants 1. 3 Jac. 1. 3 Nacts, That every Popish Recusant convell, during the next Avoidance of an Advowson, and afterwards becomes Recusant, and is cancelled, the Grant is void, and the University shall have the Presentation; for the Act has a Retrospect to the Commencement of the Sessions of the Parliament to Rep. 35. 3. 35. 36. 11 Jac. Chancellor of Oxford University's Cafe.—And it shall not be premis'd in Law, unless it be expressly aver'd that his becoming Recusant afterwards was by Covin, to avoid his Grant; nor will the Court adjudge the Grant to have been made to any other Intent, than is found by the Jury. Ibid. 36. a. 57. b. S C. cited by Hatton J. Winch. 97. in Cafe of Woodley v. the Bishop of Exeter and Mansfield. And cited per eundem Jo 26. in Cafe of Standen v. the University of Oxford and Whitton.

S. 19. The Chancellor and Scholars of the University of Oxford, shall have the Presentation &c. to every such Benefice, School, Hospital, and Donative, in the Counties of Oxford, Kent, Middlesex, Suffolk, Surrey, Hampshire, Berkshire, Buckinghamshire, Gloucestershire, Worcestershire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembrokehire, Carmarthenshire, Brecknockshire, Monmouthshire, Cardiganshire, Montgomeryshire, the City of London; and in every City and Town, being a Country of itself, within the Limits of the Counties aforesaid.

S. 20. The Chancellor and Scholars of the University of Cambridge, shall have the Presentation &c. to every such Benefice, School, Hospital, and Donative, in the Counties of Hertfordshire, Cambridgehire, Huntingdonshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Leicestershire, Derbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire,
Univerlity.

5

thire, Durham, Northumberland, Cumberland, Westmorland, Rad-

norshire, Denbyshire, Flintshire, Carnarvonshire, Anglesey, Merioneth,

Glamorganshire; and in every City and Town, being a County of itself,

lying within the Limits of the Counties last mentioned.

S. 21. Provided that neither of the Universities shall present to any Bene-

fice any such Person as shall then have any other Benefice with Care of Souls;

and such Presentation shall be void.

Cawley's

Laws of Re-
culants 233.

ays, that a

Sine Curis is

a Benefice, and yet the University may present or nominate one that has a Sine Curis; That a Donative of

the King's may be Cum cura animarum. And so is the Church of the Tower of London. Cro [C. 557. 561]

Mich. 6 Car. 2 Barkall. 2 Todrick. And the University cannot present or nominate him that hath

such a Donative. Notwithstanding what is said by Sir Edw. Coke, 3 Inst. 525, it seems that a Deanry,

Archdeaconry, Prebend &c. are not Benefices with Care of Souls; nor had they been comprehended

under the Name of Benefices with Care of Souls, within the Statute of 21 H. 8. Plurinities, altho' the

special Proviso in that Act had been omitted; for that Proviso is ex abundante, and there is no such to

except them out of the Statute of 13 Eliz. cap 12. of reading the Articles; and yet if a Dean, Arch-

deacon, or Prebendary, read not the Articles within the Time limited by 15 Eliz. his Promotion is not

void by that Statute; and the Reasons, because it is a Benefice with Care of Souls. The Opinion of

Justice Tinel at Lincoln Assizes, in Lent 1608, who in the Case of Dr Sanderson denied the Arch-
deacon of Tinel to be lawful Archdeacon, for that he had not read the Articles within the Time fo li-
mited; and affirmed an Archdeaconry to be a Benefice with Care within 15 Eliz. being contrary to Law,

and to the received Meaning of that Statute. And as for a Prebend, the Reason given for the Opinion

in Bland and Madbor's Case, B. R. Mich. 29 & 30 Eliz. is expressly against what is said by Sir Ed.

Coke; for it was there agreed, that a Layman may be presented to a Prebend Quia non habet curam

animarum. Cro. Eliz. 59. And for the same Reason a Dean, Archdeacon, Prebendary &c. may be, in

this Case, presented or nominated by the University; for their Promotion is not a Benefice with Care of

Souls.

2. The Universities shall present to the Livings of Popish Recusants 3 Lev. 522.

Convict; but shall not present a Person already benefited Per 3 Jac. 1. Trin 4 W.

5. See the Pleadings on this in 2 Lutw. 1100. Ld. Petre v. the Uni-

erity of Cambridge and Woodrofe.

(E) Privilege to present to the Livings of Recusants.

Prevented by what.

1. In Quare Impedit by the University of C. against P. and W. &c al' Hob. 126.

the Plaintiff counted that P. had an Advowson, and was convicted

of Recency; after which the Church became void, and that thereupon it belonged to the Plaintiffs to present by the Statute 3 Jac. cap. 5.

W. pleaded that the Advowson was appendant to the Manor, and that 2 Parts of the Manor were seized into the King's Hands by Process of the Ex-

decuer, according to the Statute 28 Eliz. and that the King granted the

2 Parts to W. cum Pertinentiis, and also all Hereditaments but without any

special Words of Advowson; and that thereby the Presentation belonged to him. But all the Court contra, for want of the Word Advowson,

or of Adeo pleno & integre, & in tam ampio Modo & Forma prout &c.

as P. had the same Manor; and so Writ to the Bishop was awarded for


yet 2 Parts of the Ad-

vowson will

follow 2 Parts of the Manor, and then the King will present alone; but because the Want of Words in

the King's Grant was not sufficient to carry the Advowson from him to W. but serv'd only to prove the

King's Title against the Defendant, the Court would not award a Writ to the Bishop for the King (he

being no Party to the Action) except his Title were clear against all the Parties to the Action; where-

upon the Plaintiffs were demanded why a Writ to the Bishop should not go for the King, upon his

Title appearing by the Defendant's Plea, who now confess'd the same, and disclaim'd their Title for

forth in their Declaration; and thereupon Judgment was given for the King, and a Writ awarded to
(F) Privilege to present to the Livings of Recusants, Prevented by Trusts; and How to be discovered.

1. By the 1 W. & M. cap. 26. S. 2. Every Person refusing to make, or to appear for the making, the Declaration against Transplantation, and whose Name shall be recorded at the Quarter-Sessions, is disabled to make any Presentation, Donation, or Grant of Avoidance of any Ecclesiastical Living, as fully as if he were a Papist Recusant Convicted, and the Chancellor &c. of the Universities shall have the Presentation in the respective Limits mentioned in the Act 3 Jac. 1. cap. 5.

S. 3. Trustees of Recusants are disabled to present or grant any Avoidance of any Ecclesiastical Living, Free School, or Hospital, and the respective Universities are to have the Presentations.

And if any Trustee, Mortgagee, or Grantee of any Avoidance, shall present &c. to any such Ecclesiastical Living &c. where the Trust shall be for any Recusant Convicted, or disabled without giving Notice of the Avoidance in Writing to the Vice-Chancellor of the University, to whom the Presentation shall belong, within three Months after the Avoidance, he shall forfeit 500 l. to the University to which the Presentation &c. shall belong, to be recover'd in any of their Majesties Courts of Record, by Action of Debt &c.

S. 7. Persons making the Declaration, and taking the Oaths before the Justices at the Quarter-Sessions, where their Names were recorded, shall be discharged of the Disability.

2. 12 Ann. Stat. 2. cap. 14. S. 1. Papists and their Children, under the Age of 21 Years, not being Protestants, * tho' not convicted, to lose their Presentations, and their Trustees disabled to present; but the respective Universities shall.

S. 2. Prefectors to be examined by the Ordinary, whether he be a Papist or a Trustee for such.

S. 3. Prefecture to be examined upon Oath by the Ordinary, if he knows or believes the Prefect to be a Papist, or a Trustee for a Papist, or for the Children of such, or any other Person; and if he answers not directly, the Presentation to be void.

S. 4.
Privilege to present to Livings of Recusants.

Deveisted.

1. WHEN once the Presentation has vice is vested in the University, tho' the Recusant conforms himself afterwards or dies, yet the University shall present. 10 Rep. 58 a. Trin. 11 Jac. in the Chancellor &c. of Oxford-University's CAfe.

2. If Recusant is attaint of Felony or Præmunire, the Interest of the University shall not be devested; Per Hutton J. Js. 26. in CAfe of Standen v. the University of Oxford and Whitten.
But by Statute of 12 Ann. cap. 14, Papists not convicted, or not in such manner as directed by the former Statutes, are to lose their Presentments. See the Pre-amble of the said Statute.

3. If A. be a Popish Recusant Convict, and by Pardon that Conviction is pardon'd (as it has been held it may be) and then the Church becomes void, Dr. Watson says, Woff. Comp. Inc. 8vo. 169. cap. 11. that he conceives that the University shall not have this Presentation, for that the Patron was no Recusant Convict at the Time the Presentation became void, his former Conviction being taken away by the Pardon; for the Pardon hath not only pardon'd the Conviction, but also restored the Party to his Ability, notwithstanding that he do not conform; for the Word Convict is to be understood throughout the whole Statute, although it be left out in the Middle of the Sentence in the said Statute, which enacts that every Person who shall be a Recusant Convict during the Time that he shall remain a Recusant (and says not Convict) shall be disabled to present to any Church &c. and cites Trin. 4 W. & M. C. B. The Lord Petre v. the University of Cambridge and Woodroffe. 3 Lev. 332. And says, indeed, no Person, strictly speaking, can properly be said to be a Recusant, before he be convicted of it; for it is the Conviction which in Law is the Proof and Evidence of his Recusancy.

(H) Presentation to Livings of Recusants. Avoided.

1. 1 W. & M. c. 26. That the Benefit to which Persons are presented shall become void in Case of Absence from the same above the Space of 60 Days in any one Year.

(I) Pleadings. As to Presentments to Livings of Recusants.

1. If a Quare Impedit be brought upon the Statute 3 Jac. 1. cap. 5. by either of the Universities, it must be alleged in the Count that the Patron was a Recusant Convict at the Time of the Avoidance; for without that they do not enable themselves to take Benefit of the said Act; but they need not aver that he yet continues Recusant. 10 Rep. 53. b. 57. b. 38. a. Trin. 11 Jac. The Chancellor &c. of Oxford University's Case.

2. Quare Impedit to present to the Church of H. The University pleaded the Statute 23 Eliz. cap. 1. of Forfeiture of 20 l. a Month for not coming to Church; and also another Statute 28 Eliz. cap. 6. which enacts, that when an Indictment is found against him, Proclamation shall be made that he render himself before the next Assizes; which, if he do not, that Neglect shall be a sufficient Conviction, as if it had been by Verdict that all this was done, but that he did not render himself to the Sheriff at the next Sessions, and so was convicted, then they pleaded the Statute 3 Jac. 5. that a Popish Recusant Convict shall be disabled to present to a Benefice, but that the Chancellor &c. of both Universities shall present within the respective Counties limited by that Act; and that the Plaintiff being a Popish Recusant Convict, the Church became void by the Death of the Incumbent; per quod the Defendants presented W. who pleaded in Abatement the same Statute &c. but did not conclude this Plea.
University.

Plea with the Record of the Conviction hoc in Curia prolat &c. The Plaintiff replied the general Pardon of Jac. 2. as to the Plea of the University, and demurred to the Plea of W. And upon arguing the Demurrer, this Plea was held ill, because the Statute 25 Eliz. was misrecited, that being that the Person shall render himself to the Sheriff before the next Assizes; and the Pleas, that he did not appear at the next Assizes besides, he did not shew any Record of Conviction by the Words hoc in Curia prolat. And that was held a good Cause of Demurrer. 3 Lev. 332. Trin. 4 & 5 W. & M. C. B. Lord Petre v. Cambridge University.

(K) Jurisdiction claim’d and allow’d. And Pleadings.

1. The Clerks of Oxford preferred to have Principalities of Hools before any other, where Clerks have been before, and to hold thereof Pleas and the other purchase’d Prohibition and Attachment thereupon, and the Clerks obtain’d Consultation. And it was held in a Manner di traction, pl. 4 cites & C. (that because they did not claim to hold this Plea as of Privation, but as Occupiers for the Time) that therefore the Prohibition does not lie; and this was of Plea held thereof before the Chancellor of Oxford, by their Privilege. Quære. Br. Attachment for Prohibition, pl. 2. cites 49 E.

3. 17. 2. Trespass against T. C. of Goods carried away in O. T. C. defended the Tort and Force, and demanded Judgment if the Court would take Converse; for King H. 4. granted to A. B. Chancellor of Oxford, and his Successors, that they should not be impeded by any Action of Things which they did, by reason of their Office, which they have as it to do in Oxford; and it has been us’d, that every one who has a House there, should make the Provisions before his House to the Kennel, when it is ruinous; and if he will not, that the Chancellor shall warn him to do it by a certain Day, which, if he does not do, the Chancellor shall do it, and then distress him, and retain the Distresses till the Party has made Good thereof; and the Plaintiff is remaining in Oxford, and the Pavement before his House was ruinous, and T. C. Chancellor warn’d him to do it by a Day, and he did not do it; by which the Chancellor did it at his own Costs, and distress’d him by the same Goods; Judgment if the Court will take Consequence. Per Cott. Juit. You have justified, therefore have afirm’d the Jurisdiction of the Court; for you ought to have pleaded the Grant, which is, that you shall not be impeded &c. and demanded Judgment if Curia cognoscere velit; and yet upon such Plea it is not good, because the King shall do a Tort to none; for a Grant, that a Man shall not be impeded, is void. And after Rolf waiv’d the Plea to the Jurisdiction, because the Opinion of the Court was against him. Br. Jurisdiction, pl. 39. cites 3 H.

6. 19. 3. William Lowgher appear’d and answer’d, but Robert Lowgher claim’d the Privilege of the University of Oxford; but because the said Doctor Lowgher was join’d with William Lowgher in the Bill, who was not subject to the same Jurisdiction, therefore ordered Proces to be awarded against him, to whom other Cause why he should not answer. Cary’s Rep. 79. cites 18 & 19 Eliz. White v. Robert Lowgher Dr. of Divinity, and W. Lowgher.


D 4 12
4. In Debt on Bond made at C. in the County of Surry, the Defendant pleaded the Privilege of the University of Cambridge granted by Queen Eliz. for Scholars &c. and their Servants upon Contracts made within the University; and shews that the Bond was made in Cambridge, and that he was a Servant of the Scholars, viz. Bailiff of King's College in that University, and inhabiting within the Town of Cambridge, and Precincts of that University; and therefore a privilege'd Peron of the same. And upon reading the Record, it seems'd that the Defendant being a Bailiff of the College, is not capable of the said Privilege. Brownl. 74. Trin. 13 Jac. Carrell v. Paske.

5. In Trespass for an Assault and Battery at B. in Com. Hartford, the Defendant pleads that he was Servant to a Scholar of St. John's College in Cambridge; that they are to have Conveniance there, and not to be drawn out of the University; and shew'd their Charter for Cambridge and for Oxford, and the Act of 13 Eliz. for Confirmation of the Charter for Oxon and for Cambridge. The Plaintiff demurs, because the Defendant takes no Travour, which he ought to have done with an Absque loco, that he was culpable in any Place extra Universitatem Cantabrigiae, that if they might have taken Issue. The whole Court clear of Opinion, that the Defendant here ought to have concluded his Plea with a Travour; and so by the Rule of the Court, Judgment was given for the Plaintiff. 3 Bulst. 282. 14 Jac. Payn v. Worulch.

6. In ejectment for a House in Oxford, the Defendant pleaded the Privilege of the University, and that he ought to be fu'd before the Vice-Chancellor, according to their Course of Proceedings there; and set forth their Charter, whereby they had Conveniance of all Suits, Contracts, Covenants, Quarrells (except concerning Freehold) and that this being a personal Action, they ought to have Conveniance thereof. But all the Court held, that the Vice-Chancellor had no Jurisdiction in this Cafe, because in this Action he shall recover Possession, and have an Hab. fac. Possessionem, and if he that has a Freehold may be put out of Possession; But in an Action of Covenant, where the Plaintiff should recover Damages only, it seems it would have been otherwise. Cro. Car. 87. pl. 9. Mich. 3 Car. B. R. Halley's Cafe.

7. On a Bill in Equity in the Exchequer, as Debtor and Accountant, against J. S. who had the Privilege of the University of O. he pleaded his Privilege, and set forth their * Charter of Exemption &c. Hale Ch. B. said, that the general Privilege of a Peron, as Member of the University, does not toll the particular Privilege of this Court, and that an Accountant has a more particular Interest in his Privilege than a Debor, because by 1 R. 3. cap. 13. an Accountant is not liable elsewhere, and that here the Privilege of the University has not these Words, Liet tangat nos; and so the Privilege was disallow'd. Hard. 188. pl. 15. Pacch. 13 Car. 2. Wilkins v. Shaleroot.

8. The Vice-Chancellor, and not the Chancellor, demanded Conveniance, and yet the Conveniance was allow'd; for the Court here is to supersede upon Notice of the Patent. Hard. 504. 516. Pacch. 22 Car. 2. in the Exchequer, Caffe v. Litchfield.

9. Assumpsit was brought in the Exchequer by Qno Minus. The University of Oxon demanded Conveniance by Charter of 14 H. 8. and confirm'd by Parliament 13 Eliz. which gives them Conveniance of all Suits arising.
arising anywhere against any Scholar, servant, or Minister of the University, depending before the Justices of B. R. C. B. and others there mention'd, and before any other Judge, tho' the Matter concerns the King; but the Court of Exchequer is not mention'd in that Clause; but in the Clause which gives them all Fines imposed upon them in any Court, there the Court of Exchequer is name'd. Hale Ch. B. hold; that the Privilege extends to a Quo Minus; for the Privilege of a Debtor only intitles himself to the Court, but is no Bar to any other Privilege; and that it also extends to the Court of Exchequer, because the Grant begins with Superior Courts, as B. R. &c. and then descends to other Inferior Courts &c. and those Words are sufficient to comprehend the Court of Exchequer, which is not superior to B. R. or C. B. And Confinse was allow'd accordingly. Hard. 524. Patch. 21 Car. 2. in Scacc. Caffle v. Litchfield.

10. An Indubitatus Assumpfit was brought against the President &c. of a College in Oxford, for 6o l. due for Butter and Cheese sold to them. The Chancellor demanded Confinse, by reason of its being a personal Action where Scholars are concern'd; and the demand was allow'd. Mod. 163. pl. 2. Mich. 25 Car. 2. C. B. Magdalen College's Cafe.

11. A Bill was brought against a Tutor in Oxford, for an Account of In Tropos Monies received on Account of his Pupils. The Chancellor, by Instrument in Writing, set forth the Privilege of the University Charters, and Confirmation &c. by Act of Parliament; and that the Defendant was a Scholar, and that they had a Court of Equity, and pray'd that Defendant be diffimis'd. The Lord Keeper did not allow the Claim, and said that Confinse of Pleas in Equity could not be granted, tho' Precedents were shewn of the same Claim allow'd in Q. Elizabeth's Time. He ask'd if any could be shewn in Lord Ellesmere's or Coventry's Time; but none could be shewn; and so disallow'd the Claim, saying it must be put in by way of Plea; but declar'd it should be sufficient to over the Defendant to be a Scholar Resident &c. without Oath. Chan. Cales 237. Mich. 26. the University, confirmed by Act of Parliament, which directed it to be allow'd upon any Notification or Signification of such their Privilege; but the Court rebuked it, because he had no Warrant of Attorney in Latin, under the Seal of the Chancellor; for it ought to be claim'd either in Person, or by Attorney, or otherwise there is no Party in Court to claim it. Show. 352. Trin. 4 W. & M. Parker v. Edwards & al.'

12. Cafe was brought against the Defendant, a Member of the University, inhabiting within their Jurisdiction. The Bill was of Easter Term 11 Ann. and the Defendant had an Imparlance till the first Day of Trinity-Term following; after which, and before Plea pleaded, the University of Cambridge, by their Attorney, demanded Confinse, and set out the Letters Patent, and Act of Parliament of Queen Elizabeth before mention'd; and the Claim was disallow'd, because it was not made the first Day. Cited 2 Ld. Raym. 1339. in Cafe of the King v. Cambridge University, alias Dr. Bentley's Cafe, as held Hill. 11 Ann. B. R. Perce v. Manners.

as to the Time and Manner of claiming, and therefore is to be govern'd by the Rules of Law; and that there is no Reason why the Rules of Law should not govern the Time of Pleading, as make it necessary to be pleaded at all. —No Claim can be by the University after Imparlance; —Per Holt Ch. J. Show. 352. Trin. 4 W. & M. in Cafe of Parker v. Edwards & al. —S. P. Per Cur. Burnard, Rep. in B. R. 66. Trin. 2 Geo. 2. in Cafe of Boot v. Graham. —But notwithstanding such Objection, the Privilege was allow'd Per Curiam. Godd. 1424. pl. 483. Patch. 3 Car. B. R. Fryer v. Dew.

13. A Bill being brought in this Court, for a Discovery of the Personal Estate of Dr. Aldridge deceased, and an Injunction granted thereupon, the University of Oxford claim'd Confinse of the Cafe, for that both Plaintiff and Defendant were Scholars of the University. Upon hearing Coun-
Void and Voidable.


14. Exception was taken to the Manner of the Chancellor's Claim of Conufance, the Defendant's Residence being only certified by the Chancellor, and not certified by Affidavit. The Court seem'd to be of Opinion that this Exception had a good deal of Weight in it; for they said a Judge cannot certify a Matter of Fact of this Sort, which will be final, but only Matters appearing upon Record; and they said that the bare being upon the Matriculation Roll will not be enough in this Case, but it is equally necessary that such Person should be resident in the University. So upon this Exception it stood over to another Day. Barnard. Rep. in B. R. 49. Pfach. 1 Geo. 2. Boot v. Graham.

Page j. viz. that the Demand of Conufance ought to have been entered on the Roll before they came to apply to have it allow'd. And all the Court were of that Opinion, and that it ought not to be allow'd to be enter'd Nun pro tunc; for Bars to the Jurisdiction ought to be strictly pursued; and this, they said, is the Reason why you cannot make such an Application as this after Imporance.

For more of University in general, See other Proper Titles.

(A) Void or Voidable.

1. Bond of a Feme Covert, Monk, and Infant, are void; and where such Person and another is bound the other shall be sued alone, and the Writ shall not abate. Br. Obligation, pl. 26. cites 14 H. 4. 30. and 53.

2. Things void, or determin'd, cannot be made good, but must have a new Creation. Br. Bar. pl. 27. cites 21 H. 6. 24.

3. Void Things are good to some Purpofe. Fin. Law 8vo. 62.

4. Lease by the Husband of the Wife's Land; the Husband dies, the Lease is not void, but voidable by the Wife's Entry. Arg. 3 Bulft. 272. cites Pl. C. 65. Browning v. Beefton.


7. A Feoffment once effectual, cannot be made void by any Words in it, without Entry; and it is not like a Bargain of Goods, or a Bond, or a Lease for Years, which by Words in it (as that it shall be void and of no Effect) may be disdifolv'd and made of no Effect, because that as by the
the sealing a bare Contract, it may be made perfect and effectual without other Circumstances, to may it be defeated by such bare Means, without other Circumstance. But it is not so in Case of an Inheritance or Freehold, which can't be effectual by the bare Delivery of a Deed, unless Livery be made thereupon; Per Popham Ch. J. and Fenner J. Poph. 100. Mich. 37 & 38 Eliz. in Case of Goodale v. Wyat.

8. Bond void in Part by a Statute Law, is void in toto; but at Common Law 'tis good as to the legal Part, and void as to the illegal. 3 Rep. 82. b. 83. a. in Twine's Case, cites 33 Eliz. C. B. Lee v. Colshill.

9. A fraudulent Gift of Goods is not void by the Statute 13 Eliz. against all, but only against his Creditor; but remains good against himself; Per Anderton. Cro. E. 445. in Case of Upson v. Baffet.

10. Feeffment upon Maintenance or Champerty is not void against the Feoffor, but against him that hath Right; Per Beamond J. Cro. E. 445. in Case of Upson v. Baffet.

11. Of a void Act or Deed every Stranger may take Advantage, but not of a voidable one, As if there are 2 Jointenants within Age, and one makes a Lease for Years, and dies, the other shall avoid it, because the Lease is utterly void; but if the one leaves for Life, and makes Livery in Perfom, and dies, the other shall not avoid it. Per Wray Ch. J. 2 Le. 218. in Humphreton's Case.

12. Administration by the inferior Ordinary, where there are Bona Notabilia, is void. Noy 96. in Case of Cofmsman v. Hume.

13. Infant makes a Feeffment or a * Lease, and delivers it with his Hand, it is only voidable; but if it be executed by Letter of Attorney, it is a Difficult in him. 2 Brownl. 248. in Case of Plomer v. Hockhead.

be referre a tritling Rest, as t.d. where the Land is worth 100l. per Annum, it is void. — His say- ing, when of Age, to Leftice, God give you Joy of it, is an Affirmation, Per Mead J. 4 Le. 4. pl 17.

14. Where the Statute of Weal'm. 2. 13 E. 1. cap. 1. says that Finis ipsis jure fit nullus, it is not void against the Party nor his Issue, nor him in Reversion; but the Issue and he in Reversion have Remedy to avoid it. Arg. Roll. Rep. 158. 159. in Case of Warren v. Smith, alias Magdalen College's Case.

15. So where the Statute of Additions ordains, that if any be outlaw'd without Addition, the Outlawry shall be clearly void, and of no Effect; yet it shall not be void without Writ of Error. Arg. Roll. Rep. 159. in Case of Smith v. Warren.


17. Void Things are as no Things; as a void Award is as no Award. Void Case. See Hard. 12. and 41 Arg.

at all, are both alike. Hard. 41. Arg. — Arg. Litt. Rep. 253

18. A Thing may be said to be void in several Degrees. 1st. Void so as it never done to all Purposes, so as all Persons may take Advantage thereof. 2dly. Void to some Purposes only. 3dly. So void by Operation of Law, that he that will have the Benefit of it may make it good. Cart. 19. in Case of Keite v. Clopton.


Trin. 23 Car. 2. Lord Cornwall v. Middleton.


21. A Parol Promise was made by an Executor on certain Terms, to pay a Debt of Tettator's, and also a Debt of his own. But adjudge'd for Defendant; for the Promise as to the one Part, viz. the Tettator's Debt being void

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void by the Statute of Frauds being not in Writing, it cannot stand good for the other; for it is an entire Agreement, and the Action is brought for both the Sums, and indeed could not be otherwise without Variance from the Promise. 2 Vent. 223. Mich. 2 W. & M. in C. B. Lord Lexington v. Clerk & uxor.

22. Lease by Tenant in Tail not warranted by the Statute, is not void, but voidable. Arg. Per Holt Ch. J. 2 Salk. 619. 620. in Case of Machil v. Clerk.

3 Le. 271. in Case of Butler v. Baker.

23. Bond by Infant or Non compe†, is void, because the Law has appointed no Act to avoid it; and the only Reason why the Party cannot plead Non est Factum, is because the Cause of Nullity is extrinsic, and does not appear on the Face of the Deed. 2 Salk. 675. Thompson v. Leach.—And tho’ it be for Necessaries, yet if it be with a Penalty it is void. Noy 85. Delavel v. Clare.—But Bond of Submission to an Arbitration, seems only voidable. See Noy 93. Stone v. Knight.

For more of Void and Voidable in general, See Estates, Fails, Grants, and other Proper Titles.

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(A) Voire dire.

1. Eleven were sworn, and because the twelfth was in the Vill, the eleven were charg’d upon Voire dire of the Value of the Land per Ann. by which they said 12s. and he was amerc’d in this Sum. Br. Challenge, pl. 109. cites 20 Aff. 11.

2. Inquest was demanded, and 11 appear’d, and the Court examin’d the Jurors upon Oath, if any other came to Westminster for the same Cause, and if they had any more Hundreds than one, tho’ it was not formal & its factum eft. Quod nota. Br. Enquest, pl. 7. cites 47 E. 3. 24. 25.

3. In Affixe Joinder of the Jury of two Counties was awarded upon the Issue, and 16 of the one County came, and one of the other; by which the 16 and the one were sworn upon a Voire dire by Belknap, Candish, Inglefield, and Tank, if there were more in the Vill of the other County, or no; for the Jury shall be taken by six of the one County, and six of the other; but Kirtin did not attend. Br. Challenge, pl. 213. cites 48 E. 3. 30.

4. Tho’ that produce an Evidence, ought to examine him in chief only; but they against whom he is brought, may examine him upon a Voire dire, if they please, whether he is concern’d in Interest. 10 Mod. 151. Pach. 12 Ann. B. R. Bewdley Corporation’s Cafe.

5. An
Voluntary Conveyances.

5. An Issue was, which Charter the Corporation was to aff by, whether by the ancient one, or one of later Date ? A Witness brought to establih the ancient Charter, was excepted against, as being a Mortgage under the old Corporation; which they prov'd by an Answer of his to a Bill in Chancery. But this Answer being so uncertainly penn'd, as that it might be true, and yet his Mortgage of such a Nature as not to prevent his Evidence, it was inferred that he might be call'd to explain the Ambiguity of his Answer. And the Court was of Opinion he might, since his Answer depended upon his Veracity as much as the Evidence he could then give; and if the one be to be credited, why not the other? But afterwards his Evidence was rejected upon another Consideration, viz. That in his Answer he lays the whole Stress of his Defence upon the Matter then in Issue, viz. the Substituting of the present Corporation.


6. Whether Evidence for the Crown may be examined upon a Voire dire. See 10 Mod. 192. The Queen v. Mufcot.

For more of Voire dire in general, See Trial, and other Proper Titles.

Voluntary Conveyances.

(A) What are so. And what pass'd by them.

1. A DEED made pursuant and in order to the Marriage Agreement, On a Mar- and on just and good Considerations of Marriage, the not so ex- rigement, the
riage-agree- Husband
ment, the
ment, the
and Settlement of an
its Estate on his Potestacy, and no Fraud therein, is not a voluntary Deed.


ther gave Bond to pay 500 l. on his making a suitable Jointure Settlement on the Wife, noting nothing as to the Issue. Afterwards 147 l. per Ann. Lands were settled in a strict usual Manner. The Matter of the Rolls held the Settlement good, and not voluntary or fraudulent against Bond-creditors; and that the Words of the Bond would bear such Construction. Chan. Prec. 520. pl 521. Mich. 1719. Brunt- den v. Stratton.

2. A seised of a Reversion in Fee of a Copyhold, agreed on Marriage of M. her Daughter to B. to pay B. 500 l. and to surrender the Copyhold, within two Months after it came into Possession, to the Use of B. and M. and the Heirs of their two Bodies, Remainder to the Heirs of M. But contrary to such Intention or Agreement, A. surrender'd it to the Use of B. in Fee, (or at least the Remainder, instead of being limited to M. was limited to B. in Fee.) Upon discovering the Mistake, B. as well as A. and M. was willing to rectify it, but to do it in such a manner as that it might not come to his Father's Knowledge, who had settled handomely on the Marriage, but was very passionate and fervent towards B. his Son. Whereupon B. executed a Deed, reciting the Surrender and the Mistake, and
Voluntary Conveyances.

and then covenanted to hold and lease the Premises in Trust for himself and Wife for their Lives, Remainder in Trust for the Heirs of their two Bodies, Remainder in Trust for M. and her Heirs, with a Covenant from B. to convey the same to those Uses. But B. having made a Supplier to the Use of his Will, his Father prevail'd on him to devide the Premises to him and his Heirs, which B. did, and died. On a Bill by A. and M. against the Father, Lord C. King said, he did not think this a mere voluntary Conveyance; for that when B. under his Hand and Seal declares and recites all this, he must take B.'s Intention to be as himself recites it, and if so, and that the Supplier was made differently by Mistake, it was but Justice in him to rectify it, and settle it as was first intended. And decreed the Father to settle the same accordingly. 2 Wms's Rep. 464. pl. 148. Randal v. Randal.

3. A. on Marriage settled a considerable real Estate on his first and other Sons in Tail, but no Provision was made therein for younger Children. A. had B. his eldest Son, and several younger Children, and a little before his Death he requested B. that as his personal Estate would little more than pay his Debts, B. would give 200 l. to his younger Brothers and Sistors out of the real Estate that would come to him on A.'s Death; which B. promised to do. A. died, leaving G. the Defendant his Executor, who requested B. to give such Bond; but he refused, till upon G.'s giving him 30. out of A.'s personal Estate, B. gave Bond for 120 l. for his Brothers and Sistors. B. afterwards died intestate. On a Bill brought to postpone the Payment of this Bond till B.'s just Debts be paid, the Court was of Opinion that this Bond given by an eldest Son, by way of Provision for his younger Brothers and Sistors, cannot be called a voluntary Bond; and order'd accordingly. Barnard. Rep. in Canc. 397. Hill. 1740. Eales v. Gee.

(B) Voluntary Conveyances. Binding the Party.

1. A. on the Marriage of his Son settled several Lands in this manner, viz. As to Part to the Use of himself for Life, and after to the Use of his Son for Life, then to his first and other Sons in Tail; and for Want of such Issue, to the Use of the Plaintiff, who was his Brother, and his Heirs; and as to other Part of the Lands, to the Use of the Son for Life, and after to the Use of the Wife for her Jointure, then to the first and other Sons in Tail; and for Want of such Issue, to the Plaintiff and his Heirs. The Son and Wife died without Issue in the Life-time of A. and after their Deaths A. got the Settlement, and cut it in Pieces; but the Counter-part was entire, and in the Hands of A. and the Bill was brought to discover it, and have it preserved; and the Counter-part being contested in the Answer, the Plaintiff obtained an Order at the Rolls to have it brought into Court, and a Motion was made to have that Order discharged; for that the Remainder to the Plaintiff was merely voluntary, and therefore ought not to have any Aid from a Court of Equity. But the Court would not discharge the Order, but made the Deed to be brought into Court, there to remain, and thereby hinder A. from selling the Estate from the Plaintiff. Abr. Eqw. Cales 168. Trin. 1691. Brookbank v. Brookbank.

Afterwards
K. the Husband brought a Bill, purporting to

2. A Widow had a considerable Jointure, and a real Estate of her own purchasing, and also 1000 l. South-Sea Stock, conveys Part of the real Estates to Trustees to the Use of herself during her Widowhood, Remainder to S. C. her 2d Son in Tail, Remainder over, and covenants to transfer the
Voluntary Conveyances.

the South-Sea Stock to Trustees for herself for her Widowhood, and afterwards to her said 2d Son; but the Stock never was transfer'd. There were Dupl. the Liberty of the Deeds, and they were deliver'd into her Attorney's Hands, with a Charge to part with them; and often declared she had done this for the sake of her Children. Afterwards she married K. Whereupon C. brought a Bill to have these Lands and Stock, and mean Profits since the Marriage, and the Deeds to be deliver'd to him. The Widow swore she never gave Notice to K. of these Writings, and K. swore that he had no Notice of any of them before his Marriage with her. Lord Parry; but Chancellor said, as to the Widow, if she had kept these Deeds in her own Hands, and they had been got thence, or out of the Hands of her Agent, he thought she should not be bound by them; but there being Duplicates, and Evidence that the declar'd her Intention to be to put this out of her Power, he said he should make no Difficulty to decree against her, were she the Survivor, and the only Defendant; but as she was in Pollition, and visible Owner, it is hard to decree against K. who had no Notice of the Deeds; and that he inclin'd to give no Relief. Afterwards, upon the Plaintiff's praying no Decree against his Mother or K. but only as to the Defendants who had the Deeds, that they might be deliver'd him, his Lordship decreed accordingly, and that the Plaintiff might sue in the Trustee's Name, without Prejudice to any Relief first they might have on his Bill, and the Bill to be disd'n as to the Mother and K. without Costs. 2 Wms's Rep. 358. pl. 103. Trin. 1726. Cotton v. King.

for several of her Tenants, whereat being present, she acquainted them her younger Son Stephen was to be their Landlord, in case she married again; and if she married, her 2d Husband should marry her for Love. And it appearing that she had refer'd to herself out of these voluntary Settlements her original Jointure made by Sir Thomas Cotton, her former Husband (being 420l. per Ann. Rent charge;) that she had nine younger Children by her said former Husband, who at best were very flenderly provided for; and farther, that the Plaintiff K. when he married her, was in very mean Circumstances, an Half-pay Lieutenant in Ireland, had 2 Sons by a former Wife; and that he had a considerable Sum of Money with this Lady, as she had been Executrix and Refiduary Legatee of her former Husband Sir Thomas; So that it was evident there had been no Fraud or Impostion on K. the Plaintiff, and he could not so much as pretend he could make any Settlement or Jointure on Lady Cotton. For these Reasons the Lord Chancellor disd'n'd K.'s Bill, as to that Part of it which sought to set aside any of the Settlements made by the Wife in Trust. And as to the South-Sea Stock, the there was no actual Allignment by Deed, but only a Covenant to transfer, yet this was such an Allignment as would bind K. for it was not like a Bond from her to pay Money, since here K. was to pay none, nor to part with any thing which was his; it was only a Provision made by her before her Marriage-treaty with the Plaintiff, that in case of her Marriage such a Part of her Estate should go to her Children, which was but reasonable. 2 Wms's Rep. 359. pl. 190. Trin. 1722. King v. Cotton.

3. Sir G. Rivers, by Settlement after Marriage (recited to be in Pursuance of Articles before, but not prov'd) conveys Land to the Use of himself for Life, Remainder to his Wife for Life for her Jointure. Remainder to their first and other Sons in Tail; and from and after Failure of such Issue Male, to Trustees for 500 Years, Remainder to himself in Fee. The Trust of the Term was declar'd to be, that if there should be one or more Daughters, the Trustees should or might, either by Rents, Issues, and Profits, alter the Commencement of the Term, or by Demise, Sale, or otherwise, when, and in such manner as the Trustees should think fit, raise and pay particular Portions to the Daughters, at 19 or Marriage, and Maintenance in the mean Time, after the Death of Sir G. or his Wife. And there was a Proviso in the Settlement, that if the Daughters should be under Age, and not properly educated, Trustees might raise Money for their Education. The Wife died, Sir G. is still living, and there is no Issue male. In 1727 G. and his Wife (one of the Daughters of Sir G.) bring a Bill to compel a Sale of the Trust-term, to raise the Portion provided by the Settlement, notwithstanding Sir G. the Father was still living. Lord Chancellor said, The Maintenance here is expressly provided to begin upon Failure
Voluntary Conveyances.

of Iliffe Male, and upon the Death of either Father or Mother; and there can be no way of raising it, but by Sale; wherefore &c. and this strengthened by the Proviso touching the raising Money for Education &c. And as to the Settlement being made after Marriage, and the Articles precedent not proved, he declared Sir G. was stopped; and could not lay the Settlement was voluntary, though as to Creditors it might be otherwise; and decreed the Term to be fold &c. MS. Rep. Mich. 4 Geo. 2. in Cane. Goodall v. Rivers.

(C) Binding to Persons claiming under the Party.

UPON Evidence in a Trial at Bar, the Case was, That A. 6 Nov. 1645, conveys by Indenture to W. R. and W. S. in Fee; and levies a Fine accordingly, without any Consideration: And 13 March 1645. A. covenants to stand jeild to the Use of himself for Life. Remainder to his first Son in Law, who is the Lessfor of the Plaintiff, and levies a Fine accordingly. The 28th March 1653, A. and his Wife, with W. R. and W. S. join in a voluntary Conveyance by Fee to J. N. and his Heirs. A. having litue B. (the Lessfor of the Plaintiff) dies. J. N. makes his Will, and C. and D. Executors, and devises the Lands to be held by them. They the 19th March 1657, fell to E. and F. for 2000 l, who convey to G. and his Heirs. And it was resolved by the Court, That altho' E. and F. paid a valuable Consideration, yet the EBSITE to J. N. being voluntary, if the Conveyance of 6 Nov. 1645 was forged, the Plaintiff hath good Title: But the Jury found the first Conveyance good, and found for the Defendant. Raym. 25. Mich. 13 Car. 2. B. R. Eden v. Chalkhall.

2. A. made a voluntary Conveyance to B. and afterwards a Mortgage of the same Lands. The first Deed, on a Trial at Law, is found fraudulent. B. exhibited his Bill to redeem the Mortgage. It was decreed, That tho' the Deed to B. was fraudulent, because quoad the Mortgage-Money, and Pro tanto it was voluntary; yet it was good as to the Equity of Redemption, and would pass; for a voluntary Deed is good against the Party that makes it, and his Heirs, tho' not against the Mortgagee. Nelf. Chan. Rep. 101. 16 Car. 2. Randall v. Cartwright.


4. A. on a Quarrel with his chief Son, made a Settlement of 100 l. a Year on his Wife, in Augmentation of her Jointure; and after, being reconciled to his Son, cancelled the Deed, and so it was found at his Death. On a Trial at Law, the Deed being proved to be executed, was adjudged good, though cancelled; and the Son, on a Bill brought here, was dismissed by Ld. Somers. Cited by Lord Keeper Wright. Chan. Proc. 235. as Lady HUDSON's Case.

5. A. makes his Will of Lands, and afterwards made a voluntary Conveyance of the same Lands. No-Relief against the Conveyance, though made for a particular Purpose only, which never took Effect. Cited by Ld.
Voluntary Conveyances. 19

Ld. Keeper Wright as the Lord Lincoln's Cafe. 2 Vern. 475. in Cafe of Clavering v. Clavering.

6. A voluntary Deed cancel'd, and the Lands devised for Payment of Debts, and Debts paid under the Will: Quære, If Equity will relieve in such Case, since the Tenant himself could not avoid such a voluntary Deed? Vern. 132. pl. 118. Hill. 1682. Franklin v. Thornbury. by Lease.

but see after.

Vern.

in fine.

B. who was only Cey and Trull of a Term held from an Hospital in Leicester for 3 Lives, a little before his Death, by a little Scrap of Paper at an Alehouse, but under Hand and Seal, settled this Term to the Plaintiff's his Confidz to pay his Debts, and gave them the Surplus. Afterwards being dissolved with this Settlement, which he had delivered to a Creditor, he disaffid this Term, by Will in Writing, to his Half-Brother, subject to Payment of his Debts. The Question was, Whether the Deed or Will should prevail. Lord Chancellor held, That there was no Colour for setting the Deed aside to make way for the Will; That if a Man will improvidently bind himself up by a voluntary Deed, and not reserve a Liberty to himself by a Power of Revocation, this Court will not lose the Fettors he has put upon himself; but he must lie down under his own folly. For if you would relieve in such a Case, you must conferently establish this Proposition, viz. That a Man can make no voluntary Disposition of his Estate, but only by his Will, which would be absurd. Vern. 160. pl. 8. Mich. 1682. Villers v. Beaumont & al.

7. The Plaintiff Allen, being a Servant to Defendant's Grandmother, married one of her Daughters, who brought him a Portion of 600l. with Part of which he purchased the Copyhold Lands in Question, which were surrendered to the Ufe of the Plaintiff and his Wife, and the Heirs of their 2 Bodies; the Remainder to himself in Fee. The Wife soon after died, without Issue; and the Plaintiff, with respect to her Memory, and in Kindness to the Defendant her Nephews, did, in a Fit of Sickness, voluntarily surrender the Lands to the Ufe of himself for Life, with Remainder to the Defendant in Fee; and the Defendant was admitted to the Remainder in Fee, and paid 5l. Fine. The Plaintiff afterwards married again, and made a Settlement thereof, before his 2d Marriage, on his 2d Wife and her issue. The Bill was to be relieved against the first Surrender, as obtained by Surprize, and without Consideration. The Cause was at Issue, but no Surprize proved. Both the Plaintiff and Defendant died, and the 2d Wife and her Son brought a Bill, in Nature of a Bill of Revivor; And it was insisted, that the first Surrender, being made in A. 's Illness, it must be intended by him not to bind in case he recovered; and that this appears by his after settling it on his 2d Wife and Issue, who are to be taken as Purchasers. But Lord Chancellor disaffid the Bill, no Fraud or Truim appearing in the Cafe. Vern. 365. pl. 358. Hill. 1685. Allen v. Arme.

8. A. made a voluntary Settlement of Lands, subject to some Annuities in Trust for his Grandson and his Heirs. And some Years afterwards he made another voluntary Settlement of the same Estate to the Ufe of his eldest Son for Life, and to his first and other Sons in Tail, Remainder over; and by Will gave a considerable Estate to his Grandson. It was proved, that A. always kept the first Settlement in his Custody, and never published it; but it was found after his Death amongst witt Papers; and the After-Deed was often mentioned by him; and he told the Tenants, that the eldest Son was to be their Landlord, after his Death. Yet the Bill was disaffid, as to any Relief against the first Deed; but decreed the Payment of the Annuity and Arrears; and afterwards this Decree was affirmed in Parliament. 2 Vern. 473. Hill. 1704. Clavering v. Clavering.

Chanc. Prec. 535. pl. 197. S. C. states it thus, viz. A Father, in 1664, makes a voluntary Settlement on his eldest Son and his Heirs, without any Power of Revocation; and afterwards makes another Settlement of the same Lands to his 2d Son for Life, with Remainder to his first and other Sons in Tail, Male, and dies. After his Death the first Deed came to the Hands of his eldest Son's Heir, and the other to the Hands of the second Son; who brought a Bill to set aside the first. [Nothing is mentioned in the Report of the Case, Dower or Decree of the Court in this Cafe: But in the Margin it is added thus, viz. ] Per Cur. Both Deeds being voluntary, the Provision for a younger Son is no such Consideration as to induce the Court to set aside the first Deed.—And Abr. Equ. Cafes. 24. (C) pl. 6. has the S. C. as from a M.S. accordingly.

9. A.
9. But where A. made a voluntary Settlement on her Nephew B. and kept the same in his own Possession; but it was without any Power of Revocation; and some time after the Nephew's Father, by Stealth, and without the Previous of A. got at this Settlement; and having an attested Copy thereof, put up the Deeds (there being 2 Parts) where they were before placed by A. and A. burns these Deeds, and settles the Premises on C. another Nephew: B brought a Bill to establish the first Settlement, which was dimiss'd with Coils. And after C. claiming under the After-Settlement, brought a Bill to have the attested Copies delivered up, and it was decreed accordingly, because it was indirectly gained. 1 Wms. Rep. 577. pl. 168. Mich. 1719. Naldred v. Gilham.

10. B. and C. two Brothers. Lands are conveyed to C. and his Heirs, in Trust for J. S. a Stranger, for his Life; Remainder to B. in Tail; Remainder to C. in Fee. During the Life of J. S. (the Tenant for Life) C. in Consideration of 5 s. conveys the Reversion to B. and his Heirs in Fee. B. supposing he had an absolute Fee in him, devises the Lands to his Executors, to be sold for Payment of Debts and Legacies; and makes his Brother C. and another Person Executors, and dies without Issue. C. bargains and sells the Lands to the Defendant Arnold, who had Notice of all these Transactions &c. The Question was, If the Defendant, being a Purchaser for a valuable Consideration, shall avoid the Conveyance from C. to B. of the Reversion in Fee, (being voluntary) it being, at the Time of the Conveyance, a dry Reversion in Fee Expectant upon an Eitare Tail, and of no Consideration in the Eye of the Law. Cooper C. was of Opinion, That the Conveyance of the Reversion in Fee, from C. to B. cannot be avoided as fraudulent by a subsequent Purchaser; because, at the Time of the Conveyance, it was of no Value, being barrable by the Tenant in Tail by a Recovery, with Consent of the Tenant for Life; yet he granted a Trial at Law, upon the Importunity of Counsel. MS. Rep. Trin. 2 Geo. in Canc. Buckley v. Arnold.

11. A Surrender was made to a Feme Covern of Copyhold Lands, with a Power referred to her to surrender it to such Uses as she, by Writing or left Will, in the Presence of 3 Witnesses, should direct or appoint. She made a Will, in Pursuance of her Power, executed in Presence of 3 Witnesses, and gave it to her Daughter and Heir. Afterwards she made a Surrender, together with her Husband, to the Use of the Husband and his Heirs, But this was made in the Presence of 2 Witnesses only, who subscribed their Names as Witnesses. But the Deputy-Steward, who took the Surrender, had set his Name to it. On a Bill by the Husband, after the Wife's Death, to establish this Surrender, who would have the Steward to be considered as a 3d Witness, the Daughter, the Defendant, pleaded a Title by the Will, and also demurred, for that the Plaintiff's Title, if any, was only at Law, and he might bring Ejection. Lord Chancellor seemed to think the Plea good, as a Plea of the Defendant's Title; and the Demurrer good likewife, as a Demurrer to the Plaintiff's Title. But at last he over-ruled the Plea, and allowed the Demurrer. Abr. Equ. Cafes, 42. Trin. 1728. Cotter v. Layer.
Voluntary Conveyances.

(D) Set aside in favour of Purchasers or Creditors.

1. The Plaintiff bought several Manors of T. B. deceased, who (before the Plaintiff's Purchase) had convey'd the same by Fine and Recovery to the Defendant, and his Heirs Male; which being done without Confederation, was adjudged and decreed to the Plaintiff. Toth. 257. cites Standen v. Bullock, 38 Eliz. li. 10. 713. and 42 Eliz. li. B. fo. 259.

2. The Father makes a voluntary Conveyance in Tail of Lands, referring an Estate for Life, and after sells the Woods upon the Lands to a Stranger. Decreed that the Venees of the Woods shall have the Woods, notwithstanding the Conveyance of the Lands. Toth. 259. cites 25 Jan. 9 Jac. Curfon v. Blackhall.

3. A Man conveys Land, for Preferment of his Children. This shall be good against a Purchaser, if he was not in Debt at the Time of the first Conveyance to the Children: But if he was in Debt at that Time, it is then otherwise. D. 294. b. Marg. pl. 8. cites Paanch. 11 Jac. C. B. Holcroft's Cafe.

4. A made a Conveyance to [Trustees for] his Son; and afterwards artied to sell the Lands to B. who had tender'd the Purchase-Money; and brought his Bill to be relieved. The Court, with Affiance of the Judges, declared the Conveyance fraudulent; and that it was just that the Son should be in the same Cafe as his Father, had he never made the Conveyance: And Decreed the Articles to be performed; but not to impeach the voluntary Conveyance, as between A. and his Son; for any Advancement, or any other Thing thereby settled on the Son, other than making good the said Articles; but the Trustees to be paid their Debts and Engagements out of the Purchase Money. Chan. Rep. 146. 16 Car. 1. Leach v. Dean.

5. T. sold to C. an Estate which he claimed as Heir to his Father by Virtue of a Marriage Settlement upon the Marriage of his Father with his Mother in Law M. being the Lands of the said M.—B. as Heir under that Settlement, brought a Bill to discover the Title of T. and C. and also to compel the surviving Trustee in a former Settlement in the Family, to convey to B. as Heir under the Settlement. Cowper C. declared he would not decree the Trustee to convey the legal Estate to the Cefly que Truf, to compel him to suffer the Cefly que Truf to bring an Ejection in his Name against C. because he was a Purchaser without Notice of this former Settlement, and Cefly que Truf was a Voluntary; and said it was a constant Rule in Equity, never to ad any Person who claims by a voluntary Settlement, against a Fair Purchaser without Notice: As in Cafe of a Disfesior [as it now appear'd that it was] who conveys away the Lands upon a valuable Confederation, this Court will not compel the Trustee to convey the legal Estate to Cefly que Truf, to enable him to recover the Possession at Law against the Purchasor, but the Trustee may do it himself if he think fit; but this Court will not compel him to it. Tho' Sir Jo. Jekill and Mr. Vernon infitled strongly for it, and said the Possession of the Trustee was the Possession of the Cefly que Truf, and that it was a Breach of Truf in the Trustee not to convey at any Time to Cefly que Truf upon Request. But in this Cafe Ld. C. decreed that T. should account for the Profits of the Estate from his Entry to the Time of the Conveyance to C. for he was a Disfesior, tho' T. had 2 Verdicts for him in Ejection: but this old Settlement was discover'd after those Trials. MS. Rep. Paanch. 1 Geo. Can. Turner v. Buck & al. &e contra.
Voluntary Conveyances.

6. A being indebted to 2 several Persons by Bond, and seised of Fee-Farm Rents charged with an Annuity for Life of M. for natural Love to H. his younger Son conveyed the same to B. and C. in Trust, after the Death of M. to fall, and with the Money to buy a Place for the said H. for his Life, and if H. died before any Sale, in Trust for himself and his Heirs. After this Settlement A. becomes indebted to others on Bond, and did not leaving Assets for Creditors. Mr. Vernon had given his Opinion, That if there had been no Bond-Creditors at the Time of the Conveyance, it might have created a Doubt, whether it had been done to defeat Bond-Creditors; but there being Debts then owing by Bond, he thought it would be void even against Bond-Debts contracted after, or that if it were otherwise, it would come to the same thing, since the Estate in Question is not sufficient to answer the Bond-Debts, prior to the Conveyance; and if necessary, the later Bond-Creditors would be admitted to stand in the Place of the Prior Bond-Creditors, and the Assets so marshalled, that all might receive a Satisfaction as far as the Assets will extend. And agreeable to this Opinion 22 Feb. 1716, the Court decreed, that the Fee-Farm Rents would be sold for the Benefit of the Bond-Creditors, and that the Trustees should all join in any Conveyance to be made for that Purpose. Comyns's Rep. 255, 256. 141. Hill. 3 Geo. i. in Scacc. James St. Amand v. Countes Dowager of Jersey.

(E) Voluntary Conveyances. Set aside (not as fraudulent) but for other Reasons.

In such Case the Grantor was enabled to sell and convey. Torh. 164. cites Hill. 18 Jac. Grant v. Edes.

2. A voluntary Conveyance made by one of a weak Understanding, to a Cousin German, was set aside at the Suit of one in the same Degree of Kindred, tho' no Proof was of Lunacy. She could read and write, and taught a Child to read. 2 Ch. Cafes, 103. Pash. 34 Car. 2. White v. Small.

(F) Postponed.

1. A Voluntary Conveyance made for a Provision for younger Children, must give Way to subsequent Judgments for good Confirmations, and to a Mortgage; but after the Mortgage and Judgments satisfied with Interest, the Rest of the Money raised by Sale of the said Estate, ought to stand secured for the Benefit of the Children, and be raised by Sale of another Estate, which was settled as a Collateral Security on the Mortgage to make good against the Children, because of the said voluntary Conveyance, and by Rents and Profits in the mean Time precedent to other Creditors not on Judgement, and afterwards the Creditors to come in. 2 Ch. R. 262. 34 Car. 2. Girling v. Lowther.

3. A.
Voluntary Conveyances.

2. A. having no Land, Covenants or Enters into Bond to settle 100 l. a Year in Land, or an Annuity out of Land of like Value on B. and after purchases Land of greater Value. A. devises part of the Land to C. and dies without making such Settlement. The Land voluntarily devised to C. together with the other Lands not devised, but which descended to A.'s Heir, shall be both liable to the Annuity; but after the Annuity satisfied, C. shall be reimbursed out of the descended Lands. 2 Vern. 97. pl. 90. Patch. 1689. Took v. Hasting.

(G) Favored or Relieved. How far, and against whom.

1. Where there are voluntary Conveyances executed, Chancellor will not relieve the latter against the former; but dismissed the Plaintiff's Bill. Chan. Rep. 173. 1658. Goodwin v. Goodwin.


2. Baron and Feme seised of Land in Fee in Future uses levy a Fine, and declare the Uses to the Baron and Feme &c. Remainder in Fee to the Husband. The Husband by Will devises the Land to J. S. who by Bill prays Discovery of the Deed and to have the Use of it. The Heir at Law infilts that the Fine was unduly gained, and the Deed was without Consideration, and denies the having it. And so the Court would not relieve, but left the Plaintiff wholly to Law to help himself as he could. 2 Ch. Cafes, 133. Hill. 34 & 35 Car. 2. Anon.

(H) Supported or made Good. By Matter Ex post See (D) pl. 31

Facto. In what Cases.

1. Upon an Assignment of a Mortgage made by Kendall 1659, and after by divers mean Assignments veiled in Newport, Executor of Secretary Coventry. It was objected first, That it does not appear that any Money was paid upon the original Mortgage, and therefore it was fraudulent, and it being fraudulent in the Creation, the Secretary Coventry paid a valuable Consideration, yet this will not purge the Fraud and make it good against the Defendant, who was a Purchaser bona fide, and for a valuable Consideration; fed non allocatur; for Holt Ch. J. said, The first Mortgage was good between the Parties, and being so, when the first Mortgagee assigns for a valuable Consideration, this is all one as if the first Mortgage had been upon a valuable Consideration; for now the second Mortgagee stands in his Place, and therefore is within the Proviso of the Stat. of 27 Eliz. cap. 4. that no Mortgage bona fide, and upon good Consideration shali be impeached by Force of this Act; but shall stand in such Force as before the Act made. Skin. 423. Patch. 6 W. & M. in B. R. Andrew Newport's Case.

2. A
Voluntary Conveyances.


3. S. having several young Children, and being much in Debt, conveyed part of his lands in Trust for the Payment of his Debts, and by another Deed conveyed other Part to Trustees for the Maintenance of his Children. This last Conveyance being voluntary, was declared void as to Creditors, and still liable to their Demands as before; but it was good against S. himself, and should bind him, and therefore if his Creditors should fall upon those Lands for a Satisfaction of their Debts, and thereby strip the Children of their Maintenance, the Children should have a Repayment out of the Residue of the Estate which S. had referred to himself for his own Maintenance; for tho' the Conveyance was voluntary in the Father, yet he is bound by Nature to provide for his Children; and it is a fort of a Debt. Per Ld. C. Cowper. MS. Rep. Mich. 4 Geo. Canc. Sneed & al. v. Lord and Lady Culpeper, & c contra.

4. The Father covenants with his younger son in Consideration of Natural Affection, and for Advancement in Marriage &c. to leave a moiety of his Personal Estate to him by his Will; the father has several other Children; afterwards the said Father, on a then intended Marriage, settles part of his Real Estate on his said Son and W. and the Issue of that Marriage, and afterwards the Son releases to the Father all Covenants &c. Per King C. the Covenant being in Prejudice of the Rest of the Covenantor's Children, is not to be favoured; and as the Release is voluntary, so is the Covenant. For the subsequent Settlement is plainly the Consideration of the Marriage; so that the Question is, Whether this Court will take away any Defence the Party has at Law against a voluntary Deed; which Ld. Chancellor said he would certainly do, had the Covenant appeared to be for a good Consideration. And so extinguished the Bill, and sent them to Law, and that after Judgment there, they might report back. Gibb. 105. Mich. 3 Geo. 2. in Canc. Praund v. Turner.

(1) Supplied. In what Cases Defect therein shall be supplied.

2 Ch. R. 218. 1. THO' generally a Defect in a voluntary Conveyance shall * nor be supplied in Equity, yet it is otherwise it made for a Provision and Maintenance for Children. Vern. 40. pl. 38. Pach. 1682. Tom-Car. 2. Anon. son v. Atfield. * S. P. Yet where there has been a Covenant to bind seised to the Use of a Relation, 'tis a voluntary Settlement, yet this Court in the Ancient of Times always executed such Uses. Per Ld. Wright. 2 Vern 490. Mich. 1704 in Case of Clavering v. Clavering, cites Lady Hudson's Case.—Affirmed in the House of Lords.

2. The
Voucher.

2. The Court of Chancery will never help a Defective Conveyance without Consideration; As if a Man voluntarily makes a Conveyance to another of his Estate, and it proves defective; succè if it be for Money, Marriage, Jointure &c. and whereas it was affirmed at the Bar that Equity would compel an Execution of a Trust declared expressly without Consideration. The Kd. Keeper answered, that he did not think fo truly. 12 Mod. 603. Mich. 13. W. 3. Anon.

3. One Jointure of a Church Lease being taken sick in a Journey, to sever the Jointure, and provide for his Wife, lends for the School-Master of the Town (who was the only Person he could get to come at him) and acquainted him with his Intentions, and desired him to prepare an Instrument for that Purpose. The Schoolmaster drew a kind of Deed of Gift of the Lease from the Sick Man to his Wife, which he executed, and died. And this being to the Wife, and void in Law, she would have made it good here, but was diffimulated, being voluntary, and without Consideration. Chan. Prec. 124. pl. 108. Mich. 1700. Moyse v. Gyles.

For more of Voluntary Conveyance in General, see Creditors, Facts, Fraud, Grant, Titles, and other proper Titles.

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Voucher.

(A) Warranty personal.

1. If A. be bound to B. in an Obligation of 40l. for Payment of 20l. by the Condition at a Day, and A. does not pay it, but * runs away, so that B. cannot have his Debt, upon which C. a Stranger, upon Consideration that B. will give him a certain Quantity of Herrings, and will also make him a Letter of Attorney to sue the said Obligation, ass't, and promis'd to B. to warrant the said 20 l. to B. In this Case, in an Action upon this Promise, it is a good Assignment of a Breach that he has performed the Consideration, and that C. has not paid to him the 20l. without saying that A. did not pay him, or that he was not able to pay it; for the Warranty being personal, the Intent, by Assignment of the Obligation, appears, that he ought to pay the Debt without any Reference to A. Mich. 7 Car. 2. R. between Michael and Caden adjudged, this being made in Arrest of Judgment.

2. Upon a Communication between A. and B. touching a Marriage to C. a Woman, be had between A. and one C. a Female, and upon this B. affirms to pl. 3 Mich. 6 Car. B R. B. affirming to pl. 5 Mich.Licbard v. Pickard, whereupon, in Consideration that A. at the Request of B. would marry with C. and other Consideration there express'd also, B. promised that he should marry him, according, would make good to the said H A. the
A. the said 600 l. in Maritago cum predicta C. In action upon this Promise, it is a good Assignment of the Breach that he married with C, and put the said B. praedictas 600 l. vel aliquam inde pattem prae-
tato, sic utique multum solvit nec aliquo modo seam frett, Ang-
uisse, ha. made good Secundum promissionem praebitaum; for if he
had so much for her Portion, then B, has made it good; and if
she had not, then he himself ought to pay it. P. 7. Car. B. R. be-
tween Punchard and Kingstone adjudged per Curiam, it is moved
in Arrest of Judgment; The which Infracte Ca. 6 Car. Ror. And
this Judgment was after affirmed in the Exchequer Chamber in
Writ of Error.

3. In Trespaus the Defendant intituled himself to a Lease for 60 Years,
and pleaded a Confirmation with Warranty of the Plaintiff; Judgment &c.
Per Brudnell and Fineux Ch J. It is no Bar, but he shall plead it by way
of Covenant; for by this Warranty he cannot vouch; because it is not
[but] personal; but in Writ of Ward he may vouch; but here he is put
to Writ of Covenant, as in Wafe: But per Tremail J, it is a good Bar;
which seems to be Law, that a Personal Warranty shall be a good Bar in

4. If a Man gives Lands in Fee with Warranty, and binds certain Lands
specificaly to Warranty, the Perfon of the Feoffor is hereby bound, and not
the Land, unless he hath it at the Time of the Voucher. Co. Litt.
102. b.

(A. 2) Warranty in Law. In what Cases the Law will
create a Warranty.

1. If a Feme be endow’d in Chancery of the 3d Part of the Land
of her Baron whereas he was settled in Fee, this creates
a Warranty between her and the Heir, in respect of two Parts which
the Heir has, tho’ he has not the Reversion of the 3d Part. 17 E. 3. 8.

2. So shall it be upon any Dowment. 17 E. 3. 65. b. Time of E.
66. b. 69. b. admitted by Tithe. Contra 29 E. 3. 41. b.

3. If two exchange together, this creates a Warranty between
them of the Land which each of them gives to the other. 22 E. 3.
45 Art. 6. Admitted and adjudged.

(B) Warranty
(B) Warranty * in Law granted. * By *what* Words.

1. If a Man grants a Warrant to another, this shall create a Warranty in Law of the Ward. Br. Garranties, pl. 81. cites 6 E. 2. and Fitzh. Voucher 258.

2. Warranty by Dedi & Coe rent does not hold Place but between the Feoffor and the Feoffee, by some; Quære inde. Br. Garranties, pl. 81. cites 6 E. 2. and Fitzh. Voucher 258.

Dedi, coe rent, &c. now he is bound to warrant the Lands to the Feoffee, by those Words, And if the Feoffee be impleaded, he shall have a Warrant of Warrantia Charta against the Feoffor, by these Words, Dedi, coe rent, &c. but not against his Heir; for the Heir shall not be bounden unto a Warranty made by his Father, unless be bind him and his Heirs to Warranty, by express Words in the Deed; as to say, Ego & hered' mel omnia predict' terras &c. warrantizabimur &c. P. N. B. 154. (H)

3. Warranty was by these Words, Ego & Heredes mei acquietabimus & defendemus, and did not say Quis, nec cui warrantizabunt; and yet well Per Cur. Br. Voucher, pl. 81. cites 6 E. 2. and Fitzh. Voucher 258.

And likewhile there was a Clause of Warranty made, Eeego & Heredes mei Tenementa præd' warrantizabimus; and did not say Cui illa garr. And yet well Per Cur. Br. Voucher, pl. 81. cites 12 E. 2. Fitzh. Voucher 262.

5. In Precipe quod reddat, if two make Warranty by Dedi, and the one dies, the other who survises, who is vouch'd, shall be bound to the Warranty, and shall render in Value only; for the Heir of the other who is dead shall not be bound to the Warranty, nor to render in Value by this Word Dedi, by the Statute of Bigamis, unless Rent or Service be reserved.


Bigamis, which mentions in the End Rations proprii feodii. But contra of *Coe rent only*, quære; for Rafflesford contra. Br. Garranties, pl. 81. cites 11 H. 4. 41. Dedi is a Warranty in Law to the Feoffee and his Heirs during the Life of the Feoffor. Co. Litt. 384. a. But upon an Exchange and Hamage Ancifel, the Warranty extends reciprocally to the Heirs, and against the Heirs of both Parties. Co. Litt. 384. a. b. — And before the Statute of Déja captures à terraeun, if a Man had given Lands by this Word Dedi, to have and to hold to him and his Heirs, of the Donor and his Heirs by certain Services, then not only the Donor, but his Heirs also, had been bound to Warranty. But if before that Statute a Man had given Lands by this Word Dedi to a Man and his Heirs for ever, to hold of the Chief Lord, there the Feoffor had not been bound to Warranty but during his Life, as at this Day he is. Co. Litt. 384. a.


6. Where a Man is bound upon Condition to warrant and defend Land Br. Cond. to W. S. the Warranty is where he is impleaded; but the Defending is to save the Party, that no Stranger enters upon him. Br. Garranties, pl. 60. cites 2 E. 4. 15.

7. Neither Defendere nor Acquitare do create a Warranty, but Warrantize only. Co. Litt. 384. a. (d)

(B. 2) Express
Voucher.

(B. 2) Express Warranty.

S. P. For it [1] 2. If a Man makes a Grant in Fee cum Clavula Warrantiae, by such Words no Warranty shall be created. 11 H. 8. cited 1a. 6. 41. b.


So of Grant of Rent, with Clause of Dispose, he shall not detain without more. Br. Garmanties, pl. 83. cites 11. H. 4. 41.

There be 2. 4 E. 1. cap. 6. In Deeds where is contained Dedi & Concessi, tale Tene Branches of estate & without Homage.

The Meaning of them.

Words in, That Dedi doth import a Warranty in Law, albeit there be no other Warranty to hold of the Donor and his Heirs (as at the making of this Act, viz. in 4 Ed. 1. a Man might have done) there the Feoffor and his Heirs have been bound to Warranty. And this was the Common Law: for where Dedi is accompanied with a peradventure Tenure of the Feoffor and his Heirs, there Dedi imports a peradventure Warranty for the Feoffor and his Heirs, to the Feoffee and his Heirs, and herewith agrees Glanvil. 2 Inf. 25. cites Glav. 1. 7. cap. 2. and Bredon, lib. 5. fol. 388. b

And in those Days requisite the Donee did hold of the Donor, unless there were a special Limitation to the contrary. And when the Feoffment was by this Word (Dedi) to hold of the Donor and his Heirs, then he and his Heirs are bound to Warranty. 2 Inf. 27. 3.

* See Warranties Charts (b) pl. 4.

So it is if a Body Politick or Incorporate hold by Dedi, wherein Dedi was contained, irrespective to hold of him and his Successors, this had created a like Warranty, as in this Act is mentioned. 2 Inf. 27. 6.

This 2d Branch is, And where is contained Dedi & Concessi, &c. to be holden of the Chief Lords of the Fee, or of other, and not of Feoffors or their Heirs, referring no Service without Homage, or without the foresaid Clause, their Heirs shall not be bound to Warranty, notwithstanding * the Feoffor during his own Life, * by Force of his own Gift, shall be bound to warrant.

Or without a Clause that contains Warranty,

And to be holden of the Givers and their Heirs, by a certain Service, it is agreed that the Givers and their Heirs shall be bound to Warranty;

And where is contained Dedi & Concessi &c. to be holden of the Chief Lords of the Fee, or of other, and not of Feoffors or their Heirs, referring no Service without Homage, or without the foresaid Clause, their Heirs shall not be bound to Warranty, notwithstanding * the Feoffor during his own Life, * by Force of his own Gift, shall be bound to warrant.

The Consequent hereupon is, that albeit there be in this Case of the 2d Branch, an express Warranty, the Feoffor may take Advantage of the one or the other, as upon the first Branch has been laid. 2 Inf. 27. 5.

* The Letter of this Act extends only to the Feoffor upon a Feoffment made, but if Dedi doth come by way of Release or Confirmation, it importa Warranty during the Life of him that makes the Deed. So it is if a Recession expiring upon an Estate for Years, Life, or in Tails, be granted by the Lord Dedi, and Assignment both, then Dedi doth import a Warranty, this the State wills not by way of Feoffment. So it is of a Rent, of an Ad sessum, or the like. 2 Inf. 27. 6.
Voucher.

29

3. Land was given to a Man, his Heirs and Assigns; and the Deed will'd further, And I the aforesaid W. and my Heirs, will warrant all the aforesaid Lands and Tenements against all Men in Form aforesaid. Per Norton, It is not express'd to whom the Warranty shall go; and therefore void. But per Hank. It shall have Relation to the Words of the Gift before to the Feelee, his Heirs and Assigns; and so is the Form in a Fine, and so it is suff'd tempore E. 2. which all the Justices affirm'd that the Warranty was good by the Manner. Br. Garranties, pl. 23. cites 14 H. 4-13.

4. A Warranty is a Covenant real annex'd to Lands or Tenements, whereby a Man and his Heirs are bound to warrant the same; and either upon Voucher, or by Judgment in a Writ of Warrantia Chartae to yield other Lands and Tenements (which in old Books is call'd in excambio) to the Value of that which shall be evict'd by a former Title, or else may be us'd by Way of Rebutter. Co. Litt. 365. a.

5. Warranty in Deed, or an express Warranty, is created only by this Word Warrantia. Co. Litt. 384. a.

6. A. releases with Warranty for him and his Heirs, to B. and his Heirs, without saying Contra omnes Gentes. Agreed per Cur. that this is a general Warranty, and a Warrantia Chartae lies upon it. Noy 146. Ballard v. Ballard.

7. Covenant was brought on the Word Grant in a Feoffment; the Defendant demurr'd. And per Curiam, This is no Warranty of a Freehold, but only in Case of a Leaf for Years; and cited 5 Rep. Squatter's Cafe. And Judgment for the Defendant. 3 Keb. 617. pl. 84. Hill. 27 & 28 Car. 2. B. R. Brown v. Heywood.

(B. 3) Warranty of Lands or Chattles. Good, and what amounts to it.

1. If the King grants Land to me and my Heirs, and that if I am evict'd, or my Heirs, by Title, that he shall make in Value of other Lands, Per Wich and Finch, this is no Warranty, but that the King shall make in Value if &c. which founds in Covenant, if it was between common Persons, and not in Warranty of Voucher; and therefore no Cause of Aid of the King in Lieu of Voucher, and yet the Aid was granted of the King. And so it seems there to be good Cause to have in Value against the King. Br. Recovery in Value, pl. 32. cites 39 E. 3. 12.


Voucher.

3. Warranty will not bind a Man in a thing which is apparent, as to warrant that a Horse has both Eyes where he is apparently blind of one. Arg. Lev. 122. in Case of Ekins v. Trencham.

4. Where Seller has the Poiseffion of Goods, the bare affirning them to be his makes a Warranty. Otherwife if out of Poiseffion. 1 Salk. 210.


(B. 4) Warranty of Lands. Good or not. Commencing by Dillefin. And why so called.

1. T is called a Warranty that commences by Dillefin, because regularly the Conveyance, whereunto the Warranty is annexed, works a Dillefin. Co. Litt. 366. b.

2. In Affire, it was found that a Man and his three Cousins purchas'd jointly in Fox, and the Ancestor alien'd the Whole with Warranty, and died; and 2 of the others died; and the fourth recovered the three Parts, devout mirum! For the Warranty was collateral to one of them, as it seems, if any of them was Heir to him; and if all three were Heirs to such Ancestor, then all three shall be barred of their Parts, and his own Part is gone by the Alienation. Br. Jointenants, pl. 26. cites 13 All. 6.

3. If Guardian for Caufe of Nurse aliens the Land of the Heir with Warranty, and dies, whose Heir the Demandant is, this is a Warranty which commences by Dillefin, and shall be avoided by Plea. Br. Garranties, pl. 78. cites 43 E. 3. 7.

* Warranty commencing by Test, shall not be avoided; but Warranty commencing by Dillefin shall. 5 Rep. Sc. b

in Coke's Nota on Fitzherbert's Case.

4. In Foromedon the Tenant pleaded a Feoffment of the Grandfather of the Demandant, whose Heir he is with Warranty, Judgment &c. The Demandant said, that the same Grandfather gave in Tail to his Father, and entered upon him, and made the Feoffment with Warranty immediately; so that the Warranty commenced by Dillefin, Judgment &c. by which the Tenant took other Illeue; and so hee that collateral Warranty, which commences by * Dillefin, does not bind. Br. Formedon, pl. 16. cites 49 E. 3. 6.

5. If A. dillefe B. and enfeoffs C. with Warranty, and C. enfeoffs D. with Warranty, upon whom a Stranger enters, in whole Poiseffion B. the Dillefe releaseth his Right, now all former Warranties are extinct; and albeit D. is impleaded, yet shall he not have Warrantia Charce, because he is in of another Estate by Wrong. Weet's Symb. S. 197. cites F. N. B. 135. (9) 21 H. 6. 41. 22 H. 6. 22

6. If a Man dillefe his Father, and makes a Feoffment without Warranty, and the Father dies, the Heir cannot enter; and yet the Heir of the Heir may enter; but he who made the Feoffment cannot enter against his own Feoffment, tho' Right descends by the Death of his Father, who was dillefe'd; Per Pri.s. Br. Entre'Cong. pl. 47. cites 39 H. 6. 42.

* It was resolved, by great Ad-
Voucher.

if the Father be Tenant for Life, the Remainder to the Son in Fee: The Vice, that Father, by Covin and Content, makes a Lease for Years, to the end that the Leflee shall make a Feoffment in Fee to whom the Father shall release with Warranty; and all is executed accordingly. The Father dies. This rummy; but Warranty shall not bind, albeit the Diffelein was not done immediately to the Son; for the Feoffment of the Leflee is a Diffelein to the Father, who is Particeps Crimini. Co. Litt. 366. b.

B. R. Fitchherbt's Cafe. — The fame Cafe came in Question again, Jo. 392. pl. 7. Mich. 13 Car. B. R. in Cafe of Fitchherbt b. Llrth; and it was resolved by the whole Court, that the Cafe of S Rep. 79. b. was good Law; and that the Warranty shall not bind the Remainder in Tail, as the Remainder was in that Cafe] because it was quaff'd by Diffelein, and Covin between the Parties. — Cro. C. 482. pl. 7. Fitchherbt b. Fitchherbt & al. S. C. states it, that the Father was Tenant for Life, Remainder to his Brother for Life, Remainder in Tail to the Son; and that they both made a Lease for Years to the Purpose mentioned; and that they, at distant Times, released to the Leflee's Feoffee with Warranty; and held, that they were all as one Act grounded upon this Fraud, and shall not bind him in Remainder. — Mo. 469. pl. 674. Mich. 39 & 40 Eliz. Garraway & Braybridge, S. P. and the Court inclined accordingly, and miffled the Practice; but the Cafe was ended by Composition. So it is if one Brother makes a Gift in Tail to another, and the Uncle disaffairs the Donee, and miffes another with Warranty, the Uncle dies, and the Warranty descends upon the Donor, and then the Donee dies without Issue, albeit the Diffelein was done to the Donee, and not to the Donor, yet the Warranty shall not bind. Co. Litt. 366. b. 367. a. —— 5 Rep. 80. cites 31 E. 3. Warranty 28.

8. The 2d is, That the Warranty and Diffelein are final and femel, both * S. P. 5 Rep. at one and the fame time; and yet if a Man commit a Diffelein of Intent 79. b. in to make the Feoffment in Fee with Warranty, albeit he makes the Feoffment * many Years after the Diffelein, notwithstanding, because the Warranty was done to that Intent and Purpoe, the Law shall adjudge upon the 20. Years whole Matter, and by the Intent couple the Diffelein and Warranty to- gether. Co. Litt. 367. a.

9. The 3d is, That the Warranty commences by Diffelein, by all these Examples, (if it should bind) it should bind as a collateral Warranty, and therefore commencing by Diffelein shall not bind at all. Co. Litt. 367. a.

10. The 4th is put for an Example, and the rather for that it is most useful and frequent, commences by Abatement or Intrusion, (that is, when the Abatement or Intrusion is made of Intent to make a Feoffment in Fee with Warranty,) this shall not bind the right Heir, no more than a Warranty that commences by Diffelein, because all do commence by Wrong. And if it is if the Tenant dies without Heir, and an Ancestor or the Lord enters before the Entry of the Lord, and makes a Feoffment in Fee with War- rantee, and dies, this Warranty shall not bind the Lord, because it commences by Wrong, being in Nature of an Abatement. Et sic de similis. bus. Co. Litt. 367. a.

11. The Father, the Son, and a 3d Person, are Jointenants in Fee. The Father makes a Feoffment in Fee of the Whole with Warranty, and dies. The Son dies. The 3d Person shall not only avoid the Feoffment for his own Part, but also for the Part of the Son; and he shall take Advantage that the Warranty commenced by Diffelein, tho' the Diffelein was done to another. Co. Litt. 367. a.


1. THE Heir shall never be bound by any express Warranty, but where A if a Man the Ancestor was bound by the same Warranty; for if the Ancestor were not bound, it cannot descend upon the Heir, which is the Rea- son yielded by Littleton. Co. Litt. 386. a.

Warranty, this is void by the Warrant of this Maxim, as to the Heir, because the Ancestor himself was not
Voucher.

2. But a Warrant in Law may bind the Heir, altho' it never bound the Ancestor, and may be created by a last Will and Testament. Co. Litt. 386. a.

3. The Warranty of the Predecessor shall not bind the Successor. 2 Inst. 155.

4. A. the Grandfather, B. the Father, and C. the Grandson. A. was Tenant for Life, Remainder to B. in Tail, Remainder over. A. and B., joined in a Feoffment of the 5th Part of the Lands to T. M. and his Heirs, with Warranty. B. died, and then A. died; and C. who was an Infant, and the Issue in Tail, entered, and held this 5th Part, with the rest of the Lands. The Question was, Whether his Entry was lawful; and adjudged that it was not; for whether this Feoffment was the Feoffment of the one or the other, viz. the Surrender of the Tenant for Life to him in Remainder, and to the Feoffment of him; yet since the Warranty of B. depended on C. the Infant, it shall bind him; and he can never avoid it, unless his Entry was lawful, (i.e.) unless he had a Right to enter at the Time of the Warranty depended; which he had not, because the Warranty was annexed to the Estate in Fee, which continued at the Time of the Death of the Father, and shall bind the said C. the Issue. And. 286. pl. 293. 34 Eliz. Minter v. Collins.

(B. 6) To what Estate, or on what Conveyance a Warranty may be annexed or created.

1. A Warranty may not only be annexed to Freeholds, or Inheritances Corporeal, which pays by Livery, as Houses and Lands, but also to Freeholds or Inheritances incorporeal which lie in Grant, as Advoceions; and to Rents, Commons, Estovers, and the like, which Issue out of Lands or Tenements. And not only to Inheritances in Equity, but also to Rents, Commons, Estovers &c. newly created. Co. Litt. 366. a.

2. A Warranty extends not to any Lease, though it be for many Thousand Years, or to Estates of Tenant by Statute Staple, or Merchant, or Elegit, or any other Chattel, but only to Freehold or Inheritances. Co. Litt. 389. a.
Voucher.

3. It was said, that a Warranty may be annexed to a Fine with Grant and *Patron. 25 E. 3. 
C. 141. and cites it as solved. *Cro. E. 17, Co. Ent. 579. a.
C. 141. and cites it as solved. *Cro. E. 17, Co. Ent. 579. a.
4. A Warranty cannot be annexed to a Copyhold Estate; for it is only
right, nor is any Estate less than a Freehold capable of it. And a See T. 3.
Surrender of a Copyhold comes in En le Poit by the Lord, and not En
pyhold (B.) pl. 2.

(B. 7) The Operation and Effect of a Warranty.

1. T

E N A N T in Tail of Rent purchased the Land in Fee, and made
Feoffment of the Land with Warranty, and this was pleaded in
vowy against the Issuer in Tail, who avow'd for the Rent in Tail, and
that Asfets is descended. And per King's. If the Land was charged at the
Time of the Feoffment with Warranty, the Feoffee shall hold it charged,
and the Warranty shall not discharge it; for be Warrants the Land as it is
at the Time &c. and if it was discharged at the Time, the it was
not discharged in Right, as by Unity of Possession of the Tenant in Tail of the
Rent, or by Release &c. tho' the Right remains, yet be may purch
of the Land discharged, and he who warrants, or his Heirs shalldischarge it.
Br. Garranties, pl. 46. cites 21 H. 7, 9, 10.

2. For it a Man makes Feoffment with Warranty of the Land charged
with Rent Service, the Feoffee shall hold it charged, and the Feoffor
shall not discharge it by the Warranty; and contra where it was dis-
discharg at the Time of the Feoffment; quod nota Diveritiatim inde.
Br. Garranties, pl. 46. cites 21 H. 7, 9, 10.

3. A Warranty shall never enlarge an Estate, but may strengthen the
same. Per Williams. J. Bull. 163. Trin. 9 Jac. in Cafe of Heywood
and Smith.

4. Nor shall it be of Force but so long as the Estate to which it is annex'd
has Continuance. Per Fleming Ch. J. Bull. 166. in Cafe of Heywood
and Smith, cites Litt. S. 749.

5. No Warranty extinguishes a Right, but only binds or bars it as *11 Mod.
long as the Warranty continues in Force; for if the Warranty be released,
90, 91. pl. the ancient Right *revives. 2 Salk. 686. Patch. 4 Annæ B. R. Smith
v. Tyndall.


1. If Tenant in Tail doth discontinue, and the Discontinue is disfeesed,
and Tenant in Tail releaseth with Warranty to the Disfeesor, the Dis-
feesor entereth in the Life of Tenant in Tail, who aterwards dieth,
the Warranty works nothing; for the Warranty descending afterwards,
cannot attach upon the Possession which was at the Time of the War-
ranty made, which was by the Conclusion; which by the Death of Ten-
ant in Tail, is determined and removed by an Eign Title, viz. the En-
Smith.

2. Tenant in Tail of Lands grants a Rent-Charge in Fee, and an An-
cessor collateral releaseth to the Grantee with Warranty and dieth, the Te-
nant in Tail dieth; now the Issue is bound; but if Tenant in Tail dieth
before him, who maketh the Release, now the Rent is determined by the
Death of Tenant in Tail, and then the Warranty cannot attach upon it.
Arg. 2 Le. 58. pl. 82. in Cafe of Ards v. Smith.

3. A Tenant for Life, Remainder to B. in Tail; A. releaseth for Years,
a Recovery is had against B. living A. the Recoverors enter and out the
K.

Leffece
Voucher.

Leassee for Years, the Son and Heir of B. releaseth with Warranty to him to whom the Recoverors have allured the Lands; the Leassee enters, B. dies, the Releasor dies &c. It was holden that the Entry of the Leassee; before that the Warranty had attached upon the Possession which passed, had avoided the Warranty. Arg. 2 Le. 56, 57, 58. pl. 82. Ards v. Smith. — als. Lincoln College Cafe.

(B. 9) To what Titles a Warranty shall not extend:

1. No Warranty doth extend unto meek and naked Titles, as by Force of a Condition with Clause of Re-entry, Exchange, Mortmain, consent to the Ravisher, and the like, because that for these no Action doth lie; and if no Action can be brought, there can be neither Voucher, Writ of Warrantia Chartre, nor Rebutter, and they continue in such Plight and Efficiency, as they were by their Original Creation, and by no Act can be displaced or divested out of their original Efficiency, and therefore cannot be bound by any Warranty. Co. Litt. 339. a.

(C) Warranty. To what Estate it shall extend. It shall not extend more largely than the Estate.

S. P. Co Litt. 535. b. (r) as if Leesee by Deed releases to his Leassee for Life, and warrant the Land to the Leassee and his Heirs; yet this does not enlarge his Estate.

S. P. Br. Garanties, pl. 10. cites 38. 44 admitted E. 3. 10.

2. If Leassee for Life be, the Remainder in Tail the Remainder to the right Heirs of Leassee, and Leassee grants over his Estate to another and his Heirs, and after releases to him in Fee with Warranty and dies, and this descends upon him in Remainder in Tail; yet this shall not bind him; for the Warranty does not extend but to the Estate which the Releasor had at the Time of the Release made. 44 Att. 28. Adjudged.

3. If a Release be with Warranty to one, who has an Estate in Fee, the Warranty shall extend to the Fee. 44 Att. 28. 35.

4. If there be Leassee for Life, the Remainder in Fee to another, and an Ancestor of him in Remainder releases to the Leassee in Fee with Warranty, and dies, and this descends upon him in Remainder, this Warranty shall not bind him; for it cannot enlarge the Estate of the Leassee to which it was made, and therefore is determined by his Death. 44 Att. 35. by Thorpe.

5. If my Ancestor leaves for Years, or for Life, and after I release to the Leassee with Warranty in Fee, and then my Ancestor dies, by which the Reversion descends to me, and then the Leassee dies, my Warranty shall not bar me, because the Estate is determined. 17 E. 3. 67. b.

6. If a Man gives in Tail to Baron and Feme with Warranty, and they lease for Life, saving the Reversion to them and to the Heirs of the Feme, and the
Voucher.

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the Tenant for Life is impleaded by one who is Heir to the Warranty, and
makes Defaul after Default, and the Baron and Feone are received by this
Reversion in Fee, they may rebut by the Warranty of Tail; but if they
vouch to deraign the Warranty, the Vouchee does not warrant but only

7. A Warranty being a Covenant real Executory may extend to an Estate Ai if a Man
in futuro, having an Estate whereupon it may work in the Beginning.
Co. Litt. 378. a.
and warrants the Land in forma praedita, and afterwards the Land performs the Condition, whereby the
Leafe has Warranty, the Warranty shall extend and increase according to the Estate. Co. Litt. 378. a. So it
is if Leafe had died before the Performance of the Condition, the Warranty shall rise and increase according
to the Estate, and yet the Leafe himself never bound to the Warranty, but it has Relation

8. But if a Man grants a Seigniory for Years, upon Condition to have Leafe for
the Warranty, the Warranty shall be in forma praedita, and after the Condition is per-
form'd, this shall not extend to the Fee, because the first Estate was but for
Years, which was not capable of a Warranty. Co. Litt. 378. a. b.

9. And so it is, if a Man makes a Leafe for Years, the Remainder in Fee, and
warrants the Land in forma praedita, he be in the Remainder cannot take
Benefit of the Warranty, because he is not Party to the Deed; and immedi-
ately he cannot take, if he were Party to the Deed, because he is
nam'd after the Habendum, and the Estate for Years is not capable of a Warranty.
Co. Litt. 378. b.

10. And so it is, if the Land be given to A. and B. so long as they jointly
together live, Remainder to the right Heirs of him that dieth, and warrants the
Land in forma praedita, A. dies, his Heir shall have the Warranty, and
yet the Remainder vested not during the Life of A. for the Death of A.
must precede the Remainder, and yet the Heir of A. has the Land by

11. If Tenant in Fee-simple, that hath a Warranty for Life, either by an
express Warranty, or by Dedi, be impleaded, and vouch, he shall recov-
er a Fee-simple in Value, albeit his Warranty were but for Term of
Life, because the Warranty extended in that Caufe to the whole Estate of the
Feoffee in Fee-simple. Co. Litt. 387. a.

12. If a Leafe for Life be made to the Father, the Remainder to his next
Heir, the Father is disfeiffed, and releases with Warranty, and dies, this
shall bar the Heir, altho' the Warranty doth fall, and the Remainder
comes in Effe at one Time. Co. Litt. 388. b. (w)

13. If there be Father and Son, and the Son hath Rent-service, Suit to a
Mill, Rent-charge, Rent-feck, Common of Pasture, or other Profit
apprenter out of the Land of the Father, and the Father makes a Feoffment in
Fee with Warranty, and dies, this shall not bar the Son of the Rent, Common,
or other Profit apprender, quavis claufula specialis Warrantiae vel
Acquiesci in Chartis tenementi inferatur, quia in tali caufa tranfit terru
caum onere; and he that is in Seifin or Possession need not nor to make
any Entry or Claim: And albeit the Son, after the Feoffment with War-
runty, and before the Death of the Father, had been disfeiffed, and so being
out of Possession the Warranty defended upon him, yet the Warranty should
not bind him, because at the Time of the Warranty made, the Son was in

and his Heirs, regularly the Warranty doth extend to all things including out of the Land, that into lay, to
warrant the Land in such Plight and Manner as it was at in the Hands of the Feoffor, at the Time of the
the Feoffment with Warranty, and the Feoffor shall couch as in 'Lands disfranch'd of the Rent &c. at the Time of the Feoffment made. Co. Litt. 388. b. (y)

14. So if my Collateral Ancestor releases to my Tenant for Life, this shall not bind my Reversion or Remainder, because the Reversion or Remainder continued in me. Co. Litt. 388. b. (y)

15. *A Tenant in Tail, Remainder to E.* _A._ made a Lease to _F_ for their Lives, according to the Statute of 32 H. 8. with Warranty, and died without Issue, _B._ being his Brother and Heir. This Warranty shall not bind _B._ in Remainder; for he cannot have the Rent refer'd, and then the Estate is determin'd, and the Warranty with the Estate, and shall not bar him in Remainder. And Judgment for the Plaintiff. _Cro. E._ 602. pl. 13. Hill. 40. _Eliz._ C. B. _Keen v. Cope._

16. *A Warranty always follows the Estate unto which it is annex'd, and if the Estate unto which the Warranty is annex'd be determin'd, the Warranty also shall be gone and be determin'd, as appears by Littleton in his Chapter of Warranty, *fo. 16. 8.* Pla. 758, 739. and therefore if a Lease for Life be made to one with Warranty to him and his Heirs, if he be vouch'd by Reason of this Warranty, he shall only recover according to his Estate for Life; for where the Estate is determin'd to which the Warranty is annex'd, if this Estate be determin'd, the Warranty is gone, and at an End; _Per Croke J._ 2 _Bull._ 163. Trin. 9. _Jac._ Heywood v. Smith.

17. When one makes a Gift in Tail with Warranty since the Statute, this Warranty, into whatsoever Hands it comes, cannot extend to bar the Reversion in Fee; for the Estate to which the Warranty extends, is determin'd by Death of the Tenant in Tail without Issue, and Feoffment or other Act done by the Donee subsequent, shall not extend the Warranty further than the Estate to which the Warranty at the Time of the Creation of it was annex'd. 10 _Rep._ 96. b. _Mich._ 10. _Jac._ B. R. in _Seymour's Cafe._

(C. 2.) *Warranty.Extent thereof, as to the Heirs. Gavelkind, &c.*

**Br. Garranties, pl. 11. cites S. C.**

1. *Assise by 2 Brothers.* The Tenant pleaded a Feoffment of their Father with Warranty against both; and the Eldest was compelled to answer to the Deed; and the Assise was awarded against the youngest, because it was pleaded against both, and the youngest is no Heir to the Warranty, for it was of Land in Gavelkind. And to this, that the Feoffment with Warranty of the Ancestor of the Plaintiff is a Bar to him who is Heir to the Warranty; but the Warranty is no Bar to the youngest, and a Feoffment alone is no Bar in Assise. _Br. Assise, pl. 22._ cites 44 _E._ 3. 16.

2. Every Warranty descends upon him that is the Heir to him that a says this is a Maxim of the Common Law.——_Hob._ 31. pl. 13. _10 Jac._ 1. _Cafe of Common b. Clarke_, says, Note that Warranties and Effepts do always descend upon the right Heirs general, as being to simple Heirs. 38 _E._ 3. 22. If there be a Warrantor, who hath Lands in Gavelkind, the eldest Son shall be vouch'd alone; but the Tenant may also vouch the others for the Poiffion; and cites 32 _E._ 13. _F. Voucher 94._ That the Heir general shall take such Advantage of such Warranty, and no other, except he come in as vouch'd for Poiffion with the true Heir.——_A Warranty of Land in Remainder, or Gavelkind, binds only the Heir at Common Law; _Per Dyer. D._ 547. b. pl. 55. _Trin. 1._ _Eliz._ Lien Red.
(C. 3) Upon what Conveyance a Warranty may be created.

1. If a Lessee for Years, or Tenant by Elegit &c. or a Diffidior incontinent, make a Feoffment in Fee with Warranty, if the Yeoffor be impleaded, he shall vouch the Yeoffor, and alter him his Heir also; because this is a Covenant real, which binds him and his Heirs to recompense in Value, if they have Affes by Defcent to recompense; for there is a Feoffment de facto, and a Feoffment de jure; and a Feoffment de fe, made by them that have such Interest or Poffeifion, as is afoeaid, is good between the Parties, and against all Men, but only against him that hath a Right. Co. Litt. 367. a.

2. Upon every Conveyance of Lands, Tenements, or Hereditaments, as upon Fine, Feeffments, Gifts &c. Releafe and Confirmations made to the Tenant of the Land, a Warranty may be made; albeit he that makes the Releafe or Confirmation hath no Right to the Land &c. But fome do hold, that by Releafe or Confirmation, where there is no Estate created, or Tranfmutation of Poffeifion, a Warranty cannot be made to the Assignee. Co. Litt. 371. a b.

3. An express Warranty cannot be created without Deed, and a Will in Writing is no Deed; and therefore an express Warranty cannot be created by Will. Co. Litt. 386. a.


1. If the Baron has Cause of Action to the Land of which his Feme is bound to warranty, and the Baron brings Action, he shall be barr'd, and rebutted by the Warranty of his Feme, if the be alive at the Time of the Warranty, and by the Voucher of the Deed, pl. 131. cites 11 Aff. 10.

2. And the common Opinion was, That if Feme sole be bound to warranty Land to me, and he who has Cause of Action of it takes her to Feme, and he impleads me, he shall be barr'd during the Coverture. Br. Voucher, pl. 131. cites 11 Aff. 10.

3. If Ancestor Collateral makes Feoffment in Fee with Warranty, and after the Yeoffor leaves to the Ancestor Collateral again for Life, or in Tail, or if he leaves or gives the same Land for Life or in Tail, the Remainder over &c. there the Warranty is suspended for the Time; But after the Leaf or Tail extinct, he in Reversion or Remainder may barr the Heir in Tail by this Warranty. And therefore fee there, that if the Heir impleads the Uncle, or Ancestor Collateral in his Life, the Warranty shall not serve. Br. Garranties, pl. 91. cites Litt. Tit. Garr.

4. M. seised in Fee, married A. and they by Indenture covenanted to levy a Fine to the Use of them 2 for their Lives, Remainder to A. and his Heirs, with Warranty. A Fine was levied accordingly. Afterwards A. devited the Premises to the Leffor of the Plaintiff, and died, and then

L

M.
M. died. It was objected, that the Warranty was destroy'd in its Creation; and that the Heir shall not be bound by it, but where the Ancestor was. But it was resolved, that the Warranty made a good Title to the Legacy of the Plaintiff, and it was but suspended during the Life of M. that if one makes a Feoffment in Fee, with Warranty to another and his Heirs, and the Feeor re-infeoffs the Feoffor for Life, the Warranty here is only suspended; and when the Feoffor dies the Warranty will remain, and his Heir will be bound; that is, in the principal Case, M. had taken back an Estate for Life, by way of Remainder, from the Consee, the Warranty could be only suspended, and the Heirs of M. should warrant those Lands to the Heirs of A. MS. Rep. Mich. 5 Annu. B. R. Smith v. Tindall.

5. So if a Man levies a Fine, with Warranty to another and his Heirs, and the Consee renders back to the Consee for his Life, the Warranty is suspended during the Life of the Consee; but when he dies, it shall descend upon and bind his Heir: For where the Warranty is more extensive than the Estate taken back, the Warranty is only suspended. MS. Rep. Mich. 5 Annu. B. R. in Cafe of Smith v. Tindal.

(C. 5) Warranty divided.

1. NOTE, where two Parceners are, and the one aliens her Part, and the other is impleaded, there, because she cannot have Aid of her Coparcener, she may vouch alone, and shall have the Warranty alone; Per Finch and Knivet. Quod non negatur in Formedon. And so note the Warranty sever'd, and the shall have it alone for her Mioety. Br. Garranties, pl. 27. cites 38 E. 3. 20.

2. Precipe quod reddat. The Tenant in special Tail had Issue a Daughter, and discontinued with Warranty. The Feme died. He took another Feme, and had Issue another Daughter, and died. The eldest Daughter took Baron, and she and her Baron brought Formedon; and the Tenant vouched the eldest Daughter, Wife of the Demandant, and the other Daughter by a strange Name. The Feme Demandant appear'd, and the other made Default at the Sequatur; whereupon the Tenant rebutted against the Demandant by the Warranty, and Assists descended for a Mioety; and for the other Mioety the Demandant had Setfin of the Land. Quod nota; for he cannot rebut for the Whole, because the Warranty did not descend upon the Feme of the Demandant only. And so see a Warranty sever'd. Br. Garranties, pl. 14. cites 45 E. 3. 23.

Br. Voucher, pl. 32. cites S. C.
Mich. 6 Jac. S. C. cited in Sym's Cafe, that the Baron and Feme were Tenants in special Tail to them and the Heirs of their Bodies. The Cafe of Sym's was a Formedon in Remainder, and counted of a Gift by W. to S. his Son in special Tail, the Remainder to J. his Son in special Tail, the Remainder to A. his Daughter, and her Heirs; and that S. and J. were dead without Issue. The Tenant pleaded a Fine levied by S. with Warranty, and then J. died without Issue, and afterwards S. died without Issue; and that the Warranty thereupon descendent upon the said A. and after her Death it descended upon the Demandant. The Demandant replied, that the Warranty descended upon the said A. and also upon B. another Co-heir of the said S. and they were to, and that the Warranty descended upon the Demandant as to a Mioety only. But notwithstanding the Cafe of 45 E. 3. 23. above, it was resolved by Coke Ch. J. and the whole Court, that A. and her Heir (the Demandant) is barr'd for the whole; for the Warranty is entire, and extends to all the Land, and bars every one upon whom it descends, of all the Right in the Land, whether the Right be Joint or Several; And if one only has Right, and the other nothing, he that has Right will be barr'd of all; for this Purposo the whole Warranty descends upon every of them. And they said (Ibid. 52. a.) That the 45 E. 3. 23. a. b. did not warrant any such Opinion as was inferred from thence; for that the principal Cafe in the Book at large is, that in Precipe quod reddat the Tenant vouch'd two as Heirs, and said that one was within Age, and pray'd that the Parol might demur. The Demandant replied that he was of full Age, and pray'd he might be view'd by the Court; whereupon Process was to the Sequatur &c. when he came not, nor was any Writ return'd; and the Demandant pray'd Judgment for a Mioety for the Default of one, and a Summons ad Warr' against
against the other. But to this it was said, that Summons ad Warrantizandum he cannot have, because he who is vouch'd is Demandant. Whereupon the Tenant said, that the Ancestor of those who are vouch'd, did by Deed here produced invest one R. with Warranty, Que Elate he has, Judgment if against the Deed Sec. And further that he had Affets by Defcent; to which the Demandant said, that he had nothing by Defcent. And the Court gave Judgment for a Moiety for Default of one of the Vouchers, which the Tenant had lost by his Voucher, for which Moiety he can plead Nothing; and for the other Moiety, tho' he had vouched the Demandant by a strange Name, and for in a Manner pleaded in Chief, yet inasmuch as the Demandant had told him of this Voucher as to him, because he is Demandant himself, he may plead the Warranty and Affets in Bar for the other Moiety; And that upon this Plea no Judgment is given in the Book, and therefore the Court paid no Regard to the Collection or Inference of the Ld. Brooke, the Book being adjudged upon another Point, viz. upon Default of one of the Vouchers, —— Cre. j. 217. pl. 6. Hilt. 6 Jac. B.R. S. C. adjudged accordingly, by the Name of Game and Symms. —— Mod. 132. Padv. 26 Car. 2. in C. B. in the Case of Hobbe v. Dobbe, Vaughan Ch. J. said he question'd the Resolution in Symms's Cafe; and said that the Case cited in Symms's Cafe, out of 45 E. 3. 25. is expressly against the Resolution of that Case, and that it is said in the Reports, that no Judgment was given in that Case; which he said is fallest, and also that the Case is not well abridged by Brooke; which he said, is also fallest. And asked, if in a Case of Voucher a Man looses his Warranty, that does not vouch all that are bound, why should not one that is rebutted have the like Advantage? He said, that there is a Resolution quoted in Symms's Cafe, [Pag. 51. b.] out of 4 E. 2. Fitlz. Tit. Warranty, 78. upon which the Judgment is said to be founded, being as is there said a Case in Point, but he conceived it was not; For Harvey, that gave the Rule said, there the Tenant may bar you all; and consequently may bar one only. In the Case there were several Co-heirs, if all were Demandants, all might have been bar'd; and if one be Demandant, there is no Question but she may be rebutted for her Part. But Symms's Cafe is quite otherwise; for the one Person is Co-heir to the Warranty, who is not Heir to any Part of the Land: In 6 E. 5. 50. there is a Cafe resolved upon the Ground and Reason of the 45 E. 5. And he said, that for these Reasons he could not rely on Symms's Cafe. ——Freem. Rep. 139. pl. 175. S. C. and S. P. accordingly, by Vaughan Ch. J.

3. If Father and Son make a joint Purchase in Fee, and the Father alien the Whole with Warranty, and dies, the Son shall avoid it for a Moiety: But if the Purchaser were to the Father and Son, and the Heirs of the Father, and the Father makes a Feeamient in Fee with Warranty, if the Son entreat in the Life of the Father, and the Eoffee re-enters, and the Father dies, the Son shall have an Allie of the Whole; and fo is the Book of 22 H. 6. to be understood. But if the Son had not entered in the Life of the Father, then for the * Father's Moiety it had been a Bar to the Son, for that therein he had an Eestate for Life; and therefore the Warranty, as to that Moiety, had been collateral to the Son, and by Diffeizin for the Son's Moiety; and to a Warranty defeated in Part, and fland good in Part. But if the Purchaser had been to the Father and Son, and to the Heirs of the Father, then the Entry of the Son in the Life of the Father, as to Avoidance of the Warranty, had not availed him; because his Father lawfully conveyed away his Moiety. Co. Litt. 367. b.

4. If a Man of full Age and an Infant make a Feeamient in Fee, with Warranty, this Warranty is not void in Part, and good in Part; but it is good for the Whole against the Man of full Age, and void against the Infant; for albeit the Feeamient of an Infant passing by Livery of Seilin be voidable, yet his Warranty, which takes Effect only by Deed, is merely void. Co. Litt. 367. b.

5. If a Man, seized of a Rent by a defeatable Title, relieves to the Tenant all his Rights, and warrants the Land to him and his Heirs, if he be impeaded for the Rent, he shall vouch and recover in Value for the Rent; and if after he be impeaded for the Land, he shall vouch and recover in Value again for the Land, in respect of the several Estates recovered: But for one and the same Eitate he shall never recover but once in Value; and tho' the Land recovered in Value be evilled, yet shall he never take Benefit of the Warranty after. Co. Litt. 393. a.

6. And as Warranties may be defeated in the Whole, so they may be defeated as to Part of the Benefit that may be taken of the same; as he that hath a Warranty may make a Defealence not to take any Benefit by way of Voucher, or that he shall take no Advantage by way of Warranty Charter, or by way of Repatter. Co. Litt. 393. a.

(C. 6) Warranty
(C. 6) Warranty Defeated, Avoided, or Determin'd by what Act.

1. Warranty executed is determin'd for ever, by the Record, in which it was executed, is revers'd after by Judgment in Writ of D Et; and there by the first Execution the Warranty is gone for ever; Per Scot, quod non negatur. Br. Counterple de Voucher, pl. 52. cites 4 E. 3. 36. and Fitzh. Sci. facias 40.

2. If Fine is levied to Baron and Feme, and to W. P. their Son, and to the Heirs of W. P. and after the Baron and Feme levy a Fine with Warranty to a Stranger, and W. P. enters, and the Baron and Feme die, now Warranty and Fine is void; for, for the one Money the Fine was a Dis- feisin, by which the Entry of W. was lawful, and to the other Moteiy, because it was an Alienation to his Disinheritance, his Entry was lawful, and fo the whole Warranty avoided; for, for the Moteiy, it seems to be Warranty which commenced by Disfeisin, and of the other Moteiy, Warranty collateral. Br. Garranties, pl. 35. cites 24 E. 3. 38.

3. Warranty shall not be avoided but by Entry, or by Action before that the Warranty descends; for if he may enter, and will not, he shall not recover before that the Warranty descends; then, when it is descended, he shall be bar'd. And fo note that in Formedon, Cui in Vita, and such Actions, where a Man cannot enter, there if the Warranty be descended and pleaded, this is Bar for ever. Br. Garranties, pl. 96. cites the printed Abridgment of Assises, fol. 38.

Death, which shall be so pleaded expressly. Br. Garranties, pl. 56. cites 11 H. 6. 51.

Br. Recover, pl. 38. cites S. C.

Br. Recover, pl. 11. cites S. c — Br. Voucher, pl. 71. cites S. C — Br. Garranties, pl. 52. cites 21 H. 6 45.

4. If Tenant in Tail has Issue two Daughters, and insoff's the one with Warranty, and dies, the Warranty between her and her Father is determin'd; and yet by Cause shown that the Reservoir is descended to the other Daughter, there in Formedon brought in Name of both, the Feeoffy by this Cause shown shall vouch her Self and her Sister, and otherwise not. Br. Garranties, pl. 21. cites 11 H. 4. 20.

5. T. brought Warrantia Chartae against H. and counted that one R. brought Affile against him of 100 Acres of Land, pending which Affile the Plaintiff came to him, and swore that he was in of his Feeoffy with Warranty, and requested him to administer to him a Plea in Bar of the Affile, which he refused to do &c. Por. said, before that the Defendant any thing had in this Land, A. was seised in Fee till his time by C. who insoff'd the Defendant, who insoff'd the Plaintiff, upon whom the said A. entered; Judgment li Aetio. Per Markham, he shall not difable his own Estarte; for if a Man, who has granted Rent-charge, says, that he was in by Disfeisin made to K. at the Time of the Gift, which K. after receas'd to his Possession, this shall not defeat the Grant; and yet the Release counterails Entry and Feeoffy. And per Newton, Pafton, and Asadue J. by the Entry of the Briggs all manner Estates are defeated, but in Case of Release the Estate continues; so a great Difference. And after the Defendant chang'd his Plea, and said that A. was seised in Fee, and insoff'd B. C. and D. after whose Death E. claim'd as Heir of A. and, thinking that A. had died seised, enter'd upon the said B. C. and D. and thereof insoff'd the Defendant, who insoff'd the Plaintiff in Fee with Warranty, upon whom E. enter'd, and D. died, and B. and C. releas'd to the Possession of the said F. all their Rights; Judgment li Aetio; and because he did not show whether the Feeoffy and Release was before the Affile brought, or not, therefore no Plea; Quod tota Curia conceitit; by which Portingt. alleg'd it to be before the
the Affife brought; and after Arderne pleaded the first Bar by Entry made by C. after the Deffeifor and the Warranty made. And per Cur. the Entry ought to be alleged before the Affife brought, or before any Request made to administer the Bar; for per Newton, Entry before Request in Arderne avoids the Warranty. And so Entry before Voucher in Preceipe quod reddat, notwithstanding that it be pending the Preceipe; for the Party is not intituled to his Warranty, but by the Voucher in the one Case, and by the Request in the other; but Entry lawful before for a Determination of the Warranty; by which Arderne waiv'd the Plea aforesaid, and said that A. was fait'd till deffeif'd by R. who inoff'd H. who inoff'd the Plaintiff with Warranty, and A. re-enter'd upon the Plaintiff, before which Entry the Plaintiff made no Request. And per Newton, if a Man be in of my Feoffment, and is implac'd, and after inoff'd a Stranger, and retakes an Estate, there this is a good Avoidance of the Warranty, and he cannot bind me; for he is in of another Estate, and yet Poffeffion continues as to the first Writ. Br. Warrantia Cartae, pl. 11. cites 21 H. 6. 41. and 22 H. 6. 62.

6. Entry lawful, or Recovery before Voucher or Request, is a clear Determination of the Warranty; Per Pafton J. Quod nota. Br. Warrantia pl. 11. cites 21 H. 6. 41. and 22 H. 6. 62.

7. Where Deffeifor inoff's B. with Warranty, and the first Deffeifor re-leaves all his Right to the Feoffee, and Affife is brought against him, there is a Hold of the Warranty shall remain, notwithstanding the Release. Br. Voucher, pl. 71. cites 21 H. 6. 41. and 22 H. 6. 62.

Enter with Warranty, upon whom a Stranger enters as Deffeifor, the 1st Deffeifor re-leaves the 1st Deffeifor brings Affife, and the 2d Feoffee re-enters, the 2d Feoffee brings Affife, and the 2d Feoffee brings Warranty Cartae against his Feoffor, and he pleads this Matter, and the Release of the first Deffeifor, this is not good; for the Poffeffion continued. Contrary if the first Deffeifor had re-enter'd or recover'd, and inoff'd him. And to note a Difference between Release made by him, who may lawfully enter upon one who is in by Tort, and where such a Man enters or recover's, and takes Execution. In the one Case the Warranty remains, and in the other not. Br. Warrantia Cartae, pl. 21. cites 21 H. 6. 41. & 22 H. 6. 62.

9. Where Deffeifor makes Feoffment with Warranty, and the Deffeifor enters, the Warranty is lost; for his Entry determines m'flee Acts. Br. Countemple de Voucher, pl. 2. cites 21 H. 6. 41.

10. Warranty cannot stand in Part, and be defeated in Part; Per Newcom and Pafton. And therefore Brook says it seems to him, that by the Entry into Part all the Warranty shall be defeated, for all the Julijces said that he may enter into the Moiety; Quod nota. Br. Garranties, pl. 34. cites 22 H. 6. 56.

11. If Tenant in Tail has Warranty to deraign against his Donor, and is deffeif'd, and A. who has title paramount, recovers against the Deffeifor, the Warranty of the Tenant in Tail is lost, Per Jay. Br. Garranties, pl. 55. cites 4 H. 7. 2.

12. Also a collateral Warranty be defended, yet if the Estate whereunto the Warranty was annex'd is defeated, albeit it be by a meer Stranger, the Warranty is defeated; As if the Discontinuee of Tenant in Tail is deffeif'd, and a collateral Ancestor had releas'd to the Deffeifor with Warranty, this barr'd the Illue; but if the Discontinuee had
enter'd on the Difeiior, the Bar was remov'd: So that althro' the Difcontinuance remain, and no Remitter wrought to the Heir, yet the Warranty is defeated, and Bar remov'd: and therefore the illue in Tail may have his Formedom, and recover the Land. Sublato Principali tollitur adjunctum. See Litt. S. 741. and Co. Litt. 389. a.

13. If Tenant in Tail be difeiided, and after makes a Release to the Difeiior with Warranty in Fee, and after is attain'd or outlaw'd of Felony, and has illue, and dies, the illue in Tail may enter upon the Difeiior, because nothing makes Difcontinuance in this Cave but the Warranty, and Warranty may not deceed to the illue in Tail, the Blood being corrupt between him that made the Warranty, and the illue in Tail. Litt. S. 746.

14. A Release of all Warranties, or of all Covenants real, or of all Demands, will defeat and extinguish a Warranty. Litt. S. 748.

15. If the Heir impeads the Uncle, or Ancestor collateral in his Liff, the Warranty shall not serve. Br. Garranties, pl. 91. cites Litt. tit. Garr.

16. If the Baron discontinue the Right of his Feue, and Ancestor collateral of the Feue releases with Warranty and dies, to whom the Feue is Heir, and after the Baron dies, the Feue shall be bard'd in Cui in Vita by this Warranty, notwithstanding the Coverture, because fie is put to her Action by the Difcontinuance; for Coverture cannot avoid Warranty, but where the Entry of the Feue is lawful, which it is not upon a Difcontinuance, as above. Br. Garranties, pl. 84. cites M. 33 H. 8.

17. If a Collateral Ancestor releases with Warranty, and enters into Religion, now the Warranty binds; but if after he be daieaigned, now it is defeated. Co. Litt. 392. b.

18. If a Seigniory be granted with Warranty, and the Tenancy cok, the Seigniory whereunto the Warranty was annex'd, is extinct; and consequently the Warranty defeated; and it shall not extend to the Land et sic de imilibus. Co. Litt. 392. b.

19. By Partition by Writ, the Warranty is not extinguish'd, because it is compellable by Act of Parliament, to which every Man is Party; and no Man can have wrong by its Operation. 6 Rep. 12. b. Pash. 27 Eliz. C. B. Morrice's Cafe.

20. But if 2 Jointenants make Partition by Deed by Consent, since the said Act, (viz) 31 H. 8. i. this Partition remains at Common Law; and consequently the Warranty is gone. 6 Rep. 12. b. Morrice's Cafe.
(D) Warranty. 

**Destruction. What Act or Thing will destroy a Warranty. Act of God.**

1. If my Father and J. S. enfeoff me with Warranty, and after my Father dies, I may vouch my self as Heir to my Father * with J. S. and to the Warranty is not destroyed by the Devast. 29 E. 3. *Fol. 149. Admitted.

the Father infrees his Son with Warranty, and the Sun is impilied, he may vouch his Father; but if the Father dies, and the Son is Heir to him, now if the Son be impilied, he cannot vouch as Heir of his Father: for by the Death of his Father, the Warranty of his Father is extinced; and also he cannot vouch himself; for he is Heir to the Father who made the Warranty. Br. Voucher, pl. 123. cites 43 E. 3. 25. — S. P. And it is the same Person who shall vouch and who shall render in Value, and he cannot render to himself in Value. Br. Garranties, pl. 5. cites 40 E. 3. 13. — Br. Voucher, pl. 15. cites 40 E. 3. 14. S. C.

2. If 2 are enfeoffed with Warranty, and after one dies the Survivor shall have all the Warranty; for he comes in from the first Feoffor. 13 E. 3. Ac. 96. by Sjhard.

[3.] If a Man makes a Gift in Tail at this Day, and warrants the Land to him, his Heirs and Assigns, and after the Donee makes a Feoffment and dies without Issue, the Warranty is expired as to any Voucher or Rebutter; for that the Eftate in Tail, whereunto it was knit, is spent; otherwise it is, if the Gift and Feoffment had been made before the Statue of Donis conditionalibus; for then both the Donee and Feoffee had a Fee Simple, and so are our Books to be intended in this and the like Cases. Co. Litt. 385. a. (d)

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(D. 2) Act in Law.

See (K. b) pl. 15.

[1.] 3. If a Village and another have Joint Warranty, and the Lord enters into the Mooty of his Village, the other shall have the Warranty alone. 48 E. 3. 17.

2. If a Man has Cause of Warranty, and cannot take thereof Adavantage at the Time when Necessity requires, as against an Abbot or Bishop, in the Time of Vacation, or against the Heir in Venture in mere, where there is no other Heir at the Time who can be vouch'd with him, now the Warranty is lost for ever, as it is laid there. Br. Garranties, pl. 68. cites 38 E. 3. 29.

3. If A. dextes B. and infeoff C. with Warranty, who infeoffs D. with Warranty, upon whom a Stranger enters, in whose Possession B. the Diffees his Right, all the Warranties are extinced; and if D. re-enters and be impilied, he shall not have a Writ of Warranta Chartre, because he is in of another Eftate by Wrong. F. N. B. 135. (G)

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(E) What
(E) What Act or Thing will be an Extinguishment. 
Aft of him who has the Warranty.

S. P. because he cannot warrant him. 47. 9.

If Feoffee with Warranty enfeoffs the Feoffor with Warranty, his feft Warranty is destroyed. 20 H. 6. 29 H. 17 E. 3. and 14. in Fenflee r.

So Ip, this jointly the Wa, Feme, S.C. Feme 5. I 26 and 17 re-enfeofF 8. c

But 29. 26. (i) and 49» Exthgmjhment. 9.

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Br. Garrant, sees in S.P. Co.Litt. 390. a. (g) — Ent if a Man makes a Feoffment with Warranty, and the Feoffee enfeoffs the first Feoffor upon Condition, that Warranty remains, and he shall vouch by Rea
tion of the first Warranty; but if upon that Feoffment he had limited any new Use, there, because the Es
tate was afterd, the Voucher was gone. 4 Le. 245 in Cafe of Roll v. Osborn, cites it is adjudg'd in C. B. 45 Eliz. 3 Balon v. Chetler. — And ibid. says it was resolved 53 Eliz. in B. R. in Kempe and Cunningham's Cafe, that in such Cafe he should not have several Warrantia Charte's.

S.P. Co.Litt. 2. But if the Feoffee with Warranty enfeoffs the Feoffor and his Feme with Warranty, the first Warranty is not destroyed. 17 E. 3. 47. Adjudged. But Where there 74. 29. E. 3. 49. Adjudged, 39 E.

3. 9. D. 26 Aft. 42.

Br. Garrant, sees in S. P. Co. Litt. 390 a. (i) S. P.—For tho' the Fee-Simple of the Warranty and of the Estate warranted meet in the same Person, yet another is jointly seifed with him, who would be prejudiced if the Warranty should be extinct. Hawk. Co. Litt. 491.

Br. Garrant, sees in S. P. Co. Litt. 390 a. (i) — For the other Feoffor may still warrant the Land to him that was his Com-panion, as well as to me who was the first Feoffee. Hawk. Co. Litt. 491.

See (G) pl. 1. S. C.

5. If 2 Feoffees with Warranty att, and the one releases to the other all his Right in the Land, he, to whom the Release is made, shall have all the Warranty, and no Jact shall be destroyed by it; for he comes in from the first Feoffor into the whole. 13 E. 3. Age. 96. by Shar.

6. In Dexter, if the Tenant vouches the Heir, and the Demandant has Judgment against the Heir, and the Tenant holds in Peace, and alter the Heir reverses the judgment by Writ of Difcit, and the Demandant brings new Writ of Dexter, the Warranty is lost by Fality of the Tenant, and by the Reversal of the Judgment in Writ of Difcit. Br. Garrant, sees in S. P. Co. Litt. 395 a. (g) — For the other Feoffor may still warrant the Land to him that was his Com-panion, as well as to me who was the first Feoffee. Hawk. Co. Litt. 491.

Br. Garrant, sees in S. P. Co. Litt. 395 a. (g) — For the other Feoffor may still warrant the Land to him that was his Com-panion, as well as to me who was the first Feoffee. Hawk. Co. Litt. 491.

7. If the Baron in another Writ confessesthe Warranty to be made by his Feme, if he has Caufe of Action in the same Land, he shall be barred during the Coverture; Quare. Br. Extinguishment, pl. 26. cites 13 Aft. 9. and 13 E. 3. and Fitzh. Warranty 36.

8. But 'tis said elsewhere, that if he who gets the Warranty eoffes the Feme, who warrants, and is impleaded, he has left the Warranty for ever; for he cannot vouch his own Feme; and it the Demandant recovers he has lost the Warranty for ever, and is not suspended, but extinst. Br. Extinguishment, pl. 26. cites 13 Aft. 9.

9. In Praecipu quod reddat, the Cafe was that the Father and two Sons were, and the Father inoffes the eldest in Fee, if he inoffes the Father and the youngest, and the Hurs of the Father, and the Father died; by this his first Warranty is extinct. Br. Counterple de Voucher, pl. 5.


because he inoffes his Father of as high an Estate as he took.

10. If
Voucher.

10. If two Jointenants are, and the one in Feoffs a Stranger of his Part, if I infeoffs a Stranger of his Part, the Warranty is gone. Per Auce, which Ludington did not deny. Br. Garranties, pl. 67. cites 5. H. 5. 7.

11. If a Man makes a Feoffment with Warranty, and after the Feoff is Deed grants to the Feoffor, that if be or his Heirs touch by the Warranty that it shall be void, this is a good Grant; for he may rebut notwithstanding, but not vouch. Br. Garranties, pl. 166. cites 9 H. 6. 43.

12. If a Man enfeoffs another of Lands by Deed with Warranty, if ibid. in the then Feoffee makes a Feoffment over, and takes back an Estate in Fee, the new Notes Warranty is determined, and he shall not have a Writ of Warrantia (d) lays, fee. Chap. 10. where the man, because he is in of another Estate. F. N. B. 135. (G)


13. Grandfather, Father, and Son. The Grandfather is feised for Life, * To the Feofor, the Remainder to the * Son in Tail, Remainder to the right Heirs of the Grandfather. The Grandfather covenants by Indenture to make Assurance to J. S. and that it should be to the Use of him and his Heirs; and after he suffers a Recovery against him, and levies a Fine to the said J. S. Covenies &c. and Proclamations upon it, and after the Statute of 27 H. 8. is made, and the Grandfather makes a Feoffment to the Son, and dies. And 'twas held that the Entry of the Father upon the Son is lawful, and shall not be eftopped upon the Warranty of the Grandfather; for this is gone by the reciting of the Estate; for when the Statute calls as high a Feoffion in him as he had when he adhered, the Warranty is extint; for the Statute of 27 H. 8. does not save the Warranty. And there Dyer said, that tho' the 5 Years paffed in the Life of the Grandfather; so that the Entry which was given by Cause of Forfeiture is taken away, yet when the Grandfather died he shall have other 5 Years to make his Claim or Entry for Cause of the Title coming to him by the Remainder in Tail; and this by the Statute of 4 H. 7. Mo. 71. pl. 192. Trin. 6 Eliz. Anon.


Receipt they might have vouch'd; for by Representation they are in of the first Estate, but if the Leafe had been only for the Life of the Woman, upon the Entry of her Husband, she could not have the Power of Sale.

15. If a Man conveys Land to me and my Heirs with Warranty, and I make a Feoffment, or levy a Fine, or suffer a Recovery, without vouching my Feoffor, to the Use of my self and my Heirs, yet I may vouch my Feoffor as I might do before; for this is my old Fee-Simple in the same Degrees and Privity in Effect, as before. Per Hobart Ch. J. Hob. 27. in Cafe of Roll v. Osborn.

16. If one levies a Fine to me in Fee with Warranty to me and my Heirs, and I suffer a Common Recovery against me to mine own Use as before, my Warranty remains; for I am in by him as I was in before. Hob. 27. in Cafe of Roll v. Osborn.

17. And if the Warranty were to me, my Heirs, and Assigns, and I suffer the Recovery to the Use of a Stranger, he shall vouch my Feoffor as my Assignee; for common Recovery is indeed an Assignment. Hob. 27. in Cafe of Roll v. Osborn.
(F) Warranty. Extinguishment. What Act or Thing shall be said an Extinguishment of all the Warranty, and what but of part.

Cited 1 Rep. 1. If Leeslee for Life be the Remainder or Reversion in Fee, and Leeslee is dissized, and an Ancestor of him in Remainder or Reversion relates to dissизor with Warranty and dies, and after Leeslee enters or recovers by Affise, because the Warranty does not descend upon him; yet this shall not reduce the Remainder or Reversion. But it shall be bound by the Warranty, because it was bound before the Remoncy. 44 Aff. 35.

2. But otherwise it is if the Leeslee re-enters before the Death of the Ancestor, then the Remainder or Reversion is not bound by the Warranty because it does not descend upon him; and therefore the Entry of Leeslee reduces the Estate of him in Reversion and Remainder, and then the Estate upon which the Warranty was annered is destroyed. 44 Aff. 35.

3. So if Tenant for Life, Remainder for Life, Remainder in Fee are, and Tenant for Life aliens in Fee, to whom an Ancestor of him in Remainder in Fee releases with Warranty, and after before his Death, he in Remainder enters for a Forfeiture, this destroys the Warranty as to the Remainder also, for the Cause aforesaid. 44 Aff. 35. by Chorp.

4. If Baron and Feme are seised for Life of Land, the Remainder to the Son in Tail, the Remainder to the Son in Fee, and the Baron makes Feeolment with general Warranty, and dies, and this descends upon the Son, and after the Feme enters by Force of the Statute of 32 H. 8. this Feme be remitted to her Estate for Life, yet this shall not destroy the Warranty as to the Son; for his Estate was bound by the collateral Warranty before the Entry of the Feme; and therefore the Warranty cannot be destroyed by the Entry of the Feme. Hill. 10 Car. B. R. between * Gimlet and Sandrey, Per Curiam, and Counsel, admitted, and agreed without Argument of this Point. Intratur. Cr. 8 Car. Rot. 1000. Car. B. R. between Fox and Kendall adjudged upon a special Verdict, and the same Judgment afterwards bych. 5 Car. affirm'd per Curiam, without Scruple, in Writ of Error in the Exchequer Chamber. Intratur in B. R. Tr. 3 Car. Rot. 746. But in this Case the Reversion in Fee was limited to the right Heirs of the Baron.

no Bar, but Crooke e contra; but upon that Point they would advise.—* Cro. C. 145, pl. 23. S. C. Mich. 4 Car. in B. R. adjudg'd.—Jo. 199. pl. 15. S. C. adjudg'd.

5. If a Man gives to Father and Son, and to the Heirs of the Body of the Father, and the Father aliens the Land with Warranty, and dies, the Son may enter into the one Moety for the Dissизion to him, and shall have his Action of the other Moety, by all the Justices. But by Askue [Aftton] it is to be known if he may enter into any Parcel; for then the Warranty as to this Parcel is defeated, and Warranty cannot stand in Part and be defeated in Part; Per Newton and Pafion. And therefore Brook says, it seems
feems to him that by the Entry into Part all the Warranty shall be defeated; for all the Justices said that he may enter into the Moiety. Quod nota. Br. Garranties, pl. 34. cites 22 H. 6. 51.  
6. Two make a Feoffment in Fee, and warrant the Land to the Feoffee. So it is if and his Heirs, and the Feoffee releases to one of the Feoffors of the Warran-
y, yet he shall vouch the other for the Moiety. Co. Litt. 393. a.

releases the Warranty, yet the other shall vouch for his Moiety. Co. Litt. 393. a.

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(G) Warranty. Extinguishment. What Act or Thing will destroy all the Warranty.

1. If two are infeoff'd with Warranty, and after the one infeoffs the other of his Part (admitting that he may) this shall extinguish all the Warranty, and not the Moiety only. Contra 13 E. 3. Age 96. by Shard.

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(H) Warranty. A Title happening of later Time shall not be bound.

1. If my Ancestor be displaced, and I release to the Dispossor with Warranty, and after my Ancestor (dies, by which the Right descends to me, yet my Warranty shall bar me. 17 E. 3. 67. b.  
2. If Tenant in Tail, the Remainder in Tail are, and Tenant in Tail S. C. argued levies a Fine with Warranty, and after suffers an erroneous Common Recovery, and dies without Issue, and the Warranty descends upon him in Remainder, it seems that it shall not bar him to have Writ of Error upon the Common Recovery, because this Title of Error accrued to him after the Warranty created. Phil. 13 Ja. B. R. between Holland and Lee dubitatur.

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10 to 19. S. C. argued, but the Writ abated. —-It was agreed by all the Justices, that when a Man binds himself and his Heirs to Warranty, they are not bound to warrant new Titles of Actions accrued by the Feoffee, or any other, after the Warranty made, but only such Titles which are in Effe at the Time of the Warranty made. D. 42. b. pl. 13. Mich. 50 H. 8. Anon —-S. C. cited Bridgm. 77, in Cafe of Holland v. Jackson.

3. It is a Maxim, that no Voucher shall extend to bar any Estate of S.P. 9 Rep. Franktenement or Inheritance, which is in Effe, Possession, Reversion, or 166. redivivus Remainder, (and not displaced or turn'd to a Right) before or at the Time of the Warranty made, tho' after and at the Time of the Defect of the Warranty the Effe of Franktenement or Inheritance be displaced and diverted. 10 Rep. 96. b. 97. a. Mich. 10 Jac. B. R. in Seymour's Cafe.


5. As if Lord and Tenant be, and the Tenant makes a Feoffment in Fee with Warranty, and after the Feoffee purchases the Seigniory, and then the Tenant ceases, the Lord shall have a Celavit. Co. Litt. 338. b.
W](H. 2) Warranty. Pleadings.

1. When the Vouchee will avoid the Warranty by Alteration of the Estate, he must show how the Estate is chang'd; Per Hobart Ch. J. Hob. 26. in Case of Roll v. Osborn, cites 3 E. 3. 51.
2. In Affife the Tenant pleaded Warranty of the Grandfather of the Plaintiff; to which the Plaintiff said that at the Time of the making &c. the Grandfather had nothing unles'd for Term of Life, the Remainder to W. N. which W. N. enter'd for the Alienation, because to his Disinheritance; and well confes'd and avoided. And this agrees with Libro Littleton, that if the Heir can avoid or defeat the Possession upon which the Warranty is made, it is a good Avoidance of the Warranty. Br. Garranties, pl. 99. cites 9 E. 3. 11.
3. If a Man enters into a Warranty with a Proclamation of an especial Estate in the Tenant who admits it, the Vouchee shall warrant no other Estate, tho' it be greater; Per Hobart Ch. J. Hob. 26. in Case of Roll v. Osborn, cites 41 E. 3. 25.
4. In Affise Warranty of the Uncle of the Plaintiff was pleaded whose Heir he is, and the Plaintiff said that he never had such an Uncle; and ood. Br. Garranties, pl. 74. cites 44 Aff. 1.

(H. 3) Warranty a good Bar. In what Actions.

1. In some Actions, especially Actions real, the Warranty of the Ancestor of the Plaintiff shall be a good Bar; but then the Conclusion of the Plea must be considered, which appears by the Books of Entries to be, Si encounter le Garanty non Anceflor que Heir &c. Heath's Max. 60.
2. In Affise of Common the Warranty of the Ancestor is no Bar; for it is of another thing which is not in Plain, and also the Heir cannot enter into the Warranty to defeat the Warranty; and therefore it shall be no Bar to him, inasmuch as the Law gives him no Means by Action or by Entry to avoid it. Br. Garranties, pl. 96. cites the printed Abridgment of Affises, fol. 38.

3. Trespafs of breaking his House, and carrying away his Goods:
   The Defendant said, That it was his Frankenemen't at the time of the Taking, and he took them Damage seant. And the Plaintiff said that before this, the Father of the Defendant was seised, and inoff'd W. with Warranty to him, his Heirs, and Assigns, who leas'd to the Plaintiff for Life, Judgment if against the Deed with Warranty, he shall be received to say, that it is his Frankenemen't. And per Hull, This is all in the Realty; by which he said, that after the Lease for Life the Father of the Defendant died, and the Defendant enter'd, and the Plaintiff oust'd him; Judgment if against the Deed with Warranty as above. Note the Diveristy. And the Defendant said, that before this his Father was seised in Fee, and inoff'd him, and after difseas'd him, and inoff'd W. as above; and he made continual Claim to the Land all the Life of the Father, and diew not enter for fear of Menace; and his Father died, and he enter'd, and to his Frankenemen't, and the Ifüce taken upon the continual Claim; and
to see that Warranty is a good Escoffment in Trespass. Br. Tresfpa, pl. 105. cites 14 * E. 4. 13.

Deed of his Ancestor, whose Heir he is, he shall be received to say that it is his Franktenement; and at last he was compelled to conclude upon the Franktenement, to say that it is his Franktenement, and not the Franktenement of the Defendant; for the Reality shall not come in Issue in Trespass, as agreed there. And per Hanke, Warranty is no Plea in Action of Trespass. Br. Tresfpa, pl. 105. cites 14 H. 4. 55.

And by 22 E. 4. 4 he shall not aver Escoffment nor Warranty in Bar. Quo re (f) by Conclusion. Ibid. where the Defendant in Trespass said that the Place is 20 Acres, and pleaded a Release of all the Right with Warranty of the Ancestor of the Plaintiff, whose Heir he is, made to 6 N. Tenant of the Land, &c. Escoff the has, and relied upon the Warranty. Per Sullard, this is no Plea; but if he had given Colonist, it had been a good Plea; but several causes, and that it is no Plea, unless when the Franktenement comes in Debt, and by way of Conclusio, it is then a good Plea, and not as here; for the Action stands indifferent; for it may be brought by Tenant of Fee-Simple, Fee-Tail, for Term of Life, or for Years, and this is a real Bar, which is no Plea in an Action merely personal; for it may be that the Plaintiff is Tenant for Years, or by Execution of Elysies, Statute Merchant, or the like, and therefore no Plea. Br. Tresfpa, pl. 561. cites 22 E. 2. 82. And 22 E. 4. 4 by the Opinion of the whole Court there, except Catesby, it is no Plea. Quo re. Ibid. in Trespass upon the Statute 3 R. 2. Ubriquerias no datur per Legem, the Warranty of the Ancestor was pleaded, Judgment if against the Deed of his Ancestor, whose Heir &c. and the Plaintiff demured. And the said Opinion was, that it is no Plea before the Franktenement comes in Debate; for the Warranty cannot be Satisfaction for the Damages which are to be recover'd in Trespass. Br. Tresfpa, pl. 262. cites 1 H. 7. 12. Br. Garranties, pl. 75. cites S. C. Quo re. —And in the same Case and same Year, fol. 22. the Defendant pleaded Judgment of T.R. Ancestor of the Plaintiff, whose Heir he is by Deed, and demanded Judgment, St. Action, against the Deed of his Ancestor, whose Heir &c. and no Plea. Br. Tresfpa, pl. 262. It was said by the Justices, that in Trespass done in Land collateral Warranty is no Plea, because the Plaintiff is supposed in Possession; But if he institutes himself after to the Franktenement, then it is a good Bar. Quo re; for it appears often that it is a good Escoffment in Trespass, after that the Franktenement comes in Debate; but no Bar; for the Warranty is real, and the Action is personal. Br. Tresfpa, pl. 173. cites 15 H. 7. 9.

Trespass Vi & Armis. The Defendant said, that the Place is 4 Acres, of which J.S. was seized in Fee; to whom R. Ancestor of the Plaintiff, whose Heir he is, released all his Rights with Warranty by this Deed &c. Sue Escoff the Defendant has, judgment if against the Warranty &c. Quo re; for he did not convey Title by Escoffment or otherwise. And Quo re if J.S. was Tenant, and he, who Right has, relates to him, and the Defendant alledged J.S. and gets the Deed, if he shall plead it by reason of the Possession. And per Pipt and Bridges, it is no Plea; but Sarcule contra; therefore quae. Br. Garranties, pl. 65. cites 22 E. 4. 18. Heath's Max. 60. cites S. C.

In Trespass the Defendant pleaded Lease for 60 Years by the Father of the Plaintiff, and Confirmation of the Plaintiff with Warranty, and relied upon the Deed. And per Brudnel, it is no Plea; but shall plead it by way of Covenant; for by the Warranty he cannot vouch, because it is only personal; but in Writ of Rights of Ward a Man may vouch; but here he is put to Writ of Covenant, as in Writ of Waffle; and Riney, Chart. I concealed. But per Maiale J. he may plead it by way of Bar. Br. Covenant, pl. 25. cites 24 H. 7. 52. Br. Garranties, pl. 41. cites S. C.

* This should be 14 H. 4. 15 and so are the other Editions.

4. It is holden no Plea that the Plaintiff did confirm to the Defendant, Lease for Years, with Warranty; nor in Affise by Tenant by Statute is the Warranty collateral of his Ancestor a good Bar, because only a Chattel is demanded; yet holden, that a Ward may be granted with Warranty, and the Voucher may be in a Writ of Ward. Heath's Max. 61. cites 20 H. 7. [4. a. pl. 11.]

5. A Sale of a Chattel without * express Warranty bindeth not the * The Original Seller to warrant; and that Warranty also must be made at the Time of Gains is the Sale, and not after; and no Advantage thereof to be taken by way of Bar, but by way of Action. Quo re. Heath's Max. 61. cites 5 H. 7. 18.

6. In a Formon in Defender the Tenant may plead, That the Ancestor of the Demandant exchanged the Lands with the Tenants, for other Lands taken in Exchange, which defended to the Demandant, whereunto he had enter'd and agreed; or if he had not enter'd and agreed unto the Lands taken in Exchange, then the Tenant may plead the Warranty in Law, and other Affets defended. Co. Litt. 384. b.

7. Tenant in Tail made a Feoffment in Fee with Warranty, and disaffes the Discontinue, and died seiz'd, leaving Affets to this Issue. Some hold, that in respect of this suspendest Warranty and Affets, the Issue in Tail shall not be remitted; but that the Discontinue shall recover against the Issue in Tail, and he take Advantage of his Warranty, if any he hath; O and
and after, *in a Formedon* brought by the Iffue, the Difcontinue fhall bar him in reffpect of the Warranty and Aflers, and fo every Man's Right faved. Co. Litt. 392. a. b. (9.)


But if Te-

nant by the

Cureffy alters

with Warranty, and dies, and the Heir brings *Writ of Right*, he fhall be barr'd by the Warranty, tho' no Aflers be defcended. Br. Warranty, pl. 93. cites 5 E. 4.——Contra if he brings *Alien jure*,

according to the Statute of Glouceifer, cap. 29. Ibid.

(H. 4) **Voucher. What it is. And the Several Sorts.**

1. A Voucher is, in the Understanding of the Common Law, when the Tenant calls another that is bound to him to warranty into the Court; that is, *either to defend the Right against the Demandant, or to yield him either Land &c. in Value; and extends to Lands or Tenements of an Eftate of Freehold or Inheritance, and not to any Chattel real, per-

sonal, or mix'd, having only in Cafe of a Wardship granted with Warranty; for in the other Cafes concerning Chattels, the Party, if he hath a War-

rant, fhall not vouch, but have his Action of Covenant, if he hath a Deed; or if it be by Parol, then an Action upon his Cafe, or an Action of Difceit, as the Cafe fhall require. He that vouches is called the Voucher, Vocans; and he that is vouch'd is called Vouchee, Warrantzandum. Co. Litt. 101. b.

2. There is a Recovery with a *single Voucher*, and that is where there is but one Voucher; and with a *double Voucher*, and that is when the Vouchee vouches over; and fo a *treble Voucher* &c. There is alfo a *foreign Voucher*, and that is when the Tenant, being impleaded within a particular Jurifdiction, (as in London or the like) vouches one to warranty, and prays that he may be summoned in some other County, out of the Jurifdiction of that Court: This is called a foreign Voucher, but might more aptly be called a Voucher of a *Foreigner*, De Forinfecis vocatis ad Warrantizandum. Co. Litt. 102. a.

(I) **Voucher. Who may vouch. In respect of his Eftate. [Being but a Chattel.]**

1. *In a Writ of Dower against Tenant by Elegit, and the Heir in Reversion, the Tenant by Elegit cannot vouch the Heir, because he has only a Chattel.* 1 C. 3. 2. Contra 2 C. 3. 42. b.

2. *Trespafs upon the Statute of 5 R. 2.* The Defendant pleaded *Leajf* for *Tears of the Ancestor of the Plaintiff,* and *Confirmation made by the Plaintiff to the Leafe with Warranty,* Judgment it against the Deed which comprehends Warranty. Brooke faid, the Warranty is no Plea; for it is only of Chattel real, of which Action does not lie, in which a Man may
may vouch or rebut; To which Fairfax agreed, and that it is only as Ward of an Horse. Br. Garranties, pl. 97. cites 20 H. 7. 4.  
3. Grant of Ward is good with Warranty; and in Writ of Ward, the Grantee may vouch or rebut. Br. Garranties, pl. 97. cites 20 H. 7. 4. Per Newport and Elliot.  
4. In Affid by Tenant by Statute Merchant, Warranty Collateral by Ancestor of the Plaintiff is no Bar; for it is only a Chattel real, tho' the Writ be Ut de libero Tenemento. Br. Garranties, pl. 97. cites 20 H. 7. 4. Per Rede J.

(K.) What Persons may vouch, [and How.]

1. In a Writ against the Lord and his Villein, the Villein, by Suffrance of his Lord, having to him his Scripturn, may vouch as Stranger to Warranty. 18 E. 3. 19 b. So they may join in the Voucher [in which Special] Voucher, and is endorsed by one who is bound by the Warranty, he may rebut by this Warranty, but cannot vouch by it. Br. Voucher, pl. 152. cites 22 All. 57.  
2. If Feoffee with Warranty to him and his Alligees infeoffs his Heir For he is within Age, and dies, the Heir shall vouch as Heir, notwithstanding the Feoffee, and claim the one Estate or the other, because he accepted the Estate being an Infant. 40 E. 3. 44. 30 E. 3. 16 b. 24 E. 3. 36 b.  
6 Rep. 60 b. in Sir John Finch's Case, cites 45 E. 3. 5. (22 b.) For the Law which has determined the Warranty of the Father to the Son, will give the Son Benefit of the first Warranty; because this is by Act of Law.

3. But if he had been infeoffs at his full Age, he could not vouch * Br. Garranties, pl. 5. cites S. C.  
4. [But] If Feoffee with Warranty infeoffs his Son and Heir, Br. Garranties, and dies, the Son may vouch as Heir to his Father, cites 9. tho' he be in by Purchace; because the Warranty between him and his Father is lost. 43 E. 3. 23 b. Co. 11. Bowles 81.  
5. [But] If Feoffee with Warranty gives in Tail to his Heir, and dies, the Heir cannot vouch the first Feoffee before he has vouched Calpe. himself. Dubitatuir. 18 E. 3. 6. 18 E. 3. 52.  
6. [But] If Feoffee with Warranty leaves for Life to his Heir, and dies, by which the Reversion descends upon the Leesee, he may vouch as Heir, because he may be in by Devestiture of all the Estate at his Election. 18 E. 3. 52.  
7. In Mortdancetor, the Tenant vouched to Warranty A. and prayed that he may be summoned in another County. Fith counterpleaded that the Voucher nor none of his Ancestors had any Thing Ecc. upon which the Alligee was taken, and found for the Tenant, by which it was awarded that the Voucher stand. Br. Voucher, pl. 102. cites 56 All. 6.  
8. Formed in Remainder against two Barons and their Femes, the Barons made Default, and the Femes were received and allow'd to vouch. D. 298. pl. 28. Hill. 13 Eliz. Anon.

(K. 2) [What
(K. 2) [What Person may vouch] By what Names.

[1.] If a Reversion descends, and after Tenant by the Curtesy surrenders to him, he may vouch as Heir. 1 D. 6. 2.

(K. 3) What Persons [may vouch] in Respect of their Estates.

[1.] Three Jointenants are with Warranty, and one surrenders or releases to the others, they may vouch for the Entirety; for they are in by the Frontier for the whole. 40 C. 3. 41. b.

[2.] One Coparcener cannot vouch alone without the other as Heir. 43 C. 3. 23. b. 19 D. 6. 78. b.

* In the Quod ei deloacte given by this Act, the Defendant must count that he or he was seized of the Land for Term of Life, or in Tail, without showing of whose Lease or Gift, for that the Action is brought of his own Possession, and alledge the Estates in himself, and that the Defendant hath deforced him, without making any mention of the Record. And then the Tenant may defend the Right of the Demandant &c. and either thus low he recover against the Demandant by Fullone, or other real Action; and in the Pursuance of his Plea shall say, that if the Tenant had not recovered, the Defendant in the Quod ei deloacte is become After, and in Effect revives the former Action, and the Demandant in the Quod ei deloacte is become in manner of a Tenant to the former Action, and may vouch as if he were Tenant to the former Action; because if he hath an Estate for Life, it is not safe for him to plead in chief, but to vouch him in the Reversion; therefore he can vouch no other, but him in the Reversion; or if the Defendant notwithstanding, upon the Title of the former Recovery, plead some other Bar, then the Demandant in the Quod ei deloacte shall not vouch at all, because the former Action is not revived. And if the Defendant plead the former Recovery, the Demandant may traverse the Title, or plead any thing in Bar of the Title. 2 Inf. 551, 552.

† It is not of Necessity that the Defendant, in the Writ of Quod ei deloacte, do plead the former Recovery; but (as hath been said) he may plead any other Bar. 2 Inf. 552.

* By thefe Words the Demandant in the Quod ei deloacte after the Recovery pleaded cannot vouch any other but him in the Reversion 2 Inf. 532.

† Upon the Words two Conclusions are to be ob- ferred, First, that the Demandant in the Quod ei deloacte after the Recovery pleaded cannot vouch, yet the Quod ei deloacte may be maintainable. Secondly, if the Recovery by Default be in such an Action where no Voucher doth lie, yet the Quod ei deloacte is maintainable. 2 Inf. 552.

† These Words are to be understood that such Tenant shall vouch, which might have vouch'd in the first Writ, and therefore if the Judgment be Declar'd in a Seque facies brought upon a Recovery or Fine, or in a Writ of Entry, or in the Quibus brought against the Declarer himself, there lies no Voucher, and yet a Quod ei deloacte is given by this Act upon such a Recovery by Default. 2 Inf. 552.
Voucher.

S. P. Per Kebble. Br. Pernor of Prohis &c. pl. 10. cites 14 H. 7. 17. 15 H. 7. 18.—S. C. cited Pl. C. 115. a. in Tzondlin's Café, lays that these Words, the spoken affirmatively, contain a Negatire in them, viz. Nullo aliis Modo, so that the Words (Vouch to Warranty, as if they were Tenants) have one and the same Effect of all those Words, viz. (vouch to Warranty as if they were Tenants, and in no other Manner.) — S. P. by Sanders Ch. 3. Pl. C. 266. b. 207. a. in Café of Stadling & Morgan. — Pl. C. 115. a. In Marq, it is said thus, viz. Nor Reader, that the Statute is, Vouch to Warranty (according to the Tenor of the Writ) as if they were Tenants.

And where the Vouche should not have his Age in the former Writ, he shall not have his Age in this Writ; for this Writ is of the Nature of the other. 2 Inf. 352.

The Tenant in a Quod ei deforceat may vouch &c. and to both Tenant and Demundant (as hath been said) may vouch in this Act, [and] seeing the Statute doth give a Voucher, by Consequence he shall recover in Value. 2 Inf. 352.

But note this. All duties give but one Voucher, and therefore the Vouchee shall not vouch over. 2 Inf. 352. — Br. Parliament, pl. 21. cites 14 H. 7. 17. S. P. by Vavilof, because in this Point the Statute is to be taken strictly.

This (As if &c.) extends only to the Point to which it is referred, viz. Notwithstanding that he be Demundant; but this will not alter or abrogate the Law in other Cases, and therefore if Tenant pleads other Bar, and does not maintain the first Recovery, he shall not vouch at all; nor shall he vouch other than him in the Reversion, neither shall he vouch in any Action in which no Voucher lies. 11 Rep. 62. b. in Dr. Fother's Café, cites 9 E. 5. 22. tit. Counterple de Voucher 101. 53 H. 6. 16. 14 H. 7. 18.

4. Gift in Tail referring the Reversion; the Tenant is impleaded; this is, in Good Warranty to plead, unless against him who is to Defeat this Warranty with Reversion; and fo Reversion is good Warranty in Law: Br. Garranties, pl. 9. cites 38 E. 3. 32.

5. In Precipe quod redlat the Vouchee vouch'd, the Vouchee entered into the Warranty, and shew'd that M. was seised of this Land and other, and had Issue A. and N. who made Part and this Land allotted to A. in Allowance of other Land allotted to N. and after A. had Issue F. who had Issue the Vouchee, and N. had Issue E. and E. had Issue W. of whom he protest'd A., and that the Parol demur for his Nonage; the Demundant said that A. infess'd B. Father of the Vouchee, and fo the Voucher deplo'ed'd. And the Opinion of the Court was that yet he shall have Aid, and therefore because he alone cannot have the the Warranty Paramount, he and the other shall have the Warranty. Br. Garranties, pl. 9. cites 43 E. 3. 23.

6. Where a Man abates, and the Abator infess's J. S. who leaves for Life, and grants the Reversion to J. S. Heir of the Abator, the Tenant atorns, and the Tenant is impleaded, and makes Default after Default, and he in Reversion is received, he cannot vouch, by Reason that the Statute is general, That it is good Counterplea that the Ancestor of the Tenant who vouch'd, whole Heir he is, was the first who abated, and yet the Tenant, who vouch'd claim'd in by Purchase, and not as Heir; and yet upon a Fine, he who claims by Purchase, and not by Defect, may lay for the Ad's Ancestor, who levied the Fine, had nothing at the Time &c. vantage of the other; and per Finch, the Statute extends as well to him who is Tenant by Receipt and Voucher, as to the Tertenant who vouches; for he is in Loco tenents. Br. Voucher, pl. 55. cites 46 E. 3. 2. Per Finch.

7. It was said, that where two abate to the Use of the one, and Cestui que Use &c. infess's the other in Fee, who vouches, he shall not have the Voucher. Br. Voucher, pl. 33. cites 46 E. 3. 2.

8. Where the Statute is, that a Man shall not vouch out of the Degrees in Writ of Entry within the Degrees, yet the Tenant by Receipt may vouch extra Gratias; ad quod non fuit reiponfum. Br. Voucher, pl. 33. cites 46 E. 3. 2. Per Perley.

9. After the 4 Degrees are past, the Issue in Frankmarriage shall do such Services to the Donor as the Donor does over to his Lord, and yet the Illue shall vouch by the Frankmarriage, and shall have Writ of Mefne by it. Br. Voucher, pl. 126. cites 12 H. 4. 9. Per Hank.

10. Tenant
11. In Cui in Vita the Case was, that a Feme seised of Land took Baron, and had Issue two Sons, the Baron alien'd in Fee, the Feme died, and the youngest Son recover'd the Land by Cui in Vita in the Per in the Life of the Baron as Heir, and the eldest Son brought Cui in Vita in the Per against the youngest, and he would lose the Tenant against whom he recover'd, and the Demandant counterpleaded, because he who is now Tenant recover'd the same Land against the same Voucher by Cui in Vita in the Per, supposing his Entry by the Baron of his Mother whose Heir &c. and filed Execution; and this Estate continued by Force of the Recovery till the Day of the Writ proofs'd, and always after. Et hoc paratus est &c. ab jure hoc that the said Voucher, or any of his Ancestors, had ever any thing in other manner; and pray'd that he be ouit of the Voucher. And per Babb. and Palton, this is not any Counterplea to the Voucher, but to the Lien which is for the Voucher to have, and not for the Demandant, by reason that the Demandant has contests'd Possession in the Voucher, who might make Peoffment. But Marten contra; for if it may appear by a Cause shown, that the Voucher had nothing but a Possession, which is defeated by a Recovery or lawful Entry, he shall not base the Voucher; Quod Palton conceiveth. Br. Counterplea de Voucher, pl. 2. cites 9 H. 6. 49.


14. Curtesy que Usé might vouch; Per Windham J. and he said there was no Authority to the contrary, but only Opinions obiter. 1 Mod. 193. Hill. 26 & 27 Car. 2. C. B. in Case of Williamson v. Hancock.

15. At Common Law many Persons might rebut, that could not take Advantage of a Warranty by way of Voucher; As the Lord by Escheat, the Lord of a Villein, a Stranger, Tenant in Possession. Mod. 193. Arg. in Case of Williamson v. Hancock, cites 35 Ann. 9. and 11 Ann. 3. and 45 E. 3. 18. pl. 11. and 42 E. 3. 19. b.

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(K. 4) [What Person may vouch. Persons] in of other Estate.

Br. Voucher, [1] 10. H who is in of other Estate than that to which the Warranty was annex'd, cannot vouch. 45 E. 3. 18. b.


Owen v. Morgan, Anderson Ch. J. cites S. C. —— S if Tenant in Tail general discontinues, and retakes
Voucher.

55

[3] 12. If a Warranty be annexed to a Seigniory, and after a Tenancy is chases, and afterwards the Tenancy is demanded, he cannot vouch for this. 6 U. 4. pl. 1. Dubitatur.

4. If a Man releases with Warranty to a Bajlard, and the Bajlard dies without Heir in the Life of him who releases, the Lord enters by Escheat, and now he who made the Warranty dies, and his Heir brings Action against the Lord, he shall not plead this Warranty: The Reason seems to be, inasmuch as it is descended upon other Possession in which it was not made; and also this Possession is in the Poss, and not in the Per. Br. Garranties, pl. 49. cites 29 All. 34.

5. If Baron discontinues the Right of his Feme, and retakes to him and his Feme, and they are impleaded, and the Baron makes Default, and the Feme is received, the may vouch and have the first Warranty; for the Feme is remitted. Br. Recovery, pl. 5. cites 44 E. 3. 17.

6. If two exchange Lands, and the one enters by the Exchange into the Land of the other, and infeoffs the other of his Land, which the other has in Exchange, and after the Fee is impleaded, and vouches by the Exchange, the other may rebut him of the Voucher, because he is in by the Feoffment, and not by the Exchange, as it is said. Br. Voucher, pl. 138. cites 45 E. 3. 20.

7. Cut in Vita, the Tenant pray'd Aid of two, because they were Heirs in Gavelkind, and made Partition, and this Land allotted to the Tenant. The Demandant said that after the Partition the Tenant infeoffs N. in Fee, who infeoffs the Tenant in Fee. Judgment if the Aid &c. and they were adjourn'd to another Term, at which Day it was awarded that he answer without the Aid, because he is in of other Estate, and cannot have the Voucher or Warranty paramount, because he is not in as Heir, nor can he recover pro rata; for he is now Purchaser, and so does not hold in Parcenary. And so fee that he did not lose Seilin of the Land, tho' it was after Adjournment. Br. Aid, pl. 46. cites 11 H. 4. 22.

8. If I infeoffs A. with Warranty, who infeoffs B. and after re-infeoffs A. now he cannot vouch me, nor shall not have Warrantia Chartae, inasmuch as he is in of another Estate. Br. Warrantia Cartae, pl. 24. cites Fitzh. Voucher 266. Per Barr.

Warrantia Cartae, pl. 11. cites 21 H. 6. 41. and 22 H. 6. 42.

9. Tenant for Life, Remainder in Tail, Remainder in Fee. Tenant in Tail levies a Fine; this has for ever hinder'd Tenant for Life, and Remainder in Tail, from destroying the Remainder in Fee, because the Fine has turn'd his Estate into a bate Fee, and has destroy'd all Privy of Estate; so that if Tenant for Life and Remainder in Tail would make a Tenant to the Precipe, yet they cannot vouch the Remainderman in Fee, without he will voluntarily enter into it. 11 Mod. 121. pl. 7. Trin. 1707. 6 Ann. B. R. Anon.

(K. 5) [What
[K. 5] [What Person may vouch] upon Warranty in Law.

[1] 13. Feme endow'd by the Guardian may vouch the Heir of the Baron, who has the other 2 Parts, and the Reversion of this 3d Part. Time of £. 1. 69. b. admitted by Ilive.

[2] 14. [So] Feme endow'd in Chancery, may vouch the Heir of the Baron who has the other 2 Parts, tho' he has not the Reversion of the 3d Part. 17 £. 3. 8. b.

[3] 15. A Feme Tenant in Dower may vouch the Heir of the Baron. 17 £. 3. 65. b.

[4] 16. So in Writ of Dower against Tenant in Dower, where the Dowry of the Tenant is more low than the Title of the Demandant, yet the Tenant may vouch. 17 £. 3. 65. b.


This Voucher is by reason of the Word (Grant) See 6 Rep. 17. a. Refolv'd Patch. 35 Eliz. in B. R. in Spencer's Case. - And being in Case of a Chattelreal, it imports in itself a Warranty. Ibid. 18. cites 29 £. 3. 48. and 30 £. 3. 14. Simkin Simeon's Case.

[7] 19. Tenant by Elegit cannot vouch, because he comes in by the Law. 1 £. 3. 2. Contra 2 £. 3. 42. b.

8. In Precipite quod reddat, if the Tenant vouches, the Demandant cannot counterplead by this Matter, viz. because the Vouchee had no other Estate but only by the Feoffment of a Baron and Feme, who were Cesty que Use in Right of the Feme, which Baron is dead; for there was a good Possession for the Time for the Life of the Baron: And then to say that he, who is Vouchee, had never other Estate but for Life of a Stranger who is dead, is not good; for he had Estate as Son, who might make Feoffment; and therefore the it be now determin'd, it is not determin'd ab initio. Br. Counterplea de Voucher, pl. 1. cites 27 H. 8. 27. Per Fitzherbert J.

9. And where the Statute 1 R. 2. wills that Feoffments made to great Men for Maintenance shall be void, and where the Statute of 11 H. 7. wills that Feoffments made by Fenues of their Jointures made in Use or Possession, by their first Baron or his Ancestor, shall be void, yet this is not void between the Feoffor and the Feoffee, but against Strangers; Per Fitzherbert J. But quere if it be a good Possession to vouch, but that a Stranger, who is not Heir, may counterplead it; for this is not like to the other Case, for the other was a good Plea for a Time, and those are void. Br. Counterplea de Voucher, pl. 1. cites 27 H. 8. 23.

(L) Voucher.
(L) Voucher. Who may vouch as Heir. [And last]

1. If A. infeoff'd with Warranty in Fee, and after A. dies without Co. Litr. Illue, by which the Land descends to the Uncle, and then the Uncle enters and dies without Illue, by which it descends to the Father of A. it seems that the Father may vouch upon this Warranty, saving the special Matter, that he cannot make himself Heir to his Son. For Contra Co. Litr. 11. b. the Warranty descended to his Uncle, yet the Uncle leaves it as he found it, and then the Father cannot take Advantage of it; for Co. Litr. 56. f. says that Warranties shall descend to him that is Heir by the Common Law. And S. 175. f. says that every Warranty which descends does descend to him that is Heir to him which made the Warranty by the Common Law, which proves that the Father shall not be bound by the Warranty made by the Son; for that the Father cannot be Heir to the Son that made the Warranty; and a Warranty shall not go with Tenements whereunto it is annex'd to any special Heir, but always to the Heir at the Common Law. And therefore if the Uncle be seized of certain Land, and is dismissed, and the Son relieves to the Defeator with Warranty, and dies without Illue, this shall bind the Uncle; but if the Uncle die without Illue, the Father may enter; for the Warranty cannot descend upon him. — G. Treas. of Tenures 15. 16. f. says, that in Case of the Son's being infeoff'd with Warranty, and the Uncle's entering after his Death into the Land, and dies, it is doubted whether the Father shall take Benefit of such Warranty where the Uncle has not, as it were, actually possess'd by Voucher or Warrantia Charter. And says that Coke excludes the Father, as not representing the Son, with whom the Contract was made; but that Hale admits him; for since the Uncle was possess'd of the Land, he was in actual Possession of all its Appendices.

2. If the Feme Tenant in Dower leaves her Estate to the Heir, rending Rent for Term of her Life, this is a Surrender; and if he be impleaded he shall vouch as Heir living the Tenant in Dower, well enough. Br. Recov. Rent for Term of her Life, this is a Surrender, and if he be impleaded, he shall vouch as Heir living the Tenant in Dower, well enough. Br. Voucher, pl. 50. cites 45 E. 3. 13.

Warranty as Heir in the Life of the Tenant in Dower, but he shall not have in Value during the Life of the Tenant in Dower; Per Mombray, quod non negatur. Brook f. But see Anno 1 H. 5. which is Contra, as it is said, and that he shall have in Value immediately.

3. If a Man has Illue a Son and a Daughter by one Venter, and a Son by S. C. cited another, and dies, the eldest Son enters, and dies without Illue, and the Sis- ter enters, it seems that she cannot vouch as Heir to the Father, nor be in Case vouch'd as Heir to him; for the youngest Son of the Half-Blood is Heir of Holt b. to the Father; but she is Heir to her Brother of the Whole-Blood. Br. Deborne, That she is without Remedy; for she cannot vouch as Heir alone, except she comes in as Voucher for Possession of the very Heir.


5. If any Lands be given to 2 Brethren in Fee-simple, with a Warranty to the Eldest and his Heirs, the Eldest dies without Illue, the Survivor, al- beit he be Heir to him, yet shall not vouch. Co. Litr. 385. a.
(M) Voucher. Upon Warranty in Law. Upon what Warranty it may be.

1. If 2 exchange Land, without any Clause of Warranty, yet the Law creates a Warranty between them, and thereupon the one may touch the other. 45 Eliz. 20. b. Time of E. 1. 132.

2. The King gave Land in Tail to his Cousin, saving the Reversion. The Tenant in Tail exchanged this Land for other to M. P. with Warranty, and left Assets, and died without Issue; by which the King, upon Office thereof found, demanded to have the Land to revert, and because it appear'd of Record that other Land was descended to the King, and this Land was exchanged, which is a Warranty in Law, therefore M. P. was restored by reason of the Warranty, and Assets descended to the King. Br. Tail & Dones &c. pl. 34. cites 45 Aff. 6.

(M. 2) Upon what Warranty a Voucher may be. In respect of the Words and Extent of them.

1. If a Man makes Feoffment in Fee, and warrants the Land to the Feoffee in Forma praedicta, now it shall by this be intended Warranty in Fee, by these Words in Forma Praedicta. Br. Expollision, pl. 29. cites 14 H. 4. 13.

2. Where a Man infeoffs B. in Fee, and warrants the Land to him, he may vouch, and recover Fee-simple in his Life; but if he dies, his Heirs cannot vouch. Br. Garranties, pl. 26. cites no Book; but says, Vide Alibi pro Leges.

3. It was held by all the Justices in the Exchequer-Chamber, except June, that where a Man will make Warranty to bar him and his Heirs, but not to vouch, or to render in Value, he may warrant it for him and his Heirs against the Dean of P. and his Successors &c. who have no Title. Br. Garranties, pl. 30. cites 7 H. 6. 43.

4. Or with this Clause, Provided always that the Party nor his Heirs shall not vouch the Feoffor nor his Heirs, nor recover in Value; for he may yet rebut, and plead this in Bar; and therefore the Provif takes not restrain all the Force of the Warranty, and so it is not void. Br. Garranties, pl. 30. cites 7 H. 6. 43.

5. And he may make the Warranty simple, and make Decease by Indenture, that if be vouches that the Warranty shall be void; and this holds good, by all the Justices; and the other way also, by all, except June. Br. Garranties, pl. 30. cites 7 H. 6. 43.

6. But Sir Robert Brudnell, late Ch. J. of C. B. devised other Warranty, which is now in Use, viz. That the Granter, for himself and his Heirs, will warrant against him and his Heirs; and by this the Feoffee shall
Voucher.

shall rebut, but shall not vouch. Br. Garranties, pl. 30. cites 7 H. 6. 43.

(N) Voucher. Upon what Warranty a Voucher may be. See (S) pl. 14. (D) pl. 1. 11. (F. a) pl. 5.

1. Upon a Warranty to one and his Heirs, the Assignee shall not vouch. 14 B. 4. 5. b.
2. But upon a Warranty to one, his Heirs, and Assigns, the Assignee may vouch. 20 H. 6. 34. b. Co. Litt. 47.
3. [And] upon a Warranty to one, his Heirs, and Assigns, the Assignee of the Assignee may vouch. Contra admitted 25 C. 3. 50. Per Curiam, and 26 C. 3. 56. b.

Assigns, and after B. Infeoff C. who after Infeoff D. who is imploathed, he shall not vouch as Assignee of R. Pet. Cur. Br. Voucher, pl. 169. cites 56. 14, but cites 32 E. 2. and 18 E. 2. and 33 E. 3, contra.—If a Man Infeoffs A. and B. to have to them and their Heirs, with a Clause of Warranty, pledging A. and B. to share Hereditums & Assignats; in this Case if A. dies, and B. survives, and dies, and the Heir of B. Infeoffs C. he shall vouch as Assignee; and yet he is not the Assignee of the Heir of one of them; for in Judgment of Law, Assignee of the Heir is the Assignee of the Ancestor; and so the Assignee of the Assignee shall vouch in Infinitum, within these Words, his Assigns. Co. Litt. 384. b.

So if a Man Infeoffs A. to have to him, his Heirs, and Assigns, and A. Infeoffs B. and his Heirs, and B. dies, the Heir of B. shall vouch as Assignee to A. fo as Heir of Assignees, and Assigns of Assignee, and Assigns of Heirs, are within this Word (Assigns,) which seemed to be a Question in Brafton's Time. Co. Litt. 384. b.

4. If A. warrants Land to B. and his Assigns, the Assignee, by force of this Warranty, may vouch during the Life of B. but not after the Death of B. because the Warranty is but for the Life of B. for Default of the Word (Heirs.) Co. Litt. 47.

5. [N]o Man shall vouch as Assignee, but he that comes in Privacy of Estate; and therefore he must vouch his Feoffor, and he to vouch as Assignee. Co. Litt. 385. a.

(Voucher to him, his Heirs, and Assigns, and he makes a Gift in Tail, the Remainder in Fees, the Donee makes a Tenement in Fee, that Feoffe: shall not vouch as Assignee. Co. Litt. 385. a.

(N. 2) [Upon what Warranty a Man may vouch as Assignee. Warranty in Law.]

1. Upon a Warranty in Law, the Assignee may vouch without any Word of Assignee in the Grant. Co. 5. Spencer, 17.

2. As if a Ward be granted to another, the Assignee may vouch the first Grantor. Co. 5. Spencer, 17. Contra 39 C. 3. 8. Agree.

(O) Voucher.
(O) Voucher. Who shall be said Assignee.

1. He that comes in not by Title, but by Abatement, cannot vouch as Assignee. 41 Ch. 3. 18. b.
2. If Feoffee, with Warranty to him and his Assigns, gives in Tail, the Donee may vouch as Assignee. 14 B. 6. 4.
3. He who is in of other Estate, cannot vouch as Assignee. 20 H. 6. 34. b.
4. If Feoffee, with Warranty to him, his Heirs, and Assigns, aliens in Fee, and retakes to him in Fee, and aliens to another in Fee, he may vouch as Assignee; for he is not in of other Estate. Contra 20 H. 6. 34. b.
5. If a Ward be granted to a Feme who takes Baron, and dies, the Baron shall vouch as Assignee by Force of the Warranty in Law. Co. 5. Spencer, 17. 18. See 30 Co. 3. 6. 14 b. Simkin Simons's Case. And Notice whether this Case will warrant this Opinion; for there the Voucher could not [prove] the Death of the Wife; and upon this the Voucher demands what they had to bind him; but there the Judgment is given only against the Baron, and he over against the Voucher, which implies that they intended the Feme dead.
6. If a Warranty be made to a Man and his Assigns, the Assignee of the Heir of the Feoffee shall vouch as Assignee. Quod nota. F. N. B. 135. (G) in the new Notes there, cites 7 E. 3. Warranty &c. 44. 10 E. 3. 32. 19 E. 2. 85. 13 E. 1. 93.
7. An Assignee of Part of the Land shall vouch as Assignee; as if a Man make a Feoffment in Fee of 2 Acres to one, with Warranty to him, his Heirs, and Assigns, if he make a Feoffment of one Acre, the Feoffee shall vouch as Assignee; for there is a Diversity between the whole Estate in Part, and Part of the Estate in the Whole, or of any Part. As if a Man hath a Warranty to him, his Heirs, and Assigns, and he make a Lease for Life, or a Gift in Tail, the Lessee or Donee shall not vouch as Assignee, because he hath not the Estate in Fee-simple, whereunto the Warranty was annexed; but the Lessee for Life may pray in Aid, or the Lessee or Donee may vouch the Lessee or Donor, and by this means he shall take Advantage of the Warranty. But if a Lease for Life, or Gift in Tail be made, the Remainder over in Fee, such a Lessee or Donee shall vouch as Assignee, because the whole Estate is out of the Lessee; and the particular Estate, and the Remainder, do in Judgment of Law, to this Purpose, make but one Estate. Co. Litt. 385. a.
8. If a Man infefts himself, with Warranty to them and their Heirs, and one of them releases to the other, they shall vouch; but if he had released to one of the other, the Warranty had been extinct for that Part; for he is an Assignee. Co. Litt. 385. a.
9. When one comes in as a Cofy que Use, it is by the Limitation of the Party; and tho' he does not come in En le Per, yet his Estate is under the Warranty, and he shall be an Assignee to take Advantage of a Condition. MS. Rep. Mich. 5 Anne, in Case of Smith v. Tindall.
Voucher.

61

(P) Upon what Conveyance a Voucher may be.

1. A Man cannot vouch upon a Release of a Right, which enures Br. Voucher, by way of Extinguishment, with Warranty. 21 E. 3. 27. pl. 63. cites S.C. Br. Countreple de Voucher, pl. 29. cites S.C.

2. As if one Coparcener enters into the Whole in her own Name, and Br. Voucher, after the other releases to her with Warranty, he cannot vouch upon this, because the Release enures by way of Extinguishment. 21 E. 3. 27. Br. Countreple de Voucher, pl. 29. cites S.C.

3. Upon a Release with Warranty, which enures by way of Mitter l'Estate, a Voucher may be. 21 E. 3. 27.

4. As if 2 Coparceners are setled, and the one releases to the other in Fee with Warranty, he may vouch upon this Warranty, because this Release enures by way of Mitter l'Estate. 21 E. 3. 27.

5. Recover and Rent referred upon a Lease for Life, is good Caufe to vouch, and to recover in Value. Br. Recovery, pl. 44. cites 6 E. 3. 11. and Fitzh. Voucher 126.

6. If Feme Tenant in Dover leaves her Estate to the Heir rendering Rent for Term of her Life, this is a Surrender; and if he be impeached shall vouch as Heir, living the Tenant in Dover, well enough. Br. Voucher, pl. 30. cites 45 E. 3. 13. 7. If a Man makes Feevoffment in Writing by the Word Dem'd, and the Feevoff dies, his Heir cannot vouch by this Deed of Gift. Br. Voucher, pl. 160. cites 17. nota, fol. 14.

8. A Man cannot vouch by a Confirmation with Warranty; for the See Warranty is personal. Br. Bar, pl. 55. cites 21 H. 7. 32. —If a be setled in Land in Fee, and B. releases unto him, or confirms his Estate in Fee, with Warranty to him, his Heirs and Assigns, all Men agree this Warranty to be good; but some have holden, that no Warranty can be vouch upon a bare Release or Confirmation, without passing some Estate or Transmutation of Possession. But the Law, as it appears by Littleton himself, is to the contrary, and that both the Party, and (as some do hold) his Assignee shall vouch; but he that is bound in that Case, must be present in Court, and ready to enter into the Warranty, and to answer; and the Tenant must prove forth the Deed of Release or Confirmation with Warranty, to the Intent the Demandant may have an Answer thereunto, and either deny the Deed or avoid it; for that at the Time of the Confirmation made, he to whom it was made, had nothing in the Land &c. for otherwise the Demandant may counterplead the Voucher by the Stat. of W. 1. viz. That neither Voucher, nor any of his Ancestors, had any Seisin whereof he might make a Confirmation; and this is grounded upon the said Statute of W. 1, the Words whereof be, Siffecit non garantice en present ear. Vos volit garantir de long (long) gree, &c. &c. &c. enter en redons: Otherwise the Tenant must be driven to his Warrantia Chart. Co. Litt. 285. a. 8.

Hob. 21. 22 in Cafe of Roll b. Dowbor, cites 12 H. 7. 12. (but it seems misprinted for 21 H. 7. 32) where it has been said, that upon a Release or Confirmation with Warranty, a Man cannot vouch, and therefore he shall have a Warranty of Charters, Hobart Ch. J. says, it is clear, that as to him that warranted, he may, and cites 4 E. 2. Fitzh. Voucher 294. and 1 H. 4. 19. 38 E. 15. But he says the Caufe may be fo, as the Demandant may counterplead the Voucher, and then the Tenant is driven to his Warranty of Charters for Default of his Voucher in Deed; And that to the Book 12 (21) H. 7. is in that Sense true; for if the Demandant should vouch, as he may, against the Warranty, and be counterpleaded by the Demandant, truly he should lose his Land, and the Aid of Voucher too; for he was pas'd the requiring of a new Plea of the Warrantor, when he had been by the Voucher counterpleaded before.

R

(Q) Voucher.
Voucher. In what Actions.

In a Writ of Dower no Voucher shall be.

1. A Writ of Dower no Voucher shall be.

But 2. In Quod ei deforceat for Land which the claim is in Dower, Voucher does not lie, if it be brought against the Recoveror, in the first Writ; for this Writ is in Nature of a Writ of Dower. 44 E. 3. 43.

3. But otherwise it is if this Writ had been brought against the very same Person against whom the Recovery was had, he shall not have the Voucher. Br. Voucher, pl. 7. cites 44 E. 3. 43.

* He may after the first Recovery plead, and not before, and this by the Statue; Per Littleton. Br. Voucher, pl. 10. cites 34 H. 6. 46. — Br. Quod ei deforceat, pl. 1. cites S. C. — S. P. Br. Quod ei deforceat, pl. 12. cites 50 E. 3. 12. 25.

The best Opinion was, that in Dower, or Quod ei deforceat, the Tenant may vouch the Heir of full Age, or within Age well enough, without shewing Specialty, unless he be in Ward; and if he be in Ward, he shall shew Specialty, and otherwise not, and this for the Loss of the Guardian; and after the Tenant grants he shew Specialty, but not de Rigo jure. Br. Voucher, pl. 45. cites 50 E. 3. 25.


5. But it does not lie in Execution of Ward. 48 E. 3. 20.

Br. Voucher, pl. 7. cites S. C. — S. P. But shall have Warrantia Charte, if it be against a common Person. Br. Warrantia Charta, pl. 2. cites S. C. — Br. Quare Impedit, pl. 7. cites S. C.

7. But in Quare Impedit Defendant shall have Aid of the King in Lieu of Voucher, because he has no other Remedy against the King, for he cannot have Warrant of Charters against him. 9 H. 3. 56. adjudged. 9 H. 7. 16.

* See (R) pl. 7. 45.

8. A Man may vouch in a Writ of Right of advowson. 9 H. 6. 56. b.


In Scire facias the Tenant cannot vouch, but shall have Warrantia Charta. Br. Voucher, pl. 122. cites 42 E. 2. 5. The Tenant in the Scire facias may have Writ of Warrant of Charters, yet his Petition shall lose his Warrant paramount, which he might have by Way of Voucher in a Formulm, which he lost in a Writ of Warrant of Charters. Br. Scire facias, pl. 125. cites 24 E. 5. 57.

See (X) pl. 11.
10. If upon a false Office, that B. the Tenant of the King alien'd to C. [and thereupon] C. had a Livery and made a Fine, and by Leave alien'd to another, and retook an Estate with Warranty; and after another Office is sound for the King, that B. died before his Heir in Ward; whereupon a Scire facias issued against C. to releife, C. cannot vouch the Alience in this Action; for the King was deceived in the Licence, and B. C. in by Abatement. 29 Ait. 30. adjudged. 32.

11. In a Writ of Dower against the Heir of the Baron, he cannot vouch. 22 E. 3. 3. b.

Writ of Dower; Contra of other Tenant in Writ of Ward. Br. Voucher, pl. 143 cites 45 E. 3. 20. ——

12. In a Quod permittat for turning of a Water, the Defendant cannot vouch. 30 E. 3. 26. b.

Br. Quod permittat, pl. 5. cites M.; 5 E. 5. That the Defendant cannot vouch in Quod permittat generally.

13. In a Writ of Intrusion, supposing that the Tenant himself abated, if the Tenant says that he is Tenant for Life, the Reversion to J. S. yet he shall not vouch J. S. because the Writ is brought of his own Wrong. 3 E. 2. Ady. 162. Unjudged.


Affise against H. and two Infants, all plead to the Affise by Bailiff, which remain'd, and at the Day the two came in Person and would have vouched H. who was ready to enter; fed non recipit: the Reason seems to be that Foniler is not a Thing of which he may have Certificate, as Recovery, Fine, Release &c. Br. Affise, pl. 425. cites 8 E. 3. 39. —— For he shall not have other Matter in Person after that he hath pleaded by Bailiff, but only that of which Certificate lies; wherefore they pleaded a Release; Quod nota. Br. ibid.

15. The Tenant in a Writ of Entry in Nature of an Affise cannot vouch, because it is against the Supposal of the Writ, and the Voucher ought to be granted by the Party, and not by the Court as it is of Aid, and if it should grant it, 'twill abate his own Writ. *21 E. 4. 15. b. 9 H. 5. 14. S. P. 2 & 3. For he is supposed to be in of his own Wrong. Br. Voucher, pl. 53. cites 9 H. 5. 13. 14. —— S. P. Br. ibid. pl. 121. cites 53 H. 6. 23. Per Prior; and Brooke says that the Law is so.


18. In Attaint the Tenant vouched W. N. and was ousted of the Br. Attaint, Voucher; for this Suit is only to be restored to his first Possession, whereof pl. 55. cites S. C. and 10 E. 5. 21. no Meane Time is adjudged in Law. And it was said there that for the fame Reacon a Man may do so in Quod ei deforcet, and yet Voucher lies there, and in other Writs in which a Man may lose by Default. Br. Voucher, pl. 99. cites 10 All. 8.

19. In Writ of Right upon Disclaimer, the Tenant who disclaims shall not be suffer'd to vouch, for he is the same Person who did the Tor, viz. Disclaimed. Br. Voucher, pl. 114. cites 12 E. 4. 14. Per Littleton.


Voucher.

23. In Mortdancer the Tenant may vouch at large. Br. Mortdancer, pl. 61. says it appears elsewhere.

24. Where Writ of Entry en le poft is against Tenant for Life to bind the Fee-Simple, he ought to pray Aid of Him in Reversion, and then they to vouch upon the Founder &c. Br. Recoverie, pl. 27. cites 23 H. 8.

(R) For what Thing there may be a Voucher.


† Br. Voucher, pl. 112. cites S. C. — In Mortdancer for Rent the Tenant vouched to Warranty, the other said that that which he demands is Rent Service; and admitted a good Counterplea. Br. Counterple de Voucher, pl. 46. cites 2 Aff. 35. — Br. Mortdancer, pl. 19. cites S. C. S. P. in Juris Utrum de Rent. Br. Counterple de Voucher, pl. 49. cites 18 E. 3. 1. Brooke makes a Quere where Vendor of the Rent is impelled, and vouches.

In Formedon of Rent the Tenant vouched to Warranty K. and the Demandant said that his Demand was Rent Service; Judgment &c. And the Tenant said that the Land is Hors de sen Fes; Judgment &c. and no Plea, but by Coercion of the Court was compell'd to say that the Land was held of another, al- lowing for that the Demand is Rent Service, Prift; and nothing was enter'd in the Roll but whether it was Rent Service or not, notwithstanding the Prayer of the Parties, and their Matters were given in Evidence. Br. Counterple de Voucher, pl. 12. cites 43 E. 5. 19. — Br. Voucher, pl. 52. cites S. C.

Entry for Diffusion of Rent, the Tenant said that he was Tenant of the Land out of which &c. and that J. S. was jelfed of it discharged of any Rent, and gave to his Answer in Suit, and so Voucher of the Land discharged by Reversion; and per Cur. he shall show Cause, because he vouches of another Thing which is not in Demand, but the Demandant shall not have Traverse to the Cause as here, nor the Tenant shall not be compelled to shew what Rent it is in his Voucher, but the Demandant shall aver it by Counterplea, that it is Rent Service, and then the Tenant shall not vouch where Rent Service is in Demand. And the better Opinion was, that he may vouch out of the Degrees, as here, because it is of another Thing than is in Demand, viz. of the Land where Rent is in Demand, and so out of the Cane of the Statute. Br. Voucher, pl. 118. cites 21 E. 4. 28. — Br. Counterple de Voucher, pl. 46. cites S. C.

Ward of Land and Body; 32. to the Body, the Demandant said, that a Stranger leased the Ward of the Body and Marriage to the Defendant, and could him to Warranty, and had it. Quod nota, that he may vouch in this Action of Chistle; for the Action is Writ of Right of Squirey, and yet it is but Chaste in Demand. Br. Voucher, pl. 60. cites 7 H. 14.

*Br. Voucher, pl. 112. cites S. C. per Littleton; quod non negatur. *E. F. B. 135. (E)

S. P. — See Warranty Charte, (A) pl. 3. S. C.

† This seems misprinted for (E)

3. If a Rent-Charge be demanded, the Tenant cannot vouch, if he does not vouch as for the Land discharged of the Rent. But he may vouch as for the Land discharged of the Rent, as that such a one was leased of the Land discharged of the Rent, and infected him. 10 C. 4. 9. b. Fitzh. Ma. 135. † C. 2. The Archbishop of Canterbury, 47. b. 3 D. 7. 4. 21 D. 7. 10.

4. Dowser against W. who vouch'd to warranty the Heir of the Baron, who came and demanded what he had to bind him. Hill said, Our Father, whose Heir we be, leased for Life, rendring to him and his Heirs yearly, which Reversion is in the Heir, and to vouch'd him by the Reversion and Rent. Parn said, He need not shew any Deed. But per Herle, then disclaim the Reversion or grant it. Parn said, The Lease was upon Condition, rendring Rent with Re-entry, and his Estate defroy'd in Law; Judgment. And per Herle, This is no Plea without Entry in Suit; nor to say that he has ceased of the Rent, and that he has Writ of Cessant pending. And
Voucher.

And because he did not say other thing, it was awarded that the Feme recover against the Heir, if he has by Defent; and if not, against the Tenant, and the Tenant over in Value against the Vouchee; and so the Feme shall recover against the Heir, and yet the Tenant has no Estate but for Term of Life. Br. Counterple de Garrantie, pl. 7. cites 6 E. 3.

5. It seems that in such Case, where the Land is charged in Faât at the Time of the making of the Warranty, that he who has the Warranty cannot vouch of the Land discharged &c. for it was charged, in Fact, at the Time of the Warranty. Br. Voucher, pl. 133.

the Land of W. S. and the Father released to W.S. with Warranty; and after the Son brought Affile of the Common, and the Warranty was pleaded, and the Son recovered. Br. Voucher, pl. 153, cites 22 All. 58. But Brooke makes a Square if the Warranty &c. was suspended for the Time. Br. Voucher, pl. 153.

6. Formedon of 12 Acres of Land, and 20 s. Rent; the Tenant vouch'd to warrant J. N. for all; and good per Cur. For, prima facie, he shall be intended Pernour of the Rent. But per Littleton, upon such Voucher, it is a good Counterplea that he is Tenant of the Land, out of which &c.

Br. Voucher, pl. 11. cites 35 H. 6. 30.

7. In Trespas the Defendant pleaded Lease for 60 Years of the Father of the Plaintiff, and Confirmation of the Plaintiff himself with Warranty, and relied upon the Deed with Warranty. And per Brudnell, It is no Plea, but he shall plead it by way of Covenant; for Warranty, as here, is personal; and he cannot vouch by it, for personal &c. But in Writ of Habea a Man may vouch; but, as here, he is put to Writ of Covenant, as in Waite; and Fineux was of the same Opinion. And per Tremale J. It is a good Bar. Br. Voucher, pl. 89. cites 21 H. 7. 32.

8. Where a Man is inten'd of a Manor cum Pertinentia, and Fraunc phen of Affile of Bread and Beer is appendent, he may vouch. Br. Voucher, pl. 168. cites Itin. Can. 2. & Itin. Not. 2.

(S) Voucher. What Persons may be Vouch'd. The King.

1. If the King grants Land with Warranty, and the Tenant is int. pleaded, he shall have Aid of the King in lieu of Voucher. 9 H. 2. Dubuat. 9 H. 6. 56. b.

a Man might vouch the King, and that the Paul would have demur'd for his Nomage; but that the Law is contrary now, and cites 9 H. 6. 56. — Note a Common Recovery in a Writ of Entry against J. S. for the Manor of D. in the Country of Buckingham was endeavoured to be drawn, and suffier'd at the Bar, wherein the Tenant prav'd Aid of the king, by reason of a Warranty in [of] the King, whereby he warranted that Land, and granted to make Recompence upon Excitium, and this Aid-Prayer was to be instead of a Voucher, the Warranty being created by Fine and Recovery drawn in Paper, wherein the Tenant vouch'd the King; and Sir Robert Heath, the King's Attorney, by a Warrant, as he said, from the King) enter'd into the Warranty, and prav'd that the Demandant might count, and so it was drawn that the Demandant, Petit verius Dominium Regem that Land (as the usual manner of the Courts in common Recovery is,) and that the Attorney of the King vouches over the common Vouchers: But this being perused by the Court, altho' the Attorney said he had Warrant for so doing, yet because such a Courte hath not been seen, nor any Precedent shewn that any should count against the King as Voucher, and this Courte is now devolved to be a Remainder, expectant upon an Estate Fall in the King, (as a Fine by the King is sufficient to bar an Estate Fall in him,) and altho' it is used to be levied by the King, yet that is done by way of rendered, and not by an immediate Writ of Covenant; therefore the Court would not suffer this Recovery to pass; for the King shall never render in Value upon Voucher; but in such Case they ought to sue to the King by Petition to have it in Value, and not by way of Voucher. Cro C. 96. pl. 22. Mich. 3 Car. C. B. Anon. cites 9 H. 6. 56. 25 E. 5. 39. 39 E. 3. 11. — Pope of Recov. 74, 75. cites S. C. and says that Decency and Order hinder some from suffer-
Voucher.

ing Common Recoveries, and therefore the King cannot suffer a Common Recovery; for if he suffer a Common Recovery, he must be Tenant or Voucher; and in both Cases the Demendant must come against him, and there must be Judgment against him, which the Law does not suffer, so cannot come in as Tenant by Receipt; but if the Party have any Warranty, he must pray him in Aid.

2. So if the Grant be to have in Recompence. 9 H. 6. 4. 56. b. 

Br. Recove-

ry, pl. 22.

cites S C.—In this Case, and the Case above, pl. 1. it was said by the Clerks of the Peace, That if the Tenant be impleaded, and prays Aid of the King by this Caufe, in lieu of Voucher, the special Matter shall be enter’d; or otherwise he never shall have in Value by Petition or otherwise. A Good Diversify. 

Br. Recovery, pl. 23. cites 9 H. 6. 4.

A Man cannot vouch the King. 

3. The Grantee of the King, with Warranty, shall not vouch the King. Contra 2 H. 3. Age, 149.

Br. Aid del Roy, pl. 41. cites 21 E. 3. 47.

[4.] If the King grants Land to me and to my Heirs, and grants that if I am impleaded, or loose in any manner, otherwise than by my own Act, that the King shall render to me in Value of other Land; this is a good Warranty against the King. Br. Garranties, pl. 37. cites 39 E. 3. 12.

(S. 2) [What Persons may be vouch’d.] Other Persons.

Corporations.

[S. 3] [In-

(Fol. 746.) 

[S. 2] [What Persons may be vouch’d.] Other Persons.

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(Fol. 746.)
(S. 3) [What Persons may be vouch'd. Infant.]


Voucher, Br. Voucher, pl. 61, cites S. C. And by Thorpe, the Voucher of him in Ventre fa mere only is sufficient, if there be no other Heir; but Finch contra, that he cannot be vouch'd alone; and he said if a Man vouches one in Ventre fa mere, and the Demandant says that the Ancestor has another Son alive, viz. J. by which the Tenant vouches this J. if he be his Son, and if not, he in Ventre fa mere, he shall not have the Voucher; for he who vouches ought not to be Mist-consumant of this Matter.—S. C. cited 7 Rep. 9. a. In the Earl of Bedford's Case. He may be vouch'd if God gives him Birth, and if not, such a one Heir to the Warranty; but he cannot be vouch'd alone without the Heir at the Common Law; for Proceeds shall be presently awarded against him. Co. Litt. 592 a. (n)

[2] 9. If a Warranty be made by two, whereof one is an Infant, both Br. Brief, ought to be vouch'd, otherwise it shall abate; for it does not appear that he is Infant in the Deed. (His Deed is but voidable, and he may agree to it.) 49 E. 3. 12. b.

Age shall warrant the whole. Br. Baron and Feme, pl. 42. cites S. C. Per Finch and Belknap; quod non negatur. But if of a Monk or Feme covert it is otherwise, if they are so nam'd in the Writ or Voucher. And it seems here, that he of full Age shall be charg'd with the entire Warranty.

(S. 4) [What Persons may be vouch'd.] Villein.

[1] 10. Villein cannot be vouch'd, tho' he becomes Villein after the Warranty created. 48 E. 3. 17.

This Plea does not belong to this Head.

(S. 5) [Voucher] of Himself.


In a Foresecon the Tenant vouch'd himself to save the Tail, and wth'd that one A. was sel'd and gave the Land in Demand to the new Tenant, and to E. his Wife, who is now alive; and by Award the Voucher was disallow'd, because it was there said by Knevet, the Recovery in Value cannot according to the Gift. 4 Le. 95. pl. 192. in Case of Owen v. Morgan, cited by Anderson Ch. J. 28 59 E. 3. 5.

[2] 13. A Man may vouch himself as Heir to the Donor to save the Tail; for if he vouches first the Feoffor upon his Warranty of the Fee, he shall recover a Fee, and to the Tail destroy'd; and another Reason is for that he could not have the Warranty of the Fee before, he being Tenant in Tail in Possession. 40 E. 3. 13. b. 36. 19 E. 3. 52. abridged, 25 E. 3. 53. Contra 18 E. 3. 6. abridged.

[3] 14. If the Father makes Feoffment with Warranty to B. and his Alligns, and retakes to him in Tail, his Isle may vouch himself and,
Voucher.

and her Sister Coparencer, as Almaine of 2. 40 C. 3. 22. h. to save the Tail.


In Precipe

[6] 17. If the Father infeoff his Son and Heir with Warranty, and dies, the Son may vouch himself and his younger Brother, as Heir in Borough-English. 41 C. 3. 25.

Per Skrene.

[7] 18. If the Father Tenant in Tail has two Daughters, and infeoffs the one with Warranty, and dies, if the other Daughter brings Action, the Feoffee shall vouch herself, and the other, if the herself has not Affets, for the Misthief, because otherwise the shall not have in Value when Sistres deicendo. * 11 H. 4. 20. 17 C. 3. 59.

So that if the Re- Action be vouched by them, and the cannot bar her Sister, and afterwards the Reversion falls, she shall recover in Value, and this by Sacre facies, as it seems. Br. Voucher, pl. 49, cites 11 H. 4. 19.—But such Voucher shall not be suffered, unless the Tenant shews special Cause to the Court, and declares the Misthief that will enufe his nor having the Voucher. Br. Recovery, pl. 38, cites 11 H. 4. 50.

Where a Man has two Daughters, and infeoffs the one and dies, the may vouch herself and her Sister, for the Warranty remains for one Moty. Br. Garranties, pl. 5, cites 49 E. 5. 15.—Contra where the Voucher is false Heir. Ibid.

[8] 19. If the Father and J. S. infeoff the Heir of the Father, and after the Father dies, the Heir may vouch himself and J. S. 29 C. 3. 46.

[9] 20. If Feoffee with Warranty to him, his Heirs and Assigns, aliens in Fee, and retakes Estate to him and his Feme in Fee, and after they are impaleed, they may vouch the Baron to deraign the first Warranty. 25 C. 3. 52. Per Curtail.

In Dower, the Tenant cannot vouch himself to save the Tail; for nothing is to be recover'd in Writ of Dower, but Frankentenement, and no Inheritance; but the Reversion and Inheritance shall remain in the Tenant; Quod nota, good Reason. Br. Voucher, pl. 134, cites 2 E. 2.

Where 3 bring Action, and the Tenant has Warranty of the one, he shall rebut for the third Part, and shall vouch himself for two Parts; Per Hanc. Br. Voucher, pl. 49, cites 11 H. 4. 19.

(S. 6) [Voucher]
The Demendant.

1. The Demendant himself cannot be vouched, but ought to be rebutted. 45 El. 3. 23. b. 46 El. 3. 31 b. 11 P. 4. 19.

2. Where the Tenant cannot rebut the Demendant by the Warranty, there he may vouch him with another to have in value when he has.

3. If a Man has a Daughter, and takes a 2d Wife, and Land is by Voucher, given to them in Tail, and they have Issue another Daughter, and pl. 49, cites alien with Warranty, and die. In Formedon by the 2d Daughter, the Tenant may vouch her and the elder. 11 P. 4. 20. 49 El. 37. — Ibid. by Wich and Finchd.

4. So in Formedon by the Issue in Tail, he may be vouched with his younger Brother, who is Heir by the Custom. 11 P. 4. 21 b.

5. So if the younger Brother demands Land tailed, he shall be vouched with the elder Brother. 11 P. 4. 22.

6. So if 4 Coparencers bring Formedon and the one is sum- And because mon'd and fever'd, the Tenant may vouch the Demandants with her he vouch'd only the Feme who was fever'd where he ought to have vouched all the Demandants; he was oufted of the Voucher upon the Cause shown. Br. Voucher, pl. 49. cites 11 P. 4. 19. — And by vouching one only where the Action is by four, it shall be intended of a Lien made by her who is vouched. Ibid. Per Thirl. — And it was said that the Tenant ought to vouch all the Demandants by a strange Name, and when the three appear and the fourth not be stilll rebut against the three, and yet Voucher shall stand against the fourth, and so ought to vouch all by Lien of the Ancestor. For it may be that Aftes hereafter may defend to those who are not vouched; and where the Heir in Tail brings Formedon, and the Tenant pleads Warranty without Aftes by which the Demendant recovers and Aftes defend afterwards, the Tenant may have their Fruits against him, and have in Value; and so also in Voucher. Ibid. Per Hank. Quod non negatur.

7. If Feme Tenant in Tail has 2 Daughters by one Baron, and 1 Daughter by another, and 2d Baron aliens with Warranty and dies, and the 3 Daughters bring Formedon, the Tenant may plead in Bar against the Daughter of the 2d Baron the Warranty with Aftes from her Father for her Portion, and vouch her for the Residue. 49 El. 37.

Who may be vouched. Stranger.

1. In Power the Tenant cannot vouch a Stranger; Per Claymer and Thorp Ch. Juffices. And therefore Aid was granted of the King to the Assignee of the Grantee of the King of a Ward, and also this is the Possession of the King. Br. Voucher, pl. 81. cites * 29 El. 3. 8. But if the Stranger is present in Court he may be vouched. See (X) pl. 1. cites 22 El. 3. 1. — * It should be 39.

2. In Precipe quod reddat, if the Tenant vouches, and the Demandant counter pleads, and the Vouchee dies, which appears to the Court, the Tenant
(S. 8) Voucher of Baron or Feme by each other.

1. In Affise against Baron and Feme, the Baron made Default, the Feme appeared and pray'd to be received, and was received, and vouched her own Baron as Assignee, and shew'd Deed of it, and he enter'd into the Warranty of his own free Will, and pleaded in Bar. Br. Voucher, pl. 91. cites 8 Aff. 33.

So if a Woman impleads a Man with Warranty, and they intermarry and are impleaded, the Husband shall vouch himself and Wife by Force of the said Warranty. Co. Litt. 390. a.

2. If a Man enprofs a Woman with Warranty, and they intermarry and are impleaded, and upon the Default of the Husband the Wife is received, she shall vouch her Husband &c. notwithstanding the Warranty was put in Suspence. Co. Litt. 390. a.


1. Assise against Baron and Feme and E. which E. made Default, and the Affise awarded by his Default, and the Baron and Feme pleaded Record in Bar, and failed at the Day, and the Feme was received and vouch'd this same E. and had the Voucher by Award, notwithstanding that he was out of Court by his Default, and such a Person against whom Process shall not be awarded by Reason of Default. Br. Voucher, pl. 95. cites 13 Aff. 1.

2. Affise against two, the one took the Tenancy and vouched the other, who enter'd into the Warranty and pleaded in Bar. And there it is said that he who vouches shall recover in Value against him who is vouch'd; quod non negatur. Br. Voucher, pl. 98. cites 16 Aff. 19.

3. In Affise the Tenant vouch'd the Baron and Feme named in the Affise, who enter'd into the Warranty &c. without Deed &c. and were received by Award; quod nota bene. Br. Voucher, pl. 101. cites 26 Aff. 26.

4. Precipe quod reddat against J. who vouch'd 2, who enter'd into the Warranty, and vouch'd the Tenant by a strange Name, and shew'd Cause, and the Voucher admitted, and Process granted against the Tenant, tho' be Tenant in the Affise. But Quere if it appears that he is Tenant, when it is by a strange Name. Br. Voucher, pl. 113. cites 11 E. 4. 7.

(S. 10)
Voucher.


1. Tenant in Tail has Issue two Daughters, and insets the one with Warrant into, and dies; the Warrant between her and her Father is determined; and yet, by Caufe flown, that Reversion is defended to another Daughter, there, in Formedon brought in Name of both, the Feoffee by this Caufe shall vouch herself and her Sister, and if otherwife not. Br. Garranties, pl. 21. cites II. 4. 22. Per Skrene & Thirm.


3. In Formedon the Tenant cannot vouch one who is Heir to the Donor, for the Tenant cannot have the general Counterplea, and therefore shall show Caufe. Br. Voucher, pl. 137. cites 21. E. 4. 25, 26. Per Cur.


5. Tenant for Life, Remainder in Tail, Remainder in Fee; Tenant in Tail leaves a Fine. This has for ever hinder'd Tenant for Life, and Remainder in Tail, from destroying the Remainder in Fee; because the Fine has turn'd his Estate into a bare Fee, and has destroy'd all Privilege of Estate; so that if Tenant for Life and Remainder in Tail would make a Tenant to the Precipe, yet they cannot vouch the Remainder-man in Fee, without he will voluntarily enter into it. 11. Mod. 121. pl. 7. Trin. 6 Ann. B. R. Anon.

(S. 11) Of, or by, what Persons. Within the Lien, or Degrees, or not.

1. 3 E. 1. cap. 40. Stat- Naës, That from henceforth in all manner of the tute of Wifdm. 1. Writs of Entry, which make mention of Degrees, the (Line) or Degrees in Writ of Entry within the Degrees, yet the Tenant by Replevin may vouch out of the Degrees; per Perle. Ad quaon non fur reperem. Br. Voucher, pl. 53. cites 46. E. 3. 2.- S. P. in Writ of Entry generally; for the Statute is only of the Tenant who vouch'd in a Seize Factor to execute an Annuity; per Brian. Quod nullus negavit, in a Note. Br. Voucher, pl. 159. cites 2. H. 7. 11. - In Writ of Entry for Difficult in the Per, the Tenant made Default &c; and he in Remainder foold. Deed of Remainder, and pray'd to be received, and vouch'd out of the Lien; and good by the Opinion of the Court, because he is a Stranger to the Lien, and is out of the Case of the Statute. Br. Voucher, pl. 164. cites 11. H. 7. 5. - S. P. 2. Infl. 243. - Contra of Fever, who prays to be received in Distant of her Baron; for she is Party to the Writ. Br. Voucher, pl. 164. cites 11. H. 7. 5. - S. P. 2. Infl. 243. In Writ of Entry in the Per, brought against Baron and Pem. - So of the Prayers in Aid; for she shall join to the Tenant. Br. Voucher, pl. 164. cites 11. H. 7. 5. - S. P. And therefore shall not vouch out of the Degrees. 2. Infl. 243. - And of the Voucher, in Case of the Per & Cui, Elen fays, flat, vocabulo de Personis in Parsonnâ, & de Warranto in Warrantia de Personis in brevi nominatâ, et jure ad ipsum Diffidentorem; and the Reason may be, because it appears that the Voucher is within the Degrees mentioned in the Writ. And the Words of the Statute are general, viz. None shall vouch out of the Line; in which Words the Voucher is included. Lastly, it had been to little Purpœse to restrain the Tenant in the Per, and to let the Voucher in the Cui at large; to as this Branch hath (as you see) his special Reason. 2. Infl. 243.

In Writ of Entry in the Per, supposing the Entry by W. and the Tenant vouches W. and N. and because it is oufled by Statute that a Man shall not vouch out of the Line, in Writ of Entry, and of Part he is out of the Line, and of Part within; therefore the Tenant shall be oufled of the whole Voucher, Per Wicbe.
Voucher.

Wicke. But Belk. contra; and that he shall have the Voucher of the one, and he shall warrant the Whole, As where a Man vouches two, and the Demandant counterpleads, and it is found that the one has, and the other never had, any thing in the Land demanded, there the one shall warrant the Whole. But per Kirby, in this Case the Demandant shall recover the Moteity of the Land. Quod Belk. omnis negatv. Br. Volcher, pl. 49. cites 48 E. 5. 29.

Entry in the Per of Rent, the Tenant apprænd, and said, that J. S. was seized in Per of the Land, discharged of the Rent, and gave it to his Assignee in Trust, and vouch'd the Deed, by reason of the Reversion; and the butt Opinion was, that he may vouch out of the Degrees of the Land; for this is another thing than is in Demand, and therefore out of the Cafe of the Statue; and the Gift in Trust above, with the Reversion, is sufficient Cause; but he need not to prove the Deed; for there the Demandant cannot answer to it. Br. Voucher, pl. 138. cites 21. B. 2. 26.

* Lien is properly the binding of the Voucher by Force of the Warranty; for the Vouches says Que aves vous a lier a Warranty; and then the Tenant shews the Lien, that is, the Deed or Fine &c. that birds him to warranty. Here it is taken for the Degrees. 2. Infi. 245.

In a Writ of Entry in the Per & Gui against B. of the Pessament of A — A dies, B. shall vouch the Heir of A. for the Heir is within the Intention and Meaning of this Law, lead he should lose his Warranty (so much favour'd in Law) by the Act of God, viz. the Death of A. 2. Infi. 245.

* That is, of other Writs of Entry, where no mention is made of Degrees, which Writ shall not be maintain'd, but in Cases where the other Writs of Degrees cannot lie nor hold Place.

2. IngreniTu ad Terminum qui pretettit, supposing the Entry by J. and R. the Tenant said that he entered by J. only, and not by J. and R. Judgment of the Writ, &c non allocatur; because it is out of the Cafe of the Statue, and is no Milchiet of Voucher, by which he vouch'd him alone, and well, by Award. Quod nota. Contro. it seems, where the Entry is supposed by two, where he enters by 3 or 4; for there he cannot have the Voucher out of the Degrees. Br. Enter en le Per &c. pl. 4. cites 44 E. 3. 31.

3. Entry against T. in which he had not Entry, unless by R. of M. to whom T. denied it, who wrongfully, and without Judgment, dispossessed the Demandant; and the Tenant said, that he entered by W. and not by R. and M. Judgment of the Writ; by which the Demandant, by Coercion of the Court, was compel'd to maintain that he entered by R. Pritt; and the others e contra; for this Plea goes in satisfying the Entry; and also the Voucher shall enuise accordingly; i.e. he cannot vouch out of the Degrees, and therefore he cannot vouch W. in this Case, and consequently of Neccessity shal plead it to the Writ. Nata. Br. Enter en le Per &c. pl. 5. cites 44 E. 3. 39.

4. A Bargaine cannot vouch by Force of a Warranty, annexed to the Estate of the Lords; for he that is in by the Statute [of Ufes.] is in En le Pott; for he is not in the Poffeffion by the mere Contract of the Party, but by the general Lava of the Land; and therefore, by the Writs of Entry, cannot be said to be En le Per, that is, by such a one; and he that is in the Poff cannot vouch; for a Warranty is a Covenant annexed to the Freehold, whereby the Party agrees to take it up when controverted, and to defend it: It can therefore only extend to those that claim the Freehold from him, and not those that come to it any other way; but he may rebut; for the he has not covenanted to defend the Lands to him, yet he cannot claim them, because when any Man covenants to defend the Lands, be it to whom it will, it appears thereby that the Warrantor can have no Right to claim them, unless a new Title appears after the Warranty. G. Law of Ufes and Trufts, 102, 103.

(T) How
(T) How it shall be made. As Heir.

1. A Bastard may be vouch'd as Heir, if he enters into the Inheritance descended from the Father, because he may be Heir by Continuance. 21 E. 3. 34.

2. So he may be vouch'd as Cousin and Heir. 27 E. 3. 34. Nutere.

Her now the Bastard shall not be vouch'd as Heir, nor the Heir of the Bastard, if he be in by descent; for now the Warranty is determin'd, nor the Land cannot enter upon such Heir; and then it seems that he has gain'd the Land there, not only against the Muller and his Heirs, who are privy, but against all others. Br. Voucher, pl. 154. cites 5 H. 7. 2. Br. Garranties, pl. 88. cites S. C.

And it was said there, that where the Bastard is vouch'd, the Muller shall be vouch'd with him also, and therefore if the Muller dies without Heir, the Warranty is lost. And Brookes says, it seems, that the Bastard may be vouch'd alone without the Muller; because he, by Continuance of Possession, may gain the Land as Heir. Contra of the youngest Son. Quere. Br. Voucher, pl. 154. cites 5 H. 7. 2. —— Br. Garranties, pl. 88. cites S. C.

3. If the younger Son enters into the Land descended from the Father, he shall not be vouch'd as Heir to the Father, but because of the Possession. 21 E. 3. 46.

shall not demur; for he cannot be Heir by any Continuance of Possession. Br. Voucher, pl. 67. cites S. C.

4. If a Man vouches himself and another as Cousin and Heir to I. drewing Cause, he need not to thew how Cousin. 27 E. 3. 34.

5. If the Father aliens with Warranty, and dies seised of other Land, and his eldest Son enters into the Land and dies without Issue. In a Writ of Dower brought against the Alience, the Alience may vouch the 2d Son as Heir to the Father; for he has not any Warranty from the eldest Son. 27 E. 3. 87. Adjudged.

6. Precipe quod reddat; the Tenant vouch'd T. Procedes continued till he was return'd Dead, and the Tenant vouch'd K. Sitter and Heir of T. For per Thorpe, when a Man vouches one and he dies, the Tenant cannot vouch a Stranger to the Blood, nor any other but the Heir of the first Voucher. Quod nemo negat. Br. Voucher, pl. 18. cites 41 E. 3. 28.

7. Formedon in Remainder of a Manor, the Tenant as to two Acres Parcel of it, said that R. Duke of E. was seised of the Manor of which the two Acres are Parcel, and infessed J. M. And the Duke had Issue King E. 4. who had Issue the Queen, Cicile, and Anne, and the said E. M. infessed J. S. who infessed J. B. who infessed T. W. who infessed the Tenant, and 2d to Asignee E. M. vouched to Warranty the Queen, and C. and Anne her Sisters, as Heirs of the Duke. And to see the elder Sitter shall be Heir to the Crown, yet the he is not sole Heir to the Land of another Ancestor, nor to the Warranty, but he with her Sisters, and by the Nonage of C. and A. pray'd that the Parol Demur, & adjournatur. Br. Voucher, pl. 104. cites 3 H. 7. 14.

8. If one have divers Warranties, and they fall by Descant upon a Person Heir unto them both, yet he may be vouch'd only as Heir unto one; and the Reason is apparent (whether you regard the Demandant or the Voucher) for as to the Demandant it is a kind of Plea in Bar, and therefore ought to be single; for the Demandant may counterplead the Possession of the Voucher and his Ancestors, which they cannot do if they be divers. Per Hobart Ch. J. Hob. 29. in Cafe of Sir H. Roll. V. Sir R. Osborn. cites 31 E. 3. Fitzh. Voucher 25.
(U) Voucher.  

Who may be vouched.  In Respect of the Possession.  [Gavelkind.  Borough English. Bastard.]

If the War-

1. If Land descends to two Brothers in Gavelkind who enter, they may be vouched to Warranty as one Heir.  43 E. 3. 19. 17 C.

2. 5. 172. 1 E. 3. 13.

Son shall be vouched alone.  But the Tenant may also vouch the others for the Possession.  Per Hobert Ch. J. Hob. 31. cites 38 E. 5. 22 —— S. P. Per Hobert Ch. J. Ibid. 25. in Case of Roll v Osborn cites S.C.

Pol. 78.

2. But if the Land in Demand be Gavelkind, yet the Tenant can not vouch the 2 Brothers as one Heir without alleging that they have Gavelkind Land by Decent; (for the Warranty descends only upon the eldest.) 43 E. 3. 10. Curia 17 E. 3. 61. For the youngest is vouched because of the Possession.

If a Man vouches three as Heirs in Gavelkind, if he does not the vouch eldest as Heir, and the eldest and the two eldest for the Possession, he shall not recover in Value against the Heir of the Land which he has out of Gavelkind.  Br. Recovery, pl. 45. cites 4 E. 3. 55.

If a Man vouches by Warranty made by Ancestor in Gavelkind, he shall first vouch the eldest as Heir at Common Law, and that Land in Gavelkind is descended to the Heir and his Brothers, and vouch them by Reason of the Possession.  Per Sullard.  Br. Voucher, pl. 119. cites 22 E. 4. 10. * S. P. Br. Guaranties, pl. 44. cites 21 E. 5. 21.

If no Land descends to the Heir at Common Law but Gavelkind Land, yet the Heir at Common Law may be solely vouched without the other Brothers; because the Warranty descends solely upon him.  contra 38 E. 3. 22. b. 43 E. 3. 19. Curia 17 E. 3. 61. Admitted.

3. If Land descends to 2 Coparceners in Gavelkind, and the eldest enters, yet the youngest cannot be vouched with the eldest before her Entry; (for she has not Possession for which she is vouched.) 43 E. 3. 19. Curia 17 E. 3. 61. Admitted.

If the youngest Son enters into the Land descended, he may be vouched because of the Possession.  21 E. 3. 46. 38 E. 3. 27. b. Adjudged.

A Man vouched M. and Day was given by the Rolland tending this M. died; the Tenant recouched J. Son and Heir of M. within Age, and the Parol demurred, the Demandant said that J. is youngest Son, the Tenant said that he entered as Heir, and because the Demandant could not deny it, the Voucher stood notwithstanding that there was an elder Son.  Br. Voucher, pl. 65. cites 38 E. 3. 27. —— Br. Counterple de Voucher, pl. 25. cites S.C.

Br. Counterple de Voucher, pl. 119. cites 22 E. 4. 10 —— J. 56. 1. Trin. 11 Car B. R. in the Case of Rovv v. Balkor; it was agreed by all the Court that the youngest Son in Borough English shall be vouched and charg'd for the Debt of the Father, but that he shall not be bound by Warranty, nor vouch upon Warranty made to the Father and his Heirs.

6. The youngest Son having Land by Decent in Borough English may be vouched with the Heir at Common Law.  1 E. 3. 13.

3. cites 42 E. 3. 14. —— S. P. Br. Voucher, pl. 119. cites 22 E. 4. 10 —— J. 56. 1. Trin. 11 Car B. R. in the Case of Rovv v. Balkor; it was agreed by all the Court that the youngest Son in Borough English shall be vouched and charg'd for the Debt of the Father, but that he shall not be bound by Warranty, nor vouch upon Warranty made to the Father and his Heirs.

The Bastard 7. If a Bastard enters into the Inheritance after the Death of his Father, he may be vouched because of his Possession.  21 E. 3. 46.

alone without vouching the Muller, because the Bastard is Heir in Appearance, and shall not disable himself.  Co. Litt. 5-6 b —— Where a Man has Bastard and Muller portion, and the Bastard enters, a Man shall vouch the Muller as Heir at Common Law, and show how the Bastard has entered into cer-

Buchanan.
8. If 3 Sistors, whereof one is a Bastard, enter into Land descended as Coparceners, they may be all vouch'd by the Warranty of the Ancestor because of the Possession. 17 E. 3. 59.

9. In Dower the Tenant vouch'd to Warranty himself and his Brother, and hev'd for Cause that the Land was depopulable; but this was adjudg'd ill, unless he says more, because in such Case he shall only have Aid Prayer, and afterwards he shew'd Cause by Feoffment, and then it stood. Fitzh. Tit. Voucher, pl. 113. cites Mich. 12 E. 3.

(X) Voucher. In what Cases it lies, where the Vouchee is present, tho' it does not lie in the Action.

1. The Tenant may vouch a Stranger in a Writ of Dower, if the Stranger be present in Court. 22 E. 3. 1.

2. So the Voucher lies in this Case, tho' the Vouchee demands the Lien, and the Tenant shews it. 22 E. 3. 1.

3. In Affisle the Tenant may vouch a Stranger who is not nam'd in the Writ, if the Vouchee be present. Com. Affisle of Fresh Force 89. b. Co. 8. 50. 25 At. 14. admitted.

4. In Affisle the Tenant may vouch another nam'd in the Writ, if he will enter of his own good Will. 22 At. 19. 26 At. 26. adjudg'd. 9 D. 5. 14. Co. 8. 50.

5. But the Voucher does not lie in this Case, if the Vouchee will not of his own good Will immediately enter into the Warranty. Co. 8. 50.

and would presently enter into the Warranty, and warrant the Land; but in an Affisle of Mortdancy he may vouch at large. F. N. B. 178. (E) (F)——Br. Voucher, pl. 146. cites F. N. B. accordingly.

6. In a Writ of Entry in Nature of an Affisle, the Tenant may vouch another named in the Writ. 9 D. 5. 14.

(X. 2) Voucher in Dower.

1. If the Heir be in Ward to the Mother, as Guardian in Socage, Br. Voucher, pl. 64. cites S. C.

But by Wilby J. the Voucher lies in this Case well, where the

2. But
2. But otherwise it is in this Case, if the Demandant be Guardian of the Ancestor; for the Feme has in Ward Tenants in Seignory, it may be that the Heir has also Tenants in Chivalry; and it is not Reason that the shall take Dower of those Tenants, because of Dower due from no other Tenancy unless of those which the Heir is bound to warrant; and tho' the Tenant produces Deed with Warranty, the Feme cannot be Party to try it; and therefore it is Reason that the Heir shall be vouch'd who is privy to the Deed, and who may try it. * Br. Dower, pl. 42. cites 21 E. 5. 52. * Br. Voucher, pl. 64. cites S. C.

3. In Writ of Dower, if the Tenant vouches the Heir, who has a Rent refer'd upon an Estate Tail, the Demandant shall not be compell'd to take this Rent in Lieu of Dower, because the ought to have an Estate during her Life, and this may determine before. 17 E. 3. 12.

4. If the Feme of the Father brings Dower against the Feme of the Grandfather Tenant in Dower, who vouches the Heir, it is no Counterplea that the herself may plead her elder Dower in Bar, by which the Heir enter'd into the Warranty, and pleaded it. Br. Counterplea de Garrantie, pl. 8. cites 5 E. 3. and Fitzh. Voucher 249. and M. 3 E. 2. ibid. 209.

5. In Dower the Tenant vouch'd the Heir of full Age, and shew'd Deed, as he ought. Quære; but it is said there that he must. Br. Monittrans, pl. 152. cites 48 E. 3. 5.

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(X. 3) Voucher in Ward. [How.]

1. If a Man be in Ward for his Land, he cannot be vouch'd generally, but he ought to be vouch'd in Ward, otherwise the Writ shall abate. 17 E. 3. 47. b. because the Land in Ward shall be render'd in Value. 25 E. 3. 51. b. 52.

2. So it seems, if he be in Ward for his Body only, but not for any Land at the Time of the Voucher, yet he ought to be vouch'd in Ward. Contra 17 E. 3. 47. b.

3. If he who is to be vouch'd be in Ward of the King, he shall be vouch'd in Ward of the King. 26 E. 3. 58. b. 1 E. 3. 13. b.

4. If a Man devises Land devisable to another during the Nonage of his Heir, and dies, the Heir may be vouch'd in the Ward of the Devisee. 27 E. 3. 79. adjudged.

5. In Dower if the Tenant vouches the Heir within Age, he shall vouch him in Ward of such a one, if he be in Ward. Br. Dower, pl. 98. cites 48 E. 3. 5.

(Y) Voucher.
(Y) Voucher in Ward. When an Infant is vouch'd in Ward, in whose Ward be ought to be vouch'd.

1. If the King grants over the Ward of the Body, and Land of a Ward, the Heir may be vouch'd in Ward of the Grantee. 46 E. 1. See Br. Voucher, pl. 4. cites S. C.—

2. If there are diverse Lords by Service of Chivalry, to whom he is in Ward, he ought to be vouch'd in Ward of all, because the Charge ought to be equally upon all. 46 E. 3. 20. 21 E. 3. 53. 22 E. 3. 1. b. 3. 6. 25 E. 3. 52. 6. 21 E. 3. 16.

3. So shall he be vouch'd in Ward of the King, and of the other Lords, where he is in Ward to all. 1 E. 3. 16. M. who could to warranty the Son and Heir in Ward of the King, and diverse other Lords, Guardians of other Lands of the same Heir in their hands, and was oulled of the other Lords, and they proceeded, and awarded that he be for against the King; and after Proceeds came; and upon this be vouch'd; as above, the same Heir in Ward of the King and the other Lords, and was oulled of the other Lords, because when the Heir is in Ward of the King, all his Land shall be awarded into the Hands of the King, and out of his Hands Livery shall be fixed; to which all the Justices agreed. Br. Voucher, pl. 46. cites 2 H. 4. 25.

4. So if the Heir be in Ward to a Lord by Knight-Service for some Land, and in Ward to his next Friend for Socage-Land, and the Heir is vouch'd by a Stranger, he ought to be vouch'd in Ward of both, because the Charge ought to be equal. 25 E. 3. 51.

5. So if a Writ of Dower be brought against the Alience of the Baron, who vouches the Heir, he ought to vouch him in Ward of the Guardian in Chivalry, and also of the Guardian in Socage, if the Demandant be not Guardian in Socage. 25 E. 3. 50. b. 51.

6. The same Law, tho' the Demandant be Guardian in Socage; for the alien cannot pray that the Demandant endow himself of the great part; but the Guardian in Chivalry may, when he comes in. 27 E. 3. 79. Admitted. Substantia 25 E. 3. 50. b. 51. Conta 21 E. 3. 28. b. Adjunged.

7. If Baron and Feme bring Writ of Dower, the Tenant may vouch the Heir of J. S. in Ward of the Baron, tho' be Demandant. 22 E. 3. 3.

8. If an Heir be vouch'd in Ward of diverse Lords, and after it abates by Return of the Death of one of the Lords, he ought to be * + Pol. 750. vouch'd in Ward of the Lords, and of the Executor of him if he is dead. 22 E. 3. 3.

9. And in this Case, if another of the Lords had alien'd his Estate after the first Voucher, yet he may be vouch'd in his Ward with the others; for he shall have his Recovery against him of the Land which he had the Day of the first Voucher. 22 E. 3. 3.

10. But in this Case he may vouch him in Ward of the Assignee with the others, if he will. 22 E. 3. 3. b.
(Y. 2) Voucher by the Statute.

1. If Baron and Feme, seized in Fee in Right of the Feme, give to another in Tail, and after they die, the heir of the Feme shall not be rebutted by the * Statute de Bigamis by the Reversion with Afferts from the Baron; because now, by the Disagreement of the Heir, it is only the Gift of the Baron, by which he has made a Discontinuance and gained a new Reversion, which the Heir is to defeat by this Action, and therefore this shall not be any Bar. 38 E. 3. 33. Adjudged.

2. In Formeden of certain Land and Rent, the Entry into Part shall abate the whole Writ; for he has falsify'd his own Writ by his own Act. Br. Voucher, pl. 109. cites 5 E. 4. 116.


1. In Right of Ward against Baron and Feme, who voucheth J. S. he demands the Lien, and they shew the Deed of Lien, which shows his Deed of Grant of the Ward to the Feme, whereupon the Vouchee demands Judgment whether he shall be bound by it, because the Baron is a Stranger to the Deed; upon which the Parties demur, and it is adjudged against the Vouchee, the Judgment shall be preemiptory against him, solictor, That the Plaintiff shall recover against the Tenant, and the Tenant over against the Vouchee. 30 E. 3. 6. b. Adjudged, 14 b.

2. So it had been preemiptory, if it had been adjudged against the Tenant. 30 E. 3. 6. b.


(A. a) Voucher. Judgment. Against whom Judgment final shall be.

1. If Tenant in Writ of Right vouches, and Vouchee enters into the Warranty, and makes Default after the Mife join'd, Judgment final shall be given for the Demandant against the Tenant. 10 H. 6. 2. adjudged.

2. And in this Case the Tenant shall have a common Judgment to have in Value against the Vouchee, but not final, solictor, * Quit, * perhaps he has lost but for Life or in Tail. 10 H. 6. 2. adjudged. 26 H. 8. 8. b.

* To hold Quit; but common Judgment in Value was given for the Tenant against the Vouchee. Br. Droit de Recho, pl. 5. [14] cites S. C.

3. V.
Voucher.

3. If Tenant for Life vouches a Stranger, the Demandant counterparts, so if the and it is found for him, there in Reversion has no remedy but by Writ of Right. Br. Voucher, pl. 110. cites 5 E. 4. 2. Action tried or by Default. Br. Voucher, pl. 110. cites 5 E. 4. 2.

4. Where two make Warranty, and the one dies, the Lord and the Heir of the other shall be vouched, and shall have Judgment of the whole against the one, and against the other; but he shall not have Execution of the whole against each of them, and the Cause is, because each warranted the whole by himself, and both the whole in Common. Br. Voucher, pl. 165. cites 16 H. 7. 12. 13.

(B.a) Recovery in Value. How the Judgment shall be given in Dower.

1. In Writ of Dower, if the Heir of full Age be vouched by the Tenant in the same County, the Judgment shall be conditional that is to say, against the Heir, if he has Affets, and that the Tenant shall hold in Peace; and if he has not Affets, then against the Tenant, and the Tenant over against the Heir, when he has. * 48 E. 3. 57. Ca. 9. 17. b. 2 D. 4. 3. 17 E. 3. 20. 18 E. 3. 36. b. 38. b. 43. S. C. 32. Br. Recovers, pl. 44. cites 6 E. 3. 11. S. C. and P. Br. Sequitur fab fuo pelliculo, pl. 2. S. P. cites 2 H. 4. 8. — but when the Heir is vouched in Ward, there every one shall answer for his Portion, and the Demandant shall recover against the Tenant, and he over against every one of them for his Portion; so that before the Tenant has recovered in Value against them, he shall have their Portion extended; for the one has Affets to answer in Value, yet every one shall render according to his Portion; and afterwards Grand Cape ad Talentium was awarded against each for his Portion, and Writ of Extent to the Sheriff.

2. If the Heir be vouched by other than him who is Tenant in Demise, the Judgment shall not be conditional. 18 E. 3. 36. b.

3. [As] in Writ of Dower, if the Tenant vouches J. S. who vouches the Heir of the Baron in the same County who makes Default, the Judgment shall not be conditional, unless, against the Heir of the Baron or because the Heir is not vouched by the Tenant in Demise; but the Judgment shall be against the Tenant, and he over etc. 18 E. 3. 36. b. adjudged. 25 E. 3. 99. b. adjudged.


5. If in Dower the Heir be vouched in other County, who enters into the Warranty, and says that he has not by Descent, and Tenant avers that he has Affets, the Demandant shall recover immediately against the Tenant generally, and shall leave him to the over, to have in Value against the Heir. 17 E. 3. 40. b. 41. adjudged.

6. If the Heir of the Baron in Writ of Dower be vouched in Ward in the same County, and in other Counties, the Judgment shall not be conditional, but against the Tenant etc. 18 E. 3. 38. b. In Dower the Tenant vouched the Heir of the Baron in Ward of the King, and pray'd that he be summoned in the same County; and therefore the Feeme could not recover.
7. [But] if the Heir of the Baron in Writ of Dower be vouch'd in the same County, and in other Counties, the Judgment shall be conditional, that is to say, against the Heir, if he has Afters in the same County, or not, against the Tenant &c. 18 E. 3. 35. adjudged.

8. In a Writ of Dower, if the Tenant vouches the Heir in Ward of the Grantee of the King, the Judgment shall be against the Heir in Ward of the Grantee, and that the Tenant shall hold in Peace. 26 E. 3. 58. b. agreed.

9. So if the Heir be vouch'd in the Ward of the King, the Judgment shall be against the Heir in Ward of the King, and that the Tenant shall hold in Peace. 26 E. 3. 58. b. said to be adjudged, and there it is so held also. 1 E. 3. 16. b. adjudged.

10. Grandfather, Father, and Son. The Grandfather and the Father died. The Feme of the Father was endeav'd of the third Part of the Tenements. The Grandmother brought Dower against her, and the Heir, and the Demandant recovered against the Feme of the Father, and the recover'd over against the Heir the third Part of the remaining two Parts, and did not recover in Value of the third Part; for the first Endowment was more than the ought to have, and the shall not recover over. Quod nota. Br. Recovery, pl. 5. cites 5 E. 2. and Fitzh. Voucher, 249.

11. In Dower the Demandant had Judgment to recover, and to have Execution of the Land of the Heir in his Ward, if he has Afters; and if not, against the Tenant, and be over in Value; and if he has not to the Value, then that he shall return for the Portion which he has, and for the rest that he recover against the Tenant, and be over in Value. Br. Recovery, pl. 47. cites 2 E. 3. and Fitzh. Voucher, 213.

See (B. a) (C. a) Voucher. Judgment. How it shall be given.

And the Tenant over in Value against the Voucher. 17 E. 3. 20.

Br. Counterplea de Garranty, pl. 7. cites 6 E. 5. and Fitzh. Voucher, 246. and M. 5 E. 2. ibid. 259

Brooke says, And so fee that if the Voucher at the Sequestr be return'd summond'd and did not come, nor at the Grand Cape ad Valentiam, and the other was return'd summond'd and did not come, nor at the Grand Cape ad Valentiam, and the other was return'd Nikil at the Summons, and the like at the Alias, and at the Pluries, and at the Sequestr he was return'd Nikil in Land by De- sean, and that he summond'd him in Land by De- sean and does not come, there the Tenant shall recover in Val- ue against him; but if he be not well

summond'd, as he was not here in Land purchased by him, or if he be return'd Nikil, there the Tenant shall lose his Warranty, and shall not recover in Value; and therefore fee that the Words of Seque- strar ad Perculum of the Tenant is such, that if the Tenant cannot cause him to be return'd summond'd
Voucher. 81

3. The Demandant demanded Dover, and the Tenant vouched the Heir, but it did not appear at the Alias Sequatur; and the Demandant recovered against the Voucher, and the demandant recover'd against the Tenant, and the Tenant to hold in Peace, and if the Voucher has not after thee, that the Demandant shall recover against the Tenant, and the Tenant over in Value against the Voucher; and yet the Voucher never appeared, nor was Party to the Record; therefore quere Legem. Br. Recovery, pl. 20. cites 2 H. 4. 7.

(D. a) Voucher. At what Time. [After Aid.] (Fol. 52.)

1. In Præcipe, if Tenant in Tail prays in Aid of her Sister Coparcener, and has it, the may after vouch her self and her Sister as Assignees of the Donor, upon warranty of their Father to the Donor, and assigns, to have the Tail, because before the Aid Prayer the could not have the Voucher. 40 C. 3. 22. b.

But

2. If the Tenant has Aid granted, and Prayee is ready to joine, and Tenant will not accept him, he shall not vouch. 9 H. 6. 3. b. Curia.

3. After Aid Prayer and Default made by Reverisoner, the Lessee cannot vouch him, because he has delayed him once before. 6 D. 4. 3. b. * 7 D. 4. 15. 18 C. 3. 51. b. Contra 11 D. 4. 59. b. Adjudged. Br. Voucher, pl. 75. cites 22 H. 6. 59. By the Opinion of the Court: for a Man shall not be delay'd twice for one and the same Cause; for the first Aid Prayer was by Reverison, and it shall be intended that the same Reverison is the Cause of Voucher. Br. Counterpl. de Voucher, pl. 57. cites S. C. — But Br. Voucher, pl. 51. cites 11 H. 4. 59. That in Dover the Tenant for Life pray'd Aid of him in Reverison, who was Inmon'd, and would not join, by which he vouch'd him, and had the Voucher. Per Cur. notwithstanding the Aid Prayer before; contra M. 40 E. 3; but if he shows other Cause, he may have the Voucher; and the same if he shews no Cause; Contra if he shews the same Cause; Quod nota:—If the Prayee will not join, there, the Tenant may vouch. Per Cur. Br. Voucher, pl. 6. cites 9 H. 6. 3. 2.

4. But he might have vouch'd a Stranger after the Aid and Default by Reverisoner. 11 D. 4. 59. b. 9 D. 6. 3. b. 18 E. 3. 51. b. 18 C. 3. 51. b. Dubitatur.

5. So after Aid granted and Default by Reverisoner, the Lessee cannot vouch him in Reverison for other Cause than for the Cause, for which he had the Aid, unless the Cause be arisen after the Aid granted.

6. [But] After Aid granted and Default by Reverisoner, the Lessee may vouch a Stranger as Assignee to the Reverisoner. 11 D. 4. 59. b.

7. If Tenant for Life has Aid of him in Reverison, they both may vouch afterwards. * 9 D. 6. 3. b. 18 C. 3. 51. b.

8. If Tenant for Life has Aid of the King in Reverison generally, and after a Procedendo comes, he cannot vouch the King (that is to say, to have Aid in Lieu of Voucher) because the Lease was with Warranty, and therefore he might have shown it before. 9 D. 6. 3. b.

Y

9. But
Voucher.

9. But in this Case, after the Procedendo the Tenant shall have Aid in Lieu of Voucher for a new Cause happening since the first Act. 9 H. 6. 3 b.

10. [But] If Tenant for Life has Aid of the King in Reversion generally, and after Procedendo comes, he shall * not vouch a Stranger after, because it appears that he is to have in Value of the King, therefore not of both. Also peradventure the Prayer in Aid was in Lieu of Voucher, for the Entry is all one where it is for Reversion of Estate, and where in Lieu of Voucher, and therefore shall not have other Voucher, and he has once delayed the Demandant, and no Judgment may be before other Procedendo comes, and therefore the Plea shall not be put in the Month of a Stranger. 9 H. 6. 3.

* Br. Voucher, pl. cites S. C. but Brooke makes a Quare etere of; for the Entry is all one, be the Aid in Lieu of Voucher, or for Reversion of Estate, by all the Clerks, quod nota. And Brooke says, it seems because the Entry is all one that the Tenant is at large to vouch a Stranger.

11. After Aid and Default by him in Reversion the Lefsee cannot vouch the Reversioner as Allighe of the Reversion upon a Warranty made by J. S. whole Deir the Reversioner is, and to vouch him as Deir to J. S. tho' it be a new Cause; for he is the same Person who made Default before. 18 C. 3. 51. b.

(D. a. 2) In what Cases a Man may vouch where he cannot have Aid.

1. In Right of Advowson the Tenant alg'd Gift in Tail to the Mother of the Tenant, and that A. the Donor had Issue another Daughter, and the said Mother of the Tenant, and died, and the two Sisters died, and that his Aunt had Issue P. by which he pr'y'd Aid of P. as his Coparcener of the Reversion of the Premises which is descendent to them by the Grandfather, who was the Donor, & non allocatur; for he is not Party to the Tail, and so is as a Stranger to this Estate, by which he vouch'd himself and the other Coparcener of the Reversion by Reason of this Reversion; Quod nota bene. Br. Voucher, pl. 3. cites 2 H. 6. 16.

2. Per Markham, in the Time of R. 2. If it might appear that he who prayed in Aid could vouch, he was always ousted of the Aid, and put to the Voucher, except the Tenant by the Cartes, who might pray in Aid, but cannot vouch. Quod non negatur. Br. Voucher, pl. 73. cites 22 H. 6. 39.

(E. a) Voucher. How the Voucher is to be made. In what Cases. Without Cause shown, and in what not.


Where the Tenant in Tail vouches himself to save the Tail, he shall shew Cause; Per Hank. Br. Voucher,
Voucher.

Voucher, pl. 49. cites 11 H. 4. 19. — 5. P. because it is out of the common Course; and the Demandant shall have a Counterplea to the Cause. — So it is when he vouches himself and his Brother as Tenant in Borough English. 2 Inst. 246.

2. A Man shall not vouch himself and a Stranger, without Cause. * Br. Counterplea de Voucher, pl. 5. cites 46. 27. 3. 84.

3. One Coparcener shall not vouch herself after Severance, and her Sister, who is Demandant, without shewing Cause. 11 H. 4. 20. S. C.

4. So before Partition one Coparcener shall not vouch herself and her Sister Coparcener, without shewing Cause. Admitted. 2 D. 6. 16. because of the Reversion descended to them.

5. One Coparcener shall not vouch her Sister Coparcener and herself, without shewing Cause. 17 E. 3. 46. b. 59.

6. If 2 Coparceners bring Formedon, and the one is summoned, and Br. Voucher, pl. 49. S. P. cites S. C. — If a普rize be brought by 4, and 2 are summoned'd, and fever'd, the Tenant cannot vouch them that be summoned'd and fever'd, without shewing Cause, because it is out of the common Course; and the Cause being shewed, the Demandant shall counterplead the same. 2 Inst. 246.

The Demandant cannot have the general Counterpleas where the one of the Demandants is vouch'd, and therefore the Tenant must shew Cause. Br. Voucher, pl. 49. cites 11 H. 4. 19. Per Thirn.


8. But in Writ against 2, the one makes Default after Default, and the other pleads sole Tenancy in himself, he may vouch the other, who made Default without Cause shewn, 11 D. 4. 20. because he may vouch at large, and the other is out of Court.

9. If he in Reversion be received upon Default of the Leissee for Life, he cannot vouch the Leissee, who had before lost the Frankencement, to have it now, without Cause shewn. 17 E. 3. 69. b. Adjudged 18 E. 3. 59.

10. In Action against Baron and Feme, if they vouch the Baron, they ought to shew Cause. 39 E. 3. 9. b. Br. Voucher, pl. 82. cites S. C.

11. [So] In Action against Baron and Feme, if the Feme, received upon Default of the Baron, shall vouch the Baron, he ought to shew Cause. 25 Ml. 14. Curia.

12. [So] In Action against Baron and Feme they vouch the Baron, he ought to shew Cause. 43 E. 3. 7. 17 E. 3. 47. b. 74.

13. So if the Baron makes Default, and Feme vouches J. who vouches the Baron, he ought to shew Cause; for when he warranted to the Feme, he warranted to the Baron. 43 E. 3. 7. J. entered'd, and vouch'd the Baron by a strange Name; and the Demandant said, that the Vouches and the Baron are one and the same Person Judgment if without Cause, and he was compell'd to shew Cause.

14. In Action against Baron and Feme they vouch, and Vouchees vouch the Baron and Feme, he ought to shew Cause. 44 E. 3. 38. b.

15. If one or two Vouchees vouch his Voucher, he ought to shew Cause; for the Voucher cannot stand with common Intent. 11 D. 4. 42. Br. Voucher, pl. 50. cites S. C. — S. P. Br. Voucher, pl. 166. cites 16 H. 7. 13.

16. But
Voucher.

16. But if two Vouchees vouch another, who enters into the Warranty, and vouches one of his Vouchers, he ought to shew Cause, tho' a good Warranty may be between them upon a Feasiment. 11 H. 4. 42.

17. A Man may vouch two Brothers as one Heir, without shewing Cause, as to say that they have Gavelkind Land by Descent. 43 3. 19.

18. In Writ of Right of Ward of the Body and Land, if the Defendant vouches for the Body, he ought to shew Cause. 7 H. 6. 22. b.

19. If a Man prays in Aid of 3, because of a Reversion to them, & hereditibus of 2 of them, whereof one who had Fee is dead, and the others make Default, by which the Tenant is adjudged to answer, he cannot vouch the other who has Fee, without shewing Cause. 4 H. 4. 3. b. adjudged.

20. If Letter has Aid, and Reversioner makes Default, he cannot vouch the same Reversioner without Cause shown. Contea, admitted 11 H. 4. 59. b.


22. If one Coparcener has Aid granted of the other, who makes Default at the Summons return'd, if he vouches afterwards a Stranger, who vouches the same Coparcener who made Default, he shall not shew Cause. 20 H. 6. 2. for it may be by her Release.

23. In Dower, the Tenant may vouch the Heir of the Baron without shewing Cause. 4 H. 6. 24. b. 3 H. 6. 17.

24. When the Voucher ought to shew Cause, it ought to be a sufficient Cause of Voucher, otherwise it is not good. 11 H. 4. 20. b. 21. Adjudged * 14 H. 6. 4. b.

25. If it appears by the Cause shown, that the Vouchee had nothing but a Pledge which is defeated by Recovery or lawful Entry, the Voucher does not lie. * 19 H. 6. 39 b. And the Cause is traverable. 11 H. 4. 23. Curia. 9 H. 6. 50. b. 14 H. 6. 4. b. 19. b.

26. If Baron and Feme vouch J. S. I. S. cannot vouch the Baron without Cause shown. 29 C. 3. 49. adjudged.

27. If a Man vouches another who vouches over, who vouches a third, and the third vouches the first Vouchee, he ought to shew Cause of Duster of him, * because the Demandant cannot counterplead him by the Statute, he having granted the Voucher of him before. 20 H. 6. 2. b.

28. But the Donee in this Case cannot revouch the Donor without Cause shown, because by his Feasiment in Fee the Warranty in Fee, which he had before, is determined. 20 H. 6. 2. b.

* See (F. a) pl. 1.

* See (F. a) pl. 5.

* Orig. is (Et per cecum Demandant)
29. So he may vouch herself, and a Stranger her Siter Coparcener, 

as Allegorice, without shewing Deed of Assignment: for they may be 

Allegorces without Deed. 40 E. 3. 22. b. Co. 3. Lincoln College 63. 

Voucher. 85 

30. Ifa Leaffee had Aid of him Reversion, they both cannot vouch 

the Praye without shewing Caufe, because this is a Voucher of him- 

self by the Praye. 29 E. 3. 29. 

31. A Man may vouch a Baron and Feme without shewing Caufe, 

who he vouches a Feme Covert. 25 E. 3. 43. b. adjudged. 

32. Ibo the Demandant cannot counterplead the Lien nor the Warranty, 

yet where the Party who vouches shall be compelled to shew Caufe, he 

may counterplead the Caufe; Quod nota. Br. Counterple de Voucher, 

pl. 5. cites 40 E. 3. 14. 

33. Formedon of the Gift of J. P. the Tenant vouch'd W. who came, 

and after vouch'd T. P. Coftin and Heir of J. P. which J. P. was the 

Donor, and therefore per Cur. he cannot vouch him without shewing 

Caufe; for the Demandant cannot have the General Counterple there, 

for the Reversion is not in the Heir of the Donor; by which he vouch'd 

him by a Strange Name, and had the Voucher, but it was said that 

the Demandant may aver that he is the Heir of the Donor. Br. Voucher, 


34. Entry in the Per of Rent, the Tertenant appear'd, and said that 

J. S. was seized in Fee of the Land discharged of the Rent, and gave it to his 

Ancestor in Tail, and vouch'd the Donor by Reason of the Reversion; and 

per Cur. he shall shew Caufe, because he vouches of the Land discharged, 

where Rent is only in Demand, and the Demandant shall not have 

Voucher to the Caufe, as here, and the Tenant shall not be compelled to 

shew what Rent it is in his Voucher; but the Demandant shall have for 

Counterplea that he demands Rent Service. And the best Opinion was that 

he may vouch out of the Degrees of the Land, as here; for this is an- 

other Thing than is in Demand, and therefore out of the Case of the Statute, 

and the Gift in Tail above with the Reversion is sufficient Caufe, but 

he need not shew the Deed; for there the Demandant cannot anwer to it. 


35. In Precipe quod reddat against two, if they confess Tnenancy in S. P. because 

Common, they cannot vouch severally without shewing Caufe. Br. Voucher, 

pl. 20. (bis.) cites 12 H. 7. 1. 2. 

should vouch severally without shewing of Caufe; which Caufe the Demandant shall counterplead 

by the Common Law. 2 Init. 246. 

36. In all Cases where one vouches out of common Course, there the Te-

nant ought to shew Caufe. 2 Init. 246.
(E. a. 2) *What shall be sufficient Cause.*

See (E. a.) pl. 24, 25, 29.

1. *In Formedon in Defender the Tenant vouch'd himself, and he shew'd for Cause that his Father was seeld of the Land in Demand, and thereof infused S. which S. gave the same Land to this Tenant and to the Heirs of his Body, and so as Affignee he vouch'd himself to save the Tail. And admitted for good Cause; and so hee that Tenant in Tail may vouch as Affignee, as it seems here. Br. Voucher, pl. 85. cites 14 H. 6. 4.

2. Formedon against S. who vouch'd P. who enter'd, and vouch'd this same S. by a strange Name, the Demandant said that S. the Tenant, and S. whom P. vouch'd are one and the same Person, and therefore the said P. shew'd Cause, viz. that the Father of S. infused him in Fee with Warranty, and he gave the Tail to the said Father of S. and so he vouch'd S. the Tenant to save his Reversion; and good Cause, and he shew'd Deed. Br. Voucher, pl. 166. cites 16 H. 7. 13.

(E. a. 3) *Counterplea. In what Cases.*

1. *In Mortdanceftor, the Tenant vouch'd F. who enter'd into the Warranty and vouch'd the Tenant, and was compell'd to shew Cause, and said that the Tenant infused him, and after he leas'd to him for Term of Life, the Demandant said that before the Lease made to the Tenant, the Tenant had nothing, Prift, and the others contra. And so fee where the Party is compell'd to shew Cause, the Demandant may have Travers to the Cause. Br. Voucher, pl. 94. cites 12 Aff. 10.

2. Where the Tenant is compell'd to shew Cause, there the Demandant shall have Counterplea to the Cause, tho' this Matter goes to the Lien and not to the Cause of Voucher. Br. Voucher, pl. 49. cites 11 H. 4. 19. Per Thirn and others.


(F. a) *Voucher. Counterplea of the Cause. What shall be good Counterplea of the Caufe shewn.*

H. 22. in 1. Hobart Ch. 24.

C. of Roll. W. 25. H. 21


where the Plaintiff in Warrantia Charrte counted that the Defendant infused him by the Charter with Warranty, to which the Defendant pleaded Rien passa by the Deed. And Bracton in his Treatise of Warranty, cap. 9 S. 5. says that Excepere potest Warrantus.
3. If it appears by the Caufe shown that the Vouchee had nothing but a Poſſeftion which is defeated by Recovery or lawful Entry the Voucher does not lie. 9 H. 6. 39. b.

4. If a Man vouches one vouching Caufe, and it appears by the Caufe shown that he ought to have vouch'd another with him, he shall be out of the Voucher. 19 R. 2. Aid of the King 113. Citia.

5. If a Man will vouch himself to save the Tail, and shows Caufe for that his Grandfather levied a Fine to B. who render'd it to the Grandfather for Life, the Remainder to his Father in Tail, and so vouches himself as Affignee of B. and as Heir to his Father in Tail, this is good Caufe of Voucher, tho' he does not allege any Warranty made to B. which Assigee he supposeth himself to be; for tho' the Caufe is not good to vouch as Assigee, yet there is sufficient Caufe of Voucher shown for Caufe of the Reverſion. 50 C. 3. 3. adjudged.

6. If a Man vouch himself as Heir to J. S. and vouches J. D. with himself, and shews for Caufe that J. S. and J. D. were feited, and infeited him with Warranty, this is good Caufe, without shewing what Estate the Feoffors had, nor what Estate he himself took by the Feoffment. 29 C. 3. 48. adjudged.

7. When Caufe is to be shewn upon Voucher, the Caufe shewn is traversable. 11 H. 4. 21. Citia 9 H. 6. 50. b. 14 H. 6. 4. b. 10 b. 17 C. 3. 46. 59. 29 C. 3. 29. 29 Att. 14. 27 C. 3. 89.

8. [So] the Caufe shewn is traversable, tho' the Travers be but a Counterplea of the Voucher. 29 C. 3. 29.

9. If the Tenant vouches herself, and M. her Sister, and shews for Caufe a Feoffment made to her by K. their Sister, whose Heir they are, it is a good Counterplea of the Caufe, that they never had any thing of the Feoffment of K. their Sister. 17 C. 3. 46.

10. So if Baron and Feme vouch the Baron, and shew for Caufe that the Baron infeited J. who infeited the Baron and Feme, it is a good Counterplea that J. had never any thing of the Feoffment of the Baron. 39 C. 3. 9. b.

11. If the Tenant vouch B. her Sister, shewing for Caufe that Land defended to them in Coparcenary, and the herlief enter'd in the Name of both, and after B. releas'd to her in Fee with Warranty, it is a good Counterplea of the Caufe, that the Tenant upon her Entry claim'd it to her alone, without that that B. had any thing after the Death of their Ancestor; for if the Estate of B. was turn'd to a Right at the Time of the Release, then the Release does not enure by way of Sitter of the Estate, but by Extinguisment, and so no Voucher can be. 21 E. 3. 27. adjudged.

tervalled Entry and Feoffment. —Br. Voucher, pl. 65. cites S. C.

12. If the Tenant vouches himself as Heir to A. his Sister, and shews for Caufe that A. gave to him in Tail, it is a good Counterplea that he never had any thing of the Gift of A. tho' it be to the Warranty, because he may traverse the Caufe alleged. [Footnote: It was ob- jected that Counterplea did not lie to the Warranty, but to the Poſſeftion only; but it was said by Green, that when Caufe is shewn it may be counterpleaded. And Wilby said that so it may in some Cases, as to counterplead the Beſt &c. but not the Warranty. Br. Counterplea de Voucher, pl. 51. cites 21 E. 5. 37.]

13. Contra 21 E. 3. 37. adjudged; but it is there said that it was adjudged contrary to this in Parliament.


14. But
Voucher.

Br. Countere de Voucher, pl. 51. cites S.C. 14. But in this Case it is clear, that it is a good Counterplea that A. had never any thing in the Land, nor ever gave it to the Tenant. 29 E. 3. 37. admitted by Issue.

15. If a Tail vouches himself, and J. D. as Heir to J. S. and shews for Cause that his Father and J. S. were seised, and interoff'd him with Warranty, and he vouches himself as Heir to his Father, and J. D. as Heir to J. S. it is a good Counterplea of Voucher of himself, that the Father of the Voucher had not ever any thing in the Land, tho' it is no Counterplea by the Statute, because he has not counterpleaded the Possession of his Ancestors; for this is a Traverfe of the Cause alleged. 29 E. 3. 46. adjudged.

16. So in this Case, it is a good Counterplea of the Cause of Voucher of J. D. who is vouch'd thus as Heir to J. S. that J. S. had never any thing in the Land, without taking any Counterplea of the Possession of the Ancestors of J. S. by the Statute; for he may traverse the Cause alleged, tho' in this Case the Cause of Voucher alleged was only because he vouch'd himself, and not because he vouch'd J. D. 29 E. 3. 46. b. adjudged; for the Cause cannot be sever'd.

17. If a Lefsee has Aid of him in Reversion, and they both vouch him in Reversion, and shew for Cause that J. S. was seised, and gave it in Tail, and that he in Reversion is Heir in Tail, and Heir to the Donor, and he vouches himself as Heir to the Donor, it is a good Counterplea that it appears by the Cause shewn, that he in Reversion only ought to have the Voucher, and not the Lefsee, because the Warranty does not extend to him. 29 E. 3. 29.

18. In an Action against J. S. if he vouches himself, and shews for Cause a Gift by his Ancestor to him and his Feme in Tail, and that the Reversion is defended to him by Death of the Donor, it is a good Counterplea that the Feme is yet alive, and so the Voucher contrary to the Plea, inasmuch as he has admitted himself to be Tenant, and therefore cannot have the Voucher by Force of a Tail to him and his Feme; for this Voucher is to save the Tail, which cannot be saved here, inasmuch as the Feme is not Party to the Voucher. 38 E. 3. 46. b. adjudged.

* Br. Voucher, pl. 54. cites S. C. The Voucher was of course allowed, because, as Knewet said, the Recovery in Value cannot be according to the Gift. 4 L. 93. 94. cites 48 E. 3. 5. Br. Countere de Voucher, pl. 22. cites S. C. And per Morrice, Voucher to save the Tail is for the Advantage of the Issue, and not of the Tenant who vouches; for he shall have Judgment to recover in Value immediately, but Cellet Executo during his Life; for his Issue shall have Execution, and not he who vouches.——Br. Voucher, pl. 54. cites S. C.

19. If a Feme received upon Defaut of the Baron vouches the Baron, because the Ancestor of the Baron, whose Heir he is, interoff'd her and the Baron with Warranty, it is a good Counterplea of the Cause, that they had never any thing of the Feoffment of the Ancestor; for the Cause shewn is transferable. 25 Att. 14. Ciria.

20. 20 Ed. 1. Stat. 1. 8. 3. Enactis, That where the Tenant, in a Plea of Land, vouches to warranty, and the Demandant will aver that he, nor none of his Ancestors, (since the time that the Ancestor of the Demandant was seised) was in Possession of the Lands, his Averment shall be admitted whether the Party vouch'd be absent or present.

21. In Precept quod reddat the Tenant vouch'd. The Vouchee demanded what he has to bind him to the Warranty; and the Tenant petic'd Deed of his Father, whose Heir &c. and he saith, that his Father had no Land but in Garvelkind, which defended to him and to others, and held no Plea; by which he saith that he had nothing by Descend. &c. the Day of the Voucher; and the other contra. Br. Countere de Garrantie, pl. 2. cites 38 E. 3.

22. The
22. The Demandant said, that the one who vouch'd is the same Person who vouched, Judgment if without Cause; by which he denied Cause, that his Father inoff't'd him; and the Demandant counterpleaded the Cause, because he re-inoff't'd his Father again, to the Father and his Heirs, and that he was eldest Son of the Father, who is dead; and a good Counterplea to the Cause; for by this his first Warranty is extinct. Br. Counterplea de Voucher, pl. 5. cites 40 E. 3. 14.

23. Præcipite quod reddat against Baron and Feme. The Feme was received in Dejunct of the Baron, and vouch'd f. to warranty, who entered, and said that the Father of the Baron inoff't'd f. in Fec, who gave in Title to the Baron and Feme; and good, notwithstanding he enter'd generally into the Warranty upon the Voucher of the Feme; yet he shall say now, that he did not warrant that Fee Title. Br. Voucher, pl. 22. cites 43 E. 3. 7.

24. If a Man vouches 2 Brothers as one Heir, and by the Nonomy of the youngest prays that the Parol demur, he shall not have the Voucher, without shewing Cause; by which the Tenant said that the Land is partible between Males. And per Cur. This is no Cause; by which he said that the Ancestor died seiz'd of Land partible between Males, after whose Death they were in as Heirs &c. And the Demandant anwer'd to the Cause, and said that the youngest is not seiz'd of any Land by Descendent of the Port of his Father, Judgment if by his Nonomy the Parol shall demur &c. and a good Plea, notwithstanding that the other alleged that the Entry of the one Coparcener is the Entry of both; and upon this both shall have Allise, and this seems to be where it is for their Profit; contra where it is for their Diff'nt, as here, and in the Allise Anno I. H. 6. 5. Note the Diversity. Br. Voucher, pl. 23. cites 43 E. 3. 19.

25. Formedon against Baron and Feme, who vouch'd N. who vouched the Baron and Feme; and the Demandant shew'd it, and demanded Judgment if he shall jo vouch without shewing Cause; and he shew'd that the Baron and Feme inoff't'd him, and he gave to them in Title, lodging the Reversion; by which the Demandant said that they had nothing of their Feoffment, prit'; and the others econtra. And so lee the Cause traversed &c. Br. Counterplea de Voucher, pl. 13. cites 44 E. 3. 38.

26. Formedon by 4 Barons and their Femes, of whom the one Baron and Feme made Default, and were summ'd and sever'd; and the Tenant, after the View, vouch'd this fame Baron and Feme who were summ'd and sever'd, and said that the Ancestor of the Feme inoff't'd him with Warranty, and for this Cause vouch'd her; and because he vouch'd the one Feme where he ought to have vouch'd all the Demandants, therefore, upon the Cause shewn, he was ou't of the Voucher. Br. Voucher, pl. 49. cites 11 H. 4. 19.

27. In Formedon in Reversion, before Appearance, but after Esquire good, And. 18. pl. 57. S. C. as Adjudged that the Counterplea was not good. Bench. 198.

28. There shall not be any Counterplea, but where it is thereby proved that Vouchee had not such an Estate whereof he could make a Feoffment; and therefore it is no Counterplea that the Feoffor was Jointenant with another; for one Jointenant may make a Feoffment of the Entiety with Warranty, because he is seiz'd per nym & per ten. And that it be a Diff'nt of the Moietie, yet the Feoffment is good; and the Warranty well annex'd.
Voucher.

annex'd; and when they join in a Feoffment with Warranty, every one warrants the Whole, and that may be a Counterplea to the Warranty, but not to the Voucher. Cro. E. 689. Pach. 36 Eliz. Piper v. Wider.

 Fol. 75, G. a Voucher. How it is to be made. In what Cases without showing a Deed of the Lien. [Or what Deed ought to be shown.]

S. P. per all the Justices. Contra Keble, and shewed several Books to the contrary.

1. If a Man vouches himself to save the Tail as Assignee, and shows Cause, (as he ought,) he ought to shew the first Deed, because his Cause ought to appear to be sufficient. Dubitatur * 14 H. 6. 4.

Br. Monftrans, pl. 159. cites S. C. and Hill. and Patch. 4 E. 3. that he need not shew Deed of Assignment of the Reserve; for the Defendant is a Stranger to it. — But Brooke makes a Quære, and says that this is a Cause to shew it, and therefore it seems that the Demandant may have Answer to it. Br. Ibid.

He, who vouches himself to save the Tail, shall shew Lien and Deed of the Warranty. Br. Voucher, pl. 165. cites 11 H. 7. 4. — Br. Monftrans, pl. 169. cites S. C.

2. If a Man vouches himself as Tenant in Tail, by Force of a Remainder limited to him, which is now come into Possession, to save the Tail he ought to shew a Deed of the Remainder. 25 E. 3. 54.

Br. Voucher, pl. 49. cites 11 H. 4. 19. S. P. and that for want of shewing it the Tenant was compel'd to make other Answer; but that it is said to be absolute; in another Term; for that then he shall lose Seisin of the Land, as it was held by several, because out of the Cafe of the Statute.

3. If a Man be vouch'd as Heir to B. upon a Release, with Warranty made by B. the Release ought to be shown. 11 H. 4. 22. b.

Br. Voucher, pl. 49. cites 11 H. 4. 19. S. P. and that for want of shewing it the Tenant was compel'd to make other Answer; but that it is said to be absolute in another Term; for that then he shall lose Seisin of the Land, as it was held by several, because out of the Cafe of the Statute.

4. The same Law it is if the Voucher be upon a Confirmation with Warranty, the Confirmation ought to be shown. 11 H. 4. 22. b.


In Affidavit the Defendant pleaded in Bars, that the Father of the Plaintiff infree'd A. and warranted to him, his Heirs, and Assigns, which A. infree'd him, and pleaded the Warranty as Assignee; and because he did not shew Deed proving him to be Assignee, the Affidavit was awarded; for, by the Justices, he shall not shew the Warranty as Assignee, no more than he shall vouch as Assignee without shewing Deed. But see elsewhere, that if he had pleaded it by a Deed of A. there he need not shew Deed of Assignment. Br. Deputy, pl. 14. cites 22 All. 88.

5. He who vouches as Assignee ought to shew the first Deed, upon the Voucher. 3 H. 6. 21.

20. — S. P. Br. Deputy, pl. 10. cites 3 E. 6. 21. per Coeefmore, to which it was not answer'd; [but it should be 5 H. 6. 21. as in Roll.] — And Br. Voucher, pl. 5. cites S. C.

* Br. Monftrans, pl. 106. cites 5 H. 7. 13 contra, that he shall not shew Deed; per Hank. Brian, and Townfend. — S. P. between common Persons; per Townfend. Ibid. pl. 107. cites 5 H. 7. 14. — But if he prays Aid of the King as Assignee, he shall shew Deed; per Townfend; which Hank. and Brian denied. Br. Monftrans, pl. 106. cites 5 H. 7. 13.

In Affidavit the Defendant pleaded in Bars, that the Father of the Plaintiff infree'd A. and warranted to him, his Heirs, and Assigns, which A. infree'd him, and pleaded the Warranty as Assignee; and because he did not shew Deed proving him to be Assignee, the Affidavit was awarded; for, by the Justices, he shall not shew the Warranty as Assignee, no more than he shall vouch as Assignee without shewing Deed. But see elsewhere, that if he had pleaded it by a Deed of A. there he need not shew Deed of Assignment. Br. Deputy, pl. 14. cites 22 All. 88.

6. If Tenant in Tail vouches as Assignee, he ought to shew the first Deed which creates the Warranty, tho' the Deed does not belong to him, but to him in Reversion, because he claims under the first Deed. Dubitatur 14 H. 6. 4.

7. In Real Action against Tenant in Dower, if the vouches the Heir of the Baron she ought to shew what the has to bind the Heir to the Warranty, to wit, an Endowment in Chancery or such like. 17 E. 3. 8.

E. In
Voucher.

8. In Afflfe the Tenant may vouch the Baron and Feme named in the Afflfe without shewing any Deed. 26 Alb. 26. adjudged.


10. The Court Opinion was, that in * Dower, or Quod ei deforecat, the Tenant may vouch the Heir of full Age or within Age, well enough without shewing Specialty, unless be be in Ward, and if he be in Ward * In Dower he shall shew Specialty, and otherwise not; and this for the Losf of the the Tenant Guardian, and after the Tenant gratis shew'd Specialty, but not de rigore, to vouche to Warranty the Heir of the Baron, and had the Voucher without Specialty or other Caufe proving that he had Caufe to vouch; not. Br. Voucher, pl. 79. cites 4 H. 6. 24.

11. In Forndon the Tenant vouched one of the Demandants by a strange Name, the other Demandant said that the Voucher was one of the Demandants, Judgment if without Cause shewn; and was compell'd to shew Cause by Confirmation, and did not shew the Deed; and therefore the Cause was adjudg'd insufficient, by which he was awarded to answer over, because it was in the same Term; contra upon Adjournment in another Term by several there; and so see that it is peremptory. Br. Peremptory, pl. 9. cites 11 H. 4. 22.

12. If a Man loses the Deed by which he was enfeoffed, yet the Feoffment remains good; but then he cannot vouch or bind the Feoffor to Warranty without shewing of the Deed. Br. Leafe, pl. 16. cites 4 H. 6. 17. Per Rolfe.

(H. a) Voucher. How to be made as Assignee. In what Cases without shewing Deed of Assignement.

1. For such a Thing which may be assign'd without Deed, a Ban Cro. E. 373. may vouch as Assignee without shewing Deed of Assignement, pl. 1. in Calc. of Rolfe b. Lincoln College, 63. 26 E. 3. 75. b.

Ch. J. that if he shews the Deed of Warranty it is sufficient, and that so is the better Opinion of the Books. And to that Opinion the other Juries inclined. — Ibid. 456. pl. 32. S. C. and S. P. by Popham and Fenner, and that it is to no Purpose to shew the Deed of Assignement; for, if it be shewn, it is not traversable by the Voucher.

2. Feme may vouch herself and her Sister Coparcener for Land with out shewing Deed of Assignement; for they may be Assignees without 19. S. C. Deed. 40 E. 3. 22. b.


4. Also a Ban may vouch A. upon a Feoffment with Warranty to B. and his Assigns Que Estate he has without shewing how. Contra 42 E. 3. 19. b.

5. A Ban may say that A. enfeoffed B. with Warranty to him, his * Br. Mon-Heirs and Assigns, and B. enfeoffed him, and so he may vouch A. as Alt. gives, without shewing a Deed of Assignement. Contra 17 E. 3. 68. b. Contra 22 Alb. 88.

6. In Afflfe the Tenant pleaded a Feoffment of the Grandfather of the * In Brooke Plaintiff with Warranty, whose Heir the Plaintiff is, and it was by Deed, and he pleaded as Assignee, and shew'd * both Deeds: and 'tis said effic. where that he ought fo to do, where he vouches as Assignee, or pleaded
Voucher.

as Assignee; for Warranty cannot be but by Deed or Record, and therefore Assignment thereof cannot be but by Deed, &c. Br. Monftrans. pl. 87. cites 9 Aff. 11.

7. Précipue quod reppat the Tenant vouch’d as Assignee of another by the Warranty of the first Feoffor, he shall shew the first Deed of Feoffment and also a Deed of Assignment by the first Feoffee to him; and so fact that he cannot be Assignee to a Warranty but by Deed. Br. Monftrans, pl. 164. cites 11. E. 3.

8. In * Ward, the Tenant vouched one to Warranty without shewing any Deed, and had the Voucher by Award contrary to the Opinion of Kitton; but in Dower if the Tenant vouch’d the Heir within Age, he shall not have the Voucher without shewing Deed; Quod nota. Br. Monftrans. pl. 23. cites 46 E. 3. 25.

9. He who vouches as Assignee shall shew the first Deed which comprehends the Warranty, and ought to shew the Deed which proves him Assignee. Br. Monftrans pl. 5. cites 3 H. 6. 20.

10. But if he retroys by the first Warranty, and shews the Deed thereof, he may do it by a Que Esstate, without shewing how he had the Estate. Contrary where he vouches as assignee by it. Br. Monftrans, pl. 5. cites no Book, but says Vide alibi.

9. 11. In Formedon the Tenant vouch’d the Queen and her two Sistors, as Heir to the Duke of York, by Feoffment by the Duke to M. who infeoff’d B. who infeoff’d C. who infeoff’d the Tenant, and so vouch’d as Assignee, and Exception taken because he does not shew Deed. Per Townfend, the Tenant may vouch as Assignee between common Persons, without shewing Deed; but it was not said what the Law is, where the Aid or Voucher is of the Queen, or of the King. Br. Monftrans, pl. 107. cites 3 H. 7. 14.

Br. Voucher, pl. 165. cites S. C.

12. Formedon against Baron and Feme; they vouch’d the Baron, and shew’d Caufe that the Father of the Baron infeoff’d two, who gave to the Baron and Feme in Tail, and as Assignees vouch’d the Baron to have the Tail. And per Brian and Townfend, they ought to shew Deed of Warranty; for tho’ the Poifeffion be good Caufe of Voucher as to the Demandant, and he shall not shew Lien but to the Voucher, in this Case he shall shew it; for he who is vouch’d is the Tenant himself, by which Keble shew’d Warranty. Br. Monftrans, pl. 169. cites 11 H. 7. 4.

(I. a) Voucher in Ward. How it shall be made.

(K. a) Voucher.
(K. a) Voucher. How it is to be made. [In what Place.]

1. **A Voucher cannot vouch a Voucher in other County than where the Original is brought.** 29 Eliz. 3. 3. b.

(L. a) Voucher. How to be made. Who ought to be vouch'd jointly. Coparceners.

1. **Upon Warranty by the Ancestor, the one Coparcener cannot be vouch'd without the other.** 11 H. 4. 20. b.

(L. a. 2) Joint-Voucher of whom. Survivor and Heir.

1. **Two Jointenants make a Feefeoffment in Fee by this Word Dedi; the one dies, the Survivor shall be vouch'd, and render in Value for the whole; for that the State passes from both, and the Statute lays Ratitione doni propria, yet each of them did warrant the whole by this Word Dedi, otherwise the Survivor ought not to have yielded the whole in Value, as it hath been adjudged; and the Reason is, for that the Heir of the Jointenant that dies, cannot be bound by the Warranty created by this Word Dedi.** 2 Inst. 276. But if 2 Jointenants make a Feeoffment in Fee, with an express Warranty for them and their Heirs, to the Feeoffee and his Heirs, and the one of them dies, the Survivor shall not be vouch'd alone, but the Heir also of the other, and the Recompence in Value shall be equally upon them. 2 Inst. 276.

(M. a) Voucher. How to be made. Who may vouch jointly.

1. **Two Tenants in Common cannot vouch jointly.** 23 Eliz. 3. Precipe quod reddat a-gainst 2, they took the Tenancy in Common, and the one vouch'd J. as to that which to him belongeth, and the other vouch'd P. as to that which to him belongeth. And the best Opinion was, that where they confess the Tenancy in Common, they cannot vouch severally; by which the Tenant, according to the Opinion of the Court, pleaded Ne dona pas &c. Br. Voucher, pl. 20. (bis) cites 42 Eliz. 3. 16.
(N. a) Voucher. How to be made. Where jointly [or severally.]

1. If Baron and Feine levy a Fine with Warranty for them and the Heirs of the Feine, after the Death of the Feine, the Baron only may be brought without the Heirs of the Feine; (for the Baron is to warrant all during his Life) 22 E. 3. Curia.

Where severally.

2. If Præcipe be brought against several, if they shew several Causes of Voucher, as that they are Tenants in Severalty, they may, and ought to vouch severally. 41 E. 3. 20. 12 H. 7. 2. 42 E. 3. 16.

3. But if the Action be brought against 4, and 2 make Default at the Grand Cape, and the other 2 accept the Tenancy of the Entirety, and that the others had not any thing, and abate the Writ by Gager of Non-fummons; in a new Writ by Journeys' Accounts against those 2, they shall stopp'd to plead severally Tenancies, and to vouch severally; for it is against their Acceptance; nor may they vouch severally without taking the severall Tenancy, because they have accepted the Tenancy jointly. 42 E. 3. 16. b. 17. Curia.

4. If a Warranty be made to 2 jointly, * one alone cannot vouch without the other, unless the Warranty be divided by Act in Law. 48 E. 3. 17.

5. If Præcipe be brought of a Manor and 40 Acres, Tenant bouches, and Vouches enters and vouches himself for the Manor and 40 Acres also, as Parcel of the Manor, tho' it was not Parcel, yet if he was included as Parcel, he ought to vouch accordingly. 41 E. 3. 23. b.

6. In Action against 2, one may plead a Release, and the other there are vouch. 42 E. 3. 17.

2 Tenants, one shall vouch, and the other may plead a Plea which goes to the whole, because one shall not be bound by the Plea of the other. Arg. Kelw. 16. in Case of Lord Brook v. Nevill.——But one Defendant shall not plead in Abatement of all the Writ, and also vouch or plead in Bar. Arg. Ibid.——Contra per 3 against 2. Ibid. and 16. b. 17.—Nor he shall not plead a Bar which goes to all for Parcel, and vouch again for other Parcel, because he is not at any Mischief, if his Plea, which goes to all, be true: for then this discharges him of the whole. Arg. Ibid.——Contra per 5 against 2. Ibid. and 16. b. 17.—But it is otherwise where there are 2 Jointenants. Arg. Ibid. 16.

Br. Jointenants, pl. 52. shall not run upon the Survivor, but upon him, and the Heir of the other. cites 31 E. 3. and Fitzh. and Fitzh. Voucher, 90.

7. Where 2 make a Feoffment with Warranty, and one dies, the Charge


Counterplea de Voucher, 88. and 22 E. 3. that the Feoffee may vouch the other, and the Heir of the Deceased; Per Fitzh.
8. Mortdancettor against W. and A. which A. said that he had nothing &c. and W. answer'd as sole Tenant, and pleaded in Bar the Warranty of the Mother of the Demandant to his Father, whose Heir he is &c. The Demandant said that W. had nothing, unless jointly with the said A. Judgment if he may plead the Warranty sole without A. and the Demandant was awarded by the Court to answer to the Bar. Quod nona; & e contra of Voucher; for the one cannot vouch without the other. Econtra of Rebutter, as here. The Reason seems to be inasmuch as Voucher is in lieu of the Action; contra of Bar. Br. Bar, pl. 58. cites 9 Aff. 18.


10. All that are intituled to the Voucher, ought to be joined in the Voucher; for otherwise he fails of his Voucher. Br. Voucher, pl. 54. cites 38 E. 3. 4.

11. If 2 Co-partners are, and the one aliens his Part, and the other is If 2 Co-partners be, and one of them aliens with Warranty, and comes in as Voucher, now he shall pray in Aid of his Fellow, and either have Pro rats upon the Lores, or vouch over with him upon the Warranty paramount. Hob. 26. in Case of Roll v. Osborn.

When Lands and Warranties depend to 2 Partecners, and they make Partition, and one of them is unplanned, he shall not vouch alone, but shall pray Aid of his Fellow, and he shall put themselves in Representation of one in Aid, and then vouch together; Per Hobart Ch. J. Hob. 26. in Case of Roll v. Osborn. But if one Partecner aliens his Part, or makes Default upon Aid pray'd, the other shall vouch alone; Per Hobart Ch. J. Hob. 26. in Case of Roll v. Osborn, cites 27 H. 8. 58. 4 H. 7. 20 H. 6. 2. and 45 E. 3. 25.


13. But it seems that in Warrantia Charte against 2, and the one is an Infant at the Time of the making of the Deed, it shall bind the other. But Querc if by this Writ, or by another Writ against him only. Br. Warranctt Carte, pl. 14. cites 39 E. 3. 26.

14. If three are jointly indebted with Warranty, and two releafe or surrender to the third, he shall not daerge the first Warranty by Voucher or Writ of Warrantia Charte, because he is in by the first Fidator, and not by him who releafe or surrendered. Querc if the Surrender be good. But it seems if one releases to the one, there the one is in by the other, and he shall not daerge the first Warranty, as the Case is in Anno 33 H. 6. Br. Garranties, pl. 6. cites 40 E. 3. 41.

15. And where all die except one, he who is in by the Survivor shall daerge the first Warranty. Br. Garranties, pl. 6. cites 40 E. 3. 41.

16. If two bring Formedon, and the Tenant has Warranty against the one, and not against the other, the Tenant may vouch the Demandant for the one Moiety, and plead in Bar for the other Moiety. Br. Voucher, pl. 16. cites 41 E. 3. 7.

17. When a Man has Issue 2 Sons by diverse Venter, and has Land tailed in Burgis-English, and discontinues with Warranty, and dies, and the younger brings Formedon, the Tenant may vouch the eldest and the youngest, when they appear he shall plead in Bar for one Moiety, and the Voucher shall stand for the other Moiety. Br. Voucher, pl. 49. cites 41 H. 4. 19.
18. If a Man infeoffs A. and B. with Warranty, who infeoffs W. N. who is infeoffs, and vouches the two, who vouch the first Feoffor; and after the one of the two makes Default, and the other appears, he shall have the Warranty against the first Feoffor; and so is the Opinion in 11 E. 4. 8. Br. Garranties, pl. 67; cites 5 H. 5. 7.

19. If two Jointenants are infeoffs, and the one appears, and the other will render, or makes Default, he who appears shall have the whole Warranty. Br. Garranties, pl. 67; cites 5 H. 5. 7. Per Luddington.

20. If Feoffment with Warranty is made to two, and the one alone is infeoffs, and vouches, the Vouchee may extort him from the Lien, in so much as he might have abated the Writ by Jointenanty, and did not; for he is not compell'd to warrant one, where the Warranty is made to two. Br. Voucher, pl. 16; cites 21 H. 6. 49.

21. Where 2 Jointenants are, and the one is infeoffs, and he vouches the Feoffor, this Matter is good Counterplea to the Lien. Br. Counterplea de Garrantie, pl. 4; cites 22 H. 6. 13.

22. Where the one Vouchee is by Profection, this shall serve for both; for both warranted since the Whole, therefore the one shall not be compell'd to warrant the Moiety by himself. Br. Voucher, pl. 113; cites 11 E. 4. 7.

23. B. brought Formedon against D. C. and W. which D. as to that which to him belong'd, vouch'd to Warranty A. and C. as to that which to him belong'd, vouch'd B. and the said W. as to that which to him belong'd, vouch'd N. upon which Vouchers the Demandant demand'd in Judgment; and by Yaxley, Kingsmill, Frowyke, Contable, Vavifor and Davers, they shall have his several Vouchers, for it may stand with their Tenancy well enough; for two may make Feoffment to two or three, and the one may make Warranty to the one, and the other to the other, by one and the same Deed; or the Feoffors may make Warranty to the one, and a Stranger may releafe or confirm with Warranty to the other, and this Releafe or Confirmation with Warranty is sufficient to vouch, and good Lien against the Feoffor if the Demandant will not counterplead the Posleffion, and that the one may vouch and the other plead in Bar; for the Warranty and Voucher is Inheritance, but they ought to agree in Dilatories, as in View, Aid Prayers, or the like. But Conningsby, Mordant, Wood and Brian Ch. J. Contra, and that they shall not have the several Vouchers by the Manner; for when they have accepted the Tenancy, and vouch'd, it shall be intended that they are Jointenants or Coparceners, and therefore shall not have such several Vouchers without shewing Caufe, but by Causa præterito they may have it; Quere, for afterwards they join'd in Voucher. Br. Voucher, pl. 108; cites 12 H. 4. 2.

24. In Formedon, the Tenant vouch'd 3 as several Heirs to the 3 several Persons, and for the Non-age of the one pray'd that the Parol demur'd; and the Voucher good of the three several Heirs. Br. Voucher, pl. 165; cites 16 H. 7. 12. 13.

25. In Formedon against 2 Feoffees of Trust, the one Confess'd or pleads in Bar, and the other will vouch. Fitzherbert Justice said the one cannot vouch.
vouch unless both will vouch, which Brooke Justice denied; for the one may confess and render the Action, and the other may vouch. Br. Voucher, pl. 77, cites 14 H. 8. 24.


(N. a. 2) Voucher. How. At large, in what Cases. See (A. b)

1. It was said that it is adjudg'd 11 E. 3. that in Affiff of Darrein *S. P. F. N.
* Preseintment the Tenant shall not vouch out of the Writ, no more than in Affiff of Novel Diffeulo, quare inde; for in Affiff of *Mort-
dancefor the Tenant may vouch at large, and this Affiff of Darrein Pre-

2. It seems that the Tenant in Writ of Dowry may vouch at large. Br. Voucher, pl. 74.

Tenent as to one Acre vouch'd to Warranty, which the Demander counterpleaded, that he who is vouch'd nor none of his Ancestors ever bad any thing &c. after the Seffin of the Baron. Br. Voucher, pl. 74. cites 22 H. 6. 42.

(O. a) Voucher. In what Place Voucher may be.

1. A Man cannot vouch another in other County than where the Original is brought. 29 E. 3. 3. b.

2. But a Man may vouch generally, and pray that he be summon'd in other County. 29 E. 3. 3. b.

3. So a Man may vouch and pray that he be summon'd in the County of *Lancaster or Chester, and the Writ shall go there, tho'
generally the Writ of the King does not run there. 26 E. 3. 59. b.

Adjudg'd.

Summons into Wales, we will not write to Wales, but to the Sheriff of the County next adjoining. Br. Cinyque Ports, pl. 8. cites 19 H. 6. 12. Per Fulthorp.

Where a Man vouches in Bank, and prays he be summon'd in the County Palatine of Chester, Lancaster or Durham, Summons ad auxiliandum shall not issue there, but Special Writ to the Lord of the Fran-

4. [So] a Man may vouch and pray he be summon'd in Ireland if he shews a special Deed, which testifies an Exchange of Land in Eng-


5. But a Man cannot vouch generally and pray that he be sum-
mon'd in Ireland, without shewing a Special Deed of Exchange. Time E. 1.

6. Affiff of Mortdancefor, the Tenant vouch'd in another County, and Br. Proces,
7. In Mortdancefor, the Tenant vouch'd to Warranty A. and pray'd that he may be summons'd in another County, Fifth counterpleaded that the Vouchee nor none of his Ancestors never had any Thing &c. Upon which the Affile was taken, and found for the Tenant, by which it was awarded that the Voucher stand; and then the Demandant said that the Vouchee had Affairs in the same County, and pray'd that he be summons'd in this County; & non allocatur by Reaeh of the Issue tried against him before Br. Voucher, pl. 102. cites 36 Aff. 6.

8. Prsept quod redar, the Tenant vouch'd and pray'd that the Voucher be summons'd in the County of York, and in the County of Durham, which is a County Palatine, and yet the Voucher stood; for per Cotton, if he be summons'd in the County of York, he is summons'd in all Counties of England, and therefore it seems by him that Summons shall issue there only; Quere inde, for in special Cases they may award Preseps to the County Palatine. Br. Voucher, pl. 151. cites 10 H. 6. 20.

(P. a) Voucher. Counterplea by Tenant [or Demandant.] Counterpleas to the Persons of the Voucher [or Vouchee.]

Arg Keb. 35. in Case of Plunket & Holmes — 25 E. 3. 43. b. by Willy. But Attire.

A Man cannot vouch a Clerk attaint, nor a Man outlaw'd; but rather shall have Writ of Warrantia Chartae. Contr. of an Item. a Quid non bene; and Quere if it be Law at this Day. Br. WARRANTIA CURTIA, pl. 25. cites 8 E. 2. and Pich. Voucher, 237.

See pl. 25.

2. It is a good Counterplea, by the Common Law, that the Vouchee is dead. 25 E. 3. 43. b. Per Curtiam.

Of the Vouchee.

And this was a good Counterplea at Common Law. Br. Counterple de Voucher, pl. 39. cites 7 Aff. 4. Per Herle.

* The Issue was received, notwithstanding that it be in a manner a Pregnancy. Br. Counterple de Voucher, pl. 8. cites 49 E. 5. 36. — 2 Inf. 245. S.P.

This Statute was in Affirmance of the Common Law. 2 Inf. 245. — And see pl. 25.

5. It is a good Counterplea that he who is vouch'd by a strange Name is the same Person who is Tenant; Judgment if, without Caufe shewn, he shall be received to vouch. 10 H. 6. 18.

6. If 2 Sitters are vouch'd, whereof the one is vouch'd within Age, it is a good Counterplea that they are both Baitards, for Cause of the Delay by the Age. 17 E. 3. 59.

7. If
7. If a Man be vouch'd as Son and Heir within Age, and prays Par- rol to demur, it is a good Counterplea that Vouchee is Baftard; for he cannot be bound by his own Deed. * 48 E. 3. 28. b. 10 H. 6. 15. 18. See 11 E. 3. Age 3.

8. But otherwise it is, if he be vouch'd as Son and Heir only; for there he may be bound by his Deed. * 48 E. 3. 28. b. 10 H. 6. 18. b. 14 H. 6. 10. b.

9. If a Man be vouch'd as Son and Heir to B. it is good Counter- plea that B. was attain'd of Felony or Treason, if the Parol be pray'd to demur upon the Voucher; for then he cannot be bound by his own Deed. 9 H. 6. 50. 14 H. 6. 10. b. 10. But otherwise it is if he does not take Advantage of the Nonage; for there he may be bound by his own Deed. 9 H. 6. 50. 14 H. 6. 10. b.

11. So if a Man be vouch'd as Son and Heir to another, and prays the Parol to demur for his Nonage, it is a good Counterplea that he himself is Heir to him, or that another is Heir; that is to say, elder Brother. 14 H. 6. 10. b. 25 C. 3. 43. b. by Willy. 

In Writ of Entry within the Degrees, the Tenant may pray'd to warranty, and by his Age pray'd that the Parol demur; and the Demandant said that he had an elder Brother of full Age, and pray'd that he be ousted of the Voucher; and so he was. Br. Counterplea de Voucher, pl. 3. cites 27. H. 6. 1.

12. But otherwise it is if he be vouch'd of full Age; so that the Parol is not to stay for his Nonage. 14 H. 6. 10. b.

13. If a Man vouches J. S. within Age, as Heir to J. D. and prays Demandant said that J. S. is younger than J. D.; but that W. D. is Heir. 38 C. 3. 27. b.

14. So it is a good Counterplea, tho' J. S. had enter'd into the Land as Heir to J. D. for the Delay by the Demurrer of the Parol, to which the Tenent said: that J. is Heir, and Pro pleads that he enter'd as Heir after the Death of the Ancestor, and pray'd the Voucher; and because the Demandant could not deny that J. enter'd as Heir, the Voucher stood. Br. Counterplea de Voucher, pl. 25. cites S. C.—Br. Voucher, pl. 60. cites S. C.

15. If a Man vouches another as Son and Heir of J. S. within Age, and prays that the Parol demur, it is a good Counterplea that he is of full Age. 17 E. 3. 3. 78. b.

16. [But] if a Man vouches another as Son and Heir of J. S. Br. Coun- terplea de Voucher, pl. 25. cites S. C. and E. 3. 3. 78. b. and yet he may be bound by the Deed of other Ancestor than of J. S. 21 that it is no Counterplea by the Common Law or Statute; and because the Tenant may bind him by Deed of other Ancestor; therefore the Counterplea extends not to all those whom the Tenant may bind, when the Voucher comes, and to is no Counterplea. And yet it is agreed, that where he prays that the Parol demur, as in the principal Case he cannot bind him by his own Deed. Quod nota.—Br. Voucher, pl. 62. cites S. C.

17. In a Writ of Dower, if the Tenant vouches 3, it is not a good Counterplea that in another Writ they all were vouch'd, and the De- mandant recover'd a 3d Part upon Default after Default of one, and after
after the Writ abated against the others, and how the Heir of him that made Default is vouch'd within Age, and the Warranty is determined against him by the first Recovery; for this Counterplea is to butt to the Warranty, and the Demandant is not at any Delay thereby; for the Voucher shall not demurr in this Writ. 26 C. 3. 59. adjudged.

18. The same Law, tho' the Heir of him that made Default be vouch'd in Ward of the King; for it is but a Perit Delay, that is to say, to have Aid of the King. 26 C. 3. 59. adjudged.

19. But otherwise it would be, if it had been in a Precipe quod reddat; for there this Matter should be a good Counterplea, inasmuch as in this Writ the Voucher should demurr for his Manager, which the Law will not suffer upon a Vade Voucher. 26 C. 3. 59.

20. In an Action against Feme sole, if the Tenant will vouch, it is a good Counterplea for the Demandant to say that pending the Writ the Tenant has taken Baron, because otherwise the Demandant shall be delay'd; for he and her Baron ought to vouch. 26 C. 3. 68 b.

21. In Mortdanceror the Sheriff return'd the Voucher dead, and the Tenant vouch'd his Heir within Age, and pray'd that the Voucher demurr; and the Demandant said that he had no such &c. for he died in the Life of his Father. And Herle awarded this a good Counterplea. Br. Counterplea de Voucher, pl. 39. cites 7 All. 4.

For when he is vouch'd out of Age, If it shall not like to have Aid, by which the Death may be return'd, nor the Demandant cannot say that he is of full Age, and pray that he may be vouch'd; for there is no such, and the Voucher never will be of full Age where he is dead; and therefore good Counterplea. And at Common Law it was a good Counterplea that he never had any such who was vouch'd, but here was such a one in Effe, but now is dead. Ibid.

22. In Precipe quod reddat, if the Tenant vouches a Bishop to Warranty, it is no Counterplea that he nor his Ancestors never had anything &c. but shall say that he nor his Predecessors &c. never had any thing &c. Br. Counterple de Voucher, pl. 51. cites 12 E. 3. and Fitzh. Voucher 27. 105. 110. 112.

In Precipe quod reddat, if the Tenant vouch'd, the Demandant may say by this Statute that the Tenant is dead; but otherwise if he permits the Voucher, and at the Summonam ad Warrantizandum the Sheriff returns Null, there he shall not have the Averment; for now it shall come in by the Return of the Sheriff; by which a Summonam Sed not alias.

23. 14 E. 3. cap. 18. Because the Demandants in Plura of Land have been often delay'd, for that the Tenants have vouch'd to Warranty a dead Man, against which Voucher the Demandants before this Time, might not be receiv'd to aver that the Voucher is dead, to their great Delay and Mischief.

It is accorded and established, that from henceforth, if the Tenant vouch to Warranty a dead Man, and the Demandants will aver that the Voucher is not dead, or that there is none such, their Averment shall be received without Delay.

In Precipe quod reddat, if the Tenants vouch'd two, the Demandant said that one is dead. Fencer objected that they ought to say that both are dead; for otherwise it is no Counterplea by the Statute, nor by the Common Law; but Belke and Tho' held it well enough, whereupon he vouch'd the one alone. By Voucher 135. cites 39 E. 4. 52. — Br. Counterple de Voucher, pl. 37. cites S. C. That is a good Counterplea by the first Opinion; by which he vouch'd the one and the Heir of the other. — 2 Init 246. says it is a good Counterplea for preventing of Delay. — So if the Tenant vouches A. who enters into the Warranty, and vouches B. the Demandant may allege in Advantage of himself, that the first Voucher is dead, and pray a Remonstrance against the Tenant, because this cannot come in by the Return of the Sheriff; let Finch, &c. not negatur. Br. Voucher, pl. 158. cites 40 E. 3. 57. — Br. Counterple de Voucher, pl. 8. cites 40 E. 3. 56. S. C. — And this second Voucher shall do this Matter, and pay Remonstranz, and have it, because otherwise Error shall be of the Judgment. Br. Voucher, pl. 158. cites Fitzh. Voucher 4. 18 E. 2. 57.

The Demandant may aver the Life of the Voucher by the Equity of this Statute. Jenk. 122. pl. 47.
24. In Formidon it was agreed, that where the Tenant vouch'd, it is good Counterplea that the Voucher is Villein to the Demandant; for if the Demandant pleads with him he shall be infranchis'd. Br. Counterplea de Voucher, pl. 15. cites 15 E. 3. and 48 E. 3. 17.

25. In Mortdancelor, the Tenant vouch'd the Baron and Feme, and so in the Demandant said that the Baron and Feme, nor the Ancestor of the Feme, never had any thing in Demise, nor in Services, after the Seisin of our Ancestor, of whose Seisin we demand; and a good Counterplea, that is to say, Warranty for the Ancestor of Feme, and no Mention of the Ancestor of the Baron; the Baron and Feme, for it shall be intended that the Warranty came of the Part of the Feme. Br. Counterplea de Voucher, pl. 42. cites 22 Aff. 30.

26. In Cui in Vita, in the Poit, the Tenant vouch'd Walter Son and Heir of W. of S. who was the Baron that alien'd; and the Demandant said that he was Cousin and Heir of W. abique hoc that Walter, or any of his Ancestors, had any thing after the Title &c. and a good Counterplea, by which the Tenant pleaded in Bar by Exchange. Br. Counterplea de Voucher, pl. 24. cites 38 E. 3. 15.

27. In Precipe quod reddat, the Tenant vouch'd J. Son and Heir of J. and prayed that the Parol demur by his Nonage, and is it did; and after J. die'd, and upon Refummons against the Tenant, he vouch'd as Cousin and Heir of J. To which the Demandant said that J. who was vouch'd, had a life in full Life; Judgment, if to vouch another he shall be received; and the Opinion of the Court was with the Plaintiff. Br. Counterplea de Voucher, pl. 10. cites 43 E. 3. 3.

28. In Precipe quod reddat it is a good Counterplea of the Lien to say, that he who vouch'd is not Tenant, but another; so that he cannot have any Lof's. Br. Counterplea de Garrantie, pl. 3. cites 26 H. 6. 49. Per Danby and others.

29. In Precipe the Tenant vouch'd, the Demandant counterpleaded by the Statute, by which the Tenant pleaded Outlawry in the Demandant after the aft Continuance in Debt, and pleav'd the Record. And by all the Juftices, except Brian, it is a good Anwrer, tho' it is not in Bar; for the Statute says that if the Tenant vouches and the Demandant counterpleads, and the Tenant will not attend, he shall be put over to another Anwrer, and does not say to the Anwrer in Chief; and therefore any Anwrer suffices. Br. Counterplea de Voucher, pl. 47. cites 21 E. 4. 54.

30. In Dower it is a good Counterplea to say, that the Tenant enter'd by her Husband. 2 Inf. 246.

31. It is a good Counterplea of the Voucher to say, that the Tenant hath formerly pray'd in Aid of him, in respect of the Delay. 2 Inf. 246.
(Q. a) Counterplea by Demandant. What shall be a good Counterplea.

1. If an Heir be vouch'd in Ward of the King, it is not a good Counterplea that J. S. has sued in the Chancery to the King for the said Ward, where his Right was found, and by Judgment has the Ward, and for the King has nothing in the Ward, without shewing any Thing to maintain it. 26 E. 3. 60.

2. [But] If an Heir be vouch'd in Ward of the King, it is not a good Counterplea that the King has nothing in the Ward by Nonage of him; for between them the Possession of the King shall not be tried. 17 E. 3. 65. b. Contra 21 E. 3. 53. Abjudged.

3. So if a Man be vouch'd in Ward of a common Person, it is not a good Counterplea that he has nothing in the Ward. 22 E. 3. 21. Contra 26 E. 3. 60. 27 E. 3. 82.

4. If an Heir be vouch'd in Ward of diverse Lords, it is not a good Counterplea that some of them, who are supposed Guardians, have nothing in the Ward; for if he vouches some Guardians, and others with them who have nothing, this is nothing to the Demandant. 17 E. 3. 65. b. 27 E. 3. 82. Abjudged. Contra 21 E. 3. 53.

5. If Tenant in Dower vouches the Heir of the Baron in Reversion, it is a good Counterplea that the Tenant has Fee; for he cannot bind the Heir to warranty for any other Castle but for the Reversion. 29 E. 3. 41. b.

6. If the Tenant vouches B. as Cousin and Heir to G. it is a good Counterplea that he who is vouch'd is the Son of one J. without that That he is of the Blood of G. 28 E. 3. 99.

* So called It is provided, That * in Writs of Possession, first in Writ of Mordancetor, of Cofinage, of Aiel, Nuper obit, of Intrusion, because either the Ancestor, of whose Seflin he demands, was in Possession the Day he died, or the Demandant himself was in Possession, as Mordancetor, Cofinage, Aiel, Nuper obit, Intrusion, and other like Writs, as Bezile &c. 2 Inf. 241.

* Ward And * other like Writs, whereby Lands or Tenements are demanded, against E. The Defendant could R. who was seised of the Ward, and leased to E. who vouch'd him, Norton said E. was the first who got the Ward after the Death of our Tenant, and this Estate continued till the Day of the Writ purchased, Judgment if the Voucher &c. And the best Opinion was, that it is a good Counterplea; by which the Defendant claim'd by Priority. And this Counterplea seems to be by the Equity of the Statute of Wemb. 1. cap. 38 given in Actions Possession. Br. Counterplea de Voucher, pl. 28. cites 21 E. 3. 11. 8 P. 2 Inf. 241. That in Writ of Right of Ward of the Body and Land, such Counterplea was adjudg'd good; for albeit it is named a Writ of Right, and so in Letter is out of this Branch, yet is it in Nature of a Writ of Possession; and the Words are Per Mortdancetor ou d'auter, and tho'
Voucher.

103

no Leends or Tenements be demanded, which regularly is intended of an Exatte of Freehold, yet this
Cafe being within the fame Discharge, is taken within the Remedy. 2 Inf. 241.

In Dower the Tenant could C. Cookin and Heir of T. A. the Demaundant fail'd, that her Husband died seised, and the Tenant ouf't the land that abates; and a good Counterplea within the Words (other like Words;) but that Plea is not [good] in Cæfe of the Heir. 2 Inf. 241.

An Affic of Nocel Difficrs, and an Affic of Darren Preseentment, are within this Branch, if the Ten-
ant vouch any named in the Writ; and the Demaundant may counterplead the Voucher, as well when
the Tenant is present in Court, as when he is absent. 2 Inf. 241.

Which ought to * descend, revert, remain, or † efcheat by the Death of any * A Formed
Ancestor, or otherwise ;

out of this Branch; for it is a Writ of Right in his Nature, and not a Writ of Possifion, and he de-
mands not the Land of the Seffion of his Ancestor, as the Statute speaks, but of the Gift. 2 Inf. 241.

A Formed in Revcrer is not within this Branch; for that is a Writ of Right in his Nature. 2
Inf. 241.

A Formed in the Remainder is not within this Branch; for it is no Writ of Possifion, but a Writ of
Right in his Nature; and the Demaundant doth not demand the Land of the Seffion of his Ancestor, as the Sta-
tute speaks, but of the Remainder. 2 Inf. 241.

† Lord Coke fares, that the English Tranflation of the French Word (Efcheier) in this Place is wrong;
for (Efcheier) signifies to fall, and a Writ of Efcheat is not within this Branch, for that it founds in the Right; and Reverter, Remainder, or Efcheier, is to be intended after the Death of his Ancestor, or Tenant for Life, Tenant in Dower, or by the Curtesy. 2 Inf. 241.

If the * Tenant vouch to warranty, and the Demaundant counterpleads him, * A. dies
and will aver by Affic, or by the Country, or otherwise, as the Court will vifed in Fee.
B. also,
and makes a Lease for Life, and grants the Reversion to C. in Fee, and dist. C. grants the Reversion to D. the Heir of B. Tenant for Life is impeded in a Writ of Caiuge, and makes Default after Default. D. is receiv'd, and vouch'd to warranty.
C. The Demaundant counterpleads the Voucher, for that B. was the first that abated after the Death of his Ancestor, of whose Seffion he makes his Demand. And two Objeotions were made that this Counterplea was not within this Statute; if, That D. claimed the Reversion by Purchafe, and fo B. was not his Ancestor in this Statute, for he claimed not the Land as Heir. 2. That this Statute speaks of the Tenant, which must be underflood of the Tenant for Life, who is the Tenant to the Precife in Daf, and not of the Tenant by Reafon, who is Tenant in Law. As to the Firft it was answerr'd and refolv'd, That inaufch as the Abatement is confider'd, albeit that divers Estates be made, yet for that D. is Heir to the Abator, and B. his Ancestor within the Letter of the Statute, and Injury for Conventum vs editor, and fo is within the Meaning. But if the State of the Abator had been avoided by a Title paramount, and the Heir of the Abator and then Injeff'd, there the Heir had not claimed under the Abatement; and therefore, al-
though he were within the Letter of this Act, yet had he been out of the Meaning. 2 Inf. 242.

† Albeit Tenant by Receipt be but Tenant in Law, yet it is in Law of the Tenant, and so within this Branch; for otherwise the Abator may make a Lease for Life, and by his Default after Default be receiv'd, and fo by Covin between them make this Branch of none Effic, which should be againft Rea-
fon, & in Random Legis; and Tenant in Law by Warranty is within this Act, albeit he be not present in Court. 2 Inf. 242.

Or his * Ancestor, (whose Heir he is) was † the first that enter'd after the * Predeceffor
Death of him, of whose Seffion he demands; the Averment of the Demaundant shall be admissible, if the Tenant will abide thereupon :

2 Inf. 242. As in Mortdancer againft the Prior of D. the Tenant could't to warranty. Both, faid that B your Predeceffor, Prior of D. was the first who abated after the Death of him, of whose Seffion Ecc. and the Estate continued, and died seised, after whose Death you was in, continuing the same Terms, Judgment if he ought to have the Voucher. And the other demurr'd, and after was ouf't of the Voucher by Award.

And to fee if it is a good Counterplea; and this seems to be by the Equity of the Statute of Wefl. 1.

† If A. and B. do abide to the Life of B, the whole State is in B. if B. Injeff's A, this Condition is within this Act, and yet he gain'd no Freehold; but this Statute says, Le primerque enter; and tho' he enter'd not at the first Term, yet he is within this Statute. 2 Inf. 242.

But if the Abator makes a Commitment in Fœ, and takes back an Estate to him and a Stranger, and they both be impred in a Writ of Acil, and vouch their Feeor for the Benefit of the Stranger, (who is out of the Statute) the Voucher cannot be counterplead within this Branch. 2 Inf. 242.

But if the Stranger relaves to the Abator, and he be impred, and vouches, this Voucher may be coun-
terplead by Force of this Branch. 2 Inf. 242.
Voucher.

And if not, be shall be further compelld to another Answer, if he have not his Warrant present, that will warrant him safely, and incessantly enter into the Warranty, saving unto the Demandant his Exceptions against him, if he will couch further, as he had before against the first Tenant.

And in a Writ of Right it is provided, that if the Tenant couch to Warranty and the Demandant will counterplead him, and be ready to aver by the Country, that he that is couch'd to Warranty, A. as Assignee to B. the Demandant may counterplead the Seisin of B, within the Meaning of this Branch; for that overthrows the Writ, which is the End of this Law. 2 Inf. 244.

If an Infant is couch'd as Heir to A. it is not sufficient to counterplead the Seisin of A. the Ancestor, for that the Infant cannot make a Feoffment; but he must counterplead the Seisin of the Infant and his Ancestors, and the Infaney shall come upon the Lien. 2 Inf. 244.

Nor his Ancestors

And in a Writ of Right it is provided, that if the Tenant couch to Warranty and the Demandant will counterplead him, and be ready to aver by the Country, that he that is couch'd to Warranty, A. as Assignee to B. the Demandant may counterplead the Seisin of B, within the Meaning of this Branch; for that overthrows the Writ, which is the End of this Law. 2 Inf. 244.

If an Infant is couch'd as Heir to A. it is not sufficient to counterplead the Seisin of A. the Ancestor, for that the Infant cannot make a Feoffment; but he must counterplead the Seisin of the Infant and his Ancestors, and the Infaney shall come upon the Lien. 2 Inf. 244.

Yet if he hath but an Estate for Years, it is sufficient; for by the Livery he gains Seisin, and both the Feoffments de jure & de facto are within this Statute, but otherwise it is of an Estate at Wills. 2 Inf. 244.

If the Vouchee hath but an Estate for Life, fo as his Feoffment should be a Surrender, yet hath he such an Estate as within this Statute. 2 Inf. 244.

Husband Lefts out Life in the Right of his Wife, or felled in the Right of his Wife, hath a Seisin whereof he may make a Feoffment. 2 Inf. 244.

A Feoffment for Maintenance, though the Statute of R. 2. makes it void, yet seeing it is not void until Entry, it is a sufficient Seisin to make a Feoffment. 2 Inf. 244.

One Tenant may not enforce another, yet hath he such a Seisin as is within this Act; for (to make Feoffment) is spoken but for Example; but a Fine, Release, or any other Conveyance which gives an Estate, is within this Law. 2 Inf. 244.

If a Vouchee or any of his Ancestors had any Seisin, though it were avoided or determined, it is sufficient. 2 Inf. 244.

If a Rent is demanded, and the Tenant couches by Reason of a Feoffment of the Land discharged of the Rent with Warranty, the Demandant may counterplead the Seisin of the Vouchee &c. of the Land; albeit the Rent is only in Demand. 2 Inf. 244.
Voucher.

Nor Fee or Service by the Hands of his Tenant, or his Ancestors, * For in Respect of some Tenant and Service, the Tenant may vouch to Warrant; as Frankalmoigne, Homage Anceftorrell, Ref- efsion &c. 2 Inf. 244.

Since the Time of him, on whose * Seifin the Demandant declares, * Here [Seifin] is taken for the Title of the Demandant in his Writ; for it is a Maxim in Counterpleas, that the Demandant is not to counterplead any Seifin, but after the Title of his Writ; and where the Seifin is in the Title, there the Counterplea must be after that Seifin: As for Example, in a Writ of Right after the Seifin of him of whose Seifin he demands. 2 Inf. 244.

Here is implied (and before the Writ purchased) for if it be pendente brevi it ought not to be allow'd. 2 Inf. 245.

Until the Time that the Writ was purchased and the Plea moved, where For no Warrant by he might have infeoffed the Tenant, or his Ancestors then let the Averment created after the Pur- of the Demandant be received, if the Tenant will abide thereupon; if not, the chafe of the Demandant shall be further compel'd unto another Answer, if he be not present that Writ shall warrant him freely, and incontinent enter in Answer, saving unto the De- mandant, his Exceptions against him as he had afore against the first Tenant. Plaintiff un- left upon that Conveyance the Writ be made good; as if a Precipe be brought against A. of Land, whereof B. is seifed, and B. infeoffs A. hanging the Writ, he shall vouch by Force of his Warranty, otherwise not. 2 Inf. 245.

And the said Exception shall have Place in a Writ of Mortdancesor, and in the other Writs before named, as well as in Writs that concern Rights. By this Clause, the Demandants in Writs of Poffeifion, as the Mortdancesor, Cofnages, Ait, Nuper Obiit, Intrufion, and the like, have a greater Privilege and Advantage, than Demandants in Actions which touch the Rights; for this Act gives the Demandants in Writs of Poffeifion, not only the first Counterpleas, but that, then the Tenant of his Ancestor was the first that enter'd &c. but also the last Counterplea, which is given in Writs touching the Right, viz. that neither the Vouchee, nor any of his Ancestors had ever any Seifin &c. 2 Inf. 245.

And if per case the Tenant have a Deed that comprises Warranty of another Man, which is bound in none of those Cases before mention'd to the Warranty be cutoff of his Voucher by the Writ of Warranty of Charters out of the this Statute, King's Chouery, shall be faied to him at what Time ever he will purchafe yet if he hath a Charter of War- ranty, he may have his Writ of Warrantia Charta. 2 Inf. 245.

As if a Man that never had any Thing in the Land, nor any of his Ancestors before him, relieves to the Tenant of the Land with Warranty, if the Tenant vouch him, and the Demandant counterpleads the Voucher by the last Branch of this Act, viz. that the Vouchee nor any of his Ancestors had ever any Seifin &c. and the Vouchee is not there present to enter into Warranty; in that Case the Tenant shall be oufted of his Voucher, but he may have his Writ of Warrantia Charta. 2 Inf. 245.

So if a Man after the Death of his Ancestor, abates and makes a Feoffment in Fe, and after purchafes the Land again with Warranty, and after is imploled in Affio of Mortdancesor, he shall be oufted of his Voucher by the first Branch of this Act, because he was the first that enter'd &c. but he may have his Warrantia Charta. 2 Inf. 245.

So if a Diffeffor makes a Feoffment in Fe to A. who infeoffs B. and after renews the Land of B. with Warranty, against whom the Diffeffor brings a Writ of Entry in the Per, as he may do, he cannot vouch B. by the 2d Branch of this Statute, but the Diffeffor only, and is driven to his Writ of War- rantia Charta against B. 2 Inf. 245.

8. In Cofnages, the Tenant made Default after Default, and f. came and said that A. was seifed in Fe and leged to the Tenant for Life, and after granted the Reversion to him, and the Tenant attorn'd, and pray'd to be received, and was receifed and vouch'd, and the Demandant counterpleads because the Father of the Tenant by Receipt, who vouch'd, was the first who abated after the Death of his Ancestor, and the Tenant by Receipt faid as above, and that his Ancestor had nothing at the Time of his Death, and this Tenant by Receipt in by Purchafe; and demanded Judgment, and pray'd the Voucher. And per Finch, he shall not have the Voucher, tho' he be in as Purchafor and not as Heir; but Wich contra, therefore quere. Br. Counterple de Voucher, pl. 15. citas. 46 E. 3. 2.
9. In Forde, the Tenant vouch'd &c. the Demandant said that at another time he brought such a Writ against the Tenant, which was abated by Le Gros. Gage of Non-Summons, and that he is vouch'd, nor none of his Ancestors, whose Heir &c. ever had any Thing after the Gift, and before the first Writ purchased; and the others e contra. And so it is admitted that the Writ lies by Journeys Accounts, and that the Counterplea is good upon the Matter &c. Br. Counterplea de Voucher, pl. 54. cites 11 H. 6. 34.

10. In Dover the Tenant vouch'd, the Demandant counterpleaded that he who was vouch'd nor none of his Ancestors had ever any Thing &c. after the Seisin, of the Baron. Br. Counterplea de Voucher, pl. 34. cites 22 H. 6. 49.

11. If a Man leave Lands for Life, and the Lessor thereof inoff a Stranger and makes a Letter of Attorney unto his Lessor to make Livery of Seisin accordingly, and he makes Livery; in this Case it hath been said by some Persons, that the Lessor may enter upon the Feoffment for a Forfeiture, notwithstanding the Livery of Seisin made by him; for they lay that the Feoffment took nothing by him; for the Lessor had nothing to do upon the Land, if not to see whether Wafe were done or to disfigure for his Rent and Services, if they were behind. And if the Lessor be vouch'd, and he hath not other Feoffson in the same Land after the Title of the Writ in which Writ he is vouch'd, but by making of Livery of Seisin by Force of the Letter of Attorney, the Demandant may well counterplead the Voucher. Perk. S. 290.

(R. a) Counterplea by Demandant. Counterplea to the Warranty.

1. Demandant cannot plead such Plea which shall be a Counterplea of the Warranty, 40 E. 3. 14. 11 H. 4. 21. 9 H. 6. 50.

2. As if Vouchee vouches himself to have the Tail, Demandant shall not say that the Tenant of the Land was seised of the Land in Fee, and do no Reversion in you by the Tail, for this refers to the Warranty. 41 E. 3. 24.

3. So it shall not be a Counterplea, if a Man vouches as Tenant to have the Tail. 41 E. 3. 24.


4. So it is not a Counterplea that he is in of a Fee by a Stranger. Dubitat 9 H. 6. 30. b.

5. If Voucher be upon a Fine, it is not a Counterplea that no Warranty is comprized therein. 44 E. 3. 39.

6. So if Voucher be of Baron and Feme upon their Feoffment, it is not a Counterplea that the Feme cannot warrant it by Deed, tho' the Feme shall be disfranchised thereof. 44 E. 3. 38. b.

7. If a Feme be vouch'd as Daughter and Heir to A. it is no Plea to say, that there is another Coparcener who ought to be vouch'd; for this is to the Warranty. 11 H. 4. 21.

8. It is not any Counterplea to say, that he who vouches is in of other Estate of Fee than of him of whom he vouches; for this is a Counterplea of the Lien. Contra 9 H. 6. 50.

9. But
Voucher.

9. But if a Voucher, and is compell'd to shew Cause of his Voucher, this Cause is traversable, and the Warranty counterpleadable. 11 H. 4. 21. Curia; for his Cause ought to be sufficient. 9 H. 6. 50. b. 10 H. 6. 18. Contra 21 E. 3. 37.

10. As if Tenant in Tail vouches himself to sate the Tail, it is a good Counterplea that he is in of a Fee by a Stranger, tho' it be to the Warranty, because it is Traversable to the Cause. 9 H. 6. 50. b.

11. It is not any Counterplea, that he who is vouch'd had not ever any thing but by Diffeftin, upon whom the Tenant re-enter'd; for this is only a Counterplea of the Warranty. 9 H. 6. 49. b.

12. In Writ of Dower of a Rent, it is not a good Counterplea that the Baron died seised of the Rent. Contra 56 H. 3. Prince.

13. It is not any Counterplea, that the Feoffment was made by the Voucher to the Voucher, and one B. who does not vouch, and to the Heirs of B. which B. is yet alive, because it is but to the Warranty. 17 C. 3. 74.

14. In a Praecipe quod reddat, if the Tenant vouches, it is a good Counterplea, that in other Writ they were vouch'd, and the Demandant recover'd a 3d Part upon Default after Default of one, and now his Heir is vouch'd within Age; for otherwise by his false Voucher the Parol shall not be adjudged. 26 E. 3. 59.

15. In a Writ of Dower, or Praecipe quod reddat, if the Tenant vouches, it is not a good Counterplea, that at another Time the Demandant brought other Writ against them, and upon Default of one after Default the Demandant recover'd the 3d Part, and after the Writ abated against the other two; and so demands Judgment if the Tenant shall vouch all; for this is a Counterplea to the Warranty, and not to the Voucher. 26 E. 3. 59.

16. The same Law in Writ of Dower, tho' the Heir of the Voucher against whom the Recovery was, be vouch'd within Age, for the Parol shall not be adjudged in this Writ. 26 E. 3. 59.

17. The same Law, tho' the said Heir be vouch'd in Ward of the King; for it is not any great Delay. 26 E. 3. 59.

18. It is not any Counterplea for Demandant to lay, that the Tenant has alien'd the Tenement pending the Writ; for it is but to the Warranty. 25 E. 3. 38. b. adjudged.

19. So if he lays, that the Tenant has alien'd pending the Writ, and re-purchas'd it to himself alone, or to him and others; for this is but to the Warranty. 25 E. 3. 43 b. adjudged. 26 E. 3. 68. b. Curia.

20. So if he lays, that the Tenant has nothing in the Land but by Diffeftin pending the Writ; for it is but to the Warranty. 26 E. 3. 68. b.

21. So if he lays that the Tenant has nothing in the Land but by the Feoffment of J. S. pending the Writ, inasmuch as he has made the Writ good by the Purchase. Contra 26 E. 3. 68. b.

22. There was not any Counterplea to the Possession at the Common Law, as that he nor any of his Ancesters were not ever seised; for this was only to the Warranty. 9 H. 6. 50. Contra 10 H. 6. 15. 17.
In Precipe 23. It is not any Counterplea at Common Law, that he who is 
quad reddat 
the Tenant 
vouch’d, and 
the Demand 
ant counterpleads, that the Voucher, nor none of his Ancestors whose Heir &c. had ever any thing but jointly 
with the Tenant who vouch’d; and no Counterplea to the Possession, but to the Lien, by which he granted 
the Voucher. Br. Counterde Voucher, pl. 61. cites 45 E. 5. 16.

So it is no good Pleading to allege upon a Voucher, that the Voucher, nor any of his Ancestors, anything 
bad, but jointly with J. S. for the Jounenancy ought to be expressly alleged between the Voucher, or 
forse of his Ancestors by Name, and that the Jointenancy continues. D. 541. a b. pl. 51. Pasch. 17
Eliz. Anon.

24. In Right of Ward, if Defendant vouches J. S. who lead’d the 
Ward to him, it is not a good Counterplea for the Demandant to 
flap, that he had nothing of the Leafe of J. S. before the Writ purchas’d, 
because it is a Counterplea to the Warranty, and not to the Voucher. 

25. In Morando the Tenant vouch’d A. who enter’d and vouch’d the Tenant, 
and was compell’d to shew Caufe, who said that the Tenant 
insuff’d him, and after be leas’d to him for Life; and the Demandant said 
that before the Leafe made to the Tenant, the Tenant never had any thing, 

26. In Precipe quod reddat, if the Tenant vouches D. it is no Coun 
terplea, that this Land and other defend’d to the Tenant, and to the said 
D. who made Purperty; for it may be that D. releas’d with Warranty 
to the Tenant. Br. Counterde Voucher, pl. 50. cites 18 E. 3. and 

27. In Precipe quod reddat, the Tenant vouch’d himself by a strange 
Name, and was compell’d to shew Caufe, whereupon he shew’d Gift in Taill 
by M. who’s Heir he is; and the Demandant said that he had nothing of 
the Possession of M. And per Cur. non allocatur; for this is to the Lien 
or Warranty, and not to the Possession; by which he counterpleaded 
the Possession of M. &c. Br. Counterde de Garrantie, pl. 15. cites 21 
E. 3. 37.

In Forma 
don the De 
mandant 
counted of the 
Gift to J. 
and N. his 
Feme in Tail 
and convey’d 
as Heir to 
them, and 
the Tenant vouch’d himself by a strange Name, and shew’d Caufe insomuch as a Fine was levied between R. and 
A. and J. and S. his Feme, where J. and S. acknowledged the Righ’t to be to R. and A. come in &c. which 
R. granted, and render’d to J. and S. his Feme for Term of their Lives, the Remainder to the new Tenant, 
and the Heirs of his Body, and that he is also Adverse to R. of the Fee-simple, and so vouch’d himself to safe 
the Taill. The Demandant said that J. S. and his Feme are the same Person to whom he pass’d the Gift to 
be made, and that they continued their Eftates all their Lives, oblique but that R. any thing had, and so 
counterpleaded the Caufe of the Voucher; for where the Tenant is compell’d to shew Caufe, there al 
ways the Demandant counterpleads the Caufe, tho’ his Matter be to the Lien, and the Tenant estopp’d 
him by reason of the Fine levied, and well. And the Truth was, that the Demandant was His Special 
to R. and the Tenant was Heir general, upon whose Warranty Conclusio &c. defended, and not upon 
the Heir special, and yet was awarded a Conclusion; for Per Finch, Stranger nor Privy shall not have 
Averment against this Fine which is executed, by which it was said Per Cur. Answ. quod nota, qua 
Miror inde. Br. Counterde Voucher, pl. 60. cites 42 E. 5. 9.

S. P. Br. 
Counterde 
Voucher, 
pl. 53. cites 
29 E. 3. 32.
That it is a 
good Counterplea that the one of the Vouchers, nor none of his Ancestors who were ever had any thing —— S. P. Br. Counterde Voucher, pl. 65. cites 20 H. 7. 1 —— S. P. by the bel’t Opinion of the Court; for falsa in Part, falsa in all. Br. Counterde Voucher, pl. 57. cites 59 E. 5. 54 —— S. P. Per Wich; but Bell, contra, and that he ought to counterplead the Possession of both.
In Eff haunted, that the Tenant did Felony for which he was outlaw’d, the Tenant vouch’d J. N. and 
the Demandant said that the Voucher nor none of his Ancestors ever had any thing after the Seisin of his Ten 
ant. Perfay said, You ought to counterplead after the Felony, and not after the Seisin; but Per fell 
This cannot be; for it may be that the Tenant purchas’d after the Felony, and then is the Counterplea 
before the Title of the Demandant, which cannot be; for a Man counterpleads all Possessors after his 
Title,

28. In Precipe quod reddat the Tenant vouch’d two, and the Deman 
dant said that the one, nor none of his Ancestors, ever had any thing after the Seisin &c. and held a good Counterplea; Quod nota. Br. Counter 
ple de Voucher, pl. 36. cites 39 E. 3. 36.

Voucher.
29. In Praecipe quod reddat the Tenant vouche'd J. S. and the Demandant said that the Voucher, nor none of his Ancesters, had any thing, but T. P. Father of the Voucher, who had Issue J. S. the Voucher, and one Alice who is alive, not nam'd; Judgment &c. And no Counterplea for the Demandant; for this is to the Lien, which is for the Voucher to plead, and not for the Demandant. Br. Counterplea de Voucher, pl. 57. cites 39 E. 3. 34.

30. In Praecipe quod reddat the Tenant vouche'd; the Demandant said that he who was vouche'd never had any thing but for Term of Life, the Reversion to the Tenant; so that by his Pretence he cannot inoffici him, but may surrender, this is a Counterplea to the Lien, and not to the Possession; S. C. for good Possession to make a Feoffment is confes'd in the Voucher. Br. Counterplea de Garrantie, pl. 12. cites 40 E. 3. 12.

31. In Praecipe quod reddat the Tenant vouche'd one J. and the Demandant said that he nor none of his Ancestors ever had any thing in Demesne nor Service &c. after the Title &c. but his Father, who was seised by Caufe of Coverture of this same Tenant who vouche'd; Judgment &c. and no Counterplea, because he has confes'd that he may make Feoffment, which suffices for the Tenant to vouche. Br. Counterplea de Voucher, pl. 7. cites 40 E. 3. 23.

32. Note, that in Praecipe quod reddat, viz. Formedon, where the S. P. Br. Tenant vouche'd, it is no Counterplea that the Voucher, nor none of his Ancestors, ever had any thing after the Seisin of his Ancestors, but after the Gift; for if there was a Difficult in the Discontinuance, this is a 39 E. 3. 56. Seisin, yet this does not ouit the Tenant of his Voucher which he had before. Br. Counterplea de Voucher, pl. 9. cites 41 E. 3. 15. pl. 16. cites 46 E. 3. 32. and so is 25 E. 3. as said there. — S. P. Br. Counterplea de Voucher, pl. 21. cites H. 4. 19.

* Per Carthy, He ought to say after the Gift, and before the Writ purchas'd; for if the Voucher was feiled pending the Writ, and inoffic'd the Tenant, there the Tenant shall have the Voucher; by which the Demandant said to. Ibid. pl. 45. cites 21 E. 4. 32.

In Formedon in Definder, the Tenant vouche'd to Warranty W. who vouche'd B. The Demandant counterplead, because B. nor any of his Ancestors any thing had after the Gift, so as they might inoffic't the said W. Harpur thought the Counterplea ill, and that he should have said generally, viz. so as they might make Feoffment, without saying any thing of the inoffic't him that vouche'd; but Dyer and Welf con'ta, and that this is the Form. Welton was of the contrary Opinion, but Leonard and all the Clerks said that the Form of Entry always was as here pleaded; and Bendlow said he had seen the Book of Entries, and that is according to the Pleadings here. Mo. 66. pl. 173. Trin. 6 Eliz. Felton v. Capell.

33. In Aaffin the Tenant pleaded a Feoffment of the Grandfather with Warranty, and demanded Judgment &c. And the Plaintiff confess'd and avoided the Warranty, because the Grandfather at the Time had nothing but for Life, the Remainder over, and he in Remainder enter'd for Alienation. Br. Aaffin. pl. 38. cites 49 E. 3. 11.

34. Formedon. In Praecipe quod reddat brought the Tenant made Default s. p. Br. after Default, and E. came and said that he is in Reversion, and pray'd to be receiv'd, and was receiv'd, where in Fact he purchas'd the Reversion pending the Writ, and after he vouche'd, and the Voucher was counterplead, inasmuch as he had nothing in Reversion the Day of the Writ purchas'd, and good Counterplea; for he who purchas' Reversion pending the Writ, shall not turn the Demandant in Delay. Br. Counterplea de Voucher, pl. 32. cites 21 H. 6. 14. and M. 10 E. 3. [at the End of the Cafes before.]

35. The Demandant shall not counterplead but to the Possession, unless in special Cases; Per Fineux, Davers, and Brian Ch. J. Br. Counterplea de Voucher, pl. 44. cites 8 H. 7. 5. As in Formedon, the Tenant vouche'd W. N. and the Voucher granted, and the Voucher died; by which the Tenant vouche'd again C. Sen and Wife of the first Voucher, and by his Nomage pray'd that the Parti demur; the Demandant counterplead that the Ancestor had nothing
36. In Precipe quod reddat, the Tenant vouch'd W. G., who appeared at the Sequitur, and alter died, and alter the Tenant vouch'd S. the Heir of W. G. and by his Nonage pr'y'd that the Parcel demur; the Demandant said that W. G. the Ancestor had nothing, unless jointly with W. T. who survive'd. And per Fines, Vavifor, Brian, and Townlend, it is no good Counterplea by the Statute nor by the Common Law. Br. Counterplea de Voucher, pl. 63. cites 13 H. 7. 24.

37. In Formedom the Tenant vouch'd 3 several Heirs to 3 who made the Warranty, and pr'y'd that the Parcel demur for the Nonage of the one; and the Demandant counterpleaded that the Ancestor of the Infant, nor the other two who are vouch'd, nor any of their Ancestors &c. ever had anything &c. and a good Counterplea &c. Br. Counterplea de Voucher, pl. 64. cites 16 H. 7. 13.

38. In Formedom the Tenant vouch'd the Baron and Feme; and the Demandant said that the Feme nor none of her Ancestors whose Heir she is, ever had anything after the Title of his Writ; and a good Counterplea, notwithstanding that those Words whose Heir she is, are in the Plea; for those Words are not in the Statute, yet it is according to the Effect of the Statute, and it is good without counterpleading the Possession of the Baron. Br. Counterplea de Voucher, pl. 65. cites 20 H. 7. 1.

39. If a Feme covert be Tenant by Restit in a Formedom in Remainder, and vouches, it is no Counterplea that she has nothing but jointly with her Baron; for the Feme ought not to lose her Estate by Laches of her Baron; for it is intended that this Jointenancy was made during the Coverture, and then no Moieties between them, and now she is by the Receipt as a Feme sole &c. D. 341 a. pl. 51. Patch. 17 Eliz. Anon.

(S. a) Counterplea by Demandant. What shall be good Counterplea.

1. If the Tenant vouches 3 Heirs in Gavelkind within Age, and prays the Parcel to demur, it is no good Counterplea of the Voucher by Demandant, that they have not any thing by Defect in Gavelkind by Defect. 25 E. 3. 38 b.

(T. a.) How

1. If a Man vouches himself to save the Tail, Process shall be made against himself, because without Process of Warranty other Land cannot come in Value thereof. 8 R. 2. Apd de Roy 114. Agreed.


1. The Vouchee may counterplead the Warranty. 44 E. 3. 2.

2. As he may lay that the Tenant had nothing in the Tenancy. 44 E. 3. 2.

3. It is not a good Counterplea to the Warranty, that the Warranty commenced by Difficult, because the Warranty here is demand ed against him as Heir, in Nature of a Covenant. 50 E. 3. 12. b. Br. Counterpleas de Gar ranty, pl. 1. cites S. C. (But quere)

4. It is a good Counterplea of the Warranty by the Vouchee, that the Tenant is in of other Estate than the Estate upon which the Warranty was created. 14 H. 6. 26. Br. Counterpleas de Voucher, pl. 62. cites 50 E. 3. 25.

5. So the Voucher may lay that he himself was Difficult, and so made the Feoffment, and Difficult has re-enter'd, and so Tenant is in of other Estate. Contra 14 H. 6. 26. because he cannot say that he himself was Difficult.

6. It is a good Counterplea to the Warranty by the Vouchee, that the Feoffment was made by him to the Voucher and a Stranger, and to the Heirs of the Stranger who is alive, and not joined in the Voucher.

7. It is no good Counterplea, that where he is vouch'd as of full Age, that he is within Age. 17 E. 3. 59. Adjudged. [But] It is a good Counterplea, that where he is vouch'd as of full Age, that he is within Age, and in Ward. 17 E. 3. 70.

9. If a Man be vouch'd as Son and Heir to J. S. it is good Counterplea that he does not claim to be Heir to the said J. S. of any Inheritance, because he is a Bastard. 56 H. 3. Itinerer Stafford. Nor. 6. Dembrana 2. of the said Roll. Adjudged.

10. It is not any Counterplea, that the Tenant might have abated the Writ by Non-tenure of Parcel, and would not, if he be vouch'd only for the Residue; for then no Prejudice is to the Vouchee thereby. 17 E. 3. 42. Curia. If he were not Tenant at the Re turn of the Writ, he might abate the Writ by pleading Non-tenure; but if in that Case he vouch'd over, then as to himself he admitted the Writ good; but then the Vouchee might counterplead the Tenancy: but if the Vouchee does not counterplead the Tenancy, it is good as if they all by Ellorpel. Pig. of Recov. 29.
11. If the Tenant vouches as Tenant of all the Land in Demand, it
is a good Counterplea for Voucher, without showing of the Deed
of the Lien, that he is to warrant but Parcel in certain. 18 C. 3. 49.
4. 41.
12. If the Demand be of the 3d Part of a Manor, and the Tenant
says that he is Tenant of the 3d Part of the Manor except the Advo-
tion and Knight's Fees, and of the said 3d Part vouches another; if the
Deed of Lien be to warrant the 3d Part saving the Advowson and
Fees of Knights, the Voucher cannot counterplead it, that he has
vouch'd him of the 3d Part without the Exception; for it cannot be
intended that he vouch'd otherwise than he took upon him the Ten-
nancy, which is with the Exception. 18 C. 3. 40. b. Adjudged.
13. So in this Case it is not any Counterplea, that the Voucher
has not in certain the Thing which is excepted, because it is according
to the Specialty, and the Voucher is enough Consultant of the Cer-
tainty, he or his Ancestor being Party to the Deed. 18 C. 3. 40. b.
Adjudged 41.
14. In Formerdon of Tenements in D. Per Newton, if the Tenant
vouches J. N. who enters into the Warranty, and pleads Rekfafe with
Warranty collateral of the Ancestor of the Demandant, who's Heir &c. in Bar
of Tenements in S. where the Writ is in D. and ought to have been in S. There the Voucher, by his Pleading in Bar, has affirmed the Writ good,
where he might have pleaded this Matter as Counterplea to the Lien at first.
Quod non; for by the Warranty in S. he is not bound to warrant in D.
15 Warrantia Chartera against O and M. his Wife, and counted that
O and M. levied a Fine 2 Ja. to the Defendant and his Heirs with Wa-
rantry; the Defendant pleaded that the same Term a Stranger brought a Writ
of Entry for Difficultia [in the Fer] against the Plaintiff, who vouch'd O.
only, and thereupon a Recovery pass'd to the Use of the Plaintiff for Part of
the Land for his Life, with diverse Remainders in Tail, with the Remain-
der to the Plaintiff in Fee. Resolved by all, prater Winch J. that the
Warranty was destroyed by the Severance and Decision of the Land. It
was agreed by all but Warburton, that because it appeared by the Plea
in Bar, that the Use of the Recovery was to the Plaintiff but for Life; so as the Plaintiff is in of another Estate, that he could not have a War-
rantia Chartera to recover upon a Warranty in Fee. But Warburton
thought that the Statute 27 H. 8. of Uses, gave the Benefit of the War-
ranty to Celfy que Use, and that he shall vouch as Assignee, and have
Warrantia Chartera; and that Tenant for Life, created by an Use, shall
have Benefit for his Time of the Warranty, and may vouch, or have
Warrantia Chartera; but that he must make his Count accordingly, which
he has not done in the principal Case. Mo. 859. pl. 1180. Trin. 9 Jac.
Roll v. Osborn & Ux'.

4 Le 259. pl 407, S.C. states the Uses of the Recovery by R. the
Plaintiff to the Use of R. for Life, and if a Marriage be had be-
tween him and A. S. within four Years, then to the Use of A. S. for
her Jointure, Remainder over. And it was ar-
gued for the Plaintiff,

That here was no Alteration of the Estate, to which the Warranty is annex'd; for tho' the Recovery
was had the same Term, and a Voucher upon it, yet because the Uses did not take Effect presently, but
were contingent, R. remain'd Tenant in Fee-simple as before; and to the first Warranty not destroy'd. Adjourn.——Hob. 20. pl. 57. S.C. states the Uses as in Le 259.——2 Brownl. 169. S.C.
argued.

(X. a) Coun-
(X. a) Counterpleas by Vouchee. At what Time it may be counterpleaded.

1. If Vouchee demands of the Tenant what he has to bind him to the Warranty, he cannot after say that the Tenant has nothing in the Tenancy; for by the Demand he admits him Tenant. Br. Voucher, pl. 28. cites S. C. E. 3. 2.

2. If the Tenant vouches, shewing Cause of Voucher, in Case where Cause ought to be shewn, and Demandant does not traverse it, but the Vouchee enters into the Warranty, and pleads a Deed of the Great Grandfather of the Demandant, and another Deed of the Grandfather of the Demandant, and the Demandant demands of him, to which Deed he will hold him, and he says to one in certain; the Demandant cannot traverse the Cause of Voucher after, inasmuch as he has accepted the Voucher before. 25 Ann. 14. Curia.

3. In Praecipe quod reddat the Tenant vouch'd. The Vouchee came ready to enter into the Warranty, and the Tenant shew'd Release of him with Warranty, bearing Date at Trinity Term. Finch, for the Demandant, pl 23 cites pray'd Seilin of the Land, because the Deed bore Date pending the Voucher; S. C.— he having vouch'd in Easter-Term. Morrice said, This is no Plea for the Voucher, but for the Voucher. But per Knivet, It may be that the Demandant cannot have any Counterplea, by reason of the Seilin of the Voucher after &c. and therefore, before the Entry into the Warranty, the Demandant remains Party to pray Seilin of the Land; for now it appears that you had not Cause to vouch the Day of the Voucher; and after the Vouchee enter'd into the Warranty, and vouch'd over. Br. Voucher, pl. 56. cites 38 E. 3. 13. 14.

4. In Praecipe quod reddat the Tenant vouch'd 7. P. and at the Summons ad Warrantzandum return'd, came J. P. Chaplain, and demanded the Lien; and the Tenant said that he vouch'd another of the same Name; and the Demandant pray'd Seilin of the Land, because the Tenant had vouch'd, and could not bind the Vouchee to Warranty. Finch said that the Demandant cannot counterplead after the Voucher granted, and therefore Proces siiued against the Vouchee with Addition; so that he who appears shall not be grieved &c. Br. Voucher, pl. 29. cites 45 E. 3. 6.

(X. a. 2) Counterplea. What is an Etroppel.

1. In Formedon the Tenant vouch'd, and the Demandant said that the Vouchee, nor none of his Ancestors, had ever any Thing after the Seilin of the Done. Per Kirton, You ought to say that they had nothing after the Gift; and after he pass'd, and shew'd that he, whom he vouch'd, granted and render'd by Fine to the Ancestor of the Tenant; Judgment it against the Fine. And the best Opinion was, That it is no Etoppel, and that it stands with the Fine, by which the Tenant maintain'd that he was seised, prizt; and the others econtra. Br. Counterplea de Voucher, pl. 26. cites 38 E. 3. 28.

2. If the Tenant prays Aid of the King, after Procedendo he shall not vouch a Stranger. Br. Aid del Roy, pl. 3. cites 9 H. 6. 3.

3. In
3. In *Precipe quod reddat*, the Tenant *vouch'd* and said that the Vouchee is within Age, and pray'd that the Parol Demurr; the Demendant said that the Vouchee is of full Age, and pray'd that he might be view'd; by this he has lost the Advantage of counterpleading the Voucher after. Per Cur. Br. *Eftoppel*, pl. 222. cites 22 H. 6. 48.

4. *Trefpaso Anno R. 2*, the Defendant pleaded a *Feoffment* with *Warranty* of the Ancestor of the Plaintiff whose Heir the Plaintiff is; Judgment if against the Deed of his Ancestor &c. which comprehends Warranty &c. and the Opinion of the Court was that it is no Plea; for he *does not demand* Franktenement nor Recover Franktenement by this Action, but only Damages. Br. *Garrantics*, pl. 37. cites 14 H. 7. 22.

Plaintiff says that the Ancestor of the Defendant, whose Heir he is &c. by this Deed infeoffed him with Warranty, and demands Judgment, if against the Deed with Warranty of his Ancestor he shall be received to say that this is his Franktenement, this is a good Plea. *Ibid.*

5. There is a *Diversity* between a Warranty on the Part of the Mother, and an *Eftoppel*; for an Eftoppel of the Part of the Mother shall not bind the Heir, when he claims from the Father; As if Lands be given to the Husband and Wife and to the Heirs of the Husband, the Husband makes a Gift in Tail and dies, the Wife recovers in a *Caí* in *Vita* against the Donee, supposing that the he had *Fee-Simple*, and makes a *Feoffment* and dies, the Donee dies without *Issue*, the *Issue* of the Husband and Wife bring a *Forceden* in the *Reverter* against the *Feejee*; and notwithstanding that he was Heir to the Eftoppel, and the Mother was *eoffe*d, yet for that he claim'd the Land as Heir to his Father he was not *eoffe*d. Note, that Warranties are favour'd in Law, being part of a Man's *Affurance*, but Eftoppels are odious. Co. *Litt*. 365. b.

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(X. a. 3) **Penalty of Vouchee's denying his Warranty.**

*Albeit the 1. Stat. Weft. 2. *W*HEN any *Demandise* Land against another, and the Party, that is impleaded, *vouch'd* *Warranty,* neit forque Revocation de error *uui* *vouche* a droit ley, yet the Tenant, according as it is here recited in the Preamble of this Act, after the Warranty tried could have no other Judgment, but that the Vouchee should *Warrant* the Land according to the *Voucher* of the Tenant; but this was many times in great *Delay* of the *Demandise* by *Collusion* or *Agreement* between the Tenant and the Vouchee, for Remedy whereof this Statute was made. 2 *Inf* 366.*

*This is not to be understood only where the Vouchee denies the Deed or other Cause of the Warranty, and thereupon *Issue* is taken and found against the Vouchee. And where the Vouchee enters into the Warranty, and demands of the Tenant what he hath to bind him to Warranty, and the Tenant shews Special Matter to bind him to Warranty, and the Vouchee denies in *Law upon the Lien*, this is within the Remedy of this Act; For the Words subjoined be, *Si convocarit quod Warrantiare debat*, which the Vouchee is in this Case. And this Act being made to quiet delays, which are odious in Law, is to be interpreted favourably.* 2 *Inf* 366.
Voucher.

Wherefore our Lord the King hath ordain'd, that like as the Tenant should lose the Land in demand, in Case where he vouch'd, and the Vouchee could discharge himself of the Warranty, in the same wise shall the Warrantor lose the Land in Case where he denotes his Warranty, and it be tried against him that he is bounden to Warranty; and if an Inquest be depending between the Tenant and the Warrantor, and the Demandant will require a Writ to cause the Jury to come, it shall be granted him.

And it is to be observed that here is (like as, or, whatsoever) an Adverb of similitude, viz. like as the Tenant should lose the Land in Case he vouch'd, and the Vouchee could discharge himself of the Warranty; under which Words are included, if the Vouchee can devolve him of the Warranty by Demurrer or any Issue whatsoever, codem Modo (faith this Aet) amittat Warrantus &c. which fortifies the former Exposition that hath been made; and to be short, wherefore the Judgment at the Common Law should have been against the Vouchee upon false Plea, or demurrer &c. and Warrantizaret, all these Cases are within the Provision of this Act. 2 Inst. 567.

(Y. a) Voucher. What Act or thing will abate a Voucher. Act of God.

1. If Baron and Feme are vouch'd, and the Feme is return'd Dead, if Baron and Feme are vouch'd, and the Feme dies, he shall not have new Voucher, but the Processe shall be continued against the Baron &c. Thelos's Dig. of Writs, lib. 12. cap. 3. S. 8. cites 50 E. 3. 40. Per Writ.

Where the Warranty was by the Baron and Feme, and the Feme died pending the Writ of Warrant's Charta against the Baron and her; it was resolved that the Writ should not abate, the Warranty being by both, and for the Heirs of the Baron, so as by the Death of the Feme the Warranty as to her is determined, and stands good for the Baron and his Heirs. Mo. S59. pl. 1180. Trin. 9 Jac. Roll v. Osborn.

2. If two are vouch'd and the one is return'd dead, the Voucher shall abate, because the Survivor shall not be charged of the Whole, but he and the Heir of the deceased jointly. 17 C. 3. 41. b. Contra 32 E. 3. 31. b. adjudged.

The Lords Dig. of Writs lib. 12. cap. 3. S. 5 cites S.C. that the other was not demanded, but the Tenant was forced to revouch him who was alive and the Heir of the other for the Reason within mention'd, and cites 19 H. 6. 53. accordingly, but adds Quere.

3. If a Man be vouch'd and return'd dead, the Voucher shall abate. 18 C. 3. 38. b. 50 C. 3. 2. b. 21 C. 3. 36. 37.

4. The Demandant cannot abate the Voucher upon a Nihil return'd that the Vouchee is dead, if the Tenant will not acknowledge it; but it ought to come by Return of the Sheriff. 21 C. 3. 36. b.

5. But the Tenant after Voucher cannot say that the Vouchee is dead without the Return of the Sheriff, for he has put his Answer in the South of the Voucher, and therefore he makes Default, the Demandant shall have Seisin of the Land. 18 C. 3. 38. b.

6. If the Tenant vouches and the Voucher is counterpleaded by S.P. For the Statute, the Tenant cannot say that the Vouchee is dead pending the Tenant ought to maintain the Issue, because if the Counterplea be good, the Demandant shall recover Issue taken.
7. But if the Counterplea be found false, and the Voucher grants it, then upon the Process, if the Voucher be return'd dead, the Voucher shall abide. 50 E. 3. 2. b. 3.

8. If the Tenant vouch'd and the Demandant grants it for Part, and for the Residue counterpleads it by the Statute, and upon the Process against the Voucher for this Part, whereas the Voucher is granted, the Voucher is return'd dead, yet this shall not abate the Voucher for the Residue, whereof they are at Issue upon the Counterplea, because if the Counterplea be good the Demandant shall recover the Land, which Benefit for the false Voucher shall not be taken away by this Return for the other Part. 50 E. 3. 2. b. adjudged.

9. If one be vouch'd in Ward of divers Lords, and at the Sequestration in two Periculuses one Lord is return'd Dead, the Voucher shall abide against all, and the Demandant shall not have Seisin of the Land. 22 E. 3. 3. b.

10. The Parol was put without Day by the Nonage of the Voucher, and at the Refummons the Tenant said that the Voucher is yet within Age; Judgment of the Writ, which supposes that he is of full Age. To which the Demandant said, that the Voucher was dead &c. Whereupon the Tenant was put to answer over, because the Demandant could not have Writ of Refummons of other Form. Thelotis's Dig. of Writs, Lib. 14. cap. 10. S. 4. cites Trin. 31 E. 3. Refummons, 29.

(Y. a. 2.) Act of the Demandant.

If 2 vouch, and one makes Default after [Default,] he shall lose the Moiety; but the Voucher shall stand for the other Moiety. 42 E. 3. 17. b.

Precipe quod reddat, by 2 Femes. The Tenant vouch'd, and Process continued till the Summones ad Warrantandum firum Pluries. And the one Plaintiff had taken Baron pending the Writ, and was nonstitut and ferved; by which the Writ was awarded good for the other, and did not
not abate for all, notwithstanding that the Tenant pleaded it to the Writ. Br. Voucher, pl. 83. cites 39 E. 3. 16.

(Y. a. 3) Verdict.

1. F 2 are vouch'd, and their Possession counterpleaded, and it is found that one was seized, and the other not, the Voucher shall abate for a Moiety, and the Demandant shall recover it. 48 E. 3. 28.

2. It is also held, that it shall abate in the Whole. 48 E. 3. 29.

3. If Baron and Feme are vouch'd, and their Possession counterpleaded, and found that the Feme only was seized, the Voucher shall not abate for any Parcel. Dubitatur 48 E. 3. 28.

(Z. a) Voucher. Revoucher. In what Cases Revoucher may be.

1. If the Vouchee be return'd dead by the Sheriff, he may revouch. 17 E. 3. 41. b. 56. b. 22 E. 3. 3. b. 20. b. 38 E. 3. 27. b. Adjudged. Contra 7 H. 4. 15.

2. But if he shall not revouch upon Return of Nihil by the Sheriff, upon Suggestion that the Vouchee is dead, because no Issue can be taken upon it. 17 E. 3. 41. b. 21 E. 3. 36. b. 37.

3. If at the Grand Cape ad Valentiam return'd served against the Vouchee, the Vouchee makes Default, the Tenant may say that he is dead, and revouch without Return of the Sheriff, (because otherwise the Demandant shall have Seisin of the Land,) 22 E. 3. 18.

4. If a Man vouches himself, and shews Cause, and the other deems the Cause is not good, and it is adjudg'd no Cause, the Term on which he may vouch again. 11 H. 6. 44.

5. But otherwise it is if it be adjudged after Adjournment to other Term; for then Judgment shall be to recover the Land. 11 H. 6. 48.

6. If a Vouchee vouches, shewing Cause, in a Case where he ought, and the Cause is traversed, the Voucher may revouch immediately. 17 E. 3. 47. Adjudged.

7. In Dower the Tenant vouch'd the Heir, and had Judgment by Default against the Heir, because he had Assets, and that the Tenant held in Peace. And after the Heir reversed the Judgment by Writ of Diffeit, and the Demandant brought Writ of Scire Facias against the Tenant, and the Tenant vouches the Heir; there the Heir may extort him from the Warranty.
rancy by the Judgment in the Writ of Dicect. Br. Counterplea de Gar-
ranty, pl. 10, cites 4 E. 3. and Fitzh. Seire Factions, 140. Per Scott.
8. Where the Baron and Feme were vouche'd, and the Baron died, the
Tenant was received to vouch the Heir of the Baron only. Theloa's
Dig. of Writs, Lib. 12. cap. 3. S. 7. cites M. 26 E. 3. Voucher 130.
9. In Mortdancelor the Tenant vouche'd, and the Vouchee cast Effain at
the Summons return'd, and was quash'd, and Refimmons awarded against
the Vouchee; for such Procefs shall be against the Vouchee as against the
Tenant. Quod nota. Br. Proces, pl. 96. cites 22 All. 79.
10. If a Man vouche'd, and the one makes Default, by which Judgment
is given of the 4th Part of the Demand, and after in another Action, of the
vouche'd, the Tenant may vouche again, and the Voucher is good against all ;
and if the others have nothing, he who render'd in Value before shall
Voucher 305.
11. Two were vouche'd, and at the Sequatur the one was effign'd de Ser-
cito Regis, and the Sheriff return'd that the other was dead ; upon which
the Tenant was not receiv'd to revouch the Survivor, but the first
Voucher is dead and was continued against him. Theloa's Dig. of Writs,
12. When the Tenant has the Choice of Vouchers, and takes him to one,
and thereupon proceeds to Judgment, he loses the other, and can never re-
reatro it again; as in Case of diverse Pleas in Bar, where the Action
comes to a final Judgment upon one. Per Hobart Ch. J. Hob. 29. in
Cafe of Roll v. Osborn.

(A. b) Voucher. What Person may be vouche'd. After
a Voucher where he may vouche at large.

1. If the Vouchee be return'd dead, he may vouche at large. 38 E.

3. 27. b. S. P. The-
leoa's Dig.
of Writs,
lib. 12. cap.
3. S. 4. cites

2. [But] if the Voucher be return'd dead, he can not vouche a
Stranger out of the Blood of the first Vouchee. 41 E. 3. 29. 30 E.

2. 24. b. in the same Original without shewing Caufe.

3. If two are vouche'd, and one is return'd dead, the Tenant may
vouch at large; for peradventure he has badly vouche'd before. 4
D. 4. 1. adjudged.

4. But if the Tenant vouche's, and Vouchee enters into the
Warranty, tho' the Vouchee (as it seems) after dies, the Tenant shall
not vouche at large, because by Entry into the Warranty the Court
is apprized that the Voucher is good. 4 D. 4. 1. Curia.

5. If a Man vouche's J. S. and after the Writ abates by the Death of
the Tenant, in a new Writ against his Heir he may vouche at large, be-
cause it is a new Original. 30 E. 4. 24. b.

6. If a Man vouche's B. within Age, as Son and Heir of A. by which
the Parol demurs, and after B. dies, in Refimmons Tenant cannot vouche
C. as Cousin and Heir of B. B. having a Sister of the Hall-blood; for
it cannot be intended but that the first Voucher was, because of a
Lien made by A. and by this Lien the Sister ought to be vouche'd,
and not the Cousin. 43 E. 3. 3. adjudged.
Voucher.

The Tenant vouch'd E. as Son and Heir; the Demandant said that J. is younger Son, and W. the eldest, the Tenant said Prote- 
5033, "he enters'd as Heir after A.'s Death; and because the De- 
mandant could not deny the Entry of J. as Heir, the Voucher stood. Br. Counterple de Voucher, pl. 
52; cites 53 E. 3. 12.

8. If one Coparcener vouches herself and her Sister as Heir to another, 
throwing Caufe as the ought, and the Caufe is travers'd, the may re- 
vouch any Stranger presently. 17 E. 3. 47. b. agreed; for this waives 
the first Voucher. Br. Voucher, 
pl. 50. cites 52 S. C.

9. So the may revouch her Sister only, who was vouch'd before. 17 
E. 3. 47. adjudged.

10. In Dower the Tenant vouch'd the Heir of the Baron in the Ward of 
such a one, and the Sheriff return'd that the Infant is dead &c. upon which 
the Tenant revouch'd the Heir of the first Voucher in Ward of the same Guar- 

dian. Thelot's Dig. of Writs, lib. 12. cap. 3. S. 12. cites M. 22 E. 
3. 20. 21.

11. He who fails of his Voucher cannot vouch again. Br. Voucher, 
pl. 52. cites 53 E. 3. 26.

12. He who vouches where the Demandant counterpleads, may relin- 
quish it and vouch other; quod nota. Br. Aid del Roy, pl. 14. cites 

13. In Precipe quod reddat the Tenant vouch'd E. and the Demandant 
as to 3 Parts counterpleaded the Voucher, and as to the 4th Part granted the 
Voucher; and the Sheriff return'd the Vouchee dead, by which the Tenant 
would have revouch'd for the whole, and could not for 3 Parts; for as to 
these the Parties are at Issue, and the Death of the Vouchee does not 
abate the Issue; for he is a Stranger. And to the 4th Part he vouch'd 
J. Son of E. who shall be summon'd &c. and the Demandant said that 
the Tenant and he who is vouch'd are one and the same Person; Judgment if 
without Caufe flown, by which he shall'vouch other Cause. Br. Voucher, 
pl. 43. cites 50 E. 3. 2.

14. In Precipe quod reddat, if the Tenant vouches J. S. to Warranty, 
and the Sheriff return'd him dead, by which the Tenant vouches R. S. Son 
and Heir of the said J. S. it is no Plea that there was not any R. S. Son 
and Heir of the said J. S. the Day &c. for he may bind him by his own 
But if he vouch'd R. S. Son and Heir of 
J. S. within 
the said 
pry'd that the Parol demurr, then it is a good Counterplea. Note the Diversity in Appeal. 
Br. Coun-
terple de Voucher, pl. 48. cites 21 E. 4. 71.

15. In Formedon the Tenant vouch'd M. and the Voucher granted, 
and the Vouchee died, and the Tenant vouch'd C. Son and Heir of this same 
M. who is within Age, and pray'd that the Parol demurr. And per Brian, 
where the Tenant is vouch'd, and the Vouchee dies, as here, the Ten- 
ant shall not vouch at large, without shewing Caufe. Br. Voucher, pl. 
107. cites 8 H. 7. 5. 6.

16. It was said, that if he vouches one within Age, and pray's that 
the Parol demurr, he cannot vouch at large alter. Quære if he cannot if 

17. If I have recover'd in Value, I shall never vouch again for those 
Lands by Force of the first Warranty, because it was once executed. 
And by the same Reason, if I once have had Judgment to have in Value up- 
on a Warranty, I shall not vouch again upon the same Warranty for the same 
Land. Hob. 27. in Case of Roll v. Osborn.

18. Tenant in Tail, the Remainder or Reversion lies a Fine to me and 
my Heirs with Warranty, and then I suffer a Recovery to bar the Remain- 
der, and vouch the Tenant in Tail, as I mut, and so the Recovery pallet with
Voucher.

with his ordinary Judgments, and after a Stranger sues me for the Land upon Title; in that Case and the like I hold; that I may vouch my Con复or again; for the other is known in Law, and to the Court, to be a feign'd Recovery, and by Confent, and to be but Part of the Assurance of the Land between the Parties, to bind the Remainder or supposed Remainers, and not in Execution of the true Intent of the Warranty. Hob. 28. in Cases of Roll v. Osborn.

(B. b) By what Name the Revoucher shall be.

1. If Voucher he return’d dead, he ought to vouch the Heir as Heir.
   41. C. 3. 29.

(B. b. 2) Foreign Voucher, or Voucher of Foreigners.

The Mfr. 1. Stat. Glouc. 12. P rovides, that if a Man impleaded for a Tenement chief at the
   Common-Law, when the Tenant did vouch one to Warranty, and say’d that the Voucher might be sumon’d in a foreign County, was the great Delay that the Demandant had thereby, and specially in London; for that in London the Plea could not be remov’d neither by Tolt nor Bone; but the Plea was put without Day, and the Record remov’d by the King’s Writ into the Court of C. B. &c. and some did hold that at the Common Law the inferior Court was put out of Jurisdiction. 2 Inf. 334.

* London is specially want’d for the Caufe of a Plea, but Extends by Equity to all other privileged Places where a foreign Voucher is made, as to Chefher, Durham, Saltp &c. 2 Inf. 335.—Upon foreign Voucher in Cheshire or Durham the Plea shall be remov’d by Revoucher. Br. Voucher, pl. 156. cites the Register, fol. 6 &c.

What is within the Equity of this Statute. See Jenk. 41. pl. 58.

Ancient Demesne is (as some do hold) within this Statute, because the Freehold is in the Tenants, and is within these Words (Soit impale de tenement;) but otherwise it is of a Tenant by Copy-roll in a Court Baron, because he hath no Franktenement. 2 Inf. 325.

In Ancient Demesne, if the Tenant vouches a Foreigner to Warranty, the Tenant shall have Superfesades and Writ of Warranta Charte. Quere; for the Peer cannot be remov’d by the Equity of the Statute of foreign Voucher in London. Br. Warrantia Cartae, pl. 22. cites 81 E. 3. and Pitz. Voucher 222.—If a Writ of Right is brought in Ancient Demesne, and the Tenant vouches a Foreigner to Warranty, the Tenant in this Case may bring his Writ of Warranta Charte against the Foreigner at Common Law; and when this is determined in the Common Pleas, it shall be certified to the Chancery, and the Chancellor shall command the Bailiffs of the Ancient Demesne to proceed; but in the mean Time a Superfesade shall be awarded out of the Chancery to lay the Suit in Ancient Demesne. By all the Judices. Jenk. 41. pl. 78.

That is, Vouch a Foreigner to Warranty,

when one vouch’d, and the Tenant prays that the Voucher may be sumon’d in a foreign County. 2 Inf. 325.

This Art being a beneficial Law for the Furtherance of Justice, and for outhing of Delay, is taken in this Point also by Equity, not only to foreign Pleas in real Actions, but also to Pleas, also’i they be not foreign, yet for Default of Power to proceed, the same shall be remov’d ut supra, and demanded ut supra: As it is in an Action Arrestrawl, the Tenant plead Beforely in the Demandant, or in a Writ of Dower, the Tenant pleas Ne uniques accouple in loyal Matrimony, neither the Court in London, or any like Inferior Court, cannot award a Writ to the Bishop for Trial thereof; for Nullus alias praeter Regem pollit Episcopo demandare inquititionem faciendam. And another treating of the Plea of Ne uniques accouple, in Bar of a Writ of Dower, says, Ac si alias quam Rex demandaret Episcopo quod inde inquirearet, Episcopus alerat mandatum quam Regium retinere obtemperat. And here with agree our Books in all Successions of Ages. 2 Inf. 325.
Voucher.

And therefore if such Pleas be pleaded in London, or such other Inferior Courts, the Record shall be removed, and after a Writ to the Bishop, and Certificate made by the Bishop, the Record shall be retailed; And it appears that this Act extends to Real Actions wherein Voucher lies, and not to Personal Actions; and last that foreign Vouchers should be us'd for Delay, they must have a Charter &c. comprehending Warranty, to the Court. 2 Inst. 325.

He shall have a Writ out of Chancery to summon the Warrantor at a certain Day before the Justices of the Bench, and another to the Mayor and Bailiffs of London to salute the Matter before them, until the Plea of the Warranty be determined in the Bench.

An. 9 E. 3. for by that Statute the Mayor and Bailiffs shall adjourn the Parties before the Justices of the Bench at a certain Day, and shall send the Record therein, Et le Justices face sumpsam le garrantie davant eux & penchant le garrante; and hereby the Justices of the Bench shall award the Summons ad voluntate &c. and not fetch it out of the Chancery. And by the same Act of 9 E. 3. it is provided, That if the Pay given in Bank the Tenant make Default, a Petit Case shall be awarded to the Mayor and Bailiffs to give Judgment upon that Default, if it cannot be saved &c. 2 Inst. 324.

Writ of Recordare. Shall be awarded out of Chancery to the Mayor and Bailiffs, to remove the Record before the Justices of the Bench. 2 Inst. 324.

In a Proceed. in the Hugings in London, the Tenant onions out in London, and other foreign Vouchers in the County of Norfolk &c. in this Case, as well the Voucher within London, as the foreign Vouchers, shall be removed; for altho' the Words of this Act be, Vouch forain a garrante, yet because Proceeds must be made against all the Vouchers at one Time, and if Proceeds should be made by the Court of C. B. only against the foreign Vouchers, altho' they come in they should not warrant, nor answer without the others before Proceeds was determined against them in London, fo as Necesfity requires, that Proceeds should be made against all at one Time, and that ought to be done in the more costly Courts; and when the Warranty is determined in the Court of C. B. shall be remand. 2 Inst. 325. 326.

And when the Plea at the Bench shall be determined, then shall the Voucher be this is the Power given to the Justices of the Court of C. B. and this Act is in Nature of a Commission to them, therefore it is good to be seen what is within their Commission; the Words of the said Writ of Recordare are, Ut terminated Vantium Illa Coram praefatu Justicii eadem recordum & Proceeds vobis remittamus &c. 2 Inst. 326.

If the Tenant onions a Foreigner to Warranty, and the Record is removed into the Court of C. B. to determine the Warranty, the Voucher may come over in a foreign Country, and that Voucher may come over; and if the Voucher make Default, the Court may make Proceeds against him &c. Quia quidem Lex allud aliqui concedit, omnia incidentia taceat concedenitur; but none of the Vouchers can plead in Chief, but they must be pleaded in the Inferior Court; for that is not within the said Commission given by this Act. But if the Demandant in Bank appears not, the Court may award a Non-juit as incident, and to the Tenant in Bank it may be assigned. 2 Inst. 326.

In Dower in the Hugings of London against the Husband and Wife, who owns a Foreigner to Warranty, whereupon the Plea is adjourn'd into C. B. to a certain Day, at which Day the Husband and Wife must make a Writ against the Voucher; whereupon the Voucher appears, and the Baron made Default, and the Wife pray'd to be receiv'd upon his Default; and by the Rule of the Court the was receiv'd, and that it was within their Commission, for that the Default was made in this Court, whereupon the Land was to be lost, if she were not receiv'd; for it is a Maxim in Law, Neceditas sub Lege non continuo, quia quid alias non ei fictum, neceditas facti fictum. But yet others are of another Opinion. 2 Inst. 326.

And a Writ also shall be awarded at the Demandant's Suit, by the Justices. That is, the Power given to the Mayor and Bailiffs, to cause them to proceed in the Plan:

whereby they are commanded Quod recordum & procedure eumdem locum sum omnibus ea tangentiibus: butcher's nottis de Banco habet sigillo vel. mutatis &c. esubs to them in a Superficies in Law. 2 Inst. 326.

This is a Proceedendo in Lequen directed to the Mayor &c. to proceed, which you may read in the Judicial Register. 2 Inst. 326.

And if the Demandant recover against the Tenants, the Tenant shall come before the Justices of the Bench, who shall direct a Writ to the Mayor and Bailiffs, to cause the Land to be left by the Tenant to be extended and valued, and to return that Extent, at a certain Day, into the Bench; and after the the Tenant Sheriff of the County (where the Warranty was summon'd) shall be commanded to deliver to the Voucher Land of the Voucher answerable in Value to the Land that the Voucher has lost.

By Force of this Act the Justices of C. B. upon that Record shall award a Writ of Extent &c. appare-
2 Inf. 327. 2. Foreign Voucher shall be determined before Justices Errants. Br. Voucher, pl. 151. (bis) cites Britton, Tit. Court Baron, fol. 274.

3. In Dower in London, the Tenant vouche'd Foreigner to Warranty, by which Procefs was made by the Statute to try the Warranty in Bank at a certain Day; and the Voucher came, and entered into the Warranty, as he who had nothing by Descent ready to render Dower; and the Tenant said that he has Affets by Descent in the County of N. and the Demandant pray'd Seisin of the Land. But the Court said we have not Power to award Seisin of the Land, but to try the Warranty; and because he confes'd the Warranty, the Parol was remanded; quod nota bene. Br. Voucher, pl. 20. (bis) cites 42 E. 3. 1.

4. Formedon in London. The Tenant vouche'd Foreigner to Warranty, by which the Record was sent into Bank, and Procefs made against the Vouchee; and at the Summons returned, the Tenant said that puding this Procefs, it was found before the Escheator in London, that he was seized in Fee long before the Gift, and died without Heir; by which the Escheator seised for the King, and the King gave them to the Tenant by his Patents, and pray'd Aid of the King; and the Demandant demarr'd, because he departed from his Voucher; and yet the Court recorded the Aid-Prayer, and remanded all into London. Br. Voucher, pl. 24. cites 44 E. 3. 2. 3.

5. In Formedon in Defender brought in London, the Tenant pleaded Release with Warranty of the Ancestor, and Affets descended in Fee in a foreign County; and the Record, after Ilue, was removed by Writ into C. B. to be tried. And to see that London cannot send it into Bank without Writ; but Special Writ ought to come to remove it. Br. Voucher, pl. 120. cites 48 E. 3. 21.

6. If a Man vouchees Foreigner in London, and prays that be be summon'd in another County, and pleads Warranty there, and Affets descended in a foreign County, they shall not be at Ilue there where the Voucher shall be granted; so that Procefs is to be made to the Sheriff of the foreign County, before that the Parol shall be removed into Bank, and then Writ shall come to remove it. And to see that it shall not come into Bank by the sending of those of London, but by Writ of the King, and then it shall be tried in Bank, and remanded. Br. Voucher, pl. 144 cites 48 E. 3. 21.

7. In Formedon against Baron and Feme in London, in the Huflings, the Feme was received in Default of the Baron, and pleaded Release of the Ancestor of the Demandant with Warranty, and Affets descended in a foreign County, upon which they were at Ilue; by which the Record was sent into Bank to try, and there the Feme pleaded Recovery by a Stranger in Bank, against her and her Baron, of the Land in Demand, pending the Writ; Judgment of the Writ. Wich said, We have not Power to abate the Writ, nor to take Ilue upon it; for the Record is sent here only to determine the first Ilue taken in London, and if the Vouchee will vouche over in Banco, it shall not be received; quod Belk. conceffit. But per Perley, If the Demandant will be nonsuited in Bank, the Court shall give Judgment upon it. Quere; for it seems that they shall do nothing but record it, and remand it into London. And per Belk. When they remand the Record, they liew upon what Cause it is remanded. Br. Voucher, pl. 42. cites 49 E. 3. 21.

8. Plea
Voucher.

1. If 2 are vouch'd, and one makes Default, he who comes shall have Idem Dies, till Process is ended, against the other by Grand Cape ad Valentiam. 48 E. 3. 5. b.

2. The same Law in Dower, where an Infant is vouch'd in the Ward of divers Guardains, who have each several Portions in the Ward. 49 E. 3. 5. b.

3. The same Law, tho' one who is vouch'd be deins 1e 6 Portions. 49 E. 3. 9. b.

4. If at the Time of the Voucher the Vouchee be ready in Court, he may enter into the Warranty without Process. 2 P. 6. 1.

(D. b) How the Entry into the Warranty may be.

1. If the Discontinuee vouches the Issue in Tail to the Warranty, the Time may enter into the Warranty, saving to him his Action, according to the Tail. 50 E. 3. 12. b. 11 H. 4. 22.

A Man may enter into the Warranty of Fee-Simple, saving to him his Action of the Tail; per Middleton. Br. Counterplea de Garrantie, pl. 1. cites 50 E. 3. 12.

2. If Tenant in Dower of the Allignment of the Guardian, where he is not dowerable, vouches the Heir, he may enter, saving to him his Action by Affise of Mortdancefor. 50 E. 3. 12.

Fiduciary Action of the Fee-Simple; and in the other Case he warrants the Fee-Simple, saving to him his Action of the Tail; but he can in no Case warrant the same Estate that he faces; per Middleton. But Fulth. contra; and that he may warrant the Fee-Simple, saving Action of Fee-Simple. Quod fuit negatum per aliquos. Br. Counterplea de Garrantie, pl. 1. cites S. C.

In Dower the Tenant vouch'd, and the Vouchee said that he had Affise of Mortdancefor against the same Tenant pertaining of the same Land, and enter'd into the Warranty, saving his Action of Affise of Mortdancefor, and admitted. Br. Counterplea de Garrantie, pl. 6. cites 4 E. 3. and Firth. Vouch. 156. Br. ibid. pl. 19. cites S. C.

3. But if a Fee be demanded, the Vouchee cannot enter into the Warranty, saving to him his Action for the Fee, as because the Warranty commenced by Dissolution. 50 E. 3. 12. b. 13.

In Formedon the Tenant vouch'd, and the Vouchee came in and demanded the Lieu, and the Tenant's Deed of Testament with Warranty of the Father of the Vouchee. The
Voucher.

The Voucher must that his Father had nothing, but at his Will, and to the Warranty commended by Distress; Judgment if he shall be bound to the Warranty. Per Fultch. If it was by way of Action upon this Distress, the Warranty which commended by Distress will not bind you, but now it is demanded against you as Heir of your Ancestor, in which Case, if you have by Decent, you shall be bound to the Warranty, and you may enter into the Warranty, seeing to yourself your Affin. Br. Counterple, pl. 19. cites S.C. — Br. Voucher, pl. 44. cites S.C.

4. He in Reversion or Tail may enter into the Warranty, upon Voucher of Lessee for Life, saving his Action. 18 E. 3. 12.

5. If 2 are vouch’d, and at the Sequestr sub his Penetculo the one comes, and the other makes Default, the Tenant may allege that he who does not come has nothing to render in Value, and upon this he shall have the Warranty wholly against him who appears. 41 E. 3. 3. b.

6. A brought Writ of Entry Sur Distress against B. who vouch’d one B. who enter’d into the Warranty, saving to himself a Rent issuing on of the same Land, and this was allow’d by the Court, and the Voucher was in a Writ of Entry for a Common Recovery to be had. Geldsb. 76. pl. 5. Hill. 30 Eliz. Sherly v. Grateway.

(E. b) Voucher Lien. When he comes in, by what Warranty he may be bound.

1. If a Man be vouch’d as Son and Heir of A. yet he may be bound because of his own Deed. 43 E. 3. 3. 11 D. 4. 29. b. 9 D. 6. 50. 10 D. 6. 18. b. D. 12 El. 290. 62. 63. Contra 43 E. 3. 28. b.

2. So upon such Voucher he may be bound because of Homage Ancestor. 43 E. 3. 3. a Reversion.

3. Or because of Reversion. 43 E. 3. 3. 50 E. 3. 25. b.

A Reversion is cause to vouch and to recover in Value. Br. Voucher, pl 162. cites 10 H. 7. 10. Per Frowick.

4. So he may be bound because of Warranty of other Ancestor. 11 D. 4. 20. b.

5. A Man may be vouch’d as of full Age as Heir to another, and may be bound as within Age when he comes. 50 E. 3. 3. 6.

6. If a Man be vouch’d as Heir to J. S. within Age, and it is pray’d the Parol to demur, he cannot be bound by his own Deed, because by the Special Voucher he has delayed the Demands. D. 12 El. 290. 62. 63. * 21 E. 3. 9. b. 48 E. 3. 28. b. 9 H. 6. 50. Contra to D. 6. 15. b.

7. But in this Case he may be bound by the Deed of other Ancestor.

8. If a Man will vouch one by his Name generally, when he comes in he may be bound to Warranty by his own Deed. 10 D. 7. 22. b. Curia.

9. So in such Case he may be bound to Warranty by the Deed of his Ancestor. 10 D. 7. 22. b. Curia.

10. •
(E. b. 2) Fail of Voucher; What; and the Effect thereof.

1. Recipe quod reddat against B. who vouch'd J. and R. who came but Brooke and demanded the Lien; the Tenant shew'd Deed of J. and of the Father of R. with Warranty, and would bind them by Didi; the Demandant pray'd Seisin of the Land, because the Tenant could not bind them; for Dedi does not bind the Heir but only the Party, and therefore he in the time of H. & to be Voucher is peremptory to the Tenant to life his Warranty, which shall be greater Milchiff than in Warrantia Charter (for there it does not go but to abate the Writ, and the Plaintiff may have another Writ, but he who fails of his Voucher cannot vouch again) and therefore J. shall warrant; by which J. enter'd into the Warranty, and contented the Action; wherefore the Demandant had Judgment to recover against the Tenant, and the Tenant over against J. and J. in Mifericordia. Br. Voucher, pl. 14 cites 39 E. 3. 26. Peremptory, ibid.—Br. Peremptory, pl. 24. cites S. C.

2. If a Man vouches jointly, and binds them by several Deeds, he has fail'd of his Voucher; per Cund. Br. Voucher, pl. 84. cites 39 E. 3. 26.

3. Leave was made for Life by the Heir of the Baron. The Widow S. of Leaves brought Dower, the Tenant vouch'd the Heir, and the Demandant recover'd against the Tenant, and be over in Value against the Heir. Br. Recover, pl. 3. cites 41 E. 3. 24.

and he over in Value; and so it seems clear, that Recover is good Cause to vouch, and to recover in Value. Br. Ibid.

4. In Formedon the Case was, That a Man seised of certain Land leased it for Life, the Remainder over in Tail. The Tenant for Life is impleaded, and vouches him in Remainder, to recover in Value. And it was awarded, that the Tenant shall be ouled of the Lien by vouching him in Remainder; for the Voucher enter'd, and demanded the Lien, and the Tenant shew'd Lease to him for Term of Life, the Remainder to the Voucher; and the Judgment was, That the Tenant shall be ouled of the Lien, and that the Demandant shall recover Seisin of the Land, because the Tenant had pray'd Aid of the same Donor before, and was ouled, and this Voucher of him in Remainder is only in Lien of Aid-Prayer; and the Demandant shall not be delay'd twice for one and the same Cause;
and the Cause adjudged as above, that he has fail'd of his Lien, and there is no Mention there if any Rent be referred or not. And so fee that the Tenure by Service, without Rent, suffices to recover in Value. Br. Voucher, pl. 87. cites 14 H. 6. 25.

(F. b) Voucher; Lier. Who may be bound to the Warranty. [One of the Vouches only.]

Br. Voucher, 1. If 2 are vouch'd, whereas the one shews that he was within Age at the Warranty made, yet the other alone may be bound to the Warranty; for each binds himself to warrant the Whole, and the Voucher was good till this was shown. 39 E. 3. 26.

—Br. Warrantia Carta, pl. 14. cites S. C.—Br. Garranties, pl. 98. cites S. C.—Br. Recovery, pl. 59. cites S. C. That it shall not fail alone upon him of full Age, to make him to render in Value for the Whole; [but it is misprint, and should be as in Roll, and so is the Year-Book.] Where a Man of full Age and an Infant makes Warranty, yet both shall be vouch'd; for it does not appear that the one is an Infant till it be pleaded; but upon this being pleaded, and found, it seems that the other shall warrant the Whole. Br. Voucher, pl. 52. cites 48 E. 3. 12. Per Selk. & Finch.—Br. Baron & Feme, pl. 24. cites S. C.—Br. Garranties, pl. 24. cites S. C.

Br. Voucher, 2. If 2 are vouch'd, and they are bound to warranty because of a Reversion, if the one disclaims, yet the Voucher shall continue against the other. 39 E. 3. 26.

Br. Voucher, pl. 84. cites S. C. per Morrice, which Candifd agreed.

Br. Voucher, 3. If 2 are vouch'd, and when they come, a Deed is shew'd forth, by which it appears that he has Caution of Voucher against one only, yet he shall be bound to the Warranty, for otherwise he should lose his Warranty perpetually, if this should be a Failure of his Voucher. 39 E. 3. 26. Adjudged.


(G. b) When he comes in, [what] he shall plead after Entry into the Warranty.

1. Where a Fee is demanded, and Vouchee enters into the Warranty generally, yet he may lay that he is to warrant only a Fee-Tail, or Estate for Life. 43 E. 3. 7. 44 E. 3. 39. For he enters to warrant such Estate as the Tenant has.

2. So where a Fee is demanded, and the Vouchee enters into the Warranty imply, yet he may lay that the Tenant is but Tenant for Life, and that he warranted only the Estate for Life. 45 Mf. 37. Adjudged.

3. If a Manor be in Demand, and the Tenant vouches anser, who enters generally into the Warranty, and after the Demandant counts against him, he cannot lay that he did not warrant all the Manor.
nor, but that the Warranty was with Exception of a Parcel; for by his general Entry he is concluded to say so. 17 E. 3. 62. b. 53. b.

4. [So] If a Manor be in Demand, and the Tenant vouches another, who comes and demands the Lien, and Tenant says, that his Ancestor interred him of the Manor except a certain Parcel, shewing in what certain, with Warranty, upon which the Vouchee enters into the Warranty, he shall not be bound by this Entry to warrant this, which was excepted; for his Entry was, by Intendment, according to the Lien, and so special. 17 E. 3. 62. a. b.

5. In Formeton the Tenant vouch'd E. who enter'd into the Warranty, and vouch'd D. and D. came, and pleaded that T. had recover'd the Land against the Tertenant pending the Writ, Judgment of the Writ. And per Finch, He shall have the Plea; but whether he shall have the Plea, if the Judgment was before he entered into the Warranty; for then the Tertenant in the first Voucher might have pleaded it. Br. Voucher, pl. 17. cites 41 E. 3. 10. 11.

(H. b) Judgment. At what Time it shall be given for the Tenant or Demandant. [In Writ of Dower.]

1. In Writ of Dower, if Tenant vouches, and Vouchee, upon shewing of the Deed of Lien, denies it, the Demandant shall recover immediately. 17 E. 3. 22. b.

2. In Writ of Dower, if the Heir be vouch'd in the same County, and he counterpleads the Vouchee, because he is not vouch'd in Ward, the Demandant shall not have Judgment immediately, but shall stay till the Counterplea be tried, because, before it be tried, it cannot be known whether the Judgment shall be against the Tenant or the Heir. 17 E. 3. 47. b. 70. b. Absolved.

3. But if the Heir be vouch'd in a foreign County, the Demandant shall have Judgment immediately against the Tenant. 17 E. 3. 70. b.

4. In Writ of Dower by Baron and Feme, if the Tenant vouches the Heir of a Stranger and not of the Baron (as it seems is intended) in Ward of the Tenant who is Demandant, the Demandants shall recover immediately against the Tenants, tho' the Baron of the Demandant be Party to the Issue. 22 E. 3. 3.

5. In Dower the Tenant vouch'd the Heir in Ward of E. who came and said that he had nothing in the Ward, and so to Issue; and the Demandant recover'd immediately. Br. Counterplea de garantie, pl. 18. cites 10 E. 3. 58. and Fitzh. Judgment, 209.


7. If in Dower the Tenant vouches, and the Vouchee counterpleads the Warranty, the Feme shall recover immediately; quod non negatur. Br. Dower, pl. 21. cites 46 E. 3. 25.

8. In Dower if the Tenant vouches the Heir &c. who appears, and they are at Counterplea of the Lien &c. or if the Vouchee after that he is summons'd makes Default, the Tenant shall have Execution immediately against the Vouchee, if he has Land in the same County. Br. Voucher, pl. 125. cites 34 H. 6. 1.
(I. b) In what Cases Judgment shall be given.

1. If a Man be vouch'd in Ward, and at the Sequatur sub suo Porti- culo is return'd dead, and the Guardian does not come, yet the Demandant shall not have Seisin of the Land; nor if the Infant be dead then the Guardian is not now Guardian. *22 C. 3. 20. adjudged. But *48.

(K. b) In what Cases Judgment final shall be, and in what not.

1. If the Tenant vouch and it is counterpleaded, there he shall be put to other Answer, and there shall not be final Judgment. 42 C. 3. 17. b.

2. If the Demandant counterpleads the Voucher by the first Counterplea of the Statute, upon which the Parties deny whether the Counterplea be good, and it is adjourn'd to another Term, and then adjudged that the Counterplea is good the Demandant shall recover the Land. 21 C. 3. 11.

3. So if the Demandant counterpleads the Voucher by the first Counterplea of the Statute in Affile en Pais, upon which the Parties deny, and it is adjourn'd before themselves to another Place where it is adjudged a good Counterplea, the Demandant shall recover the Land. Contra 42 Aff. 2. adjudged by Admissice.

4. But if the Tenant vouches and Demandant does not counterplead it, but demurs upon his shewing whether he ought to have the Voucher, there it is peremptory; for the Voucher is given in Lieu of an Answer there. 42 C. 3. 18.

5. If it be demurred upon a Voucher for not shewing of Cause of Voucher, and adjudged against Voucher, he shall lose the Land, and shall not be put to other Answer. *11 P. 4. 20. b.

6. But the Reporter says that hoc verum est, where it is adjourn'd to another Day, otherwise where it is the same Day. *11 P. 4. 20. b. 23. *11 P. 6. § 42. But it seems there is no Diversity; for it is not within the Statute; for it is Counterplea to the Common Plea.

7. If the Tenant vouches, and the Demandant counterpleads it by the Statute, and Tenant takes Issue with him, and it is found against the Demandant, the Judgment shall be that the Voucher shall stand, and it shall not be peremptory to the Demandant. *34 Aff. 6. adjudged.

* This should be 36 Aff. 6.

* Br. Voucher, pl. 153. cites S.C. where it is the same Term.

* Br. Peremptory, pl. 53. cites S.C. and Proceans shall be awarded against the Voucher. Contra if it be found by Verdict against the Tenant it is Peremptory, and the Demandant shall recover Seisin of the Land. Note the Diversity.—Br. Voucher, 102. cites 56 Aff. 6.

* Fol. 710.
Voucher.

8. If the Cause of Voucher be traversed, and passes by Verdict against the Voucher, he shall lose the Land. 11 H. 4. 20. b.

9. At the Common Law, if an Issue upon the Cause of the Lien between the Voucher and the Tenant was found against the Voucher, it was not peremptory, but the Judgment should be only that the Voucher should stand. 18 E. 3. 40.


11. It is made peremptory, being found against the Voucher, by the Statute of W. 2, cap. 6. 18 E. 3. 40. b.

12. So a Demurrer in such Cause between them is peremptory. 9 H. 6. 1.

If a Man

Voucher, and

focus Lien, and the

Voucher not

denying the

Lien, think-

ing that it

is insufficient, Demurr in Law upon the Lien, which is adjudg'd against him, this is peremptory, and the Demandant shall recover; quod nota. Br. Peremptory, pl. 77. cites 8 E. 3. and Fitz. Voucher 249.

So in Formon the Tenant vouch'd, and the Demandant counterpleaded, and Keble demurr'd upon the Counterplea. Voucher [bid them] be well advis'd; for if it be adjourn'd to another Term, and adjourn'd against the Tenant, it is peremptory; for Voucher is in Lien of Bar for the Tenant. Br. Peremptory, pl. 42. cites § H. 7. 7.

13. If the Tenant and Voucher demur in Law upon the Lien, and it is adjourn'd against the Voucher, the Judgment shall be, that the Voucher shall stand, and that he shall enter into the Warrant, and not that the Demandant shall recover the Land. 18 E. 3. 41. adjudg'd. 39 E. 26. b. adjudg'd.

14. But if it be adjourn'd against the Tenant that he has fail'd of his Voucher, the Demandant shall recover Seisin of the Land. 39 E. 26. b.

15. If the Tenant vouches, and Proceeds against the Voucher to the Seuator bid two perituli, and at the Day of Return the Writ is not return'd, yet if the Voucher does not appear, the Demandant shall have Seisin of the Land; (for the Voucher might appear without Return of the Writ) 14 H. 6. 7. b.

16. So it shall be, tho' the Voucher dies before the Return; for the Tenant cannot plead it without Return of the Sheriff. * 14 H. 6. 7. b. Dubitatur. (But it seems it will be erroneous if Judgment be given; for then Judgment shall be against a dead Person) 18 E. 3. 38. b.

17. In Praecipe quod reddat, if the Tenant vouches, and the Demandant counterpleads, and the Tenant refuses it, this is peremptory; as it is held there. Brooke makes a Quere if he shall not be put to answer over by the Statute of Welf. 1. c. 39. Br. Peremptory, pl. 76. cites 13 E. 3. and Fitz. Voucher 119.

But upon

Demurrer upon the

Aid, View, or Voucher,

this is not

peremptory; for Error was thereof fixed. Br. Peremptory, pl. 76. cites 13 E. 3. and Fitz. Voucher 119.

18. Failer of the Voucher or Lien is peremptory upon the Voucher; for he cannot revouch; but it is not peremptory in Warrantia Chartae, but is dilatory, and shall abate the Writ. Br. Peremptory, pl. 24. cites 39 E. 3. 26.

19. In Praecipe quod reddat the Tenant vouch'd A. who was return'd dead upon the Writ of Summons, by which the Tenant vouch'd K. Sifter and Heir of the said A. and the Demandant counterpleaded that no such K. Sifter and Heir &c. and found that K. is Sifter, but not Heir; for A. is alive, and the Return fail'd. And the best Opinion was, that the Demandant shall recover Seisin of the Land; for the Issue is found for him; for it is a good Counterplea; for the Tenant who vouch'd A. cannot

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after vouch in another Line; Per Thorp quære. Br. Counterple de Voucher, pl. 56; cites 41 E. 3. 28.

20. In Formeden, if the Tenant vouches, and the Demandant counter-pleads, and the Tenant demurs upon it, he may after relinquish it, and vouch over another in the same Term; and if the Demurrer be adjudget against him in the same Term, he may vouch another. Br. Peremptory, pl. 83. cites II H. 6. 48.

is peremptory, and he shall lose Seisin of the Land; Per Martin, quod Caris concesso. And this seems to be by the Statue of Westminster 1. c. 39. And so lie in what Term the Demurrer is peremptory, and in what not; &c nota bene. Ibid.

[But by] Keb-ble, it is no otherwise peremptory than that for this is the Act of the Court. Br. Peremptory, pl. 42. cites 8 H. 7. 7.

Tenant shall be ousted of his Voucher; for it is not as a Bar for the Tenant, but in Lieu of Allian to have the Voucher. [But] Brian said No; for it is peremptory, and the Tenant after Adjournment and Judgment cannot vouch another; for it is out of the Cafe of the Statutes, which says that he be put over to another Answer; and this is in the same Term, but not after Adjournment; and therefore after Adjournment this is peremptory, as a Trial is, and the Tenant shall lose his Land. Ibid.

21. If the Tenant vouches, and shews Cause, which Cause is not sufficient, and it is adjourn’d to another Term, this is peremptory for the Tenant. Contrary in the same Term; but otherwise it is of Aid Prayer; and for this is the Act of the Court. Br. Peremptory, pl. 42. cites 8 H. 7. 7.

22. Where the Tenant vouches in Writ of Right, and recover in Value, his Judgment against the Vouchee shall not be final; Per Fitz. and Shelley J. and per Fitzh. every Recovery upon Departure in Defpite of the Court, is a Recovery by Default. Br. Recovery, pl. 1. cites 26 H. 8. 8.

(L. b) Recovery in Value. Against whom it shall be recover'd.

1. If two are vouch'd as Heir, and the one has by Defect in Possession, and the other has nothing, the Demandant shall recover all against him who has. 12 H. 6. 6. b.

If two are vouch'd as Heir, and the one makes Default after Default, by which the Demandant has Judgment against the Tenant for a Moiety, and the Tenant over against her who made Default, if the other Coparcener after looses, and has not Allers, the Tenant shall have in Value against her who first made Default; so that the first Judgment shall charge her. 26 E. 3. 49. b. by Greene.

3. In Dower the Tenant vouch'd S. who vouch'd P. who demanded the Lien, and S. shew'd Gift of the Ancestor of P. to him and his Feme in Frank-marriage; and because he had not pray'd Aid of his Feme, and then they two to have vouch'd P. therefore the Demandant recover'd against the Tenant, and the Tenant over in Value against S. and therefore P. went quit. Br. Recovery, pl. 50. cites 4 E. 2. and Fitzh. Voucher, 243.

4. In Praecipe quod reddat the Tenant vouch'd A. who enter'd into the Warranty, and vouch'd B. who enter'd and vouch'd C. which C. appear'd, and demanded what the said B. had to bind him to the Warranty, and B. shew'd Deed; and upon this the Court arose; and the next Day they were
were demanded, and B. made Default, by which the Demandant recover'd against the Tenant, and the Tenant over in Value against A. and A. over against B. and that C. shall go quit, because B. departed, and did not pursue his Warranty. Br. Recovery, pl. 61. cites 6 E. 2. It. Cane.

5. In Aff'gs against 2, the one took the Tenancy, and vouche'd the other, Br. Recov- who enter'd into the Warranty, and pleaded in Bar; and there it is ed, that he who vouches shall recover in Value against him who is said, Quod non negatur. Br. Voucher, pl. 98. cites 16 Aff. 19. vouche'd. 6. In Dower, if the Tenant vouche the Heir in Ward of several, the one Br. Extent, only shall not render in Value for the Whole, but it shall be apportion'd the other not, and Process with Extent issue against the other; for each of them shall be contributory to the Recovery in Value for his Portion. So in Statute-Merchant, contra it is of him who is vouch'd, and infers 2. In Dower the Tenant vouche'd the Heir in Ward of 2, and the Demandant said, that the one had nothing in Ward, and this is found for the Demandant; in this Case the Demandant shall recover Seisin for the Portion of the 3d. Br. Preemptory, pl. 75. cites 21 E. 5. 55. and Fitzh. Tit. Voucher, 105. Per Hill.

7. In Dower the Tenant vouche'd the Heir of the Baron, who made De- Bitcoins at the Sequatur sub quo Periculo fucitur alias, by which it was awarded, that the Demandant should recover agans the Vouchee, if he has in fact, not, the Tenant, and the Tenant over in the fame County; and if not, against the Tenant, and the Tenant over in Value against the Vouchee. Quod nota, Judgment given against the Vouchee, where he never appeared, nor never was summons'd, nor any Process issued against him, nor could be summons'd, as it seems. Br. Sequatur, pl. 2. cites 2 H. 4. 8.

8. If two are vouche'd, and enter into the Warranty, and after the one makes Default, and after appears, the Petit Cape shall issue of the Whole, Br. Recovery, pl. 48. cites 12 H. 6. 6. for each has warranted the Whole; but Brown, but Corenfmore contra. Br. Recovery, pl. 48. cites 12 H. 6. 6.

9. But Corenfmore agreed, that where the Baftrd and Multer are vouche'd, that the Baffted shall render for the Whole. Br. Recovery, pl. 48. cites 12 H. 6. 6.

10. In Formedon the Cafe was, that a Man seized of certain Land, lesed it for Life, the Remainder over in Tail. The Tenant for Life is imp- leaded, and vouches him in Remainder to recover in Value. And per Bra. Gurran- thin, pl. 39. cites S. C. and ties. pl. 39. cites S. C. and

11. Tenant by the Curtesy may vouche the Heir, but he shall not recover Br. Gurran- Value; for it is only in Lieu of an Aid-Prayer; per Strange. Br. ties, pl. 59. Voucher, pl. 87. cites 14 H. 6. 25.

12. Feme Made Warranty, and after takes Baren, and the Tenant is im- pleaded, and vouches the Baron and Feme, who life; there the Tenant shall recover in Value of the Land of the Feme, if the Baron be not intituled to be Tenant by the Curtesy. Br. Recovery, pl. 62. cites 11 H. 7. 19.

Warranty, by which she is vouche'd, and loses, the Tenant who recovers in Value shall not have Exe- cution against the Tenant for Life. Ibid.
Voucher.

Where two are vouch'd as Heirs to 2 several Persons, who made the Warranty, the Recovery in Value shall be against both in common, and against both severally; but he shall not have in Value of the Whole against each. Quod nota. Br. Recovery, pl. 62. cites 16 H. 7. 12.

14. If 2 Jointenants make a Feoffment in Fee, with an express Warranty for them and their Heirs, to the Feoffee and his Heirs, and the one of them dies, the Survivor shall not be vouch'd alone, but the Heir also of the other, and the Recompence in Value shall be equally upon them; but if the one of them have nothing, the other shall answer the Whole; for it is a Maxim in Law, Quando de una & cadem re du onerables existit, unus pro insufficientia alterius de integro onerabitur. 2 Init. 276.

15. If a Man have divers Warranties for the same Lands, he may have several Writs of Warranty of Charters, and Judgment upon them; and so is Fitz. N. Br. 135. I. and that may give him double Remedies, or not, as the Case may be; for if he be after sued for that Land in an Action, wherein he may vouch but one, then he can never take Advantage against the other. Per Hobart Ch. J. Hob. 29. in Case of Roll v. Osborn.

16. But if he be sued in an Action wherein he cannot vouch, but may require Plea, and he doth require Plea of them both, and they both advise one Plea, and he pleads that, and loses, he shall have several Recompence against either, but if they advise several Pleas, he can have no Recompence but against him whose Pleas he follow'd. Hob. 29. in Case of Roll v. Osborn.

17. But if the Land be not recover'd against him by Action, but by Entry upon an Eise Title, then he may sue several Executions upon the several Judgments in the Writ of Warrantia Charge, against either of them, for full Recompence; and so he shall have double Value for his Loss, for either of them warranted the Whole, and neither of them hath Colour to pray Aid, or make Use of the Recompence that the other hath yielded for his own Eise. Hob. 29. in Case of Roll v. Osborn.

18. If Lands descend to an Heir who dies before an actual Entry, and so they descend to another Heir, those Lands shall not be recover'd in Value by a Warranty made of other Lands by the first Heir, because he had only a Seisin in Law, as it is expressly proved. Arg. cites C. L. 239. [a. b.] But this Case was denied to be Law per Holt Ch. J. Carth. 128. Patch. 2 W. & M. in B. R. in Case of Kellow v. Rowden.

(L. b. 2) Recovery in Value, against whom. The King, and How.


2. If the King grants Land to me and my Heirs, and that if I am evicted, or my Heirs, by Title, that be shall make in Value of other Lands, Per Wich and Finch, this is no Warranty; but that the King shall make in Value if &c. which founds in Covenant, if it was between common Persons and not in Warranty of Voucher, and therefore no Caufe to have Aid of the King in Lieu of Voucher; and yet the Aid was granted of the King; and so it seems there to be good Caufe to have in Value against the King. Br. Recovery, pl. 32. cites 39 E. 3. 12.

3. Where a Man prays Aid of the King by Warranty or Clause of Recompensation in Lieu of Voucher, he shall not recover in Value by Petition,
(L. b. 3.) Recovery in Value. In what Cases it shall be. And How, and by what Persons; In Respect of Estate.


3. A. enfeoffs B. with Warranty, and B. recovers in a Warrantia Chartae on a general Count of the Land, and afterwards a Rent is recovered against him, and he brings a Scire facias on the general Judgment in the Warrantia Chartae, to have the Value of the Rent; and per Thirn, he shall not have in Value, seeing he never demanded Warranty of Rent; but Finchd. and it seems the better Opinion were contra. F. N. B. 135. (E) in the new Notes there (b) cites 31 E. 3. Garranty de Charters 20. and 30 E. 2. 20.

4. In Dower the Tenant vouch'd B. by his own Deed, who came into Court and answer'd, and said that he had nothing to render in Value but jointly with his Feme in Tail, by which the Demandant recover'd her Dower; but the Tenant could not have in Value, because the Feme shall not oust of her Frankenement by any Plea to which she is not Party or Privy. Br. Recovery, pl. 4. cites 41 E. 3. 24.

5. In Precipe quod reddat the Tenant vouch'd, and Proceeds continued to the Sequentia, which was return'd Tarde, and the Vouch'd did not come; by which it was awarded that the Demandant recover against the Tenant, and the Tenant in Milericordia. Br. Recovery, pl. 34. cites 42 E. 3. 13.

Warranty, insomuch as the Proceeds never was returned against the Vouch'd, nor he never was Party to

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4. In Quare Impedit it was doubted if Words of Warranty be sufficient to recover in Value against the King without these Words (in Recompensation.) Per Babington quære; for it seems that they are. And per Martin, Adwovfon with Warranty is good enough. Br. Garranties, pl. 3. cites 9 H. 6. 56.

5. Ld. Coke says, that by the Branch in the Statute de Biganis 4 E. 1. cap. 1. which enacts that where a Feoffment with a Charter thereupon, being made by the King, hath so much in it, that another Person, by the like Feoffment and like Deed, should be bound to Warranty, the Justices shall not proceed without the King’s Command; if the King gives Lands with Clause of an Express Warranty, yet the Patentee &c. shall not have or recover in Value against the King, without Special Words that the King shall yield Lands in Value upon Eviction &c. And nevertheless in that Case he shall have Aid of the King by the general Purview of this Law; for it is for the Honour of the King that he aid the Patentee with any Records or Evidence that he hath for Maintenance of the Estate which he hath granted and warranted to him; but if the King exchange Lands with another, by this Warranty in Law, the King is bound to Warranty, and to yield to Value; and so it was adjudged Hill. 6 E. 1. in C. B. rot. 2. William Browne’s Cæse, Wallia. 2 Inst. 263, 269.
6. It was agreed that Warranties imply in itself Recovery in Value, and that he who acknowledges Acquittance ought to acquit the Party in Fact, and this without Words that he shall render in Value or acquit. Br. Garriancie, pl. 17. cites 46. E. 3. 28.

7. If a Man vouches two, and the Demandant counterpleads, and it is found that the one was false, and the other bad nothing, the Tenant shall lose the Moiety of the Land; Per Kirton. But Belk. contra, and that the other Warrants the whole, and the Demandant shall recover nothing by it; for he had no more Delay by the vouching of the two, than he should have had it he had vouch'd the one only. Br. Counterple of Voucher, pl. 19. cites 48. E. 3. 28.


It was agreed, that the Tenant shall not have Judgment over in Value against the Voucher, unless some of the Writs are serv'd. Br. Sequatur, pl. 5. cites 14. H. 6. 7. & 20. And Br. Recovery, pl. 56. says it seems that where the Voucher never is return'd, Summons, nor appears, that the Tenant shall not recover in Value against him. Contrary upon Summons return'd serv'd, and the Grand Cape also.


If in Precipe quod reddat at the Grand Cape ad Valantium, the Voucher make Default, and the Tenant is serv'd, this shall be adjudg'd but not ad-journ'd, and this to give Day, to the Intent that the Demandant shall have Judgment against the Tenant, and he over in Value; quod nota Per Cur. Br. Recovery, pl. 40. cites 5. H. 7. 13. So it the Sequatur be return'd summum'd. Br. Recovery, pl. 40. cites 15. E. 5. Fitz. Judgment 175.

If the Tenant vouches, and the Voucher makes Default after Default, by which the Tenant losses by Default of the Voucher before Appearance, there Quod si default last well; for there he has no Reconcilience. Br. Voucher, pl. 155. cites P. N. B 156. But if the Tenant vouches, and the Voucher appears, and after makes Default, the Tenant shall have Quod si default last there; for the Demandant shall recover against the Tenant, and he over against the Voucher, upon Appearance of the Voucher; quod nota. Br. Voucher, pl. 155. cites P. N. B. 156. Brooke says, And so it seems that the Tenant shall not have Judgment to recover against the Voucher, where he does not appear. Quere inde; for contrary Fitz. Voucher 26. Tempore E. 1. for there it is said that he shall recover in Value upon Default of the Voucher, if the Process be return'd serv'd. Ibid.

Br. Voucher, 12. In Formedon the Tenant vouch'd, and the Sheriff return'd him summum'd, and he made Default, by which Grand Cape issue, and another new Sheriff return'd the Voucher Nihil. And Hussey Ch. J. held, that the Demandant shall recover against the Tenant, and the Tenant over
1. Warranty and Affets descended to the Heir, and he alien'd by Con-
vin, and after the Possess of his Father is impladed, he shall 
vouch the Heir, and have an Execution against the Heir of his own 
Land of his Purchase by the Convin, but not the first Land which he alien'd; 

2. Where the Father makes Warranty, and dies, and the Grandfather 
dies seised of other Lands in Fee, to whom the Son is Heir immediate, this 
Affets shall not make the Son to render in Value by the Deed of the Fa-
ther; for the Father was never seised, and the Reversion descended from 
S. P. Tho' the Grandfather to the Father, who died before the Tenant for Life, 
and after the Tenant for Life died; this Affets shall not charge the Son 
to render in Value; for the Father was never seised of the Land. Br. 
Recovery, pl. 13. cites * 24 E. 3. 47.

Fitch. Recovery in Value 14.— So if the Father had the Possession, and was never seised in Possession, 
and dies, this shall not be extended against the Son. Ibid.— the Execution shall be made of the Rent 
which the Voucher has by Reversion in Tail, and yet the Reversion itself cannot be put in Execution, and 
there, when the Voucher dies, the Executor is discharg'd for ever, and the Heir in Tail shall avoid it. 
Ibid cites 17 El. 3. 11. 12.
* Lat. 66. in Case of Saul v. Clark, cites 24 E. 4. 47. S. P. accordingly.

3. Contra where the Father was seised, and leased for Life and died, and 
the Tenant for Life dies, the Heir shall be bound by the Warranty of his 
Father, and by this Affets: Per Thorp and Wilby. Br. Recovery, 
pl. 13. cites 24 E. 3. 47.

4. In Formedon it was agreed, that where the Tenant pleads War-
son, and has no Proof of Affets, by which the Demandant recovers, Reversion is 
and after Affets descend, the Tenant shall have Scire facias, and recover 

other Lands by Formedon, and after the Reversion falls, he shall have Scire facias to recover in Value. 
And Brooke says, See the Difference of this Scire facias, and the Writ of Debt against Executors. 3 H. 
6. 4. And per Hank. Such Scire facias shall lie upon Voucher, where the Heir has not Affets at the 
Time
5. If a Man be impleaded in Affise &c. and he brings a Writ of Warranty Charite, and counts that he is impleaded by Affise &c. and that he has lost &c. if the Plaintiff recovers his Warranty, he shall recover his Damages, and also to have the Value of the Land lost. F. N. B. 135. (11)

6. A Warranty was only against himself and his Heirs. It was held clearly per Cur. that a Warranty of Charters does not lie, unless there are the Words Dedi & Concesso in the Deed. Dy. 221. a. pl. 17. Patch. 5 Eliz. Anon.

for if he be impleaded by a Stranger, he shall never vouch by this Warranty, and the Nature of such Warranty is only to rebut against him and his Heirs, and not to have Recompense in Value.

7. An Advocatus may be yielded in Value on a Voucher; Per Cur. Hob. 304. Mich. 16 Jac. in Cafe of London v. the Chapter of the Collegiate Church of Southwell.

(M. b) *What Thing shall be in Value. By Reason of others.*

1. If Water runs thro' Land deliver'd in Value, this passes in Execution with the Land. 2 H. 4. 8. b.

(N. b) *What Thing shall be in Value for Collateral Respect.*

1. If Recovery in Value be against one that has alien'd his Land by Fraud to suit him of it, and takes the Profits, yet it shall not be put in Value, because the Frankencement is in another Man. 48 E. 3. 33.

2. If Writ of Covenant upon a Warranty made by the Father of the Tenant, by which the Land call'd D. is bound, and now he sties to have it in Value for the Land recover'd &c. if the Tenant pleads Riens per Dicient, because his Father infeel'd him of the Land, and confesses himself to be Heir, the Plaintiff lays inanimus as he confesses himself to be Heir and Tenant, he demands Judgment if by the said Frankencement made by Fraud, he ought to be bar'd; and upon this adjury'd for the Demandant. In Time of 2. 6. it seems it was but an Execution upon a Recovery in a Warranty Chartae.

3. If
Voucher.

3. If a Man gives Land in Fee with Warranty, and binds certain Land specially to warranty, per the Person of the Donor is only bound by it, and not the Land, unless that which he had at the Time of the Voucher. 31 E. 1. Voucher 292. Co. Litt. 102. b.

(O. b) What Thing, in respect of the Place where it is, shall be recover'd in Value.

1. If the Vouchee has not Affairs in the County where he is summon'd, he shall render other Land in Value. Contr. 29 E. 3. 4.

2. In Præcipi quod reddat, if the Tenant vouches A. and prays that Br. Recover- the Vouchee be summon'd in the County of B. only, if the Demandant reco- vers against the Tenant, and the Tenant over in Value, there his Land in the County of S. may be put in Execution. Br. Recovery, pl. 51. cites 4 E. 2. and Fitzh. Voucher, 248.

(P. b) What Estate shall be recover'd in Value.

1. If a Warranty be made to the Tenant for Life, to him and his Br. Recover- Heirs, yet he shall recover in Value, upon this Warranty, an Estate only for Life; for the Warranty does not enlarge the Estate, and the Recovery ought to be according to the Estate. 38 E. 3. 14.

Br. Garranties, pl. 26. cites S. C.

2. So if a Warranty be made to Tenant for Life, to him and his Heirs for his Life, he shall recover in Value an Estate only for his Life, and not in Fee. 38 E. 3. 14.

3. But if a Man be seised in Fee, and a Warranty is made to him Br. Recover- and his Heirs for his Life, he shall recover in Value upon this War- ranty an Estate in Fee; for he has warranted his Estate during his Life. 38 E. 3. 14.

4. If Tenant in Tail be vouch'd to warranty upon his own Warranty in Fee, and a Recovery is had against him, if he has no other Land, this Land in Tail shall be recover'd in Value against himself. (But it shall not bind the Issue, as it seems,) 40 M. 37. by Fitz- John.

5. The Law will be the same, tho' the Reversion expectant upon the Tail be in the King. 40 M. 37. by Fitz- John.

6. Where Tenant for Life is impleaded, and he vouches his Lessee, and leaves, and the Tenant recovers in Value, he shall not recover but an Estate for Term of Life, as he left; and the Reversion of the Land, recover'd in Value, remains in the Lessee. Br. Recovery, pl. 55. cites 19 E. 3.

7. If a Man leaves for Life, and after grants the Reversion to a Stranger, and the Tenant attorns, and after the Tenant is impleadled, and vouches

8. If a Man leaves for Life, and a Stranger releaseth to the Tenant for Life, and obliges himself and his Heirs to warrant the Land, and after he who releaseth purchaseth the Reversion, and the Tenant is impleadeth, and vouches him who releaseth, and he enters into the Warranty of his own free Will, the Tenant shall not recover in Value but for Term of Life, if the Deed be not entered, and if it be entered, be shall recover Fee-jumble; so per Finch. Quod non negatur. And this seems to be understood, where he and his Heirs warrant to the Tenant and his Heirs. Br. Recovery, pl. 8. cites 38 E. 3. 9.

9. If a Man recovers against him in Remainder by Writ of Warranty of Charters, and he in Remainder dies, and after the Tenant for Life dies, the Recoveror shall have Execution of this Land in Remainder. Br. Prerogative, pl. 25. cites 15 H. 4. 11.

(Q. b) At what Time he shall recover in Value.

1. If Tenant by the Curtefy surrenders to the Heir in Reversion, and after the Heir vouches, he shall not recover in Value during the Life of Tenant by the Curtefy. 1 D. 6. 2.

2. If the Parcel demurs by Age of the Vouches in Cui in Vita, by which the Demandant recovers immediately by the Statute, and the Demandant dies, * the Tenant at full Age, the Tenant shall have Re-summons to have Recovery in Value against the Vouches. Br. Recovery, pl. 46. cites 3 E. 2. and Fitzh. Voucher, 210.

3. In Writ of Dowry the Tenant vouch’d an Infant in Ward of the King, and therefore after Procedendo the Demandant recover’d against the Tenant, and the Tenant over in Value, and Ceas’d Execution till the Infant has find’d Livery. Br. Recovery, pl. 42. cites 5 E. 3. 4. and Fitzh. Voucher, 185.

4. Voucher to save the Title is for the Advantage of the Issue in Tail, and not of the Tenant who vouches, for he shall have Judgment to recover in Value immediately, but Ceas’d execution during his Life; for his Issue shall have Execution, and not he who vouch’d. Br. Counterple de Voucher, pl. 22. cites 38 E. 3. 4.

5. The Tenant vouch’d, and after he vouch’d Issue made pending the Voucher; and therefore the Demandant pray’d Seisin of the Land. Morrice said, this is for the Voucher to take Advantage of for extorting the Voucher and not for the Demandant &c. But Knivet contra, and that for this Cause he may pray Seisin of the Land; but after the Voucher enter’d into the Warranty, and vouch’d over, therefore quere. Br. Counterple de Voucher, pl. 23. cites 38 E. 3. 14.

6. If Baron discontinues the Right of his Feme, and retakes to him and his Feme, and they are impleadeth, and the Baron makes Default, and the Feme is recovered, the may vouch and have the first Warranty; for the Feme
Feme is remitted. Br. Recovery, pl. 5, cites 44 E. 3. 17. Per Thorp for in Value.

The Creation of the Baron; quod non negatur by any. But it seems that the shall have Judgment in Value, but 

7. If the Tenant in Dower leases her Estate to the Heir rendering Rent for her Life, and the Heir is impaled, he may vouch as Heir, and deraign the first Warranty as Heir in the Life of the Tenant in Dower; but he shall not have in Value during the Life of the Tenant in Dower. Per Nombray, quod non negatur. Br. Recovery, pl. 6, cites 45 E. 3. 13. But see 1 H. 5, which is contra, as it is said, and that he shall have in Value immediately. Ibid.

8. In Dower an Infant was vouch'd in Ward of the King, who came Br. Dower, and pleaded in Abatement of the Voucher, because the King leased the Ward to W. before the Voucher, fo he ought to have been vouch'd in Ward of S. C. the Lessee, and therefore ill; and where the Tenant Vouches an Infant as above, the Demandant shall recover, and the Tenant over in Value against the Infant, but he shall not have in Value till the full Age; quod non negatur. Br. Voucher, pl. 34, cites 46 E. 3. 19.

9. In Dower if the Voucher counterpleads the Lien, the Demandant shall recover immediately. Br. Voucher, pl. 35, cites 46 E. 3. 25. and the Demandant counterpleads the Lien, the Demandant shall recover immediately against the Tenant, and the Tenant shall attend to his Recovery in Value till the Counterplea be tried. Br. Recovery, pl. 5, cites 52 E. 5. 25.

10. In Dower the Tenant vouch's &c. and Judgment was given against the Tenant at the Default upon the Sequitur fact altas to recover in Value against the Voucher. Br. Voucher, pl. 25, cites 2 H. 4. 7.

11. A Man leased Land for Term of Life, and the Lessee granted the Reversion to another with Warranty, and the Tenant attorn'd, and after the Tenant surrenders to him in Reversion, and after he in Reversion is impaled in the Life of Tenant for Life, and vouched the Grantor to Warranty, and he enter'd into the Warranty, and could not bar the Demandant, by which he recover'd against the Tenant, and the Tenant over in Value against his Grantor whom he vouch'd; but the Execution in Value ceased during the Life of the Tenant for Life who surrendered. Br. Voucher, pl. 127, cites 5 H. 5. 9. Per June and Norton.

12. But if I am impaled, and being Tenant for Life make Default after Default, and he in Reversion is received and vouches, by which Judgment in Value is given, there he in Reversion who recover's shall not have Execution in Value during the Life of Tenant for Life; Per Lud. But Contrary by him after Surrender; for in the one Cafe he vouch'd recover'd in Value was in Possession, and in the other Cafe not, and therefore there, by him, he shall have Execution in Value immediately in the first Cafe, contrary in the second Cafe. Br. Voucher, pl. 127, cites 5 H. 5. 9. for Life; Per Pigot. Br. Voucher, pl. 80, cites 9 E. 4. 18.

13. In Præcipe quod reddat, if the Tenant vouches and the Demandant so of Recoverers, and the Tenant over in Value, there the Tenant shall never have Execution, if the Demandant does not take Execution against the Tenant; for he is at no Lofs. Br. Warrantia Carte, pl. 11, cites 21 H. 6. 41. and 22. H. 6. 22.

who recover'd, has Execution against the Tenant.

(Q. b. 2) Recovery

1. In some Special Cases there shall be two Recoveries in Value upon one Warranty. Co Litt. 393. a.

2. As if a Diffeffor gives Lands to the Husband and Wife, and to the Heirs of the Husband, the Husband alien in Fee with Warranty and dies, the Wife brings a Cause in Vita, the Tenant vouches and recovers in Value, it after the Death of the Wife, the Diffeffor brings a Precipe against the Alene, he shall vouch and recover in Value again. Co Litt. 393. a.


But where a Man has once a Recompence in Value, he shall not vouch again. Arg. Roll. R. 308. in Case of Holland v. Lee.

(R. b) To what Time it shall relate.

1. He shall have Execution of the Land which the Vouchee had at the Time of the Voucher, 9 P. 4. 1. 18 E. 3. 17.

But if a May be vouch'd, he shall not render in Value but of the Lands which he had at the Time of the Voucher, and if he have alien'd the Lands before the Voucher, he shall render nothing in Value; and therefore it is Policy to bring his Warrantia Charta against him when he hath the Land to render in Value. F. N. B. 154. (K)

2. If a Vouchee enters into the Warranty, and dies, by which a Refummons is sued against the Tenant who revouches the Heir of the first Vouchee, he shall recover in Value the Land which the first Vouchee had the Day of the first Voucher. 18 E. 3. 17.

3. If two exchange, and then one alien, and the other vouches him being implicated, he shall recover in Value the Land given in Exchange, and so it shall relate before the Recovery. Perkins, Sett. The Feene of the Alene shall not be endow'd.

4. A Man shall recover in Value Land which he purchas'd since the Warranty created, if he has no other Land. Nunt. 29 E. 3. 4.

5. A.
5. A makes a Lease for Life by Dedi, and grants over the Reversion, yet the Lessee may vouch A. F. N. B. 134 (H) in the new Notes there (a) cites 43 El. 3. 2. 6 H. 7. 2. 14 H. 6. 25. 48 E. 3. 2. Perk. 26.
6. The Defendant shall have in Value of the Lands against the Vouchee, But if a which he had at the Time of the Purchase of his Warrantia Chartes; and he recovers his Warrant by Writ of Warrantia Chartes, and had the Land which the Vouchee had at that Time, yet if he be afterwards pleaded for that Land for which he recovered his Warranty, he ought to vouch him against action be recovered his Warranty, to defend the Land, if he be sued in any Action wherein he may vouch, otherwise he shall not have Advantage by Recovery of his Warranty in the Warrantia Chartes. F. N. B. 134 (K)

7. In a Warrantia Chartes against the Heir, the Defendant pleads In this Case Rents per Descent &c. Upon this Plaintiff shall recover Pro loco & tempore. 8 Rep. 134. in Mary Shipley's Case.

(R. b. 2) Warranty. By Warranty in Law. [Extent thereof:]

1. If 2 exchange in Fee, this Warranty in Law binds their Heirs Sec (A) pl.3. who have the Land exchanged. 22 E. 3. 2. Curia.
2. It was agreed, that the Vouchee does not warrant but such Estate which the Tenant has by general Entry into the Warranty. B. Counterple de Voucher, pl. 13. cites 44 E. 3. 38.
3. A Man, seised of a Rent-lick infusing out of the Manor of Dale, takes a Wife, and releases to the Tenantant, and warrants Tenementa prædicia, and dies; the Wife brings a Writ of Devor of the Rent; the Tenantant shall vouch, for that albeit the Relese enured by Way of Extinguishment, yet the Warranty extended to it, and by the Warranty of the Land all Rents &c. infusing out of the Land, that are suspended or discharg'd at the Time of the Warranty created, are warranted also. Co. Litt. 366. b.
4. A Man by Deed granted and demised certain Lands for Years, which Demise imported in itself a Covenant in Law; and he further expressly covenanted for Enjoyment against himself, and all others claiming from or under him; which expresses Covenant was narrower than his Covenant in Law, and gave Bond for Performance of Covenants. Two Points were resolv'd. 1st. That this Bond extended to the Covenant in Law, 2dly. That by the express Covenant the Covenant in Law was restrained; by Cra. 67. Popham's Opinion, and all the Court. 3dly. It was agreed that the same had been resolv'd before about 14 Eliz. in one Donman's Case. And Sir Edward Coke, in the Close of the Case says, Much Inconvenience would else happen against the Intention of Parties. The express Covenants in Deeds being different from the Covenants in Law usually. 4thly. It is there agreed, that it is not so in Real Warranties, as in Co-venants.
Voucher.

R. wherein:

it was ruled, that an express Covenant shall take away the Covenant in Law; Papham Ch. J. inclin'd to this Opinion, but the other Justices did not deliver any Opinion therein, but would have given Judgment upon the Pleading; but the Plaintiff prais'd to discontinue his Suit, which was granted. —— S. C. cited Arg. 5 Mod. 571. —— S. C. cited Lev. 57. Hill. 13 & 14 Car. 2. in B. R. in the Cause of Brown v. Brown.

(R. b. 3) Recovery in Value. To what Estate it shall go.

1. If the Lessee for Life the Remainder over, or Tenant in Tail the Remainder over, be pleaded, and vouches his Lessee, and recovers in Value, the Land recover'd in Value shall go to him in the Remainder. Br. Recovery, pl. 55. cites 19 E. 3. and Vet. N. B. Brief de Formedon.


S. P. Per Montague

Land others, That the Recompence shall go to him in Remainder; but yet in the Case of the Ld Touch and Stebbell in Chancery, the Law was determined otherwise by all the Judges, as it is said. The Reason seems to be insusceptible as when he vouches a Stranger, the Recompence shall not go to him in Remainder. Contrary if he vouches the Donor, or his Heir, who is privy; but now at this Day most put it in Use to bind the Remainder. Br. Recovery, pl. 28. cites 7 H. 8. —— Ibid. pl. 33. cites 5 E. 4. 2. That if my Tenant for Life vouches a Stranger who enters into the Warranty, and cannot bar the Demandant, by which the Demandant recovers, and the Tenant over in Value, this Land recover'd in Value shall go to me in Reversion after the Death of Tenant for Life, and the Reversion of the Land recover'd in Value shall be in me in the Life of the Tenant for Life; as if Releafe had been made to the Tenant for Life, this shall ensue to him in Reversion; which Brooke says was taken contra 25 H. 8 —— Br. Voucher, pl. 141. cites S. C. but says it is held contrary at this Day of the Recovery in Value.

But if Tenant in Tail devincentes, and retakes another Estate, and suffers a Recovery upon Voucher, and recovers over in Value, and dies, this Recovery shall not bind the Life in Tail; for the Recompence shall go as the Land goes. Br. Recovery, pl. 19. cites 12 E. 4. 15.

3. Where Tenant in Tail is seized by the Tail, and suffers a Recovery with Judgment in Value, this shall bind the Tail; for the Recompence shall go as the Land goes. Br. Recovery, pl. 19. cites 12 E. 4. 15.

4. It was held, that where Tenant for Life is, and Remainder over in Tail, or for Life, and Tenant for Life is impaled, and vouches him in Remainder, who vouches over one who has Title of Formedon, and to the Recovery paffes by the Voucher, there the Life of him, who has Title of Formedon, may bring his Formedon, and recover against the Tenant for Life; for the Recompence supposed shall not go to the Tenant for Life, and therefore he may recover; for his Ancelors warranted only the Remainder, and not the Estate for Life, and therefore the Tenant for Life may bind him by the Recovery; for he did not warrant to him, and therefore in such Case, the surest way is to make the Tenant for Life pray Aid of him in Remainder, and they to join, and vouch him who has Title of Formedon, and so to pass the Recovery; for the Recompence shall go to both. Br. Recovery, pl. 30. cites 30 H. 8.

So if the Grantor of the Rent

5. A Woman, that hath a Rent-charge in Fee, inter-marries with the Tenant of the Land; an Ebranch releases to the Tenant of the Land with Warranty;
Warrant; He shall not take Advantage of this Warranty, either by granting it to the Tenant of Voucher or Warrantia Chartae; for the Wife, if her Husband die, or the Heir of the Wife, living the Husband, cannot have an Action for the Rent upon a Title before the Warranty made; for if the Heir of the Wife bring an Affidavit of Mortdancer, this Action is ground after the Warranty, whereunto the Warranty shall not extend. Co. Litt. 388. b.

Warranty cannot extend to the Rent, albeit the Feoffment was made of the Land discharged of the Rent; for if the Condition be broken, and the Grantee be intitled to an Action, this must of necessity be grounded after the Warranty made. Co. Litt. 389. a.

But in the Case above, when the Woman, Grantee of the Rent, married with the Tenant, who makes a Feoffment in Fee with Warranty, and dies, in a Gui in Vita brought by the Wife, (as by Law the same) the Feeoffee shall vouch as of Lands discharged at the Time of the Warranty made, for that her Title is paramount. Co. Litt. 389. a.—So if Tenant in Tail of a Rent-Charge purchases the Land, and makes a Feoffment with Warranty, if the Issue bring a Formedon of the Rent, the Tenant shall vouch Caufa qua supra. Co. Litt. 389. a.

But some do hold, that a Man shall not vouch &c. as of Land discharged of a Rent-Service. Co. Litt. 389. a.

6. If the Warranty depends on one, and the Land on another, as special Heir, viz. by Custom of Burrow-English or Gavelkind, or Heir on the Part of the Mother, the Heir at Law may either be vouch'd alone, or the other may be vouch'd with him as Heir to the Land. And it seems that if there be a Warranty paramount, they shall join in Deraigning it, and the Recompence shall go to the special Heir alone; for he only had the Loss. Hawk. Co. Litt. 474. 475.

7. So if a Recovery be had against Tenant in Tail and his Wife, and they vouch, and have Judgment to recover in Value, and to die, his Issue only shall have Execution, tho' the Wife was privy to the Judgment. Hawk. Co. Litt. 475.

8. The Recompence in Value shall go to him that has lost the Tenancy, S.P. Ca.Lit. and of such Estate as he lost; so that if he lost an Estate Tail, he shall have Estate in Tail only in Recompence, and not a Fee-Simple. Agreed by all the Justices. Pl. C. 514. 515. a. Hill. 20 Eliz. Ear; v. Snow.

of the Part of the Mother, shall go to the Heir of the Part of the Mother &c.

9. A levied a Fine to B. and C. and to the Heirs of B. and they granted and render'd to A. and M. his Wife, (not Party to the Writ of Covenant, not to the Countenance) and to the Heirs of the Body of A. the Remainder to B. A. alone, without M. suffer'd a common Recovery. M. died. A. died without Issue. It was agreed, per tot. Cur. That the Land to be recover'd in Value, by reason of this Recovery, cannot go to the Eatee which is given; for the Eatee given was to A. and M. and the Heirs of the Body of A. and then the Tenant, against whom the Recovery was had, was impale as sole Tenant, in which Case the Voucher, when he comes in, is to warrant a sole Eatee, but not another; but now the Land to be recover'd in Value shall go to A. alone, and M. shall have nothing; so as the true Eatee is not warranted, and fo not answer'd. 4 Le. 93. pl. 5. Value, but the Baron only, which cannot be in respect of the Eatee which the Baron and Feme had; for A. alone had not the Frankenement, but A. and M. had Eatee, which, during their Lives, cannot be divided by any Means.

10. If a Man, for him and his Heirs, warrants Land to one and his Heirs, this is a General Warranty, inasmuch as it is not restrained against any
any Person in certain... Resolved, 1 Rep. 1. Patch. 40 Eliz. in Chance-
ry, by Popham and Anderson Ch. J. and Gawdy J. Aliquots to the Ld.
Keeper, in the Case of Ld. Buckhurst v. Fenner &c.

11. Land was specially intailed to A. and his Wife, the Remainder to B. in
Tail, the Remainder to C. in Fee; and A. the Husband leaves a Fine alone
to D. in Fee; and dies, leaving Issue. The Wife enters, she is in of her
Estate in Tail, and her Entry also renews B. and C. to their several Remains-
ders, and hath put D. out of his whole Estate. And therefore I am clear
of Opinion, that the Wife, in that Case, may suffer a common Recovery
against herself as Tenant in Tail, and convey the common Vouchee, and that
shall bar the old Remainders of B. and C. for the cannot be said to be Eins
d'autre Estate at all, much less to them. And yet it is a Rare Case, that
a Common Recovery against the Tenant in Tail shall bar the Remain-
der, and not bar the Intail; for here the Intail, (that is, the Issues of the
Intail) were barr'd before by the Fine; but yet it may be truly said that the
Intail is barr'd by the Recovery; because the Wife was feised of the whole
Intail, which was so barr'd, and the Remainders are then depending
immediately upon it. If the Wife, after such Common Recovery pafs'd
against her, dies, leaving Issue by her Husband, now D. is to have the Land,
(as hath been said) neither can the Recovery, had against her, hurt him;
for as to him she was Eins d'autre Estate, and therefore the Value cannot come
to him; and if the had come in as a Vouchee, yet it could not have hurt
D. For his Estate and hers never stood together, nor had Dependance the
one upon the other; and he had his Estate divided from hers, and by con-
trary Means, tho' both out of the Root of the Intail; Per Hobart Ch. J.
Hob. 259. in Case of Duncombe v. Wingfield.

12. Recovery in Value shall not go to a Possibility. See Tit. Recov-
ery Common, (A) pl. 5.

(S. b) Recovery in Value. In what manner he shall have
the Thing recover'd in Value.

1. If Leissee for Life, rendering Rent, recovers in Value for this Land
against Leissee, he shall not render any Rent out of this Land so
recover'd in Value; because the Rent, which he ought to pay, shall be
recompus upon the Recovery in Value. 22 Aft. 52. by Thorpe.

(S. b. 2) Remedy for Recovery of the Value.

Br. Recovery, pl. 20.
1. Where Tenant in Tail is seised by the Tail, and suffers a Re-
covery, with Judgment in Value, this shall bind the Tail; for the
Recompense shall go as the Land tail'd goes, and he may of this have a
For-

2 A
Voucher.

2. A Man shall have a Writ of Warrantia Charta, also he may vouch in the Action brought against him, and if he recovers in the Warrantia Charta, e. and afterwards loseth in the Action brought against him, in which he vouch'd him against whom he recover'd his Warranty, then he shall have a Writ which is called habeas facias ad Valorem &c. prefently, within the Year after the Recovery, and shall not sue forth Scire Facias. F. N. E. 139. (D)  

bind the Land from the Title of the Warrantia Charta, (tho' he cannot have Execution until he take LofD) and upon the Voucher he shall have but from the Time of the Voucher, which may be delay'd, and therefore he was of Opinion, that he may bring it even after Voucher, because that Action may be discontinued, and fall many ways; and so the Warranty of Charters be necessary, and this Reason is expressly given both in 9 E. 2. and by Firth. Nat. sir.  

* F. N. B. 13; (D) in the new Notes there, (a) says that fo is 16 E. 3. Garranty de Charters, 20. Contra where he recovers before the Writ brought against him, yet there he shall have a Scire Facias; and and cites 19 E. 3. Warranty of Charters, 15. And it seems, if the Defendant does not acknowledge (or confess) that he has lost, he shall have only a Scire Facias. Ibid cites 16 E. 3. ibid. 20 & 29 E. 3. 4. per Tift. 13 E. 3. 4. 2. 9 E. 2. pl. 2. 45 Ed. 3. 10. Bro. Warranty, 20. 36 E. 3. pl. 11. 7 E. 2. pl. 30. 51 E. 3. pl. 22.  


2. As if the Land be of greater Value than it was at the Warranty made, by finding of a Mine of * [Lead] or Tin, he shall not render in Value according to that, but as it was at the Warranty made. 19 H. 6. 46. 61.  

S. C. — S. P. and it was inquired what the Value was at the Time of the Warranty. Br. Voucher, pl. 59. cites 3 E. 3. Ir. D.  

* Original is (Effant) but in Br. it is (Plumbe.)  

3. But in this Case, if he enters into the Warranty generally, and not shewing the Special Matter, he shall recover in Value, according to the Value at the Entry into the Warranty. 19 H. 6. 46. 61. 30 E. 3. 14.  

If the Tenant be implanted, and vouches me, and at the Grand Cape ad Valorem I come, and cannot bar the Demandant, I shall take the Land was at the Time of the Warranty, and shall not render more in Value. Br. Voucher, pl. 69. cites 19 H. 6. 45. 46.  

4. If a Man grants a Ward which creates a Warranty in Law, if after the Grant other Land descends to the Ward, by which he is of much greater Value, yet he shall not render in Value according to that, but only according to the Value at the Warranty created, tho' * This should be better by the Defendant after. 30 E. 3. 4.  

5. If a Man recovers in Value upon a Warranty in Law upon an Exchange, he shall have in Value according to the Value which he lost. Co. 4. Bynard 122.  

exchang'd be recover'd, he shall recover only for that Portion. Br. Voucher, pl. 116. cites 15 E. 4. 3. Per Littleton. — S. C. 9. Br. Recovery, pl. 36. That it is the same in Partition; and yet if a Man enters into Parcel of the Land exchang'd or divided, this defeats all the Exchange or Partition, so that the Party may enter into the whole; for Exchange is Intire.  

P p 6. If
6. If Coparceners make Partition, and then after Aid any of the Part of one Partener is recover'd by a Stranger, the Partener who loses it shall not have in Value according to the Value which he lost, but the shall have in Value according to her equal Part, all the Residue, whereof they made Partition, being put and valued together, and so each shall have after an equal Part. Co. 4. * Buffard 122. 46 E. 3. 31. b. 13 E. 4. 3 b.

If R. S. C. adjudg'd for the Plaintiff; but in neither of those Places does this Point, or the Point at pl. 5, appear.—Mo. 665. pl. 909. S. C. adjudg'd, but S. P. does not appear.—Yelv. S. S. C. but S. P. does not appear.

7. [So] if two Coparceners make Partition, and after the one aliens Parcel of her Partrarty, and after the other is impleaded, who has Aid of her Sister, and they lose, the who loses shall not have in Value only the Moiety of that which the other has, but according to the Value of the Moiety of that which the herfell lost; for her Alienation of Part is her own Act. 1 E. 3. 4. b. But quere.

8. If the Vouchee enters into the Warranty, and takes by Protestation the Value of the Land, the Protestation shall serve him for the Value, tho' the Plea be found against him. Co. Litt. 126. a. (2)

9. If there are new Buildings erected since the Warranty made, and the Warranty is demanded of them, and after the Deed is shew'd, the Defendant shall not have any Benefit by demurring upon it; but if he will be aided, he must shew the Special Matter, and enter into the Warranty for so much as was at the Time of making of the Deed, and not for the Residue. Godb. 152. Pach. 5 Jac. C. B. Ballet v. Ballet.

(T. b. 2) Remedy where more is recover'd than ought to be.

If more Land be put in Execution upon Recovery in Value than ought to be, there upon this Surmise he shall have Scire facias. Br. Scire facias, pl. 228. cites 22 E. 3. 1. and Fitzh. Recovery in Value 22.—And such a Scire facias, tit. Brief in Fitzh. the same Year, M. 37. 8.


If the Thing warranted becomes of greater Value after the Warranty created, and before the Entry into the Warranty, if the Vouchee enters generally into the Warranty without shewing the Special Matter, he shall render in Value according to the Value at the Entry into the Warranty. 30 E. 3. 14. b. 19 D. 6. 46. 61.

but in such Case, if the Vouchee demands the Lien, and demurs upon the CAuse shewn, and it is adjudg'd against him, he shall render in Value only according to the Value at the Warranty created, because he could not plead the Special Matter of the Value in this Case, as he
Voucher.

he might in the Case before, where he entered into the Warranty, and lost by the Pleading. 30 E. 3. 14 b.

3. If the thing warranted becomes of greater Value after the Entry into the Warranty, the Voucher shall render in Value only according to the Value at the Warranty made, because he could not have pleased this Special Matter. 30 E. 3. 14 b.

4. In Prac'tice, good reed of the Tenant vouch'd, and the Demannant recover'd against the Tenant, and he ever in Value Land extended to 4l. 9 s. very, pl. 7. failing to the Voucher that he at another Time might challenge the Extent, and cites 5 c. after the Voucher challenge'd the Extent, and Proceeds infed to the Sheriff of E. who return'd Extent to the Value of 60 s. and because the Tenant first challenge'd this Extent, and after costs'd, and did not fully challenge, therefore it was awarded that the Tenant have in Value according to the Extent, and that the same Voucher have the Residue of the Land first extened; quod nota. And so see Extent upon Extent. Br. Extents, pl. 3. cites 7 H. 4. 19.

(U. b. 2) Warranty collateral. [Bar] See (U. b. 3) S. P.

1. If a Man be dissised, and an Ancestor collateral of the Diifeise releashes with Warranty to the Diifeisor, and dies, this shall bar the Diiseise. 26 Aft. 8. 35 H. 6. 63.

(U. b. 3) Warranty collateral. Bar.

1. If Tenant by the Currtesy be, the Reversion to an Infant, and the Tenant by the Currtesy aliens in Fee with Warranty, and dies, by which the Warranty with Aliens descends upon the Infant in Reversion, yet this shall not bind the Infant, but he may enter and defeat the Warranty, and upon Re-entry may have an Allev; for his Laches of Entry during the Life of Tenant by the Currtesy, shall not hurt him. 28 Aft. 28. adiug.d.

2. If an Infant be dissised, and a collateral Ancestor releashes with Warranty to the Diiseisor, and dies, and the Infant brings Allev against the Diiseisor, this* collateral Warranty shall bar him, because that he might have enter'd, and so hee defeated the Warranty, yet impos'd as he has brought his Action, he has given Power to the Diiseisor to plead it against him. 35 H. 6. 63.

3. Stat. of Gloucester. 6 E. 4. col. 3. * If a Man alien a Tenement Before the making of this Statute, when the Heir demanded Inheritance on the Part of his Mother, the Warranty of the Tenant by the Currtesy, whose Heir he was, barr'd him of that Inheritance without any Alien. This Statute provides that it shall not bar without Alien. 2 Inft. 292.

But at the Common Law, if the Heir had been within Age, and his Entry congeable, tho' he had not entered in the Life of the Ancestor, the Warranty bound him not but that he might enter and avoid the Warranty; but if he were driven to his Action, the Warranty had bound him; and so it was in Case of a Pome Covert. 2 Inft. 292.

* If:
Voucher.

* It is a Rule and Law of Parliament, that regularly Nova constitutio futurus formam imponere debet, non præteritis. 2 Inst. 292.

† This Word (Act) doth properly signify a Transmutation of Possession, but yet a Release or Confirmation of the Tenants by the Curtesy with Warranty, where a Transmutation of Possession is, within the same Mischief; and therefore is within the Remedy of this Statute; for otherwise the Statute should serve to little Purpose. 2 Inst. 295.—Co.Litt. 565. b. S. P.

*If the Heir demands the Heir of his Father, and the Warranty in the Part of his Heirs is pleaded, this Case is not holpen by this Statute, as in the first Part of the Infringuries it appears; for this Act by this branch provides only for the Case of the Tenant by the Curtesy, and therefore Tenant for Life or Tenant in Descer is not within the Case or Clasis of this Act, but as concerning the Case of the Tenant by the Curtesy, which is the Case of this Act, this Statute is taken by Equity. 2 Inst. 295.

† This not only extends to the Son but to the Daughter, and to any other Heir immediately, as here the Example is put, or mediate, as Coif and Heirs, be they never to remove. 2 Inst. 295.

‡ This is to say, from which no Lands or Tenements in Fee-Simple, of the yearly Value of the Inheritance of the Part of the Master be held to the Heir; for the Warranty is no bar without such Afts. 2 Inst. 295.

And by the Equity of this Statute the Warranty of the Tenant in Tail is no Bar unless there be Afts in Fee-Simple descended. 2 Inst. 295.

Albeit the Word Heritage be general, yet hath it in Constitution a special Signification; for the Afts doth refer to the essential Quality of the Inheritance, whereof the Heir is to be b'ard, and that is, that it be in a local, Peerage, and certain Inheritance, as Lands, Rents, Commons, and the like: And therefore * an Inheritance, that is a Personal Inheritance, and lies in Action, and not Right of Action of Inheritance is no Heritage within this Statute, until it be reduced into Possession, Et sic de similibus. 2 Inst. 295.

** Co. Litt. 274. b.

* The Intendment of the Makers of this Act is, that the Warranty of him that held by the Curtesy should not be a Bar to the Heirs of his Wife, unless he left Afts; and the Makers of the Statute could not put all the Cases that might happen, but did put the strongest Cases, and by Conformation the lesser shall be included, and therefore in all Actions, as the Right of Reversion, the Formedon in the Defender, the Writ of Entry in the Per, the Writ of Entry ad commovendum, and the like are within this Statute. 2 Inst. 295.—S. P. For the Actions here put are put only for Examples. Co.Litt. 565. b.

It shall be no Bar in Mortdancefior, Avei, or Cofinage without Afts in Pacto & Re, whereas before, Afts were only intended in Law. And Dyer says this Statute is to be strictly taken; for he takes the Law at this Day to be, that if the Heir does not enter upon the Allience in the Life of his Father, he shall be bound and b'ard of his Entry by the Warranty. 3 Inst. 138. a. pl. 77. Pach. 3 & 4 P. & M. in Case of Villars v. Beaumont.

If Tenant by the Curtesy be of a Seigniory, and the Tenancy of his Heirs unto him, and after he aliens with Warranty, this shall not bind the Heirs, unless Afts defend; for it is in equal Mischief. But notwithstanding this Statute, if Tenor Tenant in Descer have alien'd in Fee with Warranty, and died, the Warranty had bound the Heir until the Statute 11 H. 7, by which Statute the Heir may enter notwithstanding such Warranty. Co. Litt. 565. b.

If a Seigniory doth descend to him of his Father's Side, then be shall be b'ard for the Value of the Heritage that is to him descended.

And if any Heritage descend to him of his Father's Side, then be shall be b'ard for the Value of the Heritage that is to him descended.

By this Act the Warranty of a Tenant by the Curtesy, being pleaded with Afts defended, is a Bar to the Heir of the Mother; but if Afts be not then defended, but after it descends from the father, then the Tenant shall have Recovery of the Inheritance of the Mother by a Writ of Judgment, as this Act appoints: And by the Equity of this Act it is taken, that in a Formation in the Defender, if the Warranty of Tenant in Tail be pleaded, where no Afts is then descended, but after Afts doth descend to the Isser, there the Tenant shall have a Scire facias to have the Afts, and not the Land in Tail; for if he should have the Land in Tail, it was consider'd, that if the Issue alien'd the Afts, he should
Voucher.

149

If the demand by Action the * Inheritance of his Mother by a † Writ of * Some ex-
pound (the Heritage of the Mother) to be the
 Lands which the Mother has by Defect, and that Contraction is true; but the Statute, by the Au-
thority of Littleton, extends also where the Mother has it by Purchase in Fee-Simple; for so says Little-
ton himself, that the Word (Inheritance) is not only intended where a Man has Lands by Defect, but
where a Man has a Fee-Simple by Purchase, because his Heirs may inherit him. And albeit it be true
that the Statute extends to an Estate in Frank-Marriage, acquired by Purchase, yet does it extend also
to all Estates in Tail, as well by Defect as by Purchase; for that Frank-Marriage is put but for an Ex-
† That is a See Cui in Vitta, but if the Lands were entail’d to the Wife, and after the Statute of Dowis
of W. 2. the Heir brought a Forndem, the collateral Warranty of the Husband shall Bar in that
Action. 2 Inf. 294.
‡ This is to be understood whereof no Fine is lawfully levied, that is by the Husband and Wife, for
then her Heir claiming a Fee Simple is bar’d; but a Fine levied by the Husband alone was a Wrong,
and at that Time a Dilicynnence, and therefore such a Fine was not within the Intention of this Act.
2 Inf. 294.—Co. Litt. 591. b. S.P.

4. If Collateral Warranty defends upon an Infant, he may enter in the Life of the Acestor, or after; well enough; per Shard, Stout, and Birton. Br. Garranties, pl. 48. cites 23 Aff. 28.

5. If Warranty Collateral defends upon the Heir within Age, the Entry of whom is lawful, and he enters, he shall not be bar’d by the Warranty; contra where the Entry is tol’d, there the Warranty is a Bar; and so it seems of Coverture and Warranty Collateral defenced. Br. Garranties, pl. 94. cites 32 E. 3.

Q q 6. If
6. If Tenant in Tail be, the Remainder to E. in Tail, the Remainder to C. in Tail, and the Tenant in Tail dies without Issue, and E. in the first Remainder makes Reversion with Warranty, and has Issue and dies, and after the Issue dies without Issue, and C. in the second Remainder be Heir to him, he shall be barr'd by this Warranty tho' the Issue had nothing by Defect; so that he was not barrable; per Finch; but Kirton Serjeant contra. Br. Garranties, pl. 8. cites 41 E. 3. 7.

7. It was in a Manner agreed, that if a Man releaseth with Warranty to my Tenant for Life, the Reversion to me and dies, and I am Heir to him, yet I shall not be barr'd; for the Reversion continues in me. Br. Garranties, pl. 13. cites 45 E. 3. 21.

8. It was agreed that Collateral Warranty defended shall bind the Right and extinguish the Tail and the Right, so that a Man cannot be remitted after Collateral Warranty defended; for 'line Warranty and Affairs defended is only a Bar to the Tail, but Collateral Warranty is an Extinguishment of the Tail; so that tho' the Tenant in Tail or his Issues enter after this, and die seised, and his Heir is in by Defect, yet he shall not be remitted for the Reason aforesaid; for per Newton, if the Affairs be alien'd or recover'd, the Heir in Tail shall retrovert to his Formedom, notwithstanding the lineal Warranty. Contrary upon Warranty Collateral. Br. Garranties, pl. 31. cites 19 H. 6. 59.

9. If Collateral Warranty defeaseth, it shall bind the Right and Entry, and is a Bar in the Action. Br. Entre Cong. pl. 33. cites 19 H. 6. 59.

Where a Man has Entry lawfully and suffers Collateral Warranty to defeaseth upon him, his Title is extint if he be of full Age; but if he be within Age at the Time of the Defect, he may Defeat it by Entry within Age or at full Age, but shall not defeat it by Affairs; for if he pleaded against him, and he cannot plead Entry to defeat it, he shall be bound; Per Prior. Br. Garranties, pl. 4. cites 55 H. 6. 63. —— And it is laid elsewhere, that upon Defect &c. where Entry is not lawful, and collateral Warranty defends, this shall bind for ever notwithstanding Nonage or Coverture; for Nonage nor Coverture shall not serve to defeat collateral Warranty, but where his Entry is lawful; quod nota. Br. Garranties, pl. 4. cites 55 H. 6. 65.—— Br. Entre Conceivable, pl. 5. cites 55 H. 6. 60. S. C.

Rights of Entry are bound by collateral Warranty as well as Rights of Action. 2 Salk. 686. Patch. 4

Anna, Smith v. Tindal.

10. In Trespass, Collateral Warranty was pleaded against a Feme in Remainder in Tail, who was Covert at the Time of the Defect thereof, and held a good Bar in this Action, by Reason that it was made upon Discontinuance; for this is a sufficient Bar in Trespass without the Warranty. Br. Garranties, pl. 54. cites 3 H. 7. 9.

S. P. Br. Garranties, pl. 42. cites 21 H. 7. 59. by the Justices who said that it is not so clear as the Usurpation [see pl. 15.] because the Usurper has Fee by the Usurpation.

11. Tenant in Tail of an Advowson in Grafts gave it to W. N. in Fee, and the Ancestor collateral to the Tenant in Tail released with Warranty and died without Issue; the Tenant in Tail died, the Church voided, W. N. presented, and the Issue in Tail brought Quare impedit, and the other pleaded the Release with Warranty; and adjudged a good Bar, because he claims Inheritance. Contra if he had claim'd only for Term of Years. Br. Garranties, pl. 36. cites 15 H. 7. 9.

12. Release with Warranty by the Ancestor Collateral, is a good Bar in Wafe, where the Plaintiff counts for Term of Life; but it is no Bar against him who claims by Elegit, or by Statute-Merchant; but if he claims Frankenheim, it is a good Bar. Quod nota. Br. Garranties, pl. 36. cites 15 H. 7. 9.

13. Tenant
Voucher.

13. Tenant in Tail of an Adwosyon in Gros^ and a Stranger presented by U.
forpation^ the six Months past'd^ and the Ugifper granted the Adwosyon to a
Stranger in Fee. The Tenant in Tail died, and the Ancesor Collateral of
the Ilfue in Tail releas'd to the Grantee with Warranty^ and dies without
Ilfie. And the Opinion of all the Justices of C. B. was^ That the Ilfue
in Tail is barr'd^ because the Grantee had Fee at the Time &c. Br. Gar-
arrantes^ pl. 42. cites 21 H. 7. 39.

14. If Tenant in Tail of Rent grants it in Fee^ and an Ancesor Colla-
teral releas's with Warranty^ and dies without Ilfue^ this is a Bar ; per
Vapersor^ who said that his Companions were of the fame Opinion. Br. Gar-
nanties^ pl. 42. cites 21 H. 7. 39.

S. P. because he warrants
br the Fee. Br.
Tail &
Done^ pl.
cites S. C.—But if Tenant in Tail of Rent grants it in Fee with Warranty^ and dies, this shall
not be a Bar, if the Ilfue will befarm. Contra if be brings Formedon^ and admits the Discontinuance ; and
this where Aldis is defined with the Warranty. Quid fall concussum. Br. Garranties^ pl. 42. cites S. C.—Br. Tail &
Done^ pl.
cites S. C.

15. If the Tenant in Tail has Ilfue 2 Sons by diverse Ventes^ and dif-
If there are
continues^ and dies^ and the Ancesor Collateral of the eldest Son releas's with new Brothers
Warranty^ and dies without Ilfue^ and the eldest Son dies without Ilfue before any Formedon brought^ the youngest Son may recover by Formedon ; for
he is not Heir to the Warrantor^ and his Brother was not barr'd by
Judgment. But Quere inde ; for it seems that the Defcendant of the Colla-
teral Warranty extinguishes the Tail; but if the Eldest had been barr'd by Judgment^ then clearly the Youngest is gone alio. Br. Tail &
Done^ pl. 33. cites 24 H. 8.

16. In a Juic Utrosum brought by a Parson of a Church^ the Collateral
Warranty of his Ancesor is no Bar ; for that he demands the Land in the
Right of his Church^ in his politicke Capacity^ and the Warranty de-

17. But some have holden^ that if a Parson bring an Atifie^ that a Col-
lateral Warranty of his Ancesor shall bind him ; and their Reason is^ for
that the Atifie is brought of his Possession and Seifin^ and he shall
recover the mean Profits to his own Use ; but seeing he is seifed of the
Freehold, whereof the Atifie is brought in Juic Ecclesic^ which is in an-
other Right than the Warranty^ it seems that it should not be any Bar in the Atifie.
The like Law is of a Bifhop^ Archdeacon^ Dean^ Matter of an
Hospital^ and the like^ of their sole Possessions^ and of the Prebend^ Vic-
car^ and the like. Co. Litt. 370 a. b.

18. If Husband and Wife^ Tenants in special Tail^ have Ilfue a Daugh-
ter^ and the Wife dies^ the Husband by a 2d Wife hath Ilfue another Daugh-
ter^ and discontinues in Fee^ and dies^ a Collateral Ancesor of the Daughters
releas's to the Discontinuie with Warranty^ and dies^ the Warranty de-
cends upon both Daughters^ yet the Ilfue in Tail shall be barr'd of the
Whole^ for^ in Judgment of Law^ the intire Warranty descended upon
both of them. Co. Litt. 373. b.

19. Albeit a Woman may have a Writ of Dower to recover her Dower^ yet because her Title of Dower cannot be divested out of the original Efience^ a Collateral Warranty of the Ancesor of the Woman shall not bar her. So it is of a Feoffment Caufa matrimonii praelociui. Co. Litt.
389. a. (d)

20. A Man had Ilfue 2 Sons^ and devise'd Lands to his youngest Son in
Tail^ and died^ the Eldest having Ilfue a Son. The youngest Son alien'd the
Land in Fee with Warranty^ and went beyond Sea^ and there died
without Ilfue^ the Son of the Eldest being within Age. It was the Opinion of
S. C. cited
Collateral

of Plowden and Bromley^ Solicitors^ and of Manwood and Lovelace^ by Vaughan
Serjeants^ and of Dyer and Catlyn Ch. Justices^ That the name was a
Collateral Warranty, and, without Aslets, was a Bar to the Issue of the eldest Son, notwithstanding his Nonage, because his Entry was told." Mo. 96. pl. 239. says this was reported to him as 12 or 13 Eliz. one Evans's Cafe.

21. A. infofed W. R. and W. S. of 2 Manors, to the Intent that they should re-grant the same to A. and M. whom he intended to marry, and to the Heirs Male of the Body of A. which was done accordingly. A. and M. marry, and have Issue B. A. dies. B. in the Life of M. [as] Tenant of the Franktenement, which was intended * by Difference, Anno 4 H. 8. suffer'd a Common Recovery with Single Voucher by Agreement, to the Intent that the Recoverors should infofed others to Uses, and that M. should, for better Allurance, release to them with Warranty. M. releas'd with Warranty accordingly, and then M. died, and after B. died. And the Question was, Whether this Collateral Warranty shall bar the Demandant, who was the Issue of B. And it was resolve'd, That the Estate Tail was barr'd by the Warranty; but if the Release by M. had been made after the Death of B. in such Case the Issue of B. might have avoided the Warranty by the Statute of 11 H. 7. 20. 3 Rep. 58. b. 61. a. b. Mich. 37 & 38 Eliz. C. B. the 3d Resolution in Lincoln-College's Cafe.

22. If Tenant in Tail, being in of another Estate, suffer'd a Common Recovery, and a Collateral Ancestor of the Tenant in Tail releas'd with Warranty to the Recoveror, and after the Recoveror makes a Feoffment to Uses, which are executed by the Statute 27 H. 8. and after the Collateral Ancestor dies. In this Case, tho' the Estate of the Land be transferr'd en le Pot, before the Descent of the Warranty, yet this Warranty shall bind, and the Tenantants may take Advantage of it by way of Rebutter. 3 Rep. 62. the 4th Resolution in Lincoln-College Cafe.

23. A. was Tenant for Life, Remainder in Tail to B. his Son, Remainder to the right Heirs of A. who levied a Fine with Warranty to the Use of L. and M. in Fee, and they by Bargain and Sale convey their Estate to the Defendant. B. in A.'s Life-time, before the Warranty attach'd, came of full Age. Then A. died. And the Question was, Whether the Entry of the Son was barr'd by this Collateral Warranty, thus descended on him; and 3 Justices, abente North Ch. J. were clear of Opinion that it was, and to Judgment was given for the Defendant. And Ellis J. said, that tho' in this Case the Warranty did not attach before the Estate in the Land was transferr'd, yet 'tis well enough if it attach afterwards. 2 Mod. 14. Hill. 26 & 27 Car. 2. C. B. Wilkinson v. Hancock.

24. J. Tenant for Ninety-nine Years, if he so long live, Remainder to Trustees during the Life of J. to preserve the contingent Remainders, Remainder to his 2nd &c. Sons of J. to be begotten in Tail, Remainder to Heirs Male of the Body of J. Remainder to T. Brother to J. and to the Heirs Male of his Body; and this Estate was created by A. Father to J. and T. J. having no Issue, the Trustees convey the Freehold to him, and he levies a Fine, and after suffer's a Recovery, which was to the Use of himself and his Heirs, and devises the Land to Temple &c. in Trust for &c. and dies, T. being his Brother and Heir. In this Case it seem'd to be the Opinion of the Court, that the Remainder of T. was barr'd by the Collateral Warranty descended upon him. Skin. 106. Patch. 35 Car. 2. B. R. Riley and Temple.
25. 4 & 5 Ann. cap. 16. S. 21. Enacts, That all Warranties made after this the first Day of Trinity-Term, by any Tenant for Life, of any Lands, Tenements, or Hereditaments, the same defending or coming to any Person in Reversion or Remainder, should be void. And so of Collateral Warranties by any other Ancestor, who has no Estate of Inheritance in the same, they shall be void against the Heir.

Rerovement or Remainder, not entitling in the Ancestor's Life; but if he had entered for the Perfection, and avoided the Effate to which the Warranty was annex'd, the Warranty was avoided also.

Hawk. Co. Litt. 461.

Before this Act collateral Warranty was a Bar both of a State in Fee and Tail, with or without Affirmation. Hawk. Co. Litt. 47.

A, B, and C are Brothers. A Gift is made to A in Tail, Remainder to B in Tail, Remainder to C in Tail, A. discontinues with Warranty. This is collateral to the Brothers, because the Remainders are their Titles, and to those A. is collateral; and it seems, that such a Warranty does still bar the Remainders, because it is not within this Act, which speaks only of Warranties made by them who have no Estate of Inheritance in the Land &c. Sed Q. If a Warranty made by the Donor shall be a Bar, in as much as tho' it be collateral, and made by an Ancestor who has an Inheritance in the Land, yet the Effate of the Donees doth not depend on the Donor's, but his on theirs'. Hawk. Co. Litt. 474.

It is a common Mistake, that all Collateral Warranties are taken away by this Statute; whereas it only makes void all Warranties by Tenant for Life, and all Collateral Warranties made by any Ancestor, not having an Effate of Inheritance in Possession. So that if A. be Tenant in Tail, Remainder to B, his next Brother, which is a very common Cafe, arising almost on every Marriage-Settlement) and A. being in Possession makes a Feoffment, or levies a Fine, with Warranty from him and his Heirs, and dies without Issue, this is a Collateral Warranty, (for B.'s Title is by way of Remainder, to which his elder Brother is collateral) which shall bar B, notwithstanding the Statute, tho' no Affirmations defend. Et sic de similibus. Rob of Gav. 125. cap. 6.

26. Tho' a Collateral Warranty will not give a Right, yet it will bar one, and when it is barr'd by a Warranty, it is as much as if it were barr'd by the Statute of Limitations. After the Aisle joint'd in a Writ of Right, the Grand Affire is to try whether the Demandant has more mere Right than the Tenant; and in such Case a Collateral Warranty will neither bar nor make a Right; but in all Possession Actions it is otherwise. As in an Ejectment, for there a Collateral Warranty will make a Title, according to Rep. Seymour's Cafe. And in 16 Aff. 16. a Title was made in an Affire under a Collateral Warranty. A Fortiori, it may be done in Ejectment.


27. A collateral Warranty will hinder a Remitter; [As] if a Man be Tenant for Life, Remainder to his Wife for Life, Remainder to their first Son in Tail, here, if the Husband after the Son comes of Age, makes a Feoffment to another and his Heirs with Warranty, and after that an Estate is granted back to the Husband, and then he dies, this collateral Warranty will hinder a Remitter to the Son. MS. Rep. Mich 5 Ann. B. R. Per Cur. in Cafe of Smith v. Tindall.

(U. b. 4) Warranty collateral. What is.

1. Every Warranty of the Tenant for Life is collateral to him in Remainder; and the Warranty of him in Remainder is collateral to every other Tenant for Life &c. because it is collateral to the Title, tho' it be ineal in Blood; and so of Warranty which is collateral of Blood, this is a Bar. Br. Formdon, pl. 67. cites Old Nat. Br. 143.

2. If Tenant in Tail discontinues the Tail, and hath Issue, and dies, and The Reason, the Uncle of the Issue reaches to the Discontinues with Warranty &c. and wherefore the Warranty of the Cause without Issue, this is collateral Warranty to the Issue in Tail, be.
Uncle, having the warranty descends upon the issue that cannot convey himself to the entail by means of his uncle. Litt. S. 799.

In Tail, shall bar the issue in Tail, is, for the Law presumes the uncle would not unnaturally disfranchise his issue, being of his own blood, of that right which the uncle never had, but came to the heir by the warranty, which also would prevent his greater advancement; nemo prefumitur alienam possetiam sine preludio. And in this case the Law will admit no proof against that which the Law presumes.

And so it is of all other collateral warranties; for no Man is presumed to do any thing against Nature.

Co Litt. 273. 2.

3. If a Coparcener alien in fee with warranty, each warranty shall be collateral; per Brian and Fairfax J. but Brooke says, quare inde; for it seems to him that the warranty of the one is collateral to the other for the parts of the other two; for they cannot claim their own proper parts by their sister, but as to the part of her who warrants, it is only lineal to the other daughter, if the dyes without issue; for they may claim the part of their sister, who made the warranty, by her who made it. Ex nunc notis hinc. Br. Garranties, pl. 55. cites 4 H. 7. 18.

4. If the Baron and Feme alien the land of which she is devisable, there, to have collateral warranty, it is good to have the warranty of the Feme against her and her heirs, and then if she has issue by the Baron, and she and the Baron die, the warranty shall be collateral to the issue, because the land comes by the father, and not by the mother. Br. Garranties, pl. 79. cit. 31 H. 8.

5. Tenant in tail has issue two daughters, and dies, the eldest enters into the whole, and thereof makes a feoffment with warranty, and dies without issue; this is collateral to the youngest as to the one moiety which belonged to her, and lineal as to the moiety belonging to the eldest. Litt. S. 710.

6. If there be father and 3 sons, and land is given to the father for life, the remainder to the 2d son in tail, remainder to the eldest and youngest son in fee; and afterwards the 2d son releases to the father, his heirs, and assigns, all his right in the land, with clause of warranty against him and his heirs for ever; after which the father devises the land to a stranger in tail, and dies, and then the 2d son dies without issue, and then the youngest dies without issue in the life of the devisee, and then all dies, and enters upon the devisee. The court were of opinion that his entry was lawful for the whole during his life, because this warranty is not collateral to him, for that his remainder was discontinued. Bend. 225. pl. 256. Trin. 16 Eliz. Anon.

7. A seised in fee, in seff'd B. in fee, to the use of M. his (A.'s) wife, and of the heirs of A. who should beget of the body of M. remainder to the issue of the right heirs of M. They have issue. Afterwards A. makes a seoffment in fee with warranty, and dies; M. enters and dies. The court held that this warranty was collateral to the same issue, because it descend'd upon him in the life of the Baron. Quære. Bend. 264. pl. 276. Trin. 17 Eliz. Cadbury's cafe.

8. Release with warranty of tenant by the curtesy of Dower, or tenant for life, to the devisee, was collateral warranty by the common law, and should bind the heir; but this is to be intended when there was no course or collusion to make devises; but after diversities made without covin, there, such release in case of the tenant by the curtesy, or baron seised in right of his Feme before the statute of Gloucester, or of the tenant in dower or in jointure before the 11 H. 7. was a bar, as a re-
Voucher.

155

a Release by other Tenant for Life is at this Day. But Release at this Day, by Tenant for Life made to the Diffeifor, or any other without Covin, and yet with Intent to bar him in Reversion, shall bar him; for Intention, without Covin and Diffeifin, shall not avoid the Warranty; As if the Father Tenant for Life, had made Feeomment in Fee with Warranty, and died, this Warranty shall bind the Son, tho' it was of Purpofe to bar him, because there was not any such Diffeifin; and therefore such Warranty cannot be avoided by Averment of Covin; and Warranty commencing by Tort cannot be avoided, but Warranty which commences by Diffeifin. 5 Rep. 80. a. b. in a Nofa of the Reporter in Fitzherbert's Case.

(U. b. 5) Original Intention of Collateral Warranty.

1. No Reason can be given for a collateral Warranty; Per Cur. 4 Mod. But Hole. 211. Pafch. 5 W. & M. in B. R. in Cafe of the Attorney General v. Dr. Lancalater.

Warranty was the Security of Purchasers, and for their Encouragement; as also for the establishing and settling the Estates of such as were in by Title or Defent cast; and this was the only Security such Persons could have at Common Law. And because the Estate of such Persons as are in by Title, are much favour'd in Law, the Covenants that were for strengthening of them were favour'd likewise. And in those Days there was no Need of a lineal Warranty; but, however, the Force of that is taken away by the Statutes of Donis; and Common Recovery is not upon the Supposition of Recompence in Value, and never was within the Statute, but always as much out of it as if it were so mentioned by express Words. And this, he said, was my Lord Hale's Opinion. 12 Mod. 512. Pafch. 13 W. 3. Ana.


1. Trespas upon the Statute of R. 2. by 4. Pigot faid that tho' 4 are Heirs in Gavelkind, and that A. Uncle to them had released with Warranty, whole Heirs they are; Judgment if Action contrary to the Warranty. And by all the Justices it is no Bar; but it was argued that it is no Bar but against the Heir at Common Law, and not against the other, younger Sons. Br. Trespas, pl. 303. cites 22 E. 4. 10.

2. Warranty never goes with Borough English or Gavelkind Land to the special Heir, nor can it descend to one of the Half-blood; and neither Collateral Warranty nor Lineal did ever bind the Heir &c. unless it descended on him. Hawk. Co. Litt. 487.

Every Warranty does descend upon him that is Heir to him

that made the Warranty by the Common Law. Co. Litt. 576. a.

(U b 7)
Voucher.

(U. b. 7) Warranty collateral. Defeated.

1. If Ancestor collateral releases with Warranty, and the Heir enters in the Life of him who warrants, the Warranty is gone for ever. Br. Garranties, pl. 71. cites 9 All. 15.

2. If Tenant for Term of Life is dissised, and an Ancestor collateral of him in Reversion releases with Warranty, and dies without Issue, and after the Tenant for Life enters, the Reversion by this is not recontinued, but remains to the Dissised, by Reason of the Warranty which is descended before the Entry of the Tenant for Life; Per Kirton, quod Finch conceit. Br. Garranties, pl. 51. cites 44 All. 35.

Contrary if the Tenant for Life had entered before the Death of the Warranty; for then the Reversion upon which &c. had been defeated, and so the Warranty defeated. Ibid.

3. It was agreed, that where collateral Warranty is descended upon one within Age, he may enter within Age to defeat the Warranty, or at full Age, by reason of the Nonage before; Quod nota. But it seems, that if a Defective be made between the full Age and the Entry, that then he cannot enter. Br. Garranties, pl. 62. cites 18 E. 4. 13.

(W. b) Lineal Warranty with Assets. Bar, in what Cases. And what is a lineal Warranty.

1. It was found by Office, that King H. 3. was seized in Fee of the Manor of C. and gave to E. C. in Tail, and that E. died without Issue, by which the Land ought to revert to the King, and it was return’d in Chancery; and M. came, and not confessing the Tail said that E. the Donee infeoff’d W. her Baron in Fee, with Warranty in Exchange for another Manor which W. gave to E. and his Heirs, and that E. was Ancestor of King E. 1. Grandfather to the King which now is, and before bow, and that Assets descended to the said King E. 1. by the same E. the Peeress in Fee simple, viz. such Land in the County of S. and demanded Judgment if against the Deed with Warranty, and Assets descended &c. by which the Right of the Reversion was extinct in King E. 1. Quo Estate W. M. has; and demanded Judgment if the King shall impeach; and Search was made, and found that E. died seised of the Assets which descended to E. 1. by which M. had Restitution; quod nota. Br. Garranties, pl. 52. cites 45 All. 6.

2. If Tenant in Tail of an Advowson in gros aliens with Warranty, and has Issue, and dies, and Assets descendent, the Issuer brings Quare Impedit; the Warranty and Assets is a Good Bar; and if the Heir has no Assets at the Time &c. but Assets descendent after, the Alienee shall have Scire facias to have in Value; Per Monbray, which none denied. Br. Assets per Deficient, pl. 32. cites 43 E. 3. 26.

* As where 3. Note, that lineal Warranty is no Bar in Formedon * without Assets. A. Tenant in Br. Formedon, pl. 73. cites Old Nat. Brev.

Tail has Issue, for 3. Sons, B. the eldest, and C. the youngest, and A. and B. make a Feoffment with Warranty, and B. dies, and then A. dies, and C. brings his Formedon. The Feoffment of B. with Warranty is pleaded in Bar. Upon Demurrer Judgment is given for C. for it is a lineal Warranty, and then without Assets it is no Bar; for tho' B. died in the Life of A yet the younger Son by Possibility might have had the
Voucher.

4. But it is a * good Bar with Affets by the Equity of the Statute of * Arr if To.

Glouce, which Statute was made before the Statute W. 2. of the Tail. Br. in Tail
Forrnedon, pl. 73. cites Old Nat. Br.

and leaves Affets and dies, the Issue cannot recover by Formedon; for the Warranty and Affets is a Bar. Br. Tail & Dones &c. pl. 53. cites 24 H. S—— S. P. Br. Garranties, pl. 28. (bis) cites 58
E. 5. 25.

5. But collateral Warranty is a good Bar without Affets; for this remains at Common Law, notwithstanding the Statute. Br. Formedon, pl. 73. cites Old Nat. Brev. tit. Formedon.

6. But if Tenant in Tail aliens in Fee with Warranty, and dies, and Af- S. P. Br.

fets defend, and the Heir enters and aliens the Affets, yet he is barr'd for his Life; but when he dies, his Issue shall not be barr'd; for he shall not have the Affets. Br. Formedon, pl. 73. cites Old Nat. Brev.

H. 8—— S. P. Because the lineal Warranty defends only to him without Affets; for neither the pleading the Warranty without the Affets, nor the Affets without the Warranty, is any Bar in the Formedon in the Defender. Co. Litt. 595. b.

7. But if he who aliens the Affets brings Formedon, and is barr'd by the S. P. Br.

Warranty and Affets pleaded by Judgment in Court of Record, and dies, and Formedon, Tit. 24.
his Issue cannot recover the Land by Formedon, because his Father was barr'd by Judgment; Quod nota Diversity. Br. Formedon, pl. 73. cites H. 8 but
7 H. 6.

de; for it is contra in the Old Natura Breviam in Formedon in the Defender.— S. P. For a Bar in a Formedon in the Defender, which is a Writ of the highest Nature that an Issue in Tail can have, is a good Bar in any other Formedon in the Defender, brought afterwards upon the same Gift. Co.
Litt. 595. b.

8. But where a Man aliens the Land of his Feme with Warranty, which is Fee-simple, and dies, and Affets descend, and the Heir aliens the Affets, and dies, his Heir shall not have Cui in Vita of the Land alien'd; for if a Man be once barrable of Fee-simple, he and his Heirs shall be barr'd thereof for ever. Contra of Tail, by reason of the Stat. W. 2. Br.

Forrnedon, pl. 73. cites 7 H. 6.

9. In Avowry by the Issue in Tail for Rent-charge intail'd, a Feoffment of the Ancestor of the Land out of which &c. Aff'edg'd of the Rent with Warranty and Affets defended, is no Plea for the Avowry is not to re- cover any Rent; for he is in Possession by his Avowry, and shall have only Mortmain of Return; and therefore it is no Bar. Br. Avowry, pl. 79. cites 21 H.

7. 9. 10.

may be recover'd by Judgment. Br. Avowry, pl. 79. cites 21 H. 7. 9. 10.

10. Lineal Warranty of Tenant in Tail, if it had not been for the Sta- tute of Gloucester 6 E. 1. 3. had no more bound the Right of the Estate Tail by the Statute de Denis with Affets descendign, than it does without Af- fets; Per Vaughan Ch. J. Vaughan. 365. Mich. 25 Car. 2. C. B. in Cate of Bole v. Horton.

S. 7

(X. b) Warranty
See (Y. b) pl. 3.

(X. b) Warranty lineal with Assets. What thing shall be Assets.

An Advocate 1. A

An Advocate shall be Assets in a Formedon, because it is an Advantage to him to advance his Blood or Friend. 9 D. 52 b. 37.

per ieble. But Dovers and Vasaflor contra; for it shall be valued for every 20 l. per Ann. of the Advocate at 20 l. Br. Assets per Defent, pl. 21. cites 5 H. 7. 37. —— Co. E. 599, 360. S. P. cites 12 H. 8. 8. and says that other books are, that it shall be valued at 12 d. in the Pound.

2. A Reversion in Fee expectant upon a Lease for Years upon which a Rent is refer'd, shall be Assets.

3. So such Reversion shall be Assets, tho' no Rent be refer'd upon the Lease. 16 E. 3. Age 45.

4. A Reversion in Fee expectant upon an Estate for Life, upon which a Rent is refer'd, shall be Assets. 16 E. 3. Age 45.

5. So such Reversion shall be Assets, tho' no Rent be refer'd upon the Lease.

6. If Tenant in Tail leaves for Life, reserving a Rent, and dies, the Reversion and Rent defending upon the Issue, shall not be any Assets, because it is to be defeated by the Formedon brought by the Issue. 16 E. 3. Age 45.

7. A Seigniory in Frankalmoigne is no Assets, because it is not valuable, and therefore not to be extended; and so it seems of a Seigniory of Homage and Fealty. Co. Lit. 374. b.

(Y. b) Warranty lineal, with Assets. What Estate shall be Assets.

1. A

An Estate Tail by Defent from the same Ancestor, shall not be any Assets in Formedon. 16 E. 3. Age 45.

Br. Recovery, pl. 13. cites S. C. —— As if the Grandfather be seised of Land, and the Father makes Warranty to J. N. of other Land, and dies, and after the Grandfather dies seised, the Son shall not render this Land in Value, for the Father was not seised of it, and he has it as immediate Heir to his Grandfather; per Thorp. Br. Assets per Defent, pl. 19. cites 24 E. 3. 5: 47.

And where there is Grandfather, Father, and Son, and the Grandfather leaves Land for Life, and the Father warrants other Land, the Grandfather dies, and the Father is seised of the Reversion, and dies, the Tenant for Life after dies, the Heir shall not render in Value by this Land; for the Father was not seised of the Land; per Thorp. Quere inde; for Reversion is good Assets, as it is said elsewhere. Br. Assets per Defent, pl. 19. cites 24 E. 3. 47. —— Br. Recovery, pl. 15. cites S. C. —— But if the Father had been seised, and leas'd for Life, and died in the Life of the Tenant for Life, this is good Assets to bind the Heir. Br. Assets per Defent, pl. 19. cites 24 E. 3. 47. But Wilby. —— Br. Recovery, pl. 15. cites S. C.

3. Note, Assets requisite to make a lineal Warranty a Bar, must have 6 Qualities: 1st, It must be Assets (that is) of equal Value, or more, at the Time of the Defent. 2dly, It must be of Defent, and not by Purchase.
Warranty with Assets. What shall be Assets in See (X. b)

Formedon,

1. If Land descends to the Heir, this is Assets before Entry; for he may enter at his Will. 43 E. 3. 9 b.

2. But an Estate descended, not of the Value of the Land demanded, shall not be Assets.

3. As if the King has Land in Extent for Debt of the Ancestor, the Franktenement and Inheritance which is in the Heir shall not be Assets. Dhibitatnr 43 E. 3. 9 b. (It seems that if the Franktenement and Inheritance which he has in him, be of the Value of the Land demanded to be sold, considering the Time of the King's Extent, it shall be Assets, otherwise e contra.)

4. If Rent-Charge issues out of the Assets to the Value of the Land, this Land shall not be Assets. 43 E. 3. 9 b.

5. The Land descended shall not be Assets, but according to the Value of the Land at the Time of the Death of the Ancestor, not having Regard to that which they have built and amended since the Death of the Ancestor. 18 E. 2. Assets by Descent, 4. by Herle.

6. The Land descended shall not be any Bar for more Land than the Value of that which is descended. 18 E. 3. 51. b. 21 E. 3. 9. b. 22 Fol. 775.

7. If Seigniory descends to the Heir, and then a Tenancy escheats, this shall be Assets. 6 D. 4. pl. 1.

8. If a Rent descends to the Tenant of the Land, it shall be Assets, (tbo' it be extinct.) 19 E. 3. Assets by Descent, 5.

9. If Assets descend, it shall continue Assets, tho' he aliens it before If Tenant in the Action brought. 19 E. 2. Assets by Descent, 3.

10. Assets by Tenant in Tail taken in Exchange shall not bind the Heir in Tail, if the Heir does not agree to it, but waives the Possession; and yet
yet 'tis otherwise of other Land descended. Br. Affets per Defcent, pl. 22. cites 14 H. 6. 2.


1. If a Man demands 3 Carves of Land against 3 diverse Tenants by 3 Precipes by Form of the Gift made to his Ancestor, and he has one Carve by decsent in Fee from this Ancestor, it seems that he shall not be barr'd by all 3 or all the 3 Carves by this Affets, but only of the 3d Part of every one of them, upon the view of the Matter to the Court according to the Affets which he has in Truth. 1 E. 3. 9. by Shard.

(A. c. 2) Affets in Formedon. Pleadings.

1. In Formedon the Tenant pleaded Warranty with Affets by Defcent, and the other pleaded Riens per Defcent, and lo to Issue, by which the Jury came, and found that he had by Defcent and not to the Value; and Wilby held that he should be barr'd by his false Pleas; for he might have pleaded that he had nothing by Defcent but only so much, and then he should not be barr'd but only of Parcel, but now he shall be barr'd of the Whole, by which the Demandant was non-suited; same quære Legem inde. Br. Affets per Defcent, pl. 16. cites 21 E. 3. 28.

2. In Formedon the Tenant pleaded Warranty and Affets, and prayed that the Parcel demurr'd for Nonage of the Plaintiff; Per Claim, you must shew where the Affets lie; but per Finch, you need not shew it till you come to full Age, and plead Riens per Defcent, then shew where the Affets lie; and the Parcel demurr'd &c. Br. Affets per Defcent, pl. 14. cites 38 E. 3. 24.

3. If Land be in tail'd to a Feme who has Issue two Daughters by one Baron, and one Daughter by another Baron, and the second Baron alien the whole, and leaves Affets to the third Daughter, and dies, and the third Daughter brings Formedon, the Tenant shall plead in Bar against the third Daughter of her Portion, and vouch her of two other Parts. Br. Voucher, pl. 103. cites 40 Aff. 37.

4. In Formedon or Debt against the Heir where Affets by Defcent is in Issue, he need not to shew how the Affets are, nor what, but Affets at such a Place; Per Cur. Br. Affets per Defcent, pl. 2. cites 3 H. 6. 3.

5. In Formedon, if the Tenant plead Warranty and Affets, the Demandant may reply, that after the Defcent f. N. has recover'd the Affets by elder Title. Br. Affets per Defcent, pl. 25. cites 1 E. 5. 3.

(A. c. 3) Re-
(A. c. 3) Rebutter, what it is.

1. Rebutter is a French Word, and is in Latin Repellere, to repel, or bar, that is, in the Understanding of the Common Law, the Action of the Heir by the Warranty of his Ancestor; and this is call’d to rebut or repel. Co. Litt. 365. a.

2. A Rebutter is where a Man grants Land [which he has] to the Use of himself, and the Issue of his Body to another in Fee with Warranty, and the Donee leaves out the Land to a 3d Person for Years, the Heir of the Donor impleads the Tenant alleging the Land was entail’d to him; the Donee comes in, and by Virtue of the Warranty made by the Donor repels the Heir, because tho’ the Land was entail’d to him, yet he is Heir to the Warrantor likewise. Heath’s Max. 74.

3. So if I grant to the Tenant to hold Allique Impetitiones Vasti, and afterwards implead him for Vafte made, he may debar me of this Action by shewing my Grant; which is likewise a Rebutter. Heath’s Max. 74. cites Bro. Abr. Tit. Bar. 23. 25. Nov. Lib. Intr. verbo Rebutter. Co. 1 Inst. 365. a. 6 H. 7. 4.

(B. c) Rebutter. How it may be. Without shewing Deed of Assignment.

1. In Allique the Tenant may plead the Release of the Ancestor of the Plaintiff with Warranty to J. S. then Tenant of the Land, his Heirs and Assignees, and that after J. S. died and W. S. enter’d as Heir, Que Effeate he has, and so rebut the Plaintiff without shewing any Deed of Assignment, or shewing how he comes to the Land. 26 Aff. 8.

2. The Assignee of him who takes Land in Exchange, may rebut by the Exchange without Deed; for the Exchange is a Warranty in Law, but he cannot vouch. Br. Deputy, pl. 13. cites 3 E. 3. and Fitzh. Foremedon, 44.

3. In Allique the Tenant rebutted by the Warranty of the Ancestor of the But he may Plaintiff, whose Heir &c. and was not suffer’d without shewing Deed of Assignment, no more than he can vouch as Assignee. Br. Garranties, pl. 47. cites 22 Aff. 88.

Ibid. cites 42 E. 3. 19.—Where Assignee rebuts by the first Deed, and shews it and [the Deed of] him whose Effeate he has, there, he need not shew how he has his Effeate. Br. Voucher, pl. 5. cites 5 H. 6. 21.

(C. c) Rebutter. * Who may be rebutted, [† and who * See (E c)] may rebut.]

1. He who might be vouched’d if a Stranger had brought the Action may be rebutted, if himself be Plaintiff, because he then cannot be vouched’ d. 18 C. 3. 52. b.
2. If Feoffee with Warranty to him and his Heirs and Assigns affigns over, and the Feoffor and his Heir brings an Action, the Assignee may rebut them, because he cannot touch them being Demandants. 18 C. 3. 52. b. 22 Aff. 83. Admitted 26 Aff. 8. 39.


4. If Feoffee, with Warranty to him and his Heirs and Assigns, be differed, and the Dilettice releases to the Dilettor, the Dilettor may rebut the first Feoffee by this Warranty; for he is an Assignee by the Release. 26 Aff. 39.

5. [So] If Feoffee, with Warranty to him, his Heirs, and Assigns, be differed, Dilettor may rebut the Feoffor. 26 Aff. 8. will prove this; for the que Estate implies as much. Contra 26 Aff. 39.

6. [So] If a Testament with Warranty be made to another, and his Heirs or Successors, he who has the Estate of the Feoffee may rebut the Feoffor and his Heirs. 29 Aff. 18. per Curiam.


8. If Feoffee, with Warranty to him, his Heirs and Assigns, aliens in Fee, and retakes Estate to him and his Feme, they may rebut the Peer of the first Feoffee. 26 C. 3. 56. b. Curia.

9. Formedon of a Gift to W. and M. his Feme. The Tenant pleaded a Feoffment of R. Grandfather of the Donor, to W. and M. his Feme, by a strange Name, in Fee with Warranty, whose Heir the Demandant is, and the Feme died, and the Baron survived, Que Estate he has, and demanded Judgment against the Deed of his Ancestor, whose Heir he is. The Demandant said, that R. is the same Person who was Donor, and W. and M. are the Donors, Judgment. Et non allocatur, because the Tenant relied upon the Warranty by the Demandant's demanding Judgment, because he conveyed by Que Estate, and did not plead How, & non allocatur, because it is by way of Rebutter, which every Stranger may do if he has the Deed, but e contra by way of Voucher; wherefore the Demandant said, that it was not the Deed of his Ancestor. Br. Formedon, pl. 10. cites 42 E. 3. 19.

10. If a Feme, Heir of a Dilettor, inferefts me with Warranty, and marries with the Dilettor, it after the Dilettor brings a Praecipe against me, I shall rebut him, in respect of the Warranty of his Wife, and yet he demands the Land in another's Right. Co. Litt. 365. b.

(D. c) Rebutter. What Person may rebut.

Every Stranger who has the Deed may rebut, but cannot vouch. Br. Formedon, pl. 10. cites 42 E. 3. 19.

If a Man makes a Feoffment with Warranty to the Feoffee his Heirs and Assigns, and the Feoffee leaves to R. for Life, the Remainder over in Fee; in Affidavit against the Tenant for Life he shall rebut the Feoffee by this Warranty. Br. Voucher, pl. 150. cites 11 Aff. 5.

If a Man, at this Day, be infeff'd with Warranty to him his Heirs and Assigns, and he makes a Gift in Tid, the Remainder in Fee, the Donor makes a Tenant in Fee,
4. If Feoffee with Warranty takes Baron, has Issue, and dies, the Baron, Tenant by the Currely, may rebout the Heir of the Feoffor by Force of this Warranty. 36 Aff. 9.

5. If a Villein purchases Land with Warranty to him and his Alligns, and the Lord enters, the Lord, who is in En le Poit, may rebout the Feoffor and his Heirs. Contra 18 C. 3. 29 b.

6. [50] If a Villein purchases Land, with a Collateral Warranty to Br. Choef, and his Alligns, and the Warranty descends upon the Heir of him who created the Warranty, and after the Lord enters, he shall rebut the Heir by this Warranty, tho' he comes in En le Poit, militarily as the Villein might have done it. 22 Aff. 37. Council.


7. If Feoffee with Warranty forfeits the Land, by which it echeats to the Lord, (that is to say, by Attainder) the Lord by Echeat may rebut the Feoffor and his Heirs, tho' he be in En le Poit. Contra 18 C. 3. 29 b.

8. If a collateral Warranty be made to a Villein and his Alligns upon a Purchase of the Villein, and the Lord enters into the Land before the Warranty descends upon the Heir who is to be bound by this collateral Warranty, and after it descends upon him, the Lord shall not rebut him by this Warranty, because he is in En le Poit before the Warranty descended upon the Heir. 22 Aff. 22. Co. 3. Lincoln College 62.

9. If he to whom a Collateral Warranty is made suffers a Common Recovery, and after the Ancestor, who created the Warranty, dies, yet the Recoveror shall rebut by this Warranty, tho' he was in partly En le Poit before the Warranty descenced; for he is not in merely En le Poit in this Cafe. Co. 3. Lincoln College 62.

Warranty shall not bind 3 Rep. 62. a. b. Mich. 57 & 58 Eliz. C. B. in Lincoln College's Cafe, cites 29 Aff. 34. But as there is a great Diversity between their Cafe of Villein and Balfard, and where one comes to the Lord by Limitation of an Ufe, or by Common Recovery, for there he comes to it by the Limitation and Act of the Party; and therefore he has a Reversion by Limitation of an Ufe, or by Common Recovery, tho' he be in En le Poit in both Cases, yet he shall take Benefit of Condition, as Alligns, within the Statute 32 H. 8. cap. 34. But when the Lord of the Villein enters, he comes to the Land in respect of a Title Paramount, viz. in respect of the Villeinage, and the Lord by Echeat, in respect of the Seigniory, which was a Title Paramount; and both those are in merely En le Poit, and not by any Limitation or Act of the Party.

Lord Vaughan says, Query in the Cafe of 22 Aff. p. 57. and 29 Aff. p. 52, whether, notwithstanding the Warranty had descended upon the Heir, while the Lords were in the Balfard of the Villein in the 18 Cafe, and of the Balfard in the 2d Cafe, before any Entry made by either Lord, the Lords [Lords] could have rebutted or vouch'd by reason of those Warranties, being in Truth Strangers to the Warranty, and not able to derive it to themselves any Way. But if after the Warranty descended upon the Villein or Balfard, the Villein or Balfard had been impeached by the Heir, and did plead the Warranty against the Heir, and had Judgment thereupon by way of Rebut, then the Lords might have pleaded this Judgment as conclusive, and making the Villein's or Balfard's Title good against the Heir, and the Heir should never have recover'd against the Lord's. And this seems the Meaning of the Book 22 Aff. p. 57. if well consider'd, (tho' in Spirit and Letter's Cafe no Such Difference is observ'd;) Vaughan 392, 393. in Cafe of Bole v. Horton.

* It seems misprint for 22 Aff. 57.

10. So If the Tenant of the Land who has a collateral Warranty, This Cafe makes Plealment to Ufe before the Warranty descends upon the Heir Balfard objects to be bound by the Warranty, and after it descends upon the Poit, he shall be bound by it, and Only que Ufe, who has the Estate by Maynard;
Voucher.

11. Mortdancefor against W. and A. which A. said that she had nothing &c. and W. answered as sole Tenant, and pleaded in Bar the Warranty of the Mother of the Demandant to his Father, whose Heir he is &c. The Demandant said that W. had nothing, unless jointly with the said A. Judgment if he may plead the Warranty sole without A. And the Demandant was awarded by the Court to answer to the Bar; quod nona, and e contra of Voucher; for the one cannot vouch without the other. E contra of Voucher, as here; the Reaon seems to be inasmuch as Voucher is in Lien of the Action; contra of Bar. Br. Bar, pl. 58. cited 9 Aff. 18.


S. P. in the Case of William v. Hancock, by Ellis J. 2 Mod. 45. a. by the Reporter in Lincoln College's Cafe. 3 Rep. 65.

13. Action by the Earl of Gloucester for Fine for Alienation made by one of his Tenants; the Plaintiff in the Replevin pleaded Deed that C. G. who was &c. was seised, and gave to R. and his Heirs to hold by such Services only, for all Services and Demands, Que Effe he has &c. And it was awarded that the Tenant shall plead the Deed well enough, as here, by way of Rebutter, tho' he be Assignee, and no Assignee is express'd in the Deed; but he cannot vouch nor have Contra fromo Fessamenti &c. which founds in Action, where no Assignee is in the Deed. Br. Deputy, pl. 4. cites 14 H. 4. 5.

14. He, that has the Possession of the Land, shall rebut the Demandant himself, without shewing how he came to the Possession of it; for it suffices for him to defend his Possession, and bar the Demandants; and the Demandant against the Warranty cannot recover the Land. 3 Rep. 63.

15. If the Warranty be made to a Man and his Heirs, without this Word (Assigns) yet the Assignee, or any Tenant of the Land, may rebut. Co. Litt. 355. a.

Note there, cited 38 E. 3. 26. S. P.—Vaugh. 388. in Cafe of Bole v. Horton, says Sir Edward Coke in Lincoln College's Cafe, cites the Book of 38 E. 3. f. 26. as adjudg'd to prove that the bare Possession of the Land is sufficient for the Tenant to rebut; for that the Assignee may rebut a Warranty made only to a Man and his Heirs. But Lord Vaughan says, If that were so, it were to his Purpose; but there is no such Cafe in 38 E. 3. f. 26. But the Cafe intended is 38 E. 5. f. 21. and he quotes the Foho truly in his Littleton. But the Cafe is not, That an Assignee may rebut, or have Benefit of a Warranty made to a Man and his Heirs only, but that a Warranty being made to a Man, his Heirs and Assignee, the Assignee of the Heir, or the Assignee of the Assignee, the neither be Assignee of the first Grantee of the Warranty, shall have like Benefit of the Warranty, as if he were Assignee of the first Grantee, which has been often relevd'd in the old Books.

* S. P. So that the Warranty is annex'd to the Land, and shall go wherever the Land goes; but a Voucher shall go no further than it is limited. MS. Rep. Mich. 5 Ann. B. R. in Cafe of Smith v. Tindall.

17. Persons may rebut, and perhaps vouch, who are neither Heirs nor formally Assignees to the Garrantie, but have the Estate warranted, Dispositione & instituted to Legend, which he conceives not to differ materially whether they have such Estate warranted by the Common Law, or by Act of Parliament. The first of this kind is Tenant by the Curtesy. The 2d is the Lord of a Vilein. The 3d is Bastard, where the Ancestor grants Lands to him with Warranty. And many other Estates are of this Kind; as Tenant in Dexter, if endow'd of all the Land warranted; an Occupant, Tenants by the Statute of 6 R. 2. cap. 6. where the Feme contents to the Rivalther; Tenant by 4 & 5 Ph. & M. because the Ward conferred to her taking away without the Guardian's Consent; Lands warranted, which after become forfeited to the King or other Lords &c. Per Vaughan, Ch. J. Vaughan, 390, 391, 392. in Cael of Bole v. Horton.

18. A devised Lands to M. his Wife in Fee. M. married T. and 2 Sulk. 685. they two by Indenture conveanted to levy a Fine to the Use of them for their Lives, Remainder to T. and his Heirs with Warranty. A Fine was held, that levied accordingly. T. devised the Premisses to E. [his Daughter and tho' the Cefty Heir at Law] and died; and afterwards M. died. It was objected to the Title of E. that the Warranty was here executed upon an Estate of Use, where the Heir comes in En le Poit; and therefore E. could not take Advantage of this Warranty, and that the Warranty is only to T. and M. and to the Heirs of T. and not to the Heirs and Assigns of T. and that E. could not rebut by Reafon of this Warranty, and so cannot make a Title under it. But it was held per Cur. that the Heir of T. here might rebut, tho' he comes in En le Poit before the Warranty had attach'd, as to the other as well as he might do after the Warranty attach'd, contrary to the Opinion of Lord Vaughan; tho' one that comes in En le Poit cannot vouch, MS. Rep. Mich. 5 Ann. B. R. Smith v. Tindal.

Law in Possession is transferred to his Use, and he is Tenant of the legal Estate, and has all Advantages which the Tenant before had to defend his Estate, and therefore he may rebut; for that is to defend his Estate, but cannot vouch; for that is to recover in Value for the Loss. — It was said per Cur. Mod. 19t, that they had adjudged lately that Cefty que Use might rebut, in the Case of Bowle v. Doble. — And that is it was held Cron. C. in Case of Spirit v. Bence. And Jo. 199, in Case of Kendall v. Fox.

(E. c) Rebutter. What Persons may be rebutted. See (C. c)

1. If diverse Heirs in Gavelkind demand Land by Writ, the Defendant may rebut them, as well as the Eldest, by a Warranty created by him from whom the Land comes, (which is lineal) for they ought to be bought together, if it was demanded by a Statute. 17 Ed. 3. 61. 21 All. pl. 8. 21 Ed. 3. 21. But quiet.

2. [But] the Defendant cannot rebut them by a collateral Warranty of the Ancestor of the Plaintiff, from whom the Land does not come.
because the Plaintiffs could not be vouch'd if the Land should be demanded by another without Assents. 17 C. 3. 61.

3. But he may rebut them by a collateral Warranty with Assents; for there they ought to be vouch'd by Reason of their Possession, if the Action was brought by a Stranger. 17 C. 3. 61.

(F. c) Rebutter. In what Cases it may be.

1. Where the Tenant may vouch he shall not rebut. 25 C. 3. 50.

2. If Feoffee with Warranty to him and his Assigns aliens and retakes Estate to him and his Wife, and after they are impeached by the Heir of him that created the Warranty, they shall not rebut him, because they may vouch the Baron, and to come at the Warranty. 25 C. 3. 50. per Curiam.


4. Trespass for taking of Tolls contrary to the Grant of H. 3. the Defendant pleaded a Grant of King John of the said Cafton, the Plaintiff alleged a Composition between the 2 Vills, and that the Defendant by taking &c. has broke the Composition; and per Knivet, clearly he shall plead as here, and shall not be drove to the Writ of Covenant, and by Consequence may rebut in such Case. Br. Barre, pl. 107. cites 39 E. 3. 13.

5. If 2 exchange lands, and the one enters by the Exchange into the Land of the other, and enfeoffs the other of his land which the other had in Exchange, and after the Feoffee is impeached and vouches by the Exchange, the other may rebut him of the Voucher, inasmuch as he is in by the Feoffment and not by the Exchange, as it is said. Br. Voucher, pl. 148. cites 45 E. 3. 20.

6. Where I grant to my Tenant to hold without Impediment of Waives, or that he shall not be impeach'd by Cestui, in this Case the Tenant may rebut by it, and shall not be compelld to sue Writ of Covenant. Br. Barre, pl. 25. cites 19 H. 6. 62.

7. If one gives Land in Frankhawighe or Frank-Marriage, he cannot have a Contra Formam Feoffamenti, because there is no certain Service contain'd in the Feoffment or Gift, and therefore out of the Statute of Marlbridge, cap 9. but he may rebut. 2 Inst. 118.

(G. c) Rebutter.
Voucher.

167


1. H is who is in of other Estate may rebut, as if the Warranty be A Man may annex'd to an Estate Tail, and None leaves for Life, by which he gains a Fee, yet if he be received upon Default of Lessor, he may rebut the Donor. 45 C. 3. 18. b. shall rebut the Plaintiff or Demandant by Warranty of Fee Tail. Br. Barre, pl. 15.; cites 45 R. 5. 18. As where a Gift in Tail is made to the Baron and Feme with Warranty, and they lease for Life, and the Tenant is impleaded by one who is Heir to the Warranty, and makes Default after Default, and the Baron and Feme are received by this Reversion because they leased for Life the Reversion to them, yet they may rebut the Plaintiff by the Warranty of Tail. Br. Ibid. — And yet if they had could, the Voucher should not be compell'd to warrant, but only Estate Tail; note a Diversity. Br. Ibid.

2. A. feied in Fee invest had the Use of himself and M. his Wife for their Lives, Remainder to B. their eldest Son in Tail, Remainder to C. the 2d Son in Tail &c. Remainder to his Daughters in Tail, Remainder to the right Heirs of his Daughters [of A.] Afterwards A. by Deed with Livery and Seisin gave to C. and K. his Wife and to the Heirs of the Body of C. of K. beg. Remainder to the Heirs of his Body rendering to A. and M. a Rent, with Warranty against all Men. Afterwards A. levied a Fine with Proclamations to 2 Strangers [and their Heirs with Warranty against all Persons] who render'd to A. for Life, [for a Week] Remainder to C. and K. as before. A. died. M. enter'd. B. survive, and was Heir to A. M. died. B. enter'd. It was objected, that after the Fine levied by A. with Render to him for Life, Remainder to C. and K. they were in of other Estate than that to which the Warranty was annex'd. But resolved contra; for the Fine operated upon the Reversion of A. and is in Confirmation of the first Estate of C. and K. but admit that he be in of other Estate, yet he may rebut well enough by Force of the Warranty. And therefore Judgment in Ejectment was given for the Lessor of C. Jo. 199. pl. 15. Mich. 4 Car. B. R. Kendal v. Fox.

(H. c) Process and Proceedings in Voucher &c. 

1. If the Tenant vouches Foreigner, the Voucher shall be determined in Br. Mendan-Banco, and if the Vouchee be return'd summons'd, and makes Default, the Affidavit shall be remanded in Pais without re-summoning the Vouchee, and if the Demandant recovers there against the Tenant, the Tenant shall make the Record come into Bank, and there shall have Judgment over in Value. Br. Voucher, pl. 90. cites 3 Aff. 10.

2. When the Heir is vouch'd within Age, and the Demandant says that there is no such &c. for he died in the Life of his Father, Writ shall not issue to summon him, by which the Death may be return'd, nor the Demandant cannot say that he is of full Age, and pray that he may be view'd; for there is no such. Br. Counterple de Voucher, pl. 39. cites 7 Aff. 4.

3. Précipe reed reddat against Baron and Feme Tenant in Dever, who was received &c. and vouch'd the Heir within Age, and pray'd that the Parol demur for his Nonage, and pray'd that he be summons'd in this County and in 2 others; and the Demandant said that he has Affairs in this County where &c. and pray'd that the Process be continue there; Ex non allocatur. Br. Voucher, pl. 67. cites 21 E. 3. 34.
In Precipe quod reddat, if the Tenant vouches at the Day of the Summons return’d, the Demandant shall not have Counterplea that the Vouchee is now Dead, but just debts shall be awarded, and this shall come by Return of the Sheriff; but at the Day that the Tenant vouch’d, the Demandant might have said that the Vouchee is Dead; but contra when it is incurred in Process. Br. Counterpleas de Voucher, pl. 3o. cites 21 E. 3. 36.

5. Precipe quod reddat was brought, and the Tenant vouch’d, and Process issued against the Vouchee to the Seuator Sub suo parte, which was return’d Tarde, and the Vouchee did not come; and the Demandant had Judgment to recover against the Tenant, and the Tenant in Mifericordia. Br. Seuator, pl. 1. cites 42 E. 3. 13.

6. In Deavor the Tenant vouch’d the Heir of full Age to Parcel and freed Deed, as he ought, and for other Parcel he vouch’d the Heir in Ward of S. for Parcel, who had Parcel of the Land, and in Ward of W. who bad the rent, as he ought, and pray’d that they may be summoned in this County and in divers others, viz. the one Guardian of the Body in this County, and in another County, and the Heir in this County solely, and the other Guardian in another County; and summons to Warranty illued, and the Guardian who was vouch’d in the foreign County came, and the other who was vouch’d in the second County made Default, and where the Heir was vouch’d of full Age he was eioign’d, and this appear’d said that he has the Body of the Heir, and part of his Land, of the Grant of the King, till full Age, and demanded Judgment Rege Inconusto &c. Belke said, you shall not be received to say any thing in Delay of the Demandant till the other comes; but per Finch, in Precipe quod reddat, it is as you say, the one shall have Idem Dies till the other comes; But upon Voucher in Ward in Writ of Deavor, every one is vouch’d for his Portion, and he who comes first shall be received to speak for his Portion. Br. Voucher, pl. 38. cites 48 E. 3. 5.

Value against the Heir when he has (Aflets). But when the Heir is vouch’d in Ward there every one shall answer for his Portion, and the Demandant shall recover against the Tenant, and he over against every one for their Portion, so that before the Tenant has recover’d in Value against them, he shall have their Portion extended; for tho’ the one has Aflets to make in Value, yet every one shall render according to his Portion. Ibid.


8. Formedon in the County of Chester, the Tenant vouch’d to Warranty two, who shall be summons’d in the same County, and N. who shall be summons’d in the Counties of D. and N. because he had nothing in Chester, and pray’d that they be summons’d in the same County, or in all the Counties as the Law will, by which the Justices of Chester sent the Record into Bank; and Hamour would have had Proces against the two in Chester, and Idem Dies given to the third, and Proces here against the third; But per Belk, Proces shall be made against them in Conwn, and at one and the same Time; for if the one appears, he shall not be put to warrant before the other comes, or till the Proces be determined against him, and therefore Proces shall be made here against all, as in Curia magni digna; by which it was awarded that Proces shall issue to the Prince to summon the two in Chester, and Proces to the Sherif of D. and N. to summon the other there, and when the Warranty is determined here in Bank, all shall be remand ; Quod nota. Br. Voucher, pl. 41. cites 49 E. 3. 9.

9. Where three Writ are return’d and none of them served against the Vouchee, the Demandant shall recover against the Tenant, and he shall not have in Value against the Vouchee; Contrary where any Writ is served against him, and he makes Default at the Sequatur. Br. Voucher, pl. 86. cites 14 H. 6. 7. 19. 20.

10. Precipe
10. Precipe quod reddat, the Tenant vouch'd, and Summons ad Warrantizandum issu'd, and the Sheriff return'd quod mandavit Bellvico &c. qui nullum delect response; by which issu'd Non omittas, and the Sheriff return'd quod nihil habet &c. nec est inventus &c. as he ought in this Case, contra the Tenant in Formendon; for he may be summon'd in Terra Petita, by which issu'd Pluries, and after Plus Pluries, and then Sequatur sub juro Periculo, and the Writ was not served, and the Tenant said that he deliver'd the Writ to the Sheriff, and said that the Vouchee is dead, and that he died after the issuing of the Writ of Sequestration; and the best Opinion was that the Writ of Non omittas shall stand for none of the Writs which is ordinary Proceeds upon the Sequestrator; for he shall have Summons, Alias, Pluries, Plus Pluries &c. Sequatur, over and above the Writ of Non omittas; quere. Br. Sequatur, pl. 3. cites 14 H. 6. 7. 20.

11. In some Cases two Sequaturs shall be awarded, As where a Man vouches one within Age, and prays that the Parol demand, and the Demandant says that he is of full Age, by which issu'd summons to be view'd, and Alias, and Pluries, and Sequatur, and if he appears at the Sequatur, and is awarded to be of Age, then Proceeds shall issue against him as Vouchee, viz. by Summons ad Warrantizandum, Alias, Pluries, and Sequatur; for the first Proceeds was but to be view'd, and not to warrant the Land, and to two Sequaturs; Per Vampane. Br. Sequatur, pl. 3. cites 14 H. 6. 7. 20.

12. The Sequatur ought to be fixed by the Tenant to the Sheriff, and he maketh Suit to him to serve it at his Peril. Br. Sequatur, pl. 3. cites 14 H. 6. 7. 20. Per A fecue.

In his Land without Reproachment in Value; unless he upon that Writ can bring in the Vouchee to warrant the Land unto him. Co. Litt. 101. b. 102. a.

13. If at the Sequatur the Writ is not return'd served, the Vouchee may enter voluntarily; for at the Sequatur the Land is to be lost; but at the Return of the Summons and other Proceeds, he cannot enter without Proceeds, for the Land is not there to be lost. Br. Sequatur, pl. 3. cites 4 H. 6. 7. and 20. Per Darrantyne.

14. In Precipe quod reddat, the Tenant vouch'd two, who enter'd into the Warranty and vouch'd the Tenant by a strange Name, and shew'd Cause; the Voucher was granted, and Proceeds issued against him; quod nota; tho' he was the Tenant who had appear'd, and had vouch'd before; quod nota. Br. Proces. pl. 115. cites 11 E. 4. 7.

15. If the Tenant vouch'd and the Sheriff return'd him summon'd, and he Br. Recover does not come, by which Grand Cape ad Valentiam issu's, and the Sheriff return[es] [that the Vouchee hath nothing], the Demandant shall recover, (for there is no more Proceeds to be made) and the Tenant over, upon a Default. Br. Voucher, pl. 140. cites 4 H. 7. 18. Per Hullley. Ch. J. S. C.

16. The Proceeds whereby the Vouchee is call'd, is a Summonsas ad &c. Co. Litt. Warrantizandum; whereupon, if the Sheriff returns that the Vouchee is summon'd, and he makes Default, then a Grand Cape ad Valentiam is awarded; and if he makes Default again, then Judgment is given against the Tenant, and he is to have in Value against the Vouchee. If the Vouchee appears, and if he makes Default again, then Judgment as before. But if the Sheriff returns that the Vouchee hath nothing, then, after Writs of Alias and Pluries, a Writ of Sequatur sub juro Periculo shall be awarded; and if the like return be made, then shall the Demandant have Judgment against the Tenant, but not to recover in Value, because the Vouchee was never warn'd, and it appears that he has nothing. But in the Cape ad Valentiam, it appears that he has Affets; and his making Default after Summons, is an implied Confession of the Warranty. Co. Litt. 101. b.
Voucher.

(I. c) Pleadings by Tenant.

When the Tenant in Plea or in Writ demanded a Rent Charge, it may vouch, but then he ought to say that the Rent in Demand is Rent Charge, and that J. N. was seized of the Land out of which the Charge is discharged of the Rent, there he need not to shew how it was discharged in the Hands of the Feoffee; for the Demandant has nothing to do with the Warranty; for he is not to be charged with it. But when the Vouchee comes in, there he who vouches ought to shew Cause; for the Vouchee is to be charged. Br. Voucher, pl. 112. cites 10 E. 4. 9.

2. If Feoffor will implead one that comes in en le Poit, the Tenant may in his Plea set forth the Matter and conclude his Plea si contra Warranty stam he should be impledged; but in this Case the Plea cannot be concluded generally; but he that will make Ufe of this Plea coming en le Poit must conclude in this Special Manner And if the Party may do this against the Feoffor himself, why may he not do it against the Heir? There is no Odds when the Warranty descends; for it is the Estate that is warranted. MS. Rep. Mich. 5 Anne B. R. Per Cur. in Case of Smith v. Tindal.

(K. c) Pleadings by Vouchee.

1. In Admeasurement of Pasture the Tenant by his Warranty was received to say that the Demandant was his Tenant; Judgment of the Writ brought by the Tenant against the Lord. Theloa's Dig. of Writs, Lib. 13. cap. 10. S. 17. cites Tempore E. 1. Admeasurement, 11.

2. It is said that the Vouchee may plead Variance between the Original Writ and the One, and the like. Theloa's Dig of Writs, Lib. 13. cap. 10. S. 3. cites Tempore E. 1. Br. 861.


18 E. 3. 52. and Trin. 2 E. 3. 73, and Past. 21 H. 6. 59. — S. P. Ibid. S. 8. cites Hill. 18 E. 2; For- medon, 59. — So in Writ of Avel by Parceners the Tenant by his Warranty was received to abate the Writ for Repugnancy in the Deponent apparent in the Count. Theloa's Dig of Writs, Lib. 15. cap. 10. S. 9. cites Trin. 5 E. 3. Joiner in Action, 29.


The Vouchee shall not plead that the Place where the Tenements are supposed to be, is not a Field but a Hamlet. Theloa's Dig. of Writs, lib. 15. cap. 10. S. 1. cites M. 5 E. 2. Voucher 251, and with this agrees T. 32 E. 3. 8.

Precip
6. Tenant by his Warranty shall plead the Misnomer of the Domain. It was said 
dant. Theloa's Dig. of Writs, lib. 13. cap. 10. S. 4. cites Hill, 7 E. 2. that the Te-
name, by his Voucher 259.

Misnomer of the Mother of the Demandant. Theloa's Dig. of Writs, lib. 13. cap. 10. S. 520.——S. P. vix. that the had another Name of Baptist. Ibid. S. 179. cites Hill, 44 E. 3.
Ettoppel.——But Ibid. S. 21. cites Mich. 15 E. 5. Ettoppel 238. That in Writ of Convenant the Tenant by his Warranty shall not plead to the Writ, that the Ancestor of the Demandant of whose Sejyn 
&c. had another Name of Baptist.

7. In Writ of Entry in the Post against Baron and Feme, supposing that But this 
Feme sole enter'd &c. the Tenant by his Warranty may have Chal-
lege to the Writ, and flew this Matter in Abatement of the Writ, in-
must be be-
almuch as the Entry of both ought to be supposed. Theloa's Dig. of fore the 

8. In Writ of Entry within the Degrees, the Vouchee was receiv'd to So in Writ 
say that be enter'd by another. Theloa's Dig. of Writs, lib. 13. cap. 10. 

was received to plead in Abatement of the Writ, giving Writ within the Degrees. Theloa's Dig. of 
Writs, lib. 15. cap. 10. S. 2. cites H. 22 E. 3. 1 and 24 E. 3. 52. 40.

9. Tenant by his Warranty may plead Parcenary of the Part of the Where I in 
Demandant in Abatement of the Writ. Theloa's Dig. of Writs, lib. 

I shall not abide the Writ by the Tienancy, but I shall give it upon the Lien, and oust him of the War-
br. Br. Voucher, pl. 10 cites 21 H. 6. 36.——The Vouchee cannot plead Tienancy or severed 
Tienancy after Entry into the Warranty in Abatement of the Writ, but they are good Counterpleas of 

10. In Formedon the Tenant by his Warranty was receiv'd to say, 
that an Ancestor of the Demandant, to whom the Demandant is not made 
Heir, was last seised &c. Theloa's Dig. of Writs, lib. 13. cap. 10. 

11. The Vouchee before Entry into the Warranty, may say that the But in Writ 
Tenant is dead. Theloa's Dig. of Writs, lib. 13. cap. 10. S. 6. cites Bar-

can not say that the Feme is dead before Entry into the Warranty. Theloa's Dig. of Writs, lib. 13. cap. 
S. 13. cites Mich. 29 E. 5. 62.——But after Entry he shall plead that one of the Tenants is dead. 
* Br. Voucher, pl. 105. cites 5 H. 7. 38. 39. S. C. That the Vouchee may plead the Death of the 
Tenant.

12. The Vouchee shall plead Discontinuance of the Proceeds. Theloa's He was re-
Dig. of Writs, lib. 13. cap. 10. S. 6. cites Patch. 10 E. 3. 503. 5 H. 7. 
cit'd to al-
lege Omiffion 
of a Word in 
The 

13. Tenant by his Warranty may plead to the Matter of the Count 
and Writ. As Repugnancy between the Writ and the Count in Matter. 
The 

14. The
14. The Vouchee in Entry in the Poet against 2, who vouche'd the Heir of the Differe1, who said that the Differe1 died siff, and he enter'd as Heir, and indeed the Test of the Differe1 name'd in the Writ, and attend the two Parts Right to another nam'd in the Writ, and so the Demandant may have Writ within the Degrees; Judgment of Writ in the Poet, and the Writ was abated by Award; for it shall be against the Feind in the Per; for the Tri in her Baron, and shall be against the other in the Per & Cui; for per Wilby, it shall not be in the Poet where it may be within the Degrees. Br. Voucher, pl. 75. cites 24 E. 5. 70.—Br. Brief, pl. 46. cites S.C.—Br. Enter en le Per, pl. 23. cites S.C.

15. Cui in Vita in the Poet, the Tenant vouche'd W. Counif and Heir of W. Knivet bid him thew How he is Claus and Heir; but Fenoc said he shall not upon the Voucher but upon the Warranty deraigned; quod non negatuer. Br. Voucher, pl. 57. cites 38 E. 3. 15.


17. Mortdancerclor by 4, where the Tenant vouche'd to Warranty in a foreign County, by which the Record was sent into Bank, and Proceeds made against the Vouchee, who came and enter'd simply int the Warranty, and said that A. was seized in Pec, and took him to Baron, and had issue f. and died. he is Baron; by the Curtesy, the Resurrection to f. and pread Ad of him, and that the Parol demur by nonage; and there it is agreed, that tho he enter'd simply into the Warranty, yet he warrants only such Estate as he has in Poffession, viz. the Tenant, who has vouche'd him. And to see that he may say that the Tenant has only the Estate for Life, and that he himself has only Estate for Life; nota. Br. Voucher, pl. 16. cites 41 E. 3. 7.


19. In Praecipe quod reddat, if the Vouchee comes and demands the Lien, he shall not lay after this, that the Tenant is not Tenant; quod nota bene. Br. Countereal de Garrantie, pl. 11. cites 45 E. 3. 2.

20. Praecipe quod reddat against A. of 2 Acres, and another Praecipe in the same Writ against B. of 2 Acres, and A. vouche'd B. who came, and said that the Land demand'd against him in the one Praecipe is the same Land which is demand'd against A. who vouche'd in the first Praecipe; Judgment of the Writ; and no Plea, because A. who vouche'd, has affrmed the Writ good. Br. Voucher, pl. 36. cites 46 E. 3. 33. S. P. Br. Voucher, pl. 78. cites 24 E. 3. 75.

21. In Forenson &c. the Vouchee shall not have Plea to the Writ, where the Tenant has admitted the Writ, unless it matter apparent, and Things which touch to the Mischief of Warranty. Br. Voucher, pl. 70. cites 21 H. 6. 36. Per Newton.

22. In Forenson the Tenant vouche'd, and the Vouchee came, and enter'd into the Warranty, and pleaded Release with Warranty of Ancettrel collateral to the Demandant, whole Heir &c. to J. N. then Tenant &c. Que
Estate he has; and a good Plea, and yet the Vouchee is Tenant by the Warranty, may plead warranty, but not Tenant in Fact. Br. Voucher, pl. 72. cites 22 H. 6. 12. Release made to the Tenant after the Entering into the Warranty. Br. Voucher, pl. 105. cites 5 H. 7. 38, 39. And per Port, if the Demandant releases all his Right to the Vouchee, after that he is entered into the Warranty, this is a good Bar; for after this he is Tenant in Law, and comes in Loco Tenentis. Br. Voucher, pl. 72. cites 22 H. 6. 12.

23. If in Writ of Entry in the Per &c. Cui, the Tenant vouch'd him in the Per, he may enter into the Warranty, and plead in Abatement of the Writ, by falsifying the Entry; per Port. Quod tota curia concepis. Br. Voucher, pl. 72. cites 22 H. 6. 12.

24. In Præcipe quod reddat the Tenant vouch'd one within Age, and pray'd that the Parol demur. The Demandant replied, that he was of full Age, priitn. Brown said, That the Form now is that the Voucher shall stand, and after he may say that he is of full Age. Per Cur. by his saying that he is of full Age, is included that the Voucher is granted; and after the Plea was admitted, and the other aver'd that he was within Age; quod nota. Br. Voucher, pl. 75. cites 22 H. 6. 48.


26. The Vouchee may have divers Pleas to the Person, Writ, and Action, after the last Continuance, as the Tenant himself might have; for he is in Loco Tenentis. Br. Continuances &c. pl. 81. cites 5 H. 7. 40.

As that the Demandant has taken Burr, or is out- law'd or excluded, the last Continuance. Thelou's Dig. of Writs, Lib. 13. cap. 10. S. 18. cites Trin. 5 H. 7. 49.—Br. Voucher, pl. 105. cites 5 H. 7. 38, 39, S. C & P.

(L. c) Pleadings by Vouchee, where there is a Voucher over.

1. The second Tenant by his Warranty may say that the first Tenant by his Warranty is dead. Thelou's Dig. of Writs, Lib. 13. cap. 10. S. 12. cites Patch. 18 E. 3. 17. cites S. C. —But the first Tenant by his Warranty shall not plead the Death of the second Tenant by his Warranty, after that the second Tenant has entered into the Warranty, and has pleaded. Thelou's Dig. of Writs, Lib. 13. cap. 10. S. 22. cites Trin. 12 R. 2. Voucher 8.

2. Formedon against A. who vouch'd E, who entered into the Warranty, and vouch'd D, and Processe returnable Oelabis Michaelis; at which Day D came, and said that 1. had brought Formedon against A. the Tenant, and recover'd by Assion tried. Judgment of this Writ; and he shall have the S. 14. and Lib. 14. cap. 7. S. 9. cites S. C. In Formedon the Tenant vouch'd one who entered into the Warranty upon Summers, and vouch'd B. who was summons'd, and entered into the Warranty, and vouch'd C. and pray'd that the Parol demur, because C is an Infant within Age, and so it did; and after Summons'd was sued against the Tenant, the first Vouchee, and the second Vouchee, but not against the Infant who was vouch'd; and good; for he was not summons'd, and therefore cannot be refus'd; and the second Vouchee pleaded in Eas, that during the Time that the Parol demur'd, if S. brought Formedon against him Tenant of the Land, and he confessed the Assion, and Demandant recover'd; and enter'd, Sue Estate the Tenant has; Judgment of the Writ; and aver'd the Life of man who recover'd the Estate Tally, as he ought, because it is a particular Estate, and that the Title of the Demandant was before
Voucher.

between the Title of his who recover'd and the Judgment. And it seems there, that this Plea does not belong to the Voucher; for it was not in Effe when he was vouche'd; for all Pleas which then were in Effe were put in the Month of the Voucher, and therefore the Voucher shall not have this Plea; for he is a Stranger to it, and this Matter was not in Effe at the Time of the Voucher to Warranty. But per Townend & Kebr, the Voucher shall have those Pleas, and several others, which happen of later Time. Tamen quœre fade. Br. Voucher, pl. 109. cites 5 H. 7; 38, 59.

3. The Voucher for Parcel vouche'd over, and Summons ad Warrant was awarded; and as to the Residue, the Voucher was counterpleaded &c. And at the Day given to the Voucher came, and said that the Demandant had entered into Parcel after the last Continuance, and held a good Plea in his Mouth. Theloafl's Dig. of Writs, Lib. 13. cap. 10. S. 17. cites M. 5 E. 4. 117.

fed, and he is also Tenant of the rent, till the second Voucher has entered into the Warranty. Quod not. — S. P. And if the Voucher dies, they shall recover. And per Cur. This Plea goes to all the Writ, and he need not make other Answer of the rent; for the Entry into Part shall abate the whole Writ; for he has falsify'd his own Writ by his own Act, and therefore the Inquest was discharg'd as well of the Counterplea as of the rent. Br. Voucher, pl. 109. cites S. C. — Theloafl's Dig. of Writs, Lib. 14. cap. 7. S. 6. cites 14 H. 6. 21.

(M. c) Pleadings by Tenant after Voucher &c.

1. Non Formedon against Baron and Feme and another, all vouche'd, and Process was awarded against the Voucher; but after the Baron made Default, and the Feme was received; and the other and the Feme pleased that the Demandant had dispossessed them pending the Writ &c. And after, at another Day, it was adjudged that they should have the Plea after the Voucher, because the Demandant had received their Plea at the first Day. Theloafl's Dig. of Writs, Lib. 14. cap. 7. S. 1. cites Trin. 4 E. 3. 148.


3. Nor to the Variance between the Writ and Specialty, notwithstanding that he has waived the Voucher. Theloafl's Dig. of Writs, Lib. 14. cap. 7. S. 2. cites Patch. 6 E. 3. 265.

4. In Mortdances for Rent against 2, the one vouche'd, and the other pleading to the Writ, and the Demandant counterpleaded the Voucher, infallibly as the Rent was Rent-Service; and yet he who had the Voucher after pleading several Tenancy in Abatement of the Writ. Theloafl's Dig. of Writs, Lib. 14. cap. 7. S. 3. cites H. 9 E. 3. 448.

5. After Voucher the Sheriff return'd, that the Voucher was dead; upon which the Tenant, being an Infant, would have pleaded Maintenancy, and was not received. Theloafl's Dig. of Writs, Lib. 14. cap. 7. S. 4. cites H. 18 E. 3. 6.

Precipe quod reddat by two Femes, the Tenant vouche'd, and Process continued till the Summons ad Warrantizandum fictæ Pluries, and the one Plaintiff had taken Baron pending the Writ, and was nonsuitæ and secur'd, by which the Writ was awarded good for the other, and did not abate in all, notwithstanding that the Tenant pleaded it to the Writ, and it was inquired for the Defendant, that because the Tenant first vouche'd, and after pleaded to the Writ, that therefore
Voucher.

7. In Precipe quod rederat, the Tenant vouch'd M. and Day given by Rolls, but no Proces offered; and at the Day the Tenant came, and said that after the last Continuance M. died, and vouch'd J. as Son and Heir of M. within Age, and pray'd that the Part defendant. The Demandant said that to the Voucher he shall not be receiv'd; for J. is a younger Son, and S. is an elder. The Tenant said Proteus that J. is Heir, and Pro prototo that he enter'd as Heir after the Death of M. Judgment, and pray'd the Voucher, and because the Demandant could not deny but that J. enter'd as Heir, the Voucher stood. Br. Counterplea de Voucher, pl. 25. cites 38 E. 3. 27.


9. Note, that after the Tenant has vouch'd, and the Summons ad Warrant awarded, the Demandant cannot counterplead, Per Pinchd. nor say that he who appears as Vouchee is the same Person who was vouch'd; but the Tenant may say that he is another Peron of the same Name, and pray Proces with Addition, and shal have it. Br. Counterplea de Voucher, pl. 14. cites 45 E. 3. 6.

10. If a Man vouches, and the Voucher enters into the Warranty, the Tenant cannot plead Release made after the Voucher, and after the Continuance; Per cur. for he is out of Court by the Entry of the Voucher into the Warranty. Br. Voucher, pl. 86. cites 14 H. 6. 7. 19. 20.

11. In Precipe quod rederat the Tenant vouch'd, and Summons ad Warrantizandum ilude; the Sheriff return'd Quod Mandavit Ballam &c. qui nullum deedit repromys; by which ilude Non outitas; and the Sheriff return'd Quod nulli habet &c. nec est inventus, by which ilude Pluritas, and after Plus pluritas, and then sequatur sub suo periculo, and the Writ of Writs, lib. 14. cap. 7. S. 6. cites S. C. That it was not serv'd; but shall be deliver'd the Writ to the Sheriff, and that the Voucher be dek, and that he die after the issuing of the Writ of Sequatur. And the best Opinion was, that where the Tenant vouches one who enters into the Warranty, and vouches over, and the second Voucher enters into the Warranty, the Tenant may say that the first Voucher is dead; for other wise he cannot have good Judgment; and therefore it seems reasonable to permit him to have the Averment here. But Brooke says it is not alike; for where the Voucher enters, Judgment shall be given against him if &c. but here where the Voucher never enter'd into the Warranty, nor Writ serv'd against him, no Judgment shall be against him, but the Tenant shall lose the Land; but he shall not have Judgment over in Value against him who never appear'd, nor any Proces serv'd against him; and therefore it seems that he cannot have the Averment of the Death. Quare. And per Alcun, he cannot have the Averment of the Death, as above, but it ought to come in by Return of the Sheriff. And per Patton, if the Tenant has 3 Writs against the Sheriff, tho' neither of them is serv'd, the Land is lost, by which &c. And so it seems by him, that he shall not have the Averment of the Death; and after the Parties agreed, therefore Quare legem. But it seems that he shall not have the Averment. Br. Sequatur, pl. 3. cites 14 H. 6. 7. 20.

12. Where the Tenant will not attend the Counterpla, he shall be put over to another Anwer, and there he may plead Outlawry in the Demandant, tho' it be no Anwer in chief. Br. Voucher, pl. 117. (bis) cites 21 E. 4. 54.

13. In Formedom, the Tenant vouch'd one who enter'd into the Warranty upon Summons, and vouch'd B. who was summons'd, and enter'd into the Warranty, and vouch'd C. and pray'd that the Parle defendant, because C. is an Infant within Age, and so it did, and after Refsummons was serv'd against the Vouchee, who had
against the Tenant, the first Voucher, and the second Voucher, but not against the Infant, who was vouch'd, and good; for he was not summon'd, and therefore cannot be summon'd; and the Tenant said that during the Time that the Parol deni'd, J. N. brought Formoned against him Tenant of the Land, and he confess'd the Action, and the Demandant recover'd and cure'd. Que Estete the Tenant bas; Judgment of the Writ, and aver'd the Life of him who recover'd the Estate Tail, as he ought, because it is a particular Estate, and that the Title of the Demandant was meane between the Title of him who recover'd, and the Judgment. And it seems that this is no Plea to the Writ for the Tenant, but a good Plea in Bar for him, quod nota per Judicium. But now because the Tenant has Day in Court again, from the Refummons, and is Tenant and Party to receive Judgment, (for the Judgment shall be given against the Tenant notwithstanding the Voucher) and also this Matter is happen'd of latter Time, therefore the Tenant shall have this Plea. Br. Voucher, pl. 105, cites 5 H. 7. 38. 39.

For more of Voucher in general, See Age, Ais, Formedon, Recovery common, Warrantia Charta, and other Proper Titles.

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**Uses.**

 Fol. 179. (A) At the Common Law. What Persons shall be seised to the first Use. In Respect of their Estates without Notice.

* See(E)

This is in a

1. If Feoffee to Use incoffis his Son, or any of his Blood, without any valuable Consideration, he shall be seised to the first Use; for Consideration of Blood shall not take away the title raised by valuable Consideration. 3 Rep. 81 b. Tuaine's Cafe.

2. But if Feoffee of an Use, which is raised by Consideration of Blood, makes Feoffment to one of his Blood without other Consideration, there he shall not be seised to the first Use; for they are in equal Degree. 3 Rep. 81 b.

3. If Feoffee to an Use incoffis another without Consideration, he shall be seised to the first Use. 3 Rep. 81 b. [A Note of the Reporter in] Twaine's Cafe.

This is in a

Bury v. Buckenham.—And Ibid. Marg. cites S. P. resolv'd accordingly by the two Chief Justices and Chief Baron at Serjeant's-Inn, Mich. 8 Jac. in Brown's Cafe.—S. P. in Chudleigh's Cafe; Arg. 3 Rep. 122 b. cites 5 E. 4. 7 b.

S. P.
4. The Grandfather in Tail intestate, several, and declared by his Will a Man that the Feoffees should hold the Land till his Debts were paid, and after should intestate his Heir of his Body, and died; the Father enter'd, and made a Feoffment, the Debts not paid, and levied a Fine, and suffered a Recovery, and caused a collateral Warranty to be made, and died, and the Son enter'd. And by some, the Feoffees may enter and execute the Estate to him, according to the Will of the Grandfather; and Per Huf- fey and Brian Ch. Justice, and others, except Fairfax and Townend, the tiles, and the Son shall be bar'd by the collateral Warranty, and the Warranty of the Father, and the Recovery, which the Son shall not avoid by the Statute 1 R. 3. But per Fairfax and Townend, the Feoffees are not bound, for here was an Ufe in Tail; yet it seems to be there admitted, King's, that the Feoffment of the Father was good before the Debts paid; but it seems to me the second Feoffees shall be seised to the first Ufe of the Debt till they are paid, and then to the Ufe of the Estate Tail. Br. Feoffments al Ufes, pl. 21. cites 3 H. 7, 13.

12 cites 14 H. 7, 53. But Brooke makes a Quære; for 15 H. 7, 11. is contrary. And per Tre- mail J. and Reedie and Fines Ch. Justices, It's a Man declares his Will, that his Feoffees shall alien to J.S. if he die, and they make a Feoffment over, the second Feoffees may alien to J. S. for there is in a manner a Ufe in J. S. Br. Feoffments al Ufes, pl. 12. cites 14 H. 7, 53. and 15 H. 7, 11.

5. The Feme of the Feoffee shall be endowed to her own Ufe; for her Estate S. P. where is made by the Law, tho' be adjudged in by the Baron; for yet it is by the Law, whether the Husband will or no. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8, 4. Per Newdigate Serjeant.

Contrariwise, it seems of the Dower ex aequo Patti, or ad Oblium Ecclesiae; for those are in the Feoffee. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8, 4.

6. The Baron of a Feme who is seised to an Ufe shall be Tenant by the Curte, and is in the Poit to his own Ufe. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8, 4. Per Newdigate Serjeant.

7. If Feoffee in Ufe be of a Seigniory, and the Land escheats, he shall S. P. have the Land to the same Ufe as he had the Seigniory; for this comes in Lieu of the Seigniory. Contra, where Feoffee in Ufe dies without Heir, and the * Land escheats; Per Fitteherbert J. Nota, good Diversity. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8, 4.

pery after the present Fee is determined; and since the Feoffee in Ufe has taken it up to the Ufe of B. when the Tenancy comes in, he shall have it to his Ufes to which the Property was at first granted.

* In this Case the Lord shall be seised to his own Ufe; Per Newdigate Serjeant. Br. Feoffments al Ufes, pl. 10. And if the Heir of the Feoffee be within Age, he shall be in Ward of the Lord, and the Lord shall have the Profits; Per Newdigate Serjeant. Br. ibid.


9. If Feoffee in Ufe makes a Gift in Tail, the Donee shall be seised to his own Ufe; for there is a Consideration, viz. a Tenure, between them, unless be expressed an Ufe upon the Gift, or in the Gifts; per Brooke J. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8, 4.
10. If the Feoff in Use makes a Lease for Life, he shall have Fealty; for this is to the Ufe of the Lefsee, if an Ufe be not expressly reserved &c.
Per Brooke J. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8. 4.

11. So of Devise by Testament, the Devisee shall be feised to his own Ufe, unless it be otherwise express'd; for there is a Consideration imply'd. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8. 4. Per Brooke J.

12. If Feoffees to an Ufe of an Estate Tail fell the Land to him who has Notice of the first Ufe, yet the Bargainer shall not be feised to the first Ufe, but to his own Ufe, by reason of the Bargain and Sale; for the Feoffees have the Fee-simple, and therefore their Sale is good. Br. Feoffments al Ufes, pl. 57. cites the Time of H. 8. Per Fitzherbert J.

Br. N. C. pl. 60. cites S. C.—
2 And. 156. in Corbit's Case, Arg. lays, that notwithstanding the Opinion of late Time, if A. gives Land to B. in Tail, to the Ufe of C and his Heirs, this Limitation of Ufe is utterly void; and cites this Case, and that the Statute 1 R. 5. disfables such Cefly que Ufe from charging, demising, or granting the Land, as has been held.

13. A Man made a Feoffment in Fee to 4, to his own Ufe, and the Feoffees made a Gift in Tail to a Stranger without Consideration, who had no Conscience of the first Ufe. To hold in Tail to the Ufe of Cefly que Ufe and his Heirs. The Tenant in Tail shall not be feised to the first Ufe, but to his own Ufe; for the Statute of W. 2. cap. 1. wills, that Voluntas Donatoris in omnibus obseveretur, that a Man ought to refer his Will to the Law, and not the Law to his Will. And also here is Tenure between the Donors and the Donee, which is Consideration that the Tenant in Tail shall be feised to his own Ufe. Br. Feoffments al Ufes, pl. 40. cites 24 H. 8.


15. Where Rent is reserved, there, tho' the Ufe be express'd to the Ufe of the Donor or Feoffor, yet this is Consideration that the Donee or Lefsee shall have it to his own Ufe. Br. Feoffments al Ufes, pl. 40. cites 24 H. 8.

16. Where a Man sells his Land for 20l. by Indenture, and executes Estate to his own Ufe, it is a void Limitation of the Ufe; for the Law, by the Consideration of the Money, makes the Land to be in the Vendee. Br. Feoffments al Ufes, pl. 40. cites 24 H. 8.

17. If a Man delivers Money to J. S. to buy Land for him, and he buys it for himself, and to his own Ufe, this is to the Ufe of the Buyer, and not to the Ufe of him who deliver'd the Money; and there is no other Remedy but Action of Deceit; per Norwich. Br. Feoffments al Ufes, pl. 40. cites 24 H. 8.

18. Feoffees feised to the Ufe of B. before the Statute of Uses, made a Feoffment by Consent of B. to J. S. and his Heirs, to the Ufe of J. S. and his Heirs, of the same Lands. J. S. had Notice of the first Ufe. All the Juries held, that J. S. should be feised to his own Ufe, because the Ufe was express'd upon the Feoffment. Goldsb. 82. pl. 23. Hill. 30 Eliz. Staples v. Lark.

19. If a Feoffment be made to A. for Life, Remainder in Fee to the Ufe of J. S. and A. aliens in Fee, with Notice, the Alienee shall not stand feised
to the first Ufes; for the Tenant for Life has no Power so to alien, and now the Feoffee is in of an Estate by Wrong, quite different from that to which the Trusts were annexed. G. Law of Ufes and Trusts, 10.


1. If Baron and Feme, jointenants in Fee, suffer a Common Recovery, this may be aver'd to be the Ufe of the Baron. Averm. D. 3 & 4 Ha. 143. 52.

(A. 3) Ufe. What it is. And the Antiquity and Original thereof.

1. An Ufe, by the Consent of all our Books, is a Confidence and G. Law of Trust, which Ceify que Ufe, that is, he, that makes the Estate, hath for him and his Heirs, in the other and his Heirs, to whom the Estate is given, and there must be a Priuity of Estate between them; for the Ufe, is not issuing out of the Thing given, but is collateral and annex'd to the Person; for the Ufe is Ufes fructus, which is referred to the Giver when he hath given away the Property to another; for he hath neither jus in Re, nec jurs ad Rem, but only a Confidence, which, if it be broken, he hath no Remedy but a Subpoena in Chancery. There were two Inventers of Ufes, Fear and Fraud; Fear, in Time of Trouble and Civil War, for saving their Inheritance from forfeiture; and Fraud, in Time reported in Peace, to defer Debts, Wards, Escheats, Mortmains &c. Per Dods. deridge J. Jo. 127. 1 Car. 1. in the Ld. Willoughby's Case. Right after to those that come to the Lands in Priuity of Estate to the Feoffee; and under the same Trust and Confidence that he did; to that, to every Ufe, 2 Things are incident, a Confidence in the Person, and a Priuity of Estate; and when any of these fail'd, the Ufe was either suspended or destroy'd.

2. Br. Feoffments at Ufes, pl. 29. cites 3 All. 1. to prove that Ufes The Op- were before that Time. And Ibid. pl. 9. cites 44 E. 3. 25. to shew that there were Feoffees in Trust at that Time.

fore the Statute of Quia Emptores terrarum, but Ufes were not common before the same Statute; for upon every Feoffment, before this Statute, there was Tenure between the Feoffor and the Feoffee, which was a Confidence that the Feoffee shall be feid to his own Ufe. But after this Statute the Feoffee shall hold of the chief Lord, and then there is no Confidence between the Feoffee and the Feoffor, without Money paid, or other special Matter declar'd, for which the Feoffee should be feid to his own Ufe. Br. Feoffments at Ufes, pl. 49. cites 14 H. 8 —— But Nanwood J. said, That the Commencement of Ufe has been as long as Mankind have been guided by Reason. And altho' no Mention is made of Ufes in our ancient Books, yet that is no Argument that Ufes have been but of late Times. Ufes were not common, therefore were not at all, is a Non-Sequitur. But Dyer Ch. J. conceived the Beginning of Ufes to be immediately after the Statute of Mortmain, 7 Eliz. Stat. de Religiosis; for which Cause they were driven to find out other Shifts, not provided for by the Statute. See 2 Le. 13. &c. pl. 25. Brent's Case.—And Holt Ch. J. in delivering the Opinion of the Court, 12 Mod. 163, in Case of Jones B. Mortif. says, That they are indeed strange Things in their Nature, and of new Invention in the Law; that the Original of them was
180

Ufes.

to avoid the Statute of Mortmain, and cites Brent's Case, 2 Le. 14. For when those Statutes prohibited the conveying Estates to the Clergy, they found out this Way to have the Estate convey'd to a Lay-Person, under secret Trusts, to their Use, which in those Days affected the Conscience of the People; And till the Time of H. 8, Clergymen sat in Chancery, who, having Power over Men's Consciences, enforced them to perform those Ufes. Indeed for a Time Ufes were kept secrets, and did not much appear till the Differences between the Houses of York and Lancaster; wherein the whole Nation being engaged, both Parties finding those Ufes convenient, and fit to preserve their Estates, agreed to support them, so that in E. 11th's Time we find more Mention of them than before, and they being thus brought in by a General Consent, were afterwards look'd into Form; So that, at length, if a Man for Money alien'd and granted his Land to one and his Heirs, by this an Use was riied by Conclusions, and it amounted to a Bargain and Sale. G. Law of Ufes &c. 3. 4. says, The Original of them was from 2 Title under the Civil Law, which allow'd of an Ufes customary Poofession, distinct from the Substance of the Thing itself; and that it was brought over to us by the Clergy, who were Matters of the Civil Law, for when they were prohibited from taking any Thing in Mortmain, and after several Evations, by purchasing Lands of their own Tenants suffering Recoveries, and purchasing Lands round the Church, and making them Church-yards by Bull from the Pope, at last this Way was invented of conveying Lands to others, to their own Use; And this being properly Matter of Equity, it met with a very favourable Con advantages from the Judges of the Chancery-Gov't, and was in those Days commonly a Clergyman; and the Clergy thought this a Statute contrary to Natural Justice, and so could easily tolerate any Act in evading it. Thus this way of Settlement began; but it more generally prevail'd among all Ranks and Conditions of Men, by reason of the Civil Conmotions between the Houses of Lancaster and York, to secure the Poofessions, and to preserve them to their Issue, notwithstanding Attainders. And hence began the Limitation of Ufes, with Power of Revocation. G. Law of Ufes and Trusts, 3. 4.

3. A seised of one Acre by Priority; and another by Posteriority makes a Poofession in Fee of both to his Use. It was adjudged, that both parties at one Infant, yet the Law shall make a Priority of the Ufes as if it were of the Land it fell, which proves that the Use is not any new Thing; for then there should be no Priority in the Case. 13 Rep. 56. cites 28 H. 8. D. 11. Lord Rolfe's Case.

See Tit. Conveyances.

(A. 4) The several Sorts of Conveyances to Ufes, and their Operations.

* But see Tit. Feoffment (B. 2) pl. 5; Bencom v. Parker.

1. There are but 3 Sorts of Conveyances to Ufes; the two first of which only will lead a Contingent Ufe. 1. Covenant to stand seised to Ufes. 2. Feoffment, Fine, or Common Recovery to Ufes. 3. Bargain and Sale to Ufes. * By this last Conveyance only, no Contingent Use can be supported. 2 Sid. 158. Per Newdigate J. Pasch. 1659. B. R. in Cafe of Heyns v. Villars.

See Tit. Conveyances.

(B) What Person may dispose of it, and to whom. What Person.

1. If an Infant Cesy que Use had made a Will of the Use, this was void. 21 E. 4. 24. b.

2. If an Infant makes a Feoffment of Gabelkind Land, warranted by the Custom, and this is to his own Use, if he after makes a Will of the Use, this is void, unless the Custom will warrant it. 21 E. 4. 24. b.

3. If Feoffees in Use are disfeised, and after the Disfeoffee's Cesy que Use, and be enfeof'd a Stranger, by this the Right of the Feoffees in Use are extinct; for he had Right of an Use, and therefore this Feoffment,
ment extinguishes the first Use; but where he sells the Land and after suffers a Recovery, this is void; for by the Sale, his Use and Right are gone; Per Fitzherbert J. but Deinmil contra, therefore Quere. Br. Feoffments al Uses, pl. 8. cites 27 H. 8. 29.

(C) Uses. Who may be seised to an Use.

1. If a Man possessed of a Term for Years in Trust for another be S.P. and the attained of Treason, by which the Interest of the Term comes to the King by Forfeiture, the King is not suffer to this Trust because he comes in in the Polit, and * cannot be seised to an Use, P. 8. Agreed. Week's Case.


— By the Attainder the Use is destroy'd. Arg. Mo. 390. cites 26 Eliz. Sir Francis Throgmorton's Case.

— After Office found, the King's Title shall prevent the Use and relate above it, but until Office the Cevfe ou Use is feised to the Land. Ld. Bacon's Reading on the Statute of Utes, 348. — G. Law of Uses &c. says, he is not capable of an Use, because he cannot take for any Man's Benefit but the King's. — S. P. ibid. 176.

2. At Common Law before 27 H. 8. of Uses, a Man could not give in Tail to the Use of another, because Tenant in Tail could not make Feoffment to bind the Issue by Reason of the Statute De Donis Conditionaliter. B. 13 Ja. B. R. Per Curiam between Cooper and the Opinion of Franklin.

— Make Feoffment to the Use of another, because the Statute doth not intend to enable those who could not stand feised to an Use before the Statute D. 13 he was Tenant in Tail, and the Li
timation of the Use out of the Tail is void as well after the Statute as before; and that the Chancery could not compel him at the Common Law to execute the Esstate. — 3. Bullit. 185. Trin. 14 Jac. B. R. the S. C. accordingly, that Tenant in Tail cannot stand feised to an Use. — Roll. Rep. 532. pl. 40. Hill. 13 Jac. S. C. adjourned. — Ibid. 384. pl. 6. Trin. 14 Jac. B. R. the S. C. and S. P. agreed; and Haughton J. said it would be repugnant to the Esstate, the Tenant in Tail should stand feised to an Use, — Godl. 259. pl. 575. S. C. by Name of Franklin's Case, says it was resolved that Tenant in Tail might stand feised to an Use expressed; but that such Use cannot be aver'd. — If I give Land in Tail by Deed since the Statute to A. to the Use of B. and his Heirs; B. has a Fee-Simple determinable upon the Death of A. without issue. And like Law, tho' doubtfull before the Statute, was, for the Chief Reason, which bred the Doubt before the Statute, was, because Tenant in Tail could not execute an Esstate without Wrong; but that, since the Statute, is quite taken away, because the Statute saves no Right of Intall, as the Stat. 1 R. 3 did; and that Reason likewise might have been answer'd before the Statute, in Regard of the Common Recovery. Ld. Bacon on the Statute of Utes, 347.

None can be seised to the Use of another but who can execute Esstate to Cease quse Use, which shall be poss'd in the Uses, which Tenant in Tail cannot do, for if he executes Esstate his Issue shall have Foremedon; and also the Stat. of 1 R. 3. is that all Gifts, Feoffments, and Grants of Ceasy quse Use shall be good against all S.C. facing to all Persons their Rights and Intereats in Tail, as if this Statute had not been made; and therefore Tenant in Tail shall not be seised to an Use. Br. Feoffment al Uses, pl. 48. cites 24 H. 8. 260.


G. Law of Uses &e. 11. He cannot be seised to an Use expressed, for the Statute De Donis has so fixed the Esstate Tail, that the Doner nor his Issue can execute this Use, nor can he be seised to an implied Use, for the Tenant A a a makes
The King cannot be seised to the Ufe of another but only to his Markham own Ufe. Br. Feoffment to Ufes, pl. 31. cites 5 E. 4. 7. Ch. J. For the King shall be adjudged indifferent to every Man, and if he should be seised to the Ufe of another, he would be partial. Br. Feoffments to Ufes, pl. 37. cites 7 E. 4. 16. R. 3. before his affum- ming the Estate Royal was seised to the Ufe of others, the Law was taken to be, that upon his becom- ing King the Ufe was gone. And therefore an Act was made in the 18 Year of his Reign, cap. 5, that the Land should be in Fec in Celty que Ufe, and the Reason why the Ufe was gone by the Common Law, was not because the Capacity of his Body Natural was confounded by the Dignity Royal; For this Capacity remained after his becoming King, and in this Capacity he held the Land after; But the Reason was, because to the Body Natural, in which he held the Land, the Body Politick was af- sociated and conjoin'd during which Association or Conjunction the Body Natural participates of the Nature and Effects of the Body Politick. And the Body Politick cannot be seised of an Ufe; neither can the Body Natural, during the Time that they are together, but is drawn to the Quality and Ef- fects of the Body Politick, which is the greater. For R. 3, disjoin'd from the King does not hold the Land, but R. being King holds it, who cannot to fur debate himself as to have Land to another Ufe; And to the Body Natural by Participation of the other, is not of the fame Degree as it would be if it were disjoin'd from R, nor the Land which he holds in the same Manner. Pl. C. 2, b. per Walph, in Cafe of Willion v. Ld Berkeley. The King shall not be seised to the Ufe of another, because he is not compellable to perform the Confidence. Poph. 72. in Cafe of Dillon v. Frainge. S. P. Gib Law of Ufes &c. 5. 6. He is not compellable; for the Chancery has only a Delegated Power from the King over the Confecnces of his Subjects; and the King, who is the Universal Judge of Property ought to be indifferent, and not take upon him the Particular Defence of any Man's Estate as a Trustee. The King cannot be seised to an Ufe; because he is en le Poff, and is Paramount the Confidence. Jenk. 190. p. 92. The King cannot be seised to an Ufe. Cron. J. 79. 51. pl. 22. per Curiam. Mich. 2 Jac. C. B in Cafe of Atkins v. Longvill, 5 E. 4. 7 E. 4. and Pl. C. 228. He cannot be compell'd to execute the Poffeifion to the Ufe by a Subpeana, because if he dif obeys he cannot be compell'd by Imprifonment. Jenk. 195. p. 1. Nor can he be seised in Trust for another so as to have Remedy againf t the King for it to as to compell him to recover, but only to have an Aquwes Manum Arg. Hard. 466. and per Hale Ch. Baron. 467. in Cafe of Powell v. the Attorney General, for the Con. of the Rolls, in Cafe of Ld Eldridge and Bultace, relating to the Irish Forfeitures, where he says he takes the King to be in Nature of a Trustee, now inftructing the general received Opinion to the contrary.

If the King be seised of Land in the Right of his Duchy of Lancaster, and covenants by his Letters Parentes under the Duchy Seal to stand seised to the Ufe of his Son, nothing paffeth. Ld Bacon's Law of Ufes, 346-G. Law of Ufes &c. 170. says that of all the Lands whereof the King is seised, he is seised in Jure Coronae for the Maintenance and Support of His Crown and Dignity, and well Government of the Commonwealth, which is a Ufe the Law defign'd him Primitus, and consequently 'tis exclu- sive of all other Ufes: Neither can it be imagined that the King shou'd be in Point of Honour stand seised of Lands only to the Benefit and Advantage of another, and fo to be a Sort of Bailiift to him.

The Queen (speaking not of an Imperial Queen, but by Marriage) cannot be seised to an Ufe; tho' be a Body enabled to grant and pur- chase without the King, yet in Regard of the Government and Interes- ter the King hath in her Poffeifion, the cannot be seised to an Ufe. Ld. Bacon on the Statute of Ufes, 347.

Where Feoffment is made to an Abbot or Corporation, this shall be to their own Ufe, unless it be otherwise expreffed; Per Brooke J. & Quere Funk. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8. 4.

A Corporation cannot be seised to an Ufe, because none can have Confidence committed to him but Body Natural, which has Reaion, and which by the Order of the Chancellor of England may be com- pelled by Imprifonment to perform it, this being the Way to have it performed, and no Corporation com-
Usfs. 183


A Writ of Right by a College was Quod clamat esse Jus & Hereditatem suam without incurring the Right of any College, and the Writ was awarded good, because the Words in the Writ are of the same Effect as the other Words; for a Corporation cannot have Land but in Right of their Corporation, nor can they demand Land unless the Right is in Right of the Corporation; and so the several Ways of Exception are all of the same Effect. And. 274. pl. 820. Parch. 53. Eliz. All Souls College in Oxford's Caff v. Tanworth.—Le. 15. pl. 212. Trin. 5. Eliz. C. B. S. C. accordingly. And Anderson Ch. J. said that if a Parson pleads that he is feized, he shall say in Jure Ecclesiæ, because he has two Capacities, and without such Words as here shall be intended feized in his own Right; but if an Abbot pleads that he has seizes, they need not such Words; for he has no other Capacity; and so of a Dean and Chapter, Mayor and Commonalty.—A Corporation aggregate could not be feized to an Ufe, it being held that no Subject can lay against them. Per Holt Ch. J. 2 Verm. 299. Mich. 1706. in Caff of the Attorney General v. the Mayor &c. of Coventry.—G. Law of Ufes &c. 5. says Bodies Politick are not capable of an Ufe or Trust, because they are Bodies framed at the Will of the King, and are no further capable than he wills them, and 'tis his Will that they should purchase for the common Benefit, and for the Ends of their Creation, and not that they should take any Thing in Trust for others; also being incorporate, the Chancery had no Process on the Perons to compel them to discharge their Trust.—Ibid. 170. S. P.—A Corporation cannot be feized to an Ufe, because their Capacity is to a Ufe certain; again, because they cannot execute an Estate without doing Wrong to their Corporation or Pounder; but chiefly because of the Letter of this Statute, which (in any Case, when it speaks of the Feoffor) rests only upon the Word (Peron,) but when it speaks of Celibate one Ufe, it adds Peron or Body Politick. Ld. Bacon on the Statute of Ufes, 547.

7. Occupant shall not be seized to any Ufe; Per Brudnel. Br. Feoilments But G. Law of Ufes and Trusts, pl. 10. cites 14 H. 8. 4. says an Occupant may be seized to an Ufe, for an Occupant continues the Estate for Life as his Substitue, and so must take it as he had it — S. P. Hard. 468, in Caff of Pawlet v. the Attorney General.

8. Those who are in by Recovery are seized to their own Ufe, and not the Ufe of another. Br. Feoilments to Ufes, pl. 40. cites 24 H. 8.

9. The Wife may be seized to the Ufe of her Baron by a Feoilment to the Baron and the Feme and others, where the Baron only paid the Purchase Money. Br. Feoilment to Ufes, pl. 51.

10. Tenure for Years cannot at this Day be seized or poifioned to any Ufe, he has only a Poffession and not Seizin, which the Statute of Ufes requires. Jenk. 195. pl. 1.

11. Lord by Escheat shall not be seized to an Ufe, because upon the Br. Feoilment of Escheat he is in En le Poit, and paramount the Confidence. Jenk. 192. Ufes, pl. 40. cites 24 H. 8.

12. So of a Lord of a Villein, and for the same Reason. 1 Rep. 122. 3. Br. Feoilments to Ufes, pl. 40. cites 24 H. 8. — S. P. — Jenk. 195. pl. 1. S. P.—1 Rep. 122. a. in Chudleigh's Caff accordingly, that he is in Paramount the Ufe, viz. by Force of a Condition in Law annex'd to the Land at the Time of the Creation of the Seignior, and the Tenancy comes in Lieu of his Seignior which he has to his own Ufe; and the Writ of Escheat says, that ad ipsum reversi debet tanquam Escafa fac, and he is not in en le Per, but en le Poit, and the Lord by Escheat loses his Seignior.—S. P. Gilb. Law of Ufes &c. 172. and says further, That he has the Lands in Satisfaction for his Services that are now gone; but what Satisfaction will it be, if he is still to hold the Land charg'd with the Ufe.


15. Tenant in Dowry shall not be feized to an Use; for the Law gives her her Estate in Consideration of Marriage, and she is not in in Privity of the same. Per Hale Ch. B. Hard. 469. in Case of Pawlett v. the Attorney General.—Gilb. Law of Uses 17. says that she claims by the Marriage Agreement; and a sufficient Provision is made for her by Law, which is a part of her Estate; and since a private Contract is the Original of her Title, she continues the Estate of her Husband as he purchased it, and under the same Title and Agreements.—But ibid. 171, says, that because she comes to the Estate by the Diffloption of Law, for the Advancement and Encouragement of Matrimony, and this Estate is given for her own Maintenance, and is consequently exclusive of all other Uses for the Advantage of other People.

16. So of a Tenant by the Curtesy, and for the same Reason. 1 Rep. 122. a. Arg. in Chudleigh's Cafe.

17. A * Diffeilor, Abator, or Intruder, shall not be feized to an Use, tho' he has Notice; for the Use was not annex'd to the Possession of the Land which any of them has, but to the Privity of Estate which neither of them has; for they are not in in Privity of the Estate, to which the Use was annex'd, but En le Pott. And since the Cefty que Ufe had no Remedy but in Chancery, and that the Chancellor had no Power to determine Right of Inheritances, therefore they cannot stand feized to an Use.

18. An Alien cannot be feized to an Use. Poph. 72. in Case of Dillon a. in Chudleigh's Cafe.

19. If a Bishop bargain or sell Lands whereof he is feized in the Right of his Fee, this is good during his Life; Otherwise it is where a Bishop is infeoff'd to him and his Successors, to the Use of J. D. and his Heirs, that is not good; no, not for the Bishop's Life, but the Use is merely void. Ld Bacon's Reading on the Statute of Uses 347. But says the Use is not void ab initio.

20. Jointtenants may be feized to an Ufe, tho' they come to it at several Times, it being derived out of the same Fountain or Freehold. 13 Rep. 56. in Samme's Cafe.

21. One that comes in En le Pott shall not be liable to the Trust, without express Mention made by the Party; and the Rules for executing a of Persons Trust have often varied, and therefore they only are bound by it who En le Pott.
(D) Uses at Common Law, and Trusts now. Who shall have them. By Descent.

1. **The use shall be of the same Nature of the Land, to descend as the Land ought.**

2. As of Borough English Land upon general Feoffments, the use shall descend to the youngest. 21 E. 4. 24. b. D. 3 & 4. H. 134.

3. So of Chancery Land to all the Heirs. 21 E. 4. 24. b. 5. the Court of Chancery cannot alter the Descent of the Land, so it cannot alter the Law and Custom of a Place; for all immortal Customs and Usages are Part of the Laws of the Land.

4. So if a Man sold of Lands of the Part of the Mother, makes Feoffment generally, the use shall descend to the Heirs of the Part of the Mother. D. 3 & 4. H. 134. [pl. 9]

5. The same Law, if he had expressed that the use should be to him for the Land and his Heirs. This should enue the Land, and the Heirs of the Part of the Mother shall have it. Co. 1. Shelly, 100. b. Contra D. 3 & 4. H. 134. 9. (Qute ecc.)

6. But it seems of Borough English Land it would be so clearly; S. P. 15. Rep. (for there, it seems, a Man cannot make any other to have it by Descent, but the youngest.) 5 E. 4. 7. b.

7. If, by a Custom of a Manor, Land in Fee ought to descend to G. Law of the eldest Daughter only, excluding the other Daughters, there being no Son, and a Trust in Equity descends to the Heirs, this shall go to the eldest Daughter only, to be relieved thereupon in Equity, according to the Custom for the Land. P. 10. Car. 2. 162. between Jones and Lady Reasbite. The said Custom found in BR. by a Jury at Bar, and thereupon the same Term decreed in Chancery, That the Trust shall go to the eldest Daughter also.

8. The Possessor Parties of an Use follows the Analogy of Descents at Law. And so if a Man, feated in Fee of an Use, had Issue a Son and a Daughter,
Daughter by one Venter, and a Son by another Venter, and devises it for Years, and dies during the Term, the Daughter shall have it, and not the Son; otherwise it had been, if he had devised it for Life. G. Law of Uses &c. 18.

(E) Uses, Trusts at the Common Law. Who shall be said seised to the first Use. [Notice.]

1. If A. agrees with B. to lease Bl. Acre to him for certain Years, and after, before he has made the Lease, according to the Premise, he enforces C. of the Land for a valuable Consideration, C. having Notice of the Premise before the Feasment made, C. shall be compelled to Chancery to make the Lease to B. according to the Premise, because of his Notice. P. 8 Ja. in the Exchequer. Per Curtail.

2. Roll Rep. 105. S. C. and Ld. C. Bacon said, "That the Consideration imports a Seisin to C.'s own Use; but the Notice imports a Seisin to the former Use; and where the Act is capable of a double Interpretation, that must be taken which confists most with Equity. G. Law of Uses &c. 7, 8.

3. If A. seised in Fee before 27 H. 8. to the Use of B. and the Heirs Males of his Body, and for Default of such Heirs to the Use of C. in Fee, and after A. gives the Lands to B. and to the Heirs general of his Body, and after B. dies without Heir Male, and his Heirs general of his Body enters, he is seised to the Use of C. to whom the Remainder in Use in Fee was limited, in Case that B. at the Time of the Gift made to him by A. had Notice of the first Use limited to him and his Heirs Males. Helw. 2. P. 7. 93. Per all the Justices, in the Case between the Lord Chamberlain, Dawkney, and Chichester.

4. It was held that where Feoffees in Use be, that their Heirs, and Feoffees, and all that are in the Per, without Consideration, or upon Consideration, if they have Notice of the first Use, shall be seised to the first Use. Contra of those who come in in the Peri. Br. Feoffments al Uses, pl. 10. cites 14 H. 8. 4.

28 H. 8 and says, That those and diverse Books prove, that if the Feoffee sells the Land for good Consideration to one that has Notice, the Purchaser shall stand seised to the ancient Uses; and that the Reason is, because the Chancery looks farther than the Common Law, viz. To the corrupt Consideration of him that will deal in the Land, knowing it in Equity to be another's; and therefore if there were Radix Americanus, the Consideration purge it not, but it is at the Peril of him that gives it; so that Consideration,
5. If A. covenants with B. that when A. shall be enfeoff'd by B. of three Acres in D. that then the said A. and his Heirs, and all others seized of the Land of the said A. in S. shall be seised thereof, to the Use of the said B. and his Heirs; there if A. makes a Feoffment of his Land in S. and after B. enfeoffs A. of the said 3 Acres in D. there A.'s Feoffees shall be seised to the Use of B. notwithstanding that he had no Notice of the Use; for the Land is and was bound with the Use aforesaid, * to whose Hands forever it shall come; and it is not like to where the Feoffee in Use fells the Land to one who has no Notice of the first Use; for in this first Case 262. G. Law of Uses, the Use was not in Use, till the Feoffment be made of the 3 Acres, and then the Use commenced. Br. Feoffments at Ufes, pl. 50. cites 30 H. 8.

* 2 Sid. 93. says, That this was denied in Chudley's Cafe.

6. If one had made a Feoffment before the Statute 27 H. 8. to the Use of the Feoffor and his Heirs, and the Feoffees had made a Lease, referring a Rent to one who had no Notice of the Use, the Lease should have the Land to his own Use, and the Notice was not material. And. 324. in Cafe of Dillon v. Fraine, cites Br. Feoffments to Ufes, pl. 47. 30 S. C. and gives for Reason, that Words of Demise equally pass an Use, as if there were express Words to transfer it.

7. If A. be indebted to the Queen, and enfeoff B. and C. to the Use of A. and his Heirs, and J. S. having Notice thereof purchases Parcel of the Land of the Feoffee, he shall be seised to the first Use of which he had Notice, that the Land purchased was not in Conscience the Land of those who enfeoff'd him, but in Trust to retain it for the Use of Cefyque Ufe. But otherwise it is, if A. had enfeoff'd B. and C. to take the Profits, or to sell for Payment of Debts, and one who has Notice thereof buys the Land, this shall be to his own Use. Sav. 15. pl. 39. Pasch. 22 Eliz. Sir Thomas Ragland's Cafe.

8. A Feoffment in Fee was made to the Use of A. for Life, Remainder to B. for Life, Remainder to C. in Fee, and afterwards A. enfeoff'd J. S. who had Notice of the Use. The same takes away all the other Uses; and tho' J. S. had Notice of the Ufe, yet he shall not be seised to the first Use; for the Estate, out of which the first Use did arise, is taken away, and then also the Uses. Arg. 3 Le. 158. pl. 205. Mich. 29 & 30 Eliz. in Cafe of Cadee v. Oliver, cites Delamere's Cafe.

9. A Feoffee of a Manor, to the Use of J. S. releases to the Tenants, they But the shall not have it to the Use of J. S. For the Seigniory is drowned in the modern Tenancy which they had to their own Use, and there can be no Trust without an Estate in Being. G. Law of Ufes and Trusts, 9.

merely, and the Owners of the Land have Notice of the Trust, the Land is invested with it, and they shall be informed by a Decree in Chancery to set it up again; for the Land was at first bound and attendant to answer the Trust; and where the Owners of the Land knew of this Trust, 'tis Iniquity in them to destroy it. G. Law of Uses and Trusts, 9. 10.
(F) Uses at Common Law. To whose Use it shall be.

By Implication of Law.

D. 146. b. 1. If Feoffment be made at this Day without any Consideration express'd, this shall be to the Use of the Feoffee. D. 3 & 4 Ma. 140. 71. Tr. 5 Ja. B. Per Curiam.

2. So if a Man suffers a Common Recovery, without limiting to whole Use it shall be, or Consideration express'd, it shall be to the Use of the Recoevor. D. 3 & 4 Ma. 146. 70.

There is no Use implied upon a Fine; Per Welton J. And by Dyer, if the Render be made in Tail, the Cognizant is seized of the Reversion to his own Use. And to this the Sergeants agreed. Mo. 46. pl. 153. Mich. 5 Eliz. Anen.

If a Fine be levied to a Man and his Heirs, to the Use of him and his Heirs, in this Case he shall take by the Common Law, and not by way of Use; and in this Case there may be a Pard. Affirmation to prevent a resting Use to the Conoour in Fee; for when the Fine is levied, an Use does immediately arise, either to the Conoour and his Heirs, or to the Conoour and his Heirs; and when there is a subsent Deed, it only shews what the Intent of the Parties was at the Time of the Fine levied. 9 Co. Dowman's Case; so that when a Fine is levied, an Use does arise by Implication of Law to the Conoour and his Heirs; and consequently this Case is excepted out of the Statute of 29 Car. 2. cap. 3. Gilb. Equ. Rep. 17. Patch. 8 Ann. Altham v. Angelley.

4. But if before the Statute of Quia emptores Terrarum, a Man had made Feoffment in Fee without Consideration, the Feoffee should have this to his own Use, because there was a Tenure created by the Law between them. D. 3 & 4 Ma. 146. 71.

5. So if a Man gives in Tail at this Day, this shall be to the Use of the Dower for the Taite aforesaid. D. 3 & 4 Ma. 146. 71. Such Leaves, or the Grant of it over, is to the Use of the Leefe or Grantee; for (as is said) the Use of the Country to declare Lands to be safely kept, has made the meer Delivery of Possession no Evidence of Right, without a valuable Consideration. But these leaves Estates were not us'd to be deliver'd to be kept for the future Support and Provision of the Family; and therefore the meer Act of delivering Possession past a Right without Consideration, since there is no Presumption from the Use of the Country, that these Estates were transfer'd under secret Trusts, especially since Rents were usually refer'd, and they subseved to Waste and other Forfeitures. Gilb. Law of Uses & 65.

† Cro. J. 200. 201. pl. 32. S. C. accordingly, the Grant being made by Fine, without any Consideration. — S. C. cited Arg. Lane 94. in Cafe of Wentworth v. Stanley, as adjudg'd S. J. in C. B.


8. If Leaffe for Life or Years grants to another his Estate, and limits the Use but of Parcel of the Estate to the Grantor, the Remainder of the Estate shall be to the Use of the Grantee by Implication of Law, and not to the Grantor. Tr. 5 Ja. B. Per Curiam. Castle v. Dobb.

9. A Man purchas'd Land, and caus'd an Estate to be made to himself and his Feme, and to three others in Fee; this shall be taken to be to the
10. L. made a Feoffment to the Use of himself for Life, and after his Death, and the Death of P. his Wife, to T. his Son in Tail. It was held that no implied Use did arise to P. and therefore the Estate to T. was contingent. (Poll. 94. in the Case of Carpenter v. Smith, cites it as the Case of Weale v. Lower.

11. A. seised in Fee of Bl. Acre and Wb. Acre, had two Sisters E. and F. and had B. a Son by a former Wife, and on his Marriage with M. a 2d Wife, he conveyed the whole to W. R. and W. S. and their Heirs, to the Ufes following, viz. Bl. Acre to A. himself for 99 Years, if he so live, and after the Expiration to the Use of the said M. for a Jointure, and after her Death to the Use of the Heirs Male of the Body of the said A. Remainder to the right Heirs of A. And as to Wb. Acre, to the Ufe of A. for 99 Years, if &c. and after to the Trustees and their Executors for 200 Years in Trust to raise Portions for his Children by M. Remainder to the Heirs Male of the Body of A. Remainder to his right Heirs. The Marriage took Effect, and after A. died, leaving B. his Son by his first Wife, and H. and F. Daughters, by M. his 2d Wife. M. entered into Bl. Acre, B. entered into Wb. Acre, and caused Part of the Rents to be paid to the Trustees towards raising Portions pursuant to the Settlement, and granted Leaves &c. and died without Issue in the Life of M. Afterwards M. died. The Matter of the Rolls was of Opinion; that the Limitation of Wb. Acre was void; and as to what had been urged that an Use arose by Operation and Construction of Law, he said that to talk of raising an Use by Implication was a Mysterly in Law which he did not understand; and would have decreed Wh. Acre to the Sitters of B. But upon the Importance of the Defendant’s Counsel, a Case was stated and sent to the Judges of C. B. who certified, November 26. 1712. That as to Bl. Acre nothing but a Reversion expectant on M.’s Estate for Life defended to B. so that by her enjoying the Land, and surviving B. there was no Poffeifio Fratris, to exclude H. and J. the Sitters by the 2d Venter, from inheriting as Heirs to A. their Father. But as to Wb. Acre, they held the Limitation to the Heirs Male of the Body of A. void, no Freehold being limited to any Person precedent to that Estate, and that no Estate of Freehold could resit to A. for his Life by Implication, because another Estate, viz. for 99 Years, if &c. was expressly limited to him, which would be inconsistent with a Freehold in him by Implication, and that a Freehold either express or implied, was necessary to support such Limitation; and consequently the Freehold and Inheritance in Fee-simple of Wh. Acre, descended to B. exceptant only on a Term for Years, to the Trustees of which there was such a Poffeifio Fratris as intitles E. and F. the Plaintiffs Aunts, and Heirs of the whole Blood to B. the Son, to that Land. M.S. Rep. Mich. 8 & 11 Ann. Rawley v. Holland.
(G) Uses at Common Law. In what Manner and Nature Cesy que Use should have it, and how he might dispose thereof.

1. *De* 3 & 4 Wm. & M. 13.6. Basset's Case. A Man suffer'd a Recovery 16 H. 7. without Consideration, and 20 H. 7. declared the Uses of the precedent Recovery, and good; for before the Statute of 27. (as this was) an Use being but a thing in Confidence, might be directed and altered according to the Intention of the Parties. Agreed 9 Rep. 10. Downman's Case.

But a stranger has no interest by
the Use, or if it be to the
interest to retake Estate Tail, there he cannot charge the Use after. Br. Feoffments al Uses, pl. 36. cites 5 E. 4. 8. ——Cary's Rep. 15. cites S. C.

2. If a Man infeoffs others to the Use of him and his Heirs, or generally, without expressing any Use, he may make a Will alter, and alter the Use.

Br. Feoffments al Uses, pl. 36. cites 5 E. 8. 7. 5. Per Cur. except Davers.

If Cesy que Use makes a Lease for Life, yet the Reversion remains in the Feeholders, and not in the Lessor. Br. Feoffments al Uses, pl. 23. cites 5 H. 7. 5. Per Cur. except Davers.

3. If Cesy que Use makes a Lease for Life, yet the Reversion remains in the Feeholders, and not in the Lessor. Br. Feoffments al Uses, pl. 23. cites 5 H. 7. 5. Per Cur. except Davers.

4. If Cesy que Use enters, and a long Time after makes a Feoffment, yet this shall not purge the Tort, but the Feeholder shall have Affise; Per Cur. quod Brian and others conceiv'd clearly. Brooke says Quere how this Entry is to be intended; for Cesy que Use always occupied the Land at the will and Sufferance of his Feeholders; therefore quere what Act will make him Diffeñor. Br. Feoffments al Uses, pl. 23. cites 5 H. 7. 5.

But if the Rescavation be by Deed, the Cesy que Use shall have the Rent. Br. Feoffments al Uses, pl. 26. cites 8 H. 7. 5. ——S. P. Gilb. Law of Uses &c. 26. 27. For being by Deed, the Feeholders are chopp'd by their own Act to deny the Tenure of Cesy que Use; but where it is without Deed, the rending Rent to a Man is an Acknowledgment of the holding Lands from him, but here the Lands are not held of Cesy que Use, but of the Feeholders who had the Reversion.

5. If Cesy que Use makes a Lease rending Rent, the Rescavation is void, unless it be by Deed; Per Brian, Br. Feoffments al Uses, pl. 23. cites 5 H. 7. 5.

In such Case the Cesy que Use becomes the Fee upon Condition, and enters for the Condition broken, he shall retain; for the Feeholders cannot enter; for by the Feoffment the Fee and the Right was out of them. Br. Feoffments al Uses, pl. 23. cites 5 H. 7. 5.

H. 8. the he had but an Use when the Feoffment was made, yet now he shall be seiz'd of the whole Estate in the Land. Co. Litt. 202. a. ——Gilb. Law of Uses 32. cites S. C. For the whole Estate is devolved out of the Feeholders by the Feoffment; and they cannot enter for the Condition broken, because they are no Parties to it.

7. The
7. The Feoffees of Cefly que Ufe during the Nonage of the Heir, in whom the Ufe is, may grant all ordinary Offices as Steward, Bailiff, Receiver &c. without the Heirs Assent, but not Fees for Term of Life without his Assent at his full Age, and may defend the Land of the Heir with the Profits; Per Huliey and Brian Ch. Justices. And per Keble, they may do this for the Profit of the Heir without his Assent. *Br. Feoffment to Ufes*, pl. 27, cites 8 H. 7. 11. in Chancery.

for his benefit; but setting Fees without his Assent when he comes to full Age may be to his Prejudice. And that (after full Age, as it seems) he may grant such Offices; for he is the Instrument to convey the Profits to Cefly que Ufe, and now it may be in his Power to appoint all Means in Order thereunto, but this it seems must be by the Consent of Cefly que Ufe; for this Appointment is wholly to convey the Profits to him.

8. If Cefly que Ufe makes a Deed of Feoffment and Letter of Attorney to deliver Seisin, and the Attorney makes the Livery, this is a good Feoffment by some; but Brian, and all the others said it was Seisin; For as soon as Cefly que Ufe had held the Land the Ufe was out of him, Queare.

and then he is not Cefly que Ufe, and therefore cannot make a Feoffment. And so see that the Cafe is intended for the Sale of the Land. And afterwards all the Justices said that Cefly que Ufe himself may make Livery of Seisin, but not his Attorney; for the Statute is taken strictly, Brooke says, Queare inde; for at this Day, the Law is taken otherwise. *Br. Feoffments al Ufes*, pl. 28. cites 9 H. 7. 26.

9. Where Feoffees to an Ufe make a Lease or such like, and Cefly que Ufe enters and makes Feoffment over, this does not disprove the first Estate, and therefore shall not avoid Mefne Acts, as Lease, Dower, Statute Merchant, or such like made by the first Feoffees; Per all the Justices except Brudenell, who was contra. But Brooke says it seems that those Cales are against him. *Br. Feoffment al Ufes*, pl. 10. cites 14 H. 8. 4.

(G. 2) Cefly que Ufe. His Power.

1. Cefly que Ufe cannot give a Tree, and yet he may grant Edowers Cefly que in Ufe, and may grant 10 Trees per Annum in Ufe or for Life; for Ufe may this is Inheritance or Frankenement. But Brooke says it seems that the Gift of the Tree shall be good; for the Stat. of R. 3. is that all Gifts, Feoffments &c. by Cefly que Ufe shall be good; and fo is 11 H. 7. 2. other, but that Sale of Trees or Wood by Cefly que Ufe shall be good by the Statute of R. 3. *Br. Feoffments al Ufes*, pl. 64. cites 10 H. 7. 29.

then Trespafs lies. *Br. Feoffments al Ufes*, pl. 13. cites 15 H. 7. 2. by all the Justices of C. B.

2. Cefly que Ufe cannot justify the taking of Beasts in the Land Da-
S. P. that he

wage Feasant, but the Feoffees shall make this Justification, and shall have Action of the Trespafs done in the Soil, but those who have Inter-

reit in the Land as Commoner or Tenant at Will shall justify in their own Names, by all the Justices of C. B. *Br. Feoffments al Ufes*, pl. 13.

cites 15 H. 7. 2.

Eflate; but he may justify since the Statute. *G. Law of Ufes &c. 31.*

3. Cefly que Ufe of Lands in Fee-Fimple may by the Statute make a Lease or Bargain of the Land as well as he may sell the Trees growing on
on the Land; and his Sale good. Kelw. 41. b. Pach. 17 H. 7. —
Ibid. 42. b.

4. If Cefty que Ufe lesse for Years rendring Rent, and makes his Will that his Executors shall have the Profit of his Lands for 20 Years, he shall have this Rent for it is Parcel of the Reversion, and annex'd thereunto, and Cefty que Ufe shall have Action of Debt but not Avowry; Per Fitzherbert and Shelly, And per Fitzherbert, if he leaves by Parol rendring Rent this is good, and he shall have the Rent; for so is the Intent of the Statute. Br. Feoffments al Ufes, pl. 6. cites 27 H. 8. 13.

5. If Cefty que Ufe in Tail had suffer'd a Recovery before the Statute of Ufes made 27 H. 8. and died, the Feoffees could not have enter'd, but should have had Writ of Entry ad terminum qui praeterit or Writ of Right, and fallify it. Br. Entry Changeable, pl. 123. cites 31 H. 8.


8. Cefty que Ufe shall take Advantage of Conditions which are knit to the Estate, as for Payment of Rent, but not concerning collateral things; And such Expulsion of the Statute 32 H. 8. hath been made before. Arg. 3 Le. 225. Pach. 31 Eliz. B. R. in Cafe of Scott v. Scott.

9. Cefty que Ufe of a Rent Charge executed by the Statute may disbein for Rent Arrear; for by the executing the Estate such Power is transferr'd the Cefty que Ufe as incident; but a Covenant for Payment of the same is not transferr'd to him, as the Power of disbeining is. 2 Mod. 138. Mich. 28 Car. 2. C. B. Cook v. Herle.

(G. 3) Cefty que Ufe. His Power as to Feoffees.

1. A Feoffee of Trufit is bound to plead all Pleas, and shall maintain Actions for the Land as Cefty que Ufe shall devise and require at the Coffs of Cefty que Ufe; Per the Justices. Br. Feoffments al Ufes, pl. 38. cites 7 E. 4. 29.

2. If I give my Goods to J. S. to my Ufe the Donee is bound to maintain a Writ of Trespass for the taking of them but not Appeal of Robbery; Per Littleton. And per Choke 'tis true; for he shall not be compell'd to lavor, and the Appellant shall swear that his Appeal is true. Br. Feoffments al Ufes, pl. 38. cites 7 E. 4. 29.
(G. 4) Consideration. Necessary in what Cases to raise an Use.

1. If a Man makes a Feoffment without Consideration, the Feoffee shall be feised to the Use of the Feoffor, or to the Use to which the Feoffor was feised; Per Fitzherbert J. Br. Feoffments al Ufes. pl. 10. cites 14 H. 8. 4.

2. It is said that if a Man be feised of Lands in Fee, and grants a Rent iffuing out of the same Lands to a Stranger, without any Consideration &c. the Grantee shall be feised of this Rent to his own Use; for the Law cannot intend such a Grant to be made to the Use of the Grantor. Perk. S. 531. cites Mich. 14 H. 8. 5.

3. Ld. Bacon, in his Reading on the Statute of Ufes, 310, 311. says, He would have one Case shewn, by Men learned in the Law, where there is a Deed, and yet there needs a Consideration; That as for Parol, the Law adjoynes it too light to give Action without Consideration; but a Deed ever imports a Consideration, because of the Deliberation and Ceremony in the Confection of it; and that therefore, in the 8 Eliz. it is solemnly argued, that a Deed should raife an Use without any Consideration. In the Queen's Case, a false Consideration, if it be of Record, will hurt the Patent, but want of Consideration never does; and yet they say that an Use is but a nimble and light Thing; and now, contrarywise, it seems to be weightier than any thing else; for you cannot weigh it up to raife it, neither by Deed nor Deed inroll'd, without the Weight of a Consideration. But (he says) you shall never find a Reafon for this, to the World's End, in the Law; but it is a Reafon of Chancery; and it is this, That no Court of Confequence will inforce Donum Gratuitum, tho' the Intent appears never fo clearly, where it is not executed, or sufficiently pass'd by the Law: But if Money had been paid, and to a Person damfified, or that it was for the Etablifhment of his Houfe, then it is a good Matter in Chancery.

4. If one, without any Consideration, enfeoffs another by Deed, Habea' to the Feoffee and his Heirs, to his own Use, and the Feoffee suffers a Feoffee to occupy the Land several Years, yet the Right is in the Feoffee; because expres Ufe is contained in the Deed, which is sufficient without other Consideration. The fame Law is when a Feoffment is made to the Use of a Stranger and his Heirs. And. 37. pl. 95. Anon.

5. Use declared on an Estate executed, needs no Consideration. Mo. pl. 247. Mich. 16 & 17 Eliz. per Cur. in Calthrop's Cafe, feifation, the Consideration must be presently executed. Arg. Cart. 140. in Cafe of Garnill v. Wentworth.—If I covenant to feid feised to the Ufe of J. S. and his Heirs, in Consideration that he shall be my Comfeller, it is good, and the Land pass'd presently, tho' it is not executed. Arg. Cart. 142. says this Cafe was put by Popham in B. R. in one Pepplewel's Cafe.


7. In the Statute of 27 H. 8. 10. all the Conveyances are mention'd, and not one Word of a Consideration in the whole Statute; but that is left to the Judgment of the Law; for at Common Law, that which pass'd by Transmutation does fo lince, and what before the Statute could not pass without valuable Consideration, will not now. Arg. Cart. 138. in Cafe of Garnill v. Wentworth, cites Pl. C. 301. Sharrington's Cafe.

8. To raife Ufes by way of Covenant or Bargain and Sale, there must be Jenk 24. a Consideration. But in Cafe of Transmutation of Possifion, they may arife pl. 36. D d d without
without any Consideration at all. Arg. Cart. 143. in Case of Garnith v. Wentworth.

(H) Uses. Consideration. What shall be said a good Consideration to raise an Use? Against the Law. [Or otherwise.]

1. If A. bargains and sells to B. in Consideration of the Loan of 100l. by B. to him for a Year, this is a good Consideration to raise an Use; for it is not unjustly, by any Statute, to take 10l. for the Loan of 100l. For the Contract is good for this between the Parties themselves, and shall bind him, and only a Pain is limited upon him who takes it, settle, that the King shall recover to much from him. (But if Usury be * against the Common Law, it seems no Use can arise.) Vide this 26 Eq. 3. 71. Contra Hill. 37 El. B. between Nowell and Hudson.

2. In an Indenture between A. and his Wife of one Part, and B. their Son of another Part, and C. their Son of the 3d Part, the said A. in Consideration of Natural Affection and Paternal Love which he has to his said Sons, and for their better Advancement, and to the Intent that the Lands should continue in his Name and Blood, covenants to stand feited to the Use of himself for Life, the Remainder to his said Wife for Life, the Remainder to his said Sons. This here another Consideration is express'd, yet inasmuch as his Wife is named his Wife in the Deed, this shall be a sufficient Consideration to raise an Use to her. Adjudged 7 Rep. 42. Bedell's Case, Trin. 3 Ta. B. R. Adjudged between Bedell and Hall. It seems this was the same Case, but there the Feine is not said to be Party to the Indenture.

3. If A. have 3 Sons, covenants, in Consideration of Natural Affection to the eldest Son, to stand seited of certain Land to the Use * of himself for Life, and after to his eldest Son and the Heirs Males of his Body; and for Default of such Use, to the Use of his 2d Son and the Heirs Males of his Body; and for Default of such Use, to the Use of the 3d Son &c. This is good Consideration to raise the Use to his younger Sons; for tho' the Consideration of Natural Affection be limited only to the Eldest, yet this is equal to all the Sons; and therefore the Law will supply it without Expectation; for if nothing was expressed, it had been good Consideration by Implication of Law. Mich. 43 & 44 Eliz. B. R. between Bond and Edmonds. Per Curiam.

4. If [A.] by Indenture made between him of the one Part, and B. his Brother, (naming him to in the Deed) and C. and D. (who are Strangers to him) in Consideration of Love and Affection which he bears towards his Wife and Children, and for their Maintenance and Stay of Living, and to the Intent to settle his Land in his Name and Blood, covenants with the said B. C. and D. to stand seited to the Use of himself for Life, and after to his Wife for Life, and after to the said B. C. and D. and their Heirs, upon Trust, that they should make such Uses as he himself shall appoint, and alter to make Portions for his Children; and after to G. his 2d Son in Full &c. Though no Use can arise by this Indenture to C. and D. who are Strangers to the
the Consideration of Blood, and to this is void as to them, yet the Ufe shall arise for all to B. who is his Brother, and to named in the Deed, which is within the Consideration. 

Trin. 14 Car. XII. 

This was a Special Verdict between Fox and Wicocks, and argued at Bar, but it abated by Death. And after, upon a new Special Verdict between Smith and Basby, it was adjudged per Curiam, That the said well arise to B. to perform the Truths specified in the Indenture. In 

tratute. [Trin. 14 Car. Rot. 1502.] This concerns one * Bishop of Grafton's Inn.

5. Consideration of ancient Acquaintance, or of being Chamber-, 

Fellows, or entire Friends, shall not raise an Ufe. Trin. 3 Jac. 

B. R. Agreed per Curiam between Ward and Tuddingham. 

6. So Consideration of great Familiarity, or long Acquaintance 

with him, or that they were Scholars together in their Youth, shall not raise an Ufe. Pl. T. 593. Sherington. 

7. If A. in Consideration that B. was bound in a Recognizance 

for him, * bargains and sells Land to the other, this is not good. 

37 Eliz. b. Adjudged between Ward and Lombard, cites Ch. 41 Eliz. 

B. R. 

* After Recital of the being bound Sec. A. for diverse Considerations, bargain'd and sold to B. and his Heirs. The Deed was involv'd within the 6 Months, but no Money paid. This cannot be good. But if there had been apt Words, he might thereby have rais'd an Ufe by way of Covenant; for in every Bargain and Sale must be a Suid pro Suid. But here A. has nothing; but being bound had been a good Consideration to raise an Ufe by way of Covenant. Sec. E. 594. pl. 19. Panch. 37 Eliz. C.B.Ward v. Lamber. 

G. Law of Ufes, 243, cites Sec. C. and says the Words here are not apt to make a Covenant to stand fiell'd, so the Deed had not any Operation. — But a Covenant to stand fiell'd would be good; because Chancery will oblige a specific Performance upon any Agreement, where a Consideration was perform'd on one Side; and where the Chancery would raise an Ufe, the Statute executes it. G. Law of Ufes, 112. cites Sec. C.— Ibid. 51. accordingly, That it had been good by Covenant to stand fiell'd, had there been apt Words.

8. The Consideration of a Surname will not raise an Ufe, as was re- 

solved in Sir Christopher Hatton's Case, who had a Sister's Son call'd 

Newport, and in Consideration of his changing his Name to Hatton, he 

covenants by Deed to raise an Ufe to him. This Consideration was ad- 

judged not sufficient to raise an Ufe. Jenk. 81. pl. 50. 

9. If before the Statute of 27 H. 8. one had infeft'd his Servant, he 

should be fiell'd to the Ufe of the Felidier, but if he expresses the Consideration to be for Service, he should be fiell'd to his own Ufe; Per Popham 


10. W. and M. his Wife purchas'd Lands, to them and the Heirs of W. 

They by Indenture bargain'd and sold the Land to O. P. Q. and R. and their Heirs, upon Trust to sell the same to pay his Debts and Legacies, and for the Maintenance and Marriage of E. his Daughter. W. also covenan- 

ted, that he and his Wife, before Pentecost then following, should by Fine 

with Proclamations grant the said Lands to the Bargainees and their Heirs, 

upon the said Trust. In the Deed W. recites, that the said O. is near al- 

lied to him, that P. as [is] his Uncle, Q. is his Uncle in Law, and R. is his Brother in Law; and that he and his Heirs, for the natural Love and 

kindred between him and them, should immediately after his Decease fiell'd 

to the Ufe of the said Kindmen and their Heirs, of all such Parts of the 

said Lands as before the Decease of the said W. should not be executed by Fine, 

or other Execution of Eftate, according to the Purport of the same Deed, 

upon the Trust and Consideration aforefaid; And in that Deed W. and M. made a Letter of Attorney to make Livery and Seiling; but no Livery was 

made, nor any Fine levied, nor was the Deed involv'd: Of all the Parties to 

the
the Deed. P. only was of Blood to the said W. Resolv'd that the Use
did not entitle to them which were not of Blood, but of Alliance. But
* how much of the said last did vest and execute in the said P. who was of
Blood, the said Lords the Judges rested doubtful, and would be further

11. A covenant to stand seised to several Uses, and afterwards to C.
for 99 Years, if he so long live, Remainder to two Strangers for the Life of C.
to preferre contingent Remainders, Remainder over. It was agreed by
all, that the Remainder to the two Strangers was void, they not be-
ing of the Blood; so that they cannot enter for, or take Benefit of a For-
teiture committed by C. 2 Lev. 52. 54. Trin. 24 Car. 2. B. R. Wha-
ley v. Tankard.

2 Show. 12. in the Caise of Colman v. Senhoufe.

13. A by voluntary Deed covenants with B. and C. (Strangers) to
stand seised to the Use of himself for Life, Remainder to the Use of B. and
C. during the Life of E. the Daughter of A. [his Heir at Law] upon
Trust to apply the Profits &c. for the Benefit of E. and after her Death
to B. and C. and their Heirs during the Life of the eldest Son of E. upon
Trust, to raise Portions for younger Children, and then to convey to the eldest
Son &c. with Remainders over &c. It was objected, That the Plain-
tiff, who claim'd as the eldest Son of E. can have no Benefit under this
Settlement, for that the Trustees being Strangers to the Consideration of
Blood, no Use thereby arises to them, according to the Lord Pagett's
Cafe, and Lord Chancellor was of the same Opinion. Then it was objected
for the Plaintiff that there may be a Difference where the Estate, Trust, or
Use in the Trustees, is limited for the Benefit of the Blood and Family of the
Covenator, and where for collateral or other Purposes, as was the Lord Pag-
nett's Cafe, the Trust Term there being for the Payment of Debts &c.
but here the Trust is for the Benefit of the Blood of the Covenantor, 

(H. 2) Uses. Consideration good. Where the Con-
ideration is mixt.

1. If an Use be declar'd on a Covenant to stand seised on Considera-
tion of Marriage and Money, no Use will arise without Marriage, tho'
the Money is paid. Mo. 102. pl. 247. Mich. 16 & 17 Eliz. Per
Car. in Calthrop's Cafe.

A Deed

to a Son was
in Confe-
ration of na-
tural Love
and Affec-
tion, and of the Sum of 1. to be paid annually to the Father. Tho' Money is Part of the Considera-
tion mention'd, yet this will as work a Covenant to stand seised; but then it ought to be pleaded as a Cove-
nant to stand seised according to the legal Construcction of a Covenant to stand seised according to the legal Construcction of a Covenant to stand seised accordingly.

2. In Consideration of Natural Affection to my Son, and of 100 l. paid by
my Son, I covenant to stand seised. Lord Ch. J. Bridgman (who put
this Cafe) said he thought the principal Consideration will carry it. Car.

3. A.

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(I) Uses. Consideration. To whom the Consideration may raise an Use. Not to a Stranger.

1. If a Man, in Consideration of natural Love which he bears to, and A. his Brother, covenants to stand feized to the Use of B. and his Wife, for their Lives, this shall raise a good Estate to A. for he gives the Estate to A. in Consideration of the Marriage between her and his Brother; and this shall be taken for the Jointure of A. for the Love which he bears towards his Brother extends in Right of his Brother to his Wife. Pl. C. 397. 4 Sher. 36. Pled.

2. If a Man, in Consideration that B. shall marry his Daughter, covenants to stand feized to the Use of B. and his Daughter, in Tail or Life, this shall raise a good Estate to them both. Pl. C. 397. Shar-lington and Pleydall v. Strotton.

3. If a Man, in Consideration of natural Love and Affection to his Son, covenants to stand feized to the Use of the Wife of his Son for Life, this shall raise a good Estate to the Wife; for the Love to the Son extends to his Wife. Contra. 5 Jac. B. R. between Boulle and Winstan. Afterwards marry; and resolves that the Consideration extends to the Wife that should be. Cro. J. 168. pl. 8. S. C. —— See (K) pl. 1.

4. If a Man, in Consideration of a Marriage to be had between B. Ma 544. pl. his Son, and A. covenants to stand feized to the Use of B. and A., this is a good Consideration to raise an Use to A. Mich. 37 & 38 Eliz. B. R. Admitted between Corbin and Corbin.

5. If a Man, in Consideration that B. shall marry his Daughter, covenants to stand feized to the Use of B. and his Daughter, the Remainder to C. this is a void Remainder to C. because he is a Stranger to the Consideration. Pl. C. 397. 5. Sher. & Pled.

6. In Consideration of certain Money given by B. a Man may if A. bar- covenants to stand seized to the Use of A. for Life, the Remainder to gains and C. in
7. So in Consideration of certain Monies given by B. a Man may covenant to stand seised to the Use of B. for Life, the Remainder to C. in Fee, or with diverse devise Remainders; for the Monies are given for all the Estates. PL. C. 307. 6. S.循 and Vld.

8. If a Man, in Consideration of the Diligence of his Funerals, Payment of his Debts and Legacies out of the Profits of his Land, covenant to stand seised to the Use of himself for his Life, the Remainder after his Death to the Use of J. S. for 20 Years, and dies, not making J. S. his Executor, (but dies intestate, his Attorney of Treaty) the Remainder for Years is void, and no Use shall arise thereof to J. S. because he is a Stranger to the Consideration. Adjourned 1 Rep. 154. Lord Paget's Case.

9. But otherwise it had been, if the Covenanator had made J. S. his Executor; for then he had been enough privy to the Consideration. 1 Rep. 154. Lord Paget's Case.

10. A Feme may enfeoff a married Man, Causa Matrimonii praebuci, because of the common Possibility. 10 Rep. 50. b. in Launpért's Cafe, cites 4 H. 6. 16 & 17.

11. A Mortgagor intreated a Stranger to redeem the Land at the Day, and by Indenture Mortgagor covenanted, that after the Redemption the Stranger should have the Land to him and his Heirs; and that he, in Consideration of 100l. would stand seised to the Use of him and his Heirs. The Stranger redeems the Land at the Day, the Mortgagor enters, and the Deed is inroll'd within the 6 Months; yet Ruled that nothing pass'd, because he had not any Eate or Interest therein at that Time, to contract for it. Cro. E. 402. pl. 10. in the Cafe of Yelverton v. Yelverton, says it was cited as a Cafe in the 20 Eliz. but neither the Name, nor in what Court, was mention'd.

12. Feoffment in Fee; on Condition that if the Feoffor do such a Thing he shall re-center, and retain the Land to the Use of a Stranger, the Use is void, and the Feoffor shall hold the Land to his own Use; Per Mend J. Le. 269. pl. 372. in Cafe of Fernand v. Ramley.
K) Ufes. Consideration. What shall be a good Consideration to raise an Ufe.

(See this Title before) [at (H)]

1. A Man may covenant to stand seised to the Ufe of A.'s Wife, S. C. cited in Consideration that he is the Wife, and this shall raise a good Estate to the Wife; for this is a good Consideration in Law. Adj. 11 Rep. 24. 7 Rep. 40. Bedell's Case. Adjudged Crim. 3 Fac. 25. R. betw. Bedell and Hall.

2. A Man may covenant to stand seised to the Ufe of A.'s Wife of his Brother, in Consideration that he is the Wife of his Brother, and this shall raise a good Estate to her; for the Love which he bears towards his Brother, extends in his Right to his Wife. Pl. C. 307. Sher and Pierd. 3. Fraternal Love, and Continuance of his Land in such of his Blood is good Consideration to raise an Ufe by way of Consideration; for this is a Consideration of Blood, and the Brother is one of the next Degrees after his Parents and Children, and they are next in Blood are next in Love by Intendment of the Law. Pl. C. 307. Sher and Pierd. [v. Strotton.]

Kindred, this is sufficient to raise a Ufe to them, without any Mention of a particular express Consideration; for the Love and Affection between them is obvious, which being a Consideration in itself sufficient to raise a Ufe, it shall be presumed that it was to the Intent the Ufe was limited; may, if there be a Consideration to some certain Person, and afterwards a Ufe is limited to another Person, that does not come under the Consideration expressed, yet if he be a Person on whose Side there is a manifest Pre-supposition of another Consideration, he shall have the Ufe limited to him by that Consideration, tho' he could not take by Virtue of the first. Thus, if a Man covenants, in Consideration of natural Love and Affection that he bears to his eldest Son, to stand seised to the Ufe of him, and then to the Ufe of any other of his Kindred, as Brother, Cousin, &c. this shall give a Ufe to them, tho' they do not come within the Consideration that is expressed to the eldest Son; for there is an obvious and apparent Consideration to raise an Ufe to them. Gibb. Law of Ufes and Trusts 251. 252.

4. If a Man covenants, in Consideration of Blood, and of the Mo. 753. Marriage of his Bastard-Daughter, to stand seised to the Ufe of the pl. 1020. Bastard-Daughter, this is not a good Consideration to raise an Ufe, because in the Law the is not his Daughter, but Hilla Popull. Mich. 43 & 44 Eliz. 25. R. per Curiam, between Frampson and Gerard. S. C. says the Judges were divid. in Opinion, viz. Popham and Fenner with the Heirs general, and Gowy and Yelverton contra, whereupon it was adjourn'd for Difficulty into the Exchequer Chamber, and that it was argued there. But says not what became of it.)—And. 75. 79. pl. 145. S. C. By Name of Gerard v. Worlesley, adjudged.—D. 574. pl. 16 & 17. Hill. 23 Eliz. Worlesley's Case, S. C. that the Judges, except Perciam, held, that the Ufe cannot be carried to the Bastard without express Consideration—S. C. cited 2 And. 81. and 126. S. P. Gibb. Law of Ufes &c. 257. But if a Man covenants by Indenture, in Consideration of natural Love and Affection, Blood, and Marriage of his Bastard Daughter, to have a Fine, and that the Comitee shall stand seised to the Ufe of the Bastard Daughter; tho' this be not a sufficient Consideration to raise an Ufe upon a Covenant, yet it is expressive of the Intent of the Party, and therefore shall serve as a sufficient Declaration of a Ufe upon the Fine, where there needs no Consideration.

5. A Man, in Consideration of his Care and Love which he bears Mo. 568. pl. to J. S. call'd, named, and reputed, one of his Sons, (where he was his Bastard-Son) covenants to stand seised to the Ufe of the said J. S. Mich. 56 & 57. Eliz. S. C. this is no good Consideration to raise any Ufe. This was Sir James but S. P. not Perrot's Case, adjudged in the Exchequer, in a Writ of Inte- tion upon the Conveyance of Sir John Perrot, by which a Re- mainder
6. Consideration of Affection to the Heirs Males of the Covenantor, which should beget of the Body of A. his late Wife, is good Consideration to raise an Ufe, by way of Covenant, to the Heirs Heirs of his Body; for every one is bound in Nature to provide for his Children. Pl. C. 304. Sber. and Fed. 

7. For Advancement of his Heirs Males, A Man may covenant to stand feised to the Ufe of himself and the Heirs Males of his Body, and this shall raise a good Estate Tail; for this all the Estate Tail is in himself, yet this is for the Benefit of the Heir Male, that it is in Futuro, and not in Presenti; for none can know who shall be his Heir, but solus Deus facit Heredes. 7 Rep. 13. b. [14. a] Englefield's Cafe.

8. A Consideration of the Continuing of his Land in his * Name, is a good Consideration to raise an Ufe by way of Covenant; for by this the Females shall be excluded; for the Males are more worthy, and for several Reasons I may [ought to] be preferd before the Females. Pl. C. 306. Sber. and Fed.


And if the Ufe had been limited to the Queen in Consideration that she was the Head of the Commonwealth, and had the Care and Charge as well to preserve the Peace of the Realm, as to repel foreign Hostility, yet had no Ufe been raised to her, for this is to be done Ex Officio. —— G. Law of Ues &c. 224, 225. cites S. C. and adds that there is no particular Consideration to intitle her to the Profits of those Lands; neither has she any more Reason to have them now than before; for Ex Officio the takes Care of the Commonwealth, and to that End she has a sufficient Revenue.

So of a Brother; Per Son, or Conseq., it is good to raise a Ufe without any express Words
Words of Consideration. 7 Rep. 39. b. (40. b.) in Bedell’s Car. For the Word Brother, implies.

11. Consideration of *Marriage to be bad*, will raise an Use, because the present Estate is to the Baron, and what is limited to the Feme, is only a Remainder; Per Twifden J. Sid. 83. Trin. 14 Car. 2. B. R. in Case of Stephens v. Brittridge.

12. There are no Considerations, now at this Day, to raise Uses upon *Covenants to stand seised*, but natural Love and Affection, which is for Advancement of Blood, or Consideration of Marriage, which is joining of Blood and Marriage together. Other Considerations, as *Money for Land, or Land for Land*, tho’ the Words are (Stand seised to Uses) yet they are Bargains and Sales, and without *Rent* raise no Use. Arg. Cart. 139. in Case of Garnish v. Wentworth, cites Le. 201. at the End of the Lord Paget’s Cafe, and Coke’s Institute on the Statute of Inrolments, p. 672. and Pl. C. 303.

13. If a *Leave and Release* be pleaded to A. and his Heirs, and no Consideration appears, nor paid to whose Use it shall be intended to the Use of Reliefe and his Heirs. 2 Salk. 678. pl. 5. Mich. 1 Ann. B. R. Shortridge v. Lamplugh.

In this Case the Leave was pleaded in Consideration of 51, but no Consideration was pleaded for the Release; per Powell J. the Merger of Estate is a good Consideration. Ibid. — S. G. and S. P. accordingly per Powell J. But by him and Holt Ch. J. if there were a particular Use limited on the Release, the rent would fail back. 7 Mod. 77. in S.C.

(L) Uses. Consideration. In what Cases they shall be raised to a Stranger to the Consideration for a collateral Respect.

1. If a Dower covenants, in Consideration of natural Love and Affection to his Son, to stand seised to the Use of his Son, for Life, then the Remainder to such Wife as the Son shall have after, for Life, the Son is the Collateral, Remainder to the first Son of the Son and Wife begotten &c. The Wife be a Stranger to the Consideration (admitting it) yet the Estate limited to her is well rais’d for the Subsequent Estate, which is within the Consideration. Agreed Tr. 5 Jac. B. R. between bold and Winton.

Wife shall take well enough, and that she is within the Consideration; for it is for the Advancement of his Polity, and without a Wife the Son cannot have Polity. And the Estate of the Son shall support the Use to the Wife, and when the Contingent happens, the Estate of the Son shall be charged according to the Limitation; that is, to the Son and the Woman &c. 15 Rep. 48 Trin. 7 Jac. in the Court of Wards. Anon. — And if it was resolved in B. R. per rot. Car. in the Reign of Q. Eliz. for both Points in Sheffield’s Cafe. Ibid. 49 — Baron makes Footment in Fee to the Use of himself, and such Wife as shall be in Fee. He marries, and levies a Fine of all, and dies, and the Wife brought a Case in Vita of a Moity. D. 274. b. pl. 42. Marg. cites it as in the Time of Q. Eliz. in C. B. Read’s Cafe.

M. levied of Lands in Question, levied a Fine thereof, to the Use of himself and of such Feme as he should afterwards marry, and after their Decease to the Use of J. the Daughter of M. and the Heirs of her Body, and afterwards married the now Tenant, and died. Adjudged per 3 J against Dyer Ch. J. that such Limitation is good. Mo. 46. pl. 242. Hill 14 Eliz. Mutton’s Cafe. — D. 274. b. pl. 42. Patch. 10 Eliz. S. C. and Dyer makes a Quere; but says, that by the Opinion of Wray and Mead, Serjeants, and Plowden and Onslow, Solicitor, the Estate is raised to the Wife; and that they subscribe’d their Names to their Opinion — And 42. pl. 166 Mich. 10 Eliz. says it was held, that the Wife took nothing, because the Land was vested in the Conform by the Statute 27 H. S. with the Remainder over. And yet it appears that the Intent was, that such Feme ought to take Estate; and also that this cannot be F f f jointly.
(M) Usfs. Consideration. To what Use the Consideration shall be said to go.

See (O) pl. 11. S. C.

If a Man seizes of the Manor of K. and of other Land, bargains and sells the Manor of K. to B. in Fee, in Consideration of 200l. and covenants with B. in the same Deed, that when he is disposed to sell the other Land, that he shall have the first Offer; and if he go about to alien or convey the Land to any other, that then he covenants to stand seised thereof to the Use of B. in Fee; and after he endeavors to alien the Land without any Offer of it to B. the said Consideration of 200l. shall be sufficient to raise the Use thereof to B. according to the Covenant, being all in one Deed. 40 & 41 El. B. R. between Parsons and Hills.

(N) Usfs. Consideration. Where the Consideration shall be said too general to raise an Use. [Averment.]

* S. P. For no Use shall be raised upon such general Consideration, because it appears not to the Court that the Bargainer has Quid pro Quo, and the Court ought to adjudge the Consideration be sufficient or not, and this cannot be where it is alleg'd in such Generality. 1 Rep. 176. a. Resolved. Mildmay's Case.

1. If a Man bargains and sells Land for diverse good Causes and Considerations, and does not express in certain the Considerations, * no Use shall arise by it. 41 El. B. R. adjudged between Esher and Smith. 1 Rep. 176. b. 177. † Mildmay's Case. Resolved. But upon Averment that this was in Consideration of Money, or other valuable Consideration given, this shall pass; for this Averment stands with the Deed.

2. If a Man in Consideration of a certain Sum of Money, bargains and sells, this is a good Consideration to raise an Use without Averment of any Sum in certain; for the Quantity of the Sum is not material. Held 41 El. B. R.

† Mo. 569. pl. 777. S. C. That if it was for Money, it must be aver'd; but if it be express'd in the Deed to be for a compotent Sum of Money, it is sufficient, without forcing the Certainty of the Sum; and none of the Parties shall pay that no Money was paid; for against this express Averment in the Deed no Averment nor Evidence shall be admitted to say that no Money was paid; and Judgment accordingly.

‡ Jenk. 24. S. P. and cites S. C.
3. An Ufe cannot be rais'd by any Covenant or Proviso, or by Bargain and Sale upon a general Conclusion. Repolv'd 1 Rep. 175. b. 176. a. Hill. 26 Eliz. Mildmay's Cafe.

4. If I by Deed covenant with F. S. for diverse good Considerations, that Batj f. S. and my Heirs fhall stand faid to the Ufe of J. S. and his Heirs, no Ufe be of my will arise thereby without a special Avermente. 1 Rep. 176. a. by the Reporter in Mildmay's Cafe.

5. There is a Difference where the Consideration is general and the G. Law of Bargain or Covenant is with a Person certain, there Averment, according to the Truth of the Cafe, may be taken; but when the Consideration is cites S. C. general and the Person uncertain, there no Averment can avail. 1 Rep. and says the Averment by the particular Person is only the reducing the general Consideration to some Certainty, and making out that in particular in Favour of the Person who was before included in the general Words, which is very reasonable in a good Consideration were Bona fide paid him; but in a Cafe where the Person is uncertain, the Intent of the Covenantor was void ab initio; for it appearing that he designed no Body in particular for the Benefit of the Ufe he would raife, no Person in certain could aver any particular Consideration why he should have the Ufe, because it plainly appears by the Deed he did not design him for the Ufe any more than any other Person; and the Law will not give a Ufe to any Body contrary to the Intent of the Party mentioned in the Settlement.

6. And therefore if A. for diverse good Considerations, covenant with B. that A. will stand faid to the Ufe of one as B. shall name; now, tho' B. names the Son or Cousin of A. yet no Ufe shall be rais'd by it; for by the Generality and Uncertainty this was void in initio, and cannot be made good after, and no Averment can make it good, or reduce it to any Certainty; for A.'s Intent was as general as the Words. 1 Rep. 176. b. Refolv'd 26 Eliz. in Mildmay's Cafe.

of B. cannot aver any, because it appears that A. knew not who the Nominee would be, and therefore could have no Respect for any particular Person to make him rais'd a Ufe. If B. had paid Money Quere whether he might not have aver'd it, and so made good the Ufe to the Nominee.

7. But if A. covenants with B. that in Consideration of paternal Love, or for Advancement of my Blood, he will stand faid to the Ufe of such of my Sons, or of such of my Cousins as B. shall name; on Nomination he made the Ufe shall be rais'd; for the Consideration is particular and certain, and the Person by Matter ex post Facto may be made certain. 1 Rep. 176. b. Refolv'd Hill. 26 Eliz. in Mildmay's Cafe.

advance some of his Family, and he only left it to B.'s Judgment who should be the Person.

8. If one incofis his Son and Heir apparent, and no Ufe is express'd, nor in both Consideration, it was laid it should be to the Ufe of the Son, and that if the Law has been taken; and that to it is in Cafe of a Covenant to stand faid to the Ufe of the Son. But the Court laid there was a Difference betwixt the Cakes; for in Cafe of a Foeliment they seem'd of Opinion that the Deed should have no Operation, but that in the other Cafe it might be otherwife upon Contrivance of the refulting of the Ufe to the Father. 4 Le. 166. pl. 218. 26 Eliz. Hodge's Cafe.

9. A Tenant in Tail, Remainder to B. in Fee; B by Deed inrol'd, for Mo 196. pl. and in Consideration that the Lands should remain in his Family, Name, and Blood, and for other good Considerations, covenanted to stand faid & c. to the
the Use of himself and the Heirs Males of his Body, and after to the Use of diverse Brothers in Tail; and for Default thereof to the Use of the Queen, her Heirs and Successors. Afterwards the Tenant in Tail in Pottellon fullered a common Recovery with Voucher. Refolv'd that the Iffue in Tail were barr'd, because the Consideration that his Land should continue in his Name and Blood, was not a sufficient Consideration to raise an Use to the Queen, tho' the Limitation to her was for the Preservation of the Estate Tail against Discontinuances and Bars; and the Words (viz.) for other good Considerations, are too general to raise an Use, without a special Averment that some valuable or other good Consideration was given. 2 Rep. 15, a. Trin. 27 Eliz. C. B. Wileman's Case.

10. In Affîce the Case was, the Father of the Demandant seiz'd in Fee covenanted by Indenture, in Consideration of Advancement of the Demandant, being his Son, to hand seiz'd to the Use of himself and his Wife (being the Tenant in the Affîce) for their Lives, and after to the Use of the Demandant, without express Mention of any Advancement of the Wife. The Father died, the Wife entred; the Son brought Affîce. Adjudg'd that he shall be barr'd. So that it appears the Justices thought the Use well rais'd to the Feeme, without expressing her Advancement, or Averment thereof in pleading, because it was Matter apparent. Arg. Mo. 504. in Lord Buchhurt's Case, cites 50 Eliz. before the Justices of Affîce in the County of Hereford, Bargaine v. Bargaine.

11. A. in Consideration of Service, and for diverse other Considerations gave Land to J. S., his Servant, and M. his Cousin in Tail. The Question was, if this be a Jointure forfeitable by Alienation of M., the Feeme? The Court varied in Opinion in Respect that no Consideration was expressed, but Service and the Confanguinity is Consideration implied. Mo. 683. pl. 943. Mich. 43 & 44 Eliz. Ward v. Sudman. Cro. J. 175. pl. 15. S. C. accordingly. And ibid. 175. says that the naming one of the Grantees Cousin in the Deed is not material, where it does not appear to be any Consideration of the Deed, but is by way of Addition to her Name; yet in Regard 'tis found by verdict that in Facts she was his Cousin, and that a Marriage was intended between her and the other Grantee at the Time of the Gift, which after took Effect, it shall be intended as well the Cause of the Gift as the Service of the Baron, which was mention'd as another Part of the Consideration.

12. A Different Consideration from what is expressed in the Deed is not to be aver'd, and tho' the Consideration of Blood is a good Consideration, yet that is not to be regarded, if Money or the Grant of Annuity be expressed in the Deed. And where the Grant is to two, and only one is of Kin, the Consideration of Blood cannot be the Inducement to the Conveyance. And it would be dangerous and liable to Perjury intended by the Stature of Frauds to be prevented to suffer Parol Evidence to prove Blood or Kindred to be the Consideration of the Conveyance, Per Matter of the Rolls. 2 Wms's Rep. 204, 205. Mich. 1723. Clarkston v. Hanway & al.'

1. If a Feme in Consideration of Marriage to be had between her and S. C. cited one F. within 20 Days after, by her Deed inroll'd, gives, grants and confirms * Land to the said F. and his Heirs, to the use of F. and his Heirs with Clause of Warranty against all People, but never makes Livery and Seisin of the Land, nor is any Letter of Attorney 519. In Case in the Deed, and after the Marriage is had within the 20 Days. In this Case an Use shall arise to F. by Force of this Deed; for it does not appear that it was the Intent of the Party to pass this by Way of Feoffment, notwithstanding the Word Deed, and the Warranty; nor if it be admitted that a Man cannot vouch by Force of a Warranty created with an Use, yet he may rebut it, and to the Warranty of Effect. 3d. 40 & 41 El. B. R. per Curiam between Tewbe and Hopplewell.

only a Feoffment, Conusa Matrimonii praecedet; but that Popham held e contra.

2. But otherwise it had been 1f a Letter of Attorney to make Livery of Seisin had been in the same Deed, Agreed. Ibid.

3. If the Father makes a Deed of Feoffment to his Son, and a Letter of Attorney to make Livery and no Livery is made, yet no Use shall arise to the Son; for then he should be in by the Statute in other Degree than was intended. Co. Lit. 49.

Court of Equity must follow the Intent of the Parties, and they have exprest their Intent not to part with the Estate until the Ceremony be perform'd.

4. If the Lord of a Manor by Deed grants, Bargains, releases and enfeals to a Copyholder the Land to the Use of the Copyholder and another in Fee, and after makes Livery accordingly, this shall pass by the Livery and not as a Release or Confirmation, tho' this might have operated as a Release or Confirmation by way of Enlargement to the said Use, presenty upon the Delivery of the Deed; for the Operation shall stay till the Livery. 3d. 7 a. Resolved per Curiam in the Court of Wards, Sam's Case.

5. If a Man in Consideration of natural Affliction and of Money gives, grants, bargains, sells, enfeals and confirms to B. in Fee by Deed indented with a Letter of Attorney in the Deed to make Livery, and the Deed is after enroll'd within six Months, this shall pass as a Bargain and Sale notwithstanding the Letter of Attorney in the Deed for the Feoffee has given to the Feoffee Election to execute the Estate the one Way or the other, and that Way which first executes the Estate shall stand. 8th. 10 Can. laid per Berkeley J. that the Lt. Keeper held to in Chancery the same Term.

Gaffam for Money, Agree for Money, Covenant for Money, if the Deed be duly enroll'd, that the Lands pass both by the Statute of Uses and by the Statute of Inrollments, as well as upon the Words of Bargain and Sale.

6. If a Man destined in Fee of Land, for Money grants, demises, bargains Pojb. 95. and sells it to another for Years, the Leisuer may elect to have it as a Demise at Common Law, or as a Bargain and Sale; for the Leisuer having

E f s.
paving the Power to pass it the one Way or the other, hath given express Election to the Leasee to have it the one Way or the other. Resolved. 2 Rep. 35. 6. Sir Rowland Hobby's Case.

Jo. 266. pl. 2. S. C. by the Name of Barrell b. Gunter is that a Lease was made to A. for 20 Years rendring Rent, A. ceded. Afterwards the Leior for Money paid by B. demised, and to Farm let to B. the same Land for 4 Years from the Date of the said Indenture, and afterwards included by Deed the asz Leafe before he had elected to take the Leafe by way of Bargain and Sale or otherwise, and before any Rent paid to him, and neither upon the Deed of Feoffment nor after, did he declare what Way he took the Leafe, nor had he any Atornment from the first Leafee; And therefore Jones J. was of Opinion that if he had Election to take it by Deed at Common Law, or by Way of Bargain and Sale, executed by the 27 H. S. according to Liptoards and Fox's Case; but fell Election he shall take it as a Lease at Common Law, and if there was no Atornment, it is a future Interest; but if he had received the Rent of the first Leafee, this had been an Election in Law to take it by Way of Bargain and Sale.

* 'Tis (Devisor) in the Original.

S. C. cited 2. Inf. 75: and says

that this Judgment was afterwards allowed'd and ratified by Act of Parliament Amo 4 Car. — S. C. cited G. Law of Ules &c. 84, 85, and says that a Bargain and Sale to them is good tho' the Truth be void when limited to other Persons.

S. P. Gibb. Law of Ules &c. 199, 200. For Ules cannot be destroyed nor altered without a Transmutation of the Possession.

9. A Feoff to the Ufe of A. and his Heirs before the Statute of 27 H. S. 8. for Money bargained and sold the Land to C. and his Heirs, who had Notice of the former Ufe; yet no Ufe passed by this Bargain and Sale; for there cannot be two Ufes in Ufe of one and the same Land; and seeing there was no Transmutation of Possession by the Tertenant, the former Ufe could neither be extinct nor altered. And if there could be two Ufes of one and the same Land, then could not the said Statute give them any other Possession; but if A. devised one to the Ufe of B. and A. had bargained and sold the Land for Money to C. — C. had an Use; and
10. If the *fee simple* give a different estate than what was in use, as if the
fezzdment was to them for Life, and they give a Fee, no Use can arise
out of this new estate; as if one *fee simple* to *use*, the *diffefer'
shan't be fezzed to the Use tho' he had Notice. And. 314. in Cafe of
Dillun v. Preine, alias; Chudleigh's Cafe.

11. A. Tenant in Tail, in Consideration of 100 l. bargains and sells Bl.
Acre, by Indenture inroll'd, to B. And by the fame Deed, in Conside-
ration of the said 100 l. and of Rent to be granted afterwards by B. covenants
that it if he sells any Part of his other Lands, which he has in Fee, that
B. shall have the first Offer for the Purchase of them; and if he attempts
to sell without such Offer to B. then that A. and his Heirs will stand fezzed
for the same Considerations to the Use of B. and his Heirs of all which he
shall attempt to alien without such Notice. B. dies, leaving M. his
Heir. A. without Notice, sells other Land to J. S. who had Notice of
the Covenant. The Rent was not granted; yet the Juztices agreed that
the Consideration was good enough tho' but one of the two Things be per-
form'd, that is, the Payment of the Money. And dly, the Rent should
have been granted in convenient Time, which not being done, is no
Part of the Consideration. 3dly, They doubted if the Heir of B. should
Mills v. Parsons, that it was resolved that the Cove-

12. The Father by Indenture, in Consideration of Love which he bare
to his Son, and for natural Affection unto him, bargain'd and sold, gave,
granted and confirm'd certain Land unto him and his Heirs; this Deed was
inroll'd: The Question was, Whether this Land should pass? And it
was held it should not, unless Money had been paid, or Estate were ex-
ecuted; for the Use shall not pass; but because the Son was then in Possi-

S. P. by Twidden J. But that in Consideration of 20 l. and Affection, it is good without Inrollment, be-
cause both Considerations are expreffed. 1 Lev. 56. Hill. 13 & 14 Car. 2. B. R. in Cafe of Porter v.

13. Covenant by Indenture that in Consideration of 20 l. to me paid by S. P. 7 Rep.
my for I will stand fezzed to the Use of him and his Heirs. The Indenture
must be inroll'd according to the Statute or else nothing passes; because
the expressive valuable Consideration calls the tacit implied Consideration of
Blood, and no other Consideration can be averr'd than is conten'd in
the Deed; because the Substance of the Agreement is by Affent of the

14. A. with his own Money, bought Lands of 100 l. and took the Con-
veyance by Indenture in these Words, grant, bargain'd fell, alien, enioff,
&c. to the Use of A. for Life, Remainder as to one 3d to his Wife for Life,
Remainder to B. and his Heirs, and there was a Letter of Attorney to make
Livery. The Deed was inroll'd in Chancery, and 2 Months after Livery
was made, and indorsed on the Deed. A. afterwards, by Leaf and Re-

8. S. cited 8 Rep. 94. a. Hill. 7 Jac. in Fox's

207

Uses.
How they may be raised. Where without Deed.

A man cannot raise an Ufe by Parol in Nature of a Covenant, without any Feoffment, for natural Affection, because it would be mischievous if upon every Word, without any Ceremonies of the Law, an Ufe shall arise without a settled Resolution manifested by a Deed. B. 37 El. in the Case between Collard and Collard. Per Curiam adjudge'd, and there said that 1 Ba. per Curiam accordingly and that Way laid, that when he was Sergeant the Opinion of all the Judges was fo. Contra 37 & 38 El. B. R. between * Corbin and Corbin.

said they were clear of a contrary Opinion. And Popham said, that 7 E. 6. it was adjudged that an Ufe may rise by Parol, and that he could shew the Record of it. Fenner would say nothing as to this Point. —— No. 685. pl. 590. S. C. says that in B. R. Popham Ch. J. held strongly, that the Consideration of the Blood raised an Ufe without Writing, and so the Party had Possession by the 27 H. 8. But Gawdy, Fenner, and Clench contra. And in the Exchequer all the Judges agreed, that an Ufe could not arise upon Natural Affection without Deed. —— 2 And. 64. pl. 46. S. C. by Name of Tallard v. Tallard.—Poph. 47. Collard v. Collard, S.C. in B. R. with the Reasons of the Judges there; but that Judgment given there was reversed in the Exchequer.

Raven. 47. Arg. in the Case of Fosfer v. Fosfer, says, that the Judgment in Collard's Case was reversed upon the Mistake that an Ufe might be raised by Parol. —— Sid. 82. pl. 9. in the S.C. of Fosfer v. Fosfer, says the Court was of Opinion, according to the Case of Collard, that no Ufe will arise without Deed. —— G Law of Ufes and Trusts, 270. 271. says, it seems at Common Law an Ufe might have been raised by Word upon a Conveyance that paid the Possession, by some solemn Act, as a Feoffment; but where there was no such Act, there it seems a Deed declaratory of the Ufes was necessary; for as a Feoffment, which paid the Estate, might be made at Common Law by Parol, so by the same Reason might the Ufes of the Estate be declared by Parol. But where a Deed was requisite to the Paffing of the Estate itself, it seems it was requisite for the Declaration of the Ufes, as upon a Grant of a Rent, or the like. So it seems a Man could not covenant to stand seised to a Ufe without a Deed, there being no solemn Act; but yet a Bargain and Sale by Parol has raised a Ufe without, and it has been held to do so since the Statute. In Cities exempted out of the Statute it has been held, that if a Fine be levied of a Rent no Ufe can be limited of it without Deed; but now by 23 Car. 2. c. 2. all Declarations of Trust, other than such as arise by Implication of Law, are to be in Writing, and signed by the Party, who is by Law enabled to declare such Trust, or else it must be by his Lift Will in Writing. —— And Ibid. 48. says the Intent of the Party must be declared by Deed, and the Chancellor must follow that Intent, for it would be mischievous that any Words of Kindness, that express a future Design of parting with an Estate, should be construed as a present Settlement.

* See (1) pl. 4. S. C.
2. *[Itch. 13 Car. 2. R. in Fox and Wilcock's Case, per Curiam]* *See* (O 4) accordingly clearly, this being collaterally held, per Walter Holborne in his Argument. *Tr. 15 Car. 2. R. Agreed per Curiam in* *Pierce and Poysey.*

3. *If a Han levies a Fine of a Rent, he cannot limit the Use to a Stranger without Deed.* *Itch. 14 Ja. 2. R. per Curiam, between Povers and Yeaton.*

S. P. Gilb. Law of Ufes &c. 36, 57. For the Use and Possession of that which has its Nature and Being by a solemn Agreement by Deed, cannot be without such Agreement; for otherwise there would be a greater Evidence that the Use continued with the Party, than that it was disputed of.

4. There are several Ways in the Law for declaring of Uses, whether upon Transmutation of Possession or without it. If an Use be declared to be on Transmutation of Possession, as in a Fine or Feoffment, there needs no Agreement whatsoever; it is sufficient for the Party on the Transmutation to declare, that the Use shall be to such Party, and of such an Estate; But if it be an Use arize without Transmutation of Possession, the Use then does not arise by virtue of any Declaration or Appointment, but there must be some precedent Obligation to oblige the Party to declare the Use, which must be founded on some Consideration; for an Use, having its Foundation generally on Grounds of Equity, could not be relieved in Chancery without Transmutation of Possession, or an Agreement founded on a Consideration. And therefore if Bargain and Sale were made of a Man's Lands on the Payment of Money, the Ue should have raised without Deed by Parol; but if the Use was in Consideration of Blood, then it could not arise by Parol Agreement without a Deed, because that Agreement was not an obliging Agreement; it wanted a Consideration; and therefore to make it an obliging Agreement there was a Necessity of a Deed; but where there was a Transmutation of Possession there needed no Deed, but only the bare Appointment of the Party. 12 Mod. 161, 162. Hill. 9 W. 3. Per Holt Ch. J. in delivering the Opinion of the Court in the Case of Jones v. Morley.

It be a valuable Consideration, or a binding Agreement by Deed. 2 Salk. 677. Jones v. Morley.

5. On a Fine sur Cuniance de droit tantium, Uses may be raised without a Deed; for Affectio tua imponit nomen operi tuo; and therefore where-ever there is an Act that alters the Possession, the Party's own Words may declare the Intent of the Act; and this being according to the Policy of the Common Law, has not been alter'd by any Statute. Gilb. Law of Ufes &c. 57.

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(O. 3) How they may be raised. Upon what Conveyance.

1. If the Lord releases to a Copyholder in Fee, to have to him in Fee to the Use of another, this is a good Use; for upon such Release a Rent may be reserved. 9 7 Ja. in the Court of Wards. Rec. solv'd per the 3 Judges and the Court in Samms's Case. 13 Rep. 35. Salk. 23, S.C. and P. accordingly. S. P. Gilb. Law of Ufes &c. 57. For since the Seisin and Use is in the Lord, he may transfer the Seisin of the legal Estate by passing the Use to another, or not, as he pleases. Quere if the Law is not the same of the Release that ensue by way of Enlargement, and transmuting of an Estate; but otherwise of Releases that ensue by way of transmuting a Right and Extinguishment; for in these Cases the Released has not the Use and Possession of any Estate; for that is in the Dilettor. Ibid. 251, it is a good Use; for the Receiv
2. If the Baron covenants with his Wife to stand seised to the Use of the Wife, this is void; because he cannot covenant with his Wife.

Co. Litt. 112.

3. An Use cannot be out of a Release by Difficer; for such Release to such Purpose shall not enure as an Entry and Feoffment. Le. 148. pl. 205, in Case of Read v. Nath, Arg. cites to E. 4. S.

If one, since the 27 H. 8. by Deed indentured and assi lied, or before by Deed, for 200 l. had bargain’d and sold his Land to another in Fee, to the Use of the Bargainer for Life &c. in Fee, or to the Use of a Stranger, this Use is utterly void; for the Bargain for Money implies in it a Use, and the limitation of other Use is merely contrary; for by this means the Use in Fee, which is in the Bargainer in Fee only, shall be taken away, if the Law were otherwise. By the Justices in Bocco. Mich. 4. & 5. Ph. & M. And. 51. pl. 96. Anon. seems to be S. C. —Bendl. 61. pl. 109. Anon. seems to be S. C. accordingly.—S. C. cited And. 312. in Case of Dillon v. Frein. —S. C. cited 2. And. St. in Case of Lord Cromwell v. Andrews.—And ibid. 176. in Cornby’s Case, and says that it is void, because there is a Repugnancy in it, and the one cannot stand with the other.—If a Man bargain and sells Land for Money, and Limin an Use upon it, it is void; Per Browne J. Mo. 46. in pl. 139. Mich. 5. Eliz. Anon.—A Man cannot bargain and sell Land to another Ufe than that of the Bargainer. Arg. Le. 143. in Case of Read v. Nath.

5. No Use is imply’d on a Fine any more than on a Feoffment; so that a Limitation of Uses by a Deed to the Heirs of the Baron, where the Render on the Fine was to the Heirs of the Feme, is a good Limitation. Mo. 45. 46. pl. 138. Mich. 5 Eliz. Anon.

An Use cannot be on Estate, (as on a Surrender) which passes by way of Extinguishment. Palm. 339 in the Case of Waker v. Snow. But this is not by Force of the Statute of 2H. 8. of Ufes, but by the Statute of 32. H. 8. of Wills. Sid. 26. Hill. 12. Car. 2. C. B. in Case of Hor. v. Dic.—Lutw. 823. Trin. 12. W. 5. in Case of Broughton v. Angel, says it was agreed that a Devise may be to the Use of another.—S. P. Gilb. Law of Ufes, 281. but says, Quere if the Limitation of the Use be void, whether the Devisee shall be seised to the Use of the Deviseor and his Heirs.

8. A Fine by Tenant for Life to him in Reversion in Fee was declared to the Use of Conufc and his Heirs, on Condition to pay to Conufor 4½ l. per Ann. for his Life; and for Devolution to the Use of the Conufor for Life; this is no Surrender, because a Fine implies a Gift in Fee simple, and the Parties are entitled to say the contrary; but if it were a Surrender, yet it may well be to an Use; for it is a Conveyance charg’d with this Limitation of an Ufe. Cro. E. 655. pl. 23. 41 Eliz. C. B. Smith v. Warren.

9. An

10. Upon a Release which creates an Estate, an Ufe may be limited; A Release but upon a Release or Confirmation which enures by way of Mitter le Droit, or Confirmation, an Ufe cannot be limited. 13 Rep. 35. in Samines's Cafe.

11. If a Man makes a Feefiment in Ufe, but to the Ufe of his Will, here arifes an Ufe and Trust for himself, because he hath not put it out of him. Arg. 1 Mod. 17. pl. 45. Mich. 21 Car. 2. B. R., in Cafe of Smith v. Wheeler.

(O. 4) By what Words Uses may be raised.

1. If A. left in Fee of Land, covenants with B. in Consideration S. C. Wm. of a Marriage to be had between J. S. the Daughter of B., 35 36. 37. and J. D., the Son of A., that the faid Land fhall, from and immediately after the Death of A. remain and be unto the faid J. D. and A. S., and to the Heirs of the faid J. D., to the only Ufe of the faid J. D. and A. S. and to the Heirs of the faid J. D. In this Cafe, the Marriage takes Effect, yet no Ufe fhall arife by this Covenant, because he does not covenant to hand felled to the faid Ufe, but only that it fhall remain &c. Mich. 18 Ja. B. Rot. 2126. between Nelf. Abr. Backler Plaintiff, and Symons and Pffe Defendants, in a Quaer *Im- petit adjudicated. I did not hear this adjudicated, but the Record exemplified was shown to me, and it was faid that this was so refolved by all the Court, and that the Judgment was given for this Cafe.

was not refolved—S. C. cited Per Car. 2 Lev. 78. in Cafe of Pybus v. Mitford. — Vent. 374. S. C. — S. C. cited Sid. 26. in Cafe of Here v. Dir, that it would not raise an Ufe, because Ex Res & Modus habendi are to be considered; and there was Res, yet there was not Modus habendi; and so was the Cafe of Diffield v. Dircct, 16 Car. B. R. and Bridgman Ch. J. faid that these two Resolutions were founded upon 21 H. 7. 18. — Vent. 141. Trin. 23 Car. 2. B. R. in Cafe of Grofing v. Scudamore, the Court faid that this Cafe was adjudic拉丁语 or by the Conveyance. As B. G. G. in Cafe of S. J. the Ufe does not arife by this Conveyance, and in Cafe of J. D., the Father is not appropriated to the several Ufes, but only a Remainder limited after the Father's Death, which cannot be without a particular Effeate, nor that without a particular Contract; and no Man can contract with himfelf.

A. lefted in Fee of Land in Poelfion and in Ufe, covenanted on the Marriage of his Son with the Daughter of J. S. that the Son, immediately after his Deceafe, shall have in Poelfion or in Ufe all his Lands, according to the fame Causes of Inheritance as they then hold in; and that all Persons which fhall, or hereafter to be fied, fhall be fied to the fame Ufe and intent. It was held that the Fee-imple of the Ufe was not out of the Father, nor is it ch'ang'd; and that, as it is, it is only a Covenant; but perhaps it might be otherwise had the Words been, That immediately after his Deceafe the Land fhould enure and remain to the Son. Quare inde. D. 35. a. pl. 5. Pafch. 54 & 55 H. 8. Lord Burgh's Cafe. — but if the Word Defeofien had been joined, it would be otherwise; for there is Election how he is to have it. D. 35. Mary, cites it as to held by Manwood and Chiche in the Exchequer, 21 Eliz. and also cites 2 H. 7. 16. Where the Father, in Consideration of marrying his Son, covenants &c. that he &c. has not made, or fhall make any Grant &c. of the faid Lands, but that all the faid Lands &c. shall defcend, remain, and come in Poelfion and Ufe to the faid Son, and the Heirs Male of his Body &c. no Ufe is created or altered by thofe Words. And 25. pl. 55. Trin. 4 Eliz. Annon. — Bendl. 121. pl. 155. S. C. Anon. —

2. Le. 6. pl. 18. S. C. — Where a Man covenanted in Consideration of marrying his Daughter, that he would fuffer 20 l. per Ann. to defend, come, and remain to his Daughter and her Baron, and the Heirs of their Bodies, (The Eftate of the Covenantor was 500 l. per Annum.) It was agreed by the Justices, that this is only Covenant, and no Ufe arifes for want of Certainty, and thofe Words Defend, Come, and Remain, cannot create Ufe but to the Heir apparent: but if it were in the Difjunctive (as) the Word Remainder would create an Ufe in the Remainder to a Stranger. Mo. 125. pl. 26. Pafch. 25 Eliz. Anon. —

90
212

Ufes.

So where A. Tenant in Tail, in Consideration of a Marriage of B. the Tenant (his eldest Son) conveyed that the Land, after his Death, should descend, remain, or shall be to the Son and his Heirs. resolved that by this no Estate was alter'd in A. but he remain'd Tenant in Tail as before. 1st. Because it is only a Covenant and Executory, for which an Action of Covenant lies, if he performs it not; for it is not that he will stand feised to the Ufe of himself for Life, and after to the Ufe of the Son, but only that it shall descend, remain, or be to the Son after his Death, which may be his permitting it to descend and be to the Son, without any Alteration of the Estate. 2ndly. If it were an express Covenant that he would stand feised to the Ufe of himself for Life, and after to the Ufe of the Son, he being Tenant in Tail, and referring to himself an Estate for his own Life, he thereby referv'd all that he might lawfully dispose, and by the Covenant he can dispose of no more than he can lawfully do; and so the Limitation after his Death is meerly void, and the Estate remain'd in him as before; for both which Causes, but principally for the first, Judgment was given for the Demandant. Gros. 279. 280. pl. 3. Parch. 74. Eliz. B. R. Blithman v. Blithman, and 291. pl. 299. S. C. that notwithstanding the Considerations were sufficient to raise an Ufe, yet A. being Tenant in Tail, cannot, as this Case is, raise an Ufe to commence after his Death, especially to his Son and Heirs, who is inheritable to the Tail, and to whom it shall descend; and he shall enjoy the Land according to the Intention of the Covenant, the it raises no Ufe.——S. C. cited 2 Rep. 52.
a. in Cholmley's Café, that the Limitation of the Remainder is void.——S. C. cited Mo. 545. accordingly.

If I covenant that my Son shall have my Land, this was held good by Reason of the Word (Covenant) in a Rep. Childrith's Café, and was cited out of Semnute's Café in D. 96. But Hobart Ch J. (in Win. 61. in Café of Buckley & Simmonds) denied this; and now Bridgman Ch. J. agreed with Hobart's Opinion, that it wasd Consideration. But per Bridgman, If I will that my Son shall have my Land in Consideration of Marriage, this the Word (Covenant) is wanting, yet the Ufe is well rais'd. Sid. 25. pl. 7. Hill. 12. Cor. 2. B. A. in Café of Hore v. Dix.

Mar. 50. pl. 6. S. C. but states it that A. by Deced in Consideration of Marriage, did give and grant to C. his 24th Son, and his Heirs after his Death, and that no Livery was made, & Roll Ch. J. conceived that no Estate was rais'd to C. by this Conveyance; and as to an Objection that it should cure b. by way of Covenant, he agreed that if the Meaning of A. might appear that he intended to pass the Estate by way of Covenant, he should alter'd in A. but he remain'd Tenant in Tail as before. But the Question was if it should pass by way of Covenant; but this shall not pass by way of Covenant to stand feised, because it does not appear that A. intended to put himself of the Land during his Life; for he grants this to B. after his Death before the Sabendum; so that he does not intend to make himself only Tenant for Life, and it would be inconvenient to make a strait Contraction to pass Estates by general Words, without the usual Ceremonies of the Law. Tr. 15. Cor. B. R. adjudged per Curiam, upon a special Petition between Puthfield and Pierce. Intracrill. Hill. 11. Cor. Rot. 499. Rich. 15. Cor. this was mov'd again, told that this does not alter the Estate of the Father, but that he should be fee'd in Fee thereof during his Life, and his eldest Son should have it by Way of Contingent Ufe after his Death. But the Court said that this was harder to maintain that the other; and therefore they gave Judgment as before, because the Intent is to convey at Common Law. But if it appears by a Deed, that it is the Intent of him who was fee'd of the Land, that this shall pass an Estate according to the Rules of Law, this shall to pass, tho' there are not formal Words of Covenant &. Agreed per Curiam in the said Café of Puthfield.
Where the intent appears, that one shall have Estate, but the Conveyance is defective, this shall be
supplied by way of Use to answer the Intent. \( \text{v} \text{Lev. 226. Arg. cites Rolls. \text{Tibb v. Popple-

\text{thwaite, and [2 Lev. 69] Creding v. Scudamore, and [2 Lev. 75] Pybus v. Mitford. And Judgment ac-

\text{cordingly Trin. 50 Car. 2. B. R. Coltman v. Senhouse.} \)

3. If a Man felled in Fee suffers a Common Recovery, and this is
express'd to be upon Trufi and Confidence that the Recoverers will exe-
cute back to him an Estate Tail, the Remainder in Fee to his Son; but
there was no Condition expressed, nor any Covenant to compel them to
execute it, and therefore the Law will supply it, and will execute it
without any strict Act. \( \text{B. R. in Fulfordton's Case,} \)

\text{and said by Sir Edward Coke Attorney General, that it was so}

agreed in the Case of Senatori Puerto, 16 El.

\text{will now execute it in him.} \text{— When there is Agreement for further Assurance, no Use}

\text{will arise till Execution of such future Conveyance, this's a Recovery be had in order thereto. D. 162. pl. 49.} \text{Trin.}

\text{4 & 5 P. M. Lady Wingfield v. Littleton.} \text{— But where there is a present Execution, it is}

\text{true, as it was agreed in a manner, that if I covenant in Consideration of Marriage, or for a Sum of Money to me}

\text{paid, that the Party shall have the Manor of D. by express Words, this shall change an Use immediately,}

\text{because there is no Estate to be made &c. And it was agreed that if Celly que Use wills that his}

\text{Feoffor shall make Estate in Fee, or in Tail to J. S. and dies, the Use changes before the Estate executed.}

D. 96. pl. 41. Hill. 1 M. Bannett's Cafe.

4. A Man can \([ \text{not} ] \) commence an Use without Bargain, Livery of \([ \text{Dr. & Stud.}

\text{Seltrim, or Recompence; for it can not be by a naked Grant or Covenant with-

\text{out Recompence, where the Grantor himself is feified of the Land in Per-

\text{formance.} \text{— Br. Feoffments al Ufes, pl. 46. cites Dr. & Stud. Lib. 2. fo. 100. a Feoffment in}

\text{Fee to the}

\text{Ue of the Feoffee and his Heirs without Recompence, yet the Feoffee is feified to his own}

\text{Use. Br. Feoffments al Ufes, pl. 46. cites Dr. & Stud. Lib. 2. fo. 100.} \text{— But if a}

\text{Man makes a Feoff-

\text{ment to his Use, so that the Use be in Ufe, he may grant to the Feoffee to be feified to his own Use without}

\text{Recompence, and well; for there a Use was in Ufe before. Br. Feoffments al Ufes, pl. 46. cites Dr. &}

\text{Stud Lib. 2. fo. 100.} \text{— Coven where a Man felled in Fee to his own Use, grants to another that he will}

\text{be feified to his Use without Bargain or Recompence. Note a Diversity; and the same fcrms of Considera-

\text{tion. Br. Feoffments al Ufes, pl. 46. cites Dr. & Stud Lib. 2. fo. 100.} \)

5. If a Man makes a Feoffment in Fee to the Ue of himself for Life, and that after his Decease \( \text{j. N. shall take the Profits, this makes a Use in}

\text{J. N. Contrary if he had faid that after his Death his Feoffees should take}

\text{the Profits and deliver them to \( \text{j. N. this makes no Use in J. N. for he has them only by the Hands of the Feoffees.} \text{— Br. Feoffments al Ufes, pl.}

\text{52. cites 36 H. 8.} \)

6. If a Man covenants upon Consideration to be feified to the Ue of

\text{himself for Life, and after to the Ue of his Son; but he fays further, that his}

\text{Meaning is that his Wife shall have it for her Life; Per Petiam J. This is not a void Clause, but good to the Wife. Ow. 55. Hill. 33 &}

\text{34 Eliz. C. B. in Cafe of Carter v. Kungled.} \)

7. A. makes a Deed, and by the Word \( \text{Deed conveys Land to B. without any Words of Bargain and Sale, and that for a Sum of Money; if the}

\text{Deed be Debito Medio invell'd, the Use shall pass as well as if the Words of Bargain and Sale had been in the Deed, because that a Sum of}

\text{Money was paid for the Land. 4 Le. 110. pl. 224. 19 Eliz. B. R.}

\text{Grey v. Edwards.} \)

8. A. makes a Deed, and by the Word \( \text{Deed conveys Land to B. without any Words of Bargain and Sale, and that for a Sum of Money; if the}

\text{Deed be Debito Medio invell'd, the Use shall pass as well as if the Words of Bargain and Sale had been in the Deed, because that a Sum of}

\text{Money was paid for the Land. 4 Le. 110. pl. 224. 19 Eliz. B. R.}

\text{Grey v. Edwards.} \)

That
11. In Articles of Agreement, the Mother bargains and sells, demises
and grants to her Son the Tenements in Question for 20 l. to have &c. to
him and his Heirs for ever, fbe to have it during her Life, and also fbe to
have his Durn during her Life for her 3d Part &c. No Ufe arises, but the
Deed rests all in Agreement. 1 Lev. 55. Hill. 13 & 14 Car. 2. B. R.
Foiver v. Foiter.

12. A covenants, upon Marriage of his Son, to levy a Fine to his Son,
and that the Son shall stand seised to fuch Ufes. No Fine is levied; no
Ufes can arise. But had it been added, that for Default of Fine, or other
Execution of Conveyance, the Father shall stand seised to the Ufes, it had
been well. 3 Lev. 306. Trin. 3 W. & M. in C. B. Barrington v.
Crane.

13. It is not neceffary in declaring an Ufe, if there be a Transmutation
of Possefion, to use the very Word Ufe. Any Expression whereby the Mind
of the Party may be known, that fuch a one shall have the Land, is fufficient;
Per Holt Ch. J. in delivering the Opinion of the Court. 12 Mod.
162. Hill. 9 W. 3. in Cafe of Jones v. Morley.

See (D) (F) (O. 5) To whose Ufe it shall be without any Li-
mitation.

Godb. 180. 1. If a Man suffers a common Recovery, or levies a Fine of Land,
and limits no Ufe, this fhall be to the Ufe of him who suffers
the Recovery or levies the Fine.

Burt v.
Taylor,
S. P. agreed per tot. Cur.———S. P. and S. C. cited Gilb. Law of Ufes &c. 61. 64, says, that the Ufe
refuits to the Tenant in Tail, and he becomes seised in Fee by Virtue of the Recovery, because the
Recoverer is Tenant in Fee-Simple, and when no Ufes are declared of that Recovery; and where no
Covenant appears from the Recoverer, the Recovery can be to no other Purpofe than to deck the
Entail.

A Te-
A Tenant for Life surrenders to Remainder-Man in Tail, tho' this Surrender the Estate for Life is extinguish'd; yet if the Interest was only to enable him to suffer a Recovery, to bar Remainders depending upon the Estate for Life, and the Estate Tail of the Remainder-Man, the Recovery shall be to the Use of A. for Life, if no other Uses may be shewn. Held per Cur. Palm. 559. Pelsh. 18 Jac. B. R. Walker v. Snow.

* Tho' the Limitation of the Feoffment, by which J. S. was made Tenant to the Præcie, was to J. S. and his Heirs; for otherwise he could not be Tenant to the Præcie to suffer it. Palm. 559. Walker v. Snow.

2. If two join in a Common Recovery where one has nothing in the If Land, and no Ufe is limited upon it, this shall be to the Use of him only who had the Interest in the Land, and no Ufe shall arise to the Stranger. 3d to 1st in the Exchequer among the Reports of B. Beckwith's Case. Per Curtam.

7. S. without Consideration, the Ufe implied shall be to A. only and his Heirs; for an Ufe is only a Trust and Confidence, and a Thing in Equity and Confidence shall be, by Operation of Law, his who in Truth was Owner of the Land, without having Regard to Elfpoppels or Conclusions; And so it was adjudg'd in the principal Case, where Baron and Feme feided in Jure Uxoritis, levied a Fine without declaring any Ufe, the Law will rest the Ufe in the Feme only; because the Estate of the Land passed from her only, and the Baron's joining with her was only for Conformity. 2 Rep. 52 b. Titus. 27 Ellis in Beckwith's Case, alias, Colgate v. Blithe.

3. If a Man sells his Land or the Use of it for Money, and does not say to Gilb. Law the Vendee and his Heirs, yet the Vendee hall have it to him and his of Uses 17; Heirs. Br. Feoffments to Ufes, pl. 4. cit. 27 H. 8. 8. and says that fol. 5. in the same Year is agreeable thereto.

(Heirs) to create an Inheritance in an Ufe; for it is Equity that a Perfon who gave a Consideration for a Fee, should have it; and that it is not setting up any other Rules of Property opposite to the Rules of Law in particular Cases, where they should happen to shelter Dishonesty and Oppression; But now since the Statute, no Inheritance can be raised without the Word, Heirs, because now the Ufes are transfer'd into Possession, and must be govern'd by the Rules of Possessions at Common Law, as to the Words that create new Estates.

4. If a Feoffment be made to A. to enfeoff B. to the Use of C. and A. enfeoffs B. without limiting of any Ufe, yet it shall be to the Use of C. Nov. 19. per Popham Ch. J. in Cafe of Yelverton v. Yelverton.

5. If one feised of Land of the Part of his Mother makes Feoffment in Fee without Consideration, he shall be feised as he was before, [viz.] of the Part of the Mother. 2 Rep. 58. a. Sic dictum fuit in Beckwith's Cafe.

6. If two Jointenants are, the one for Life and the other in Fee, and they levy a Fine without declaring any Ufe, the Ufe shall be to them of the fame Estate as they had before in the Land. 2 Rep. 58. a. Sic dictum fuit, in Beckwith's Cafe.

7. If A. Tenant for Life and B. in Reversion or Remainder levy a Fine generally, the Ufe shall be to A. for Life, the Reversion or Remainder to B. in Fee; for each grants that which he lawfully may, and each shall have the Ufe which the Law veils in them according to the Estate which they convey over. 2 Rep. 58. a. Sic dictum fuit in Beckwith's Cafe.

(O. 6) Ufes.
(O 6) Uses. Consideration, Avancement. [And of what Things the Use shall arise.]

1. A Consideration which stands with the Deed and not repugnant to it, may be aver'd. Resolved. 7 Rep. 49. Bedell's Case.

2. If a Man bargains and sells in Consideration of the Loan of 191. for a Year, and for other good Consideration, admitting that the Loan of 191. is no good Consideration to raise an Use, yet another Consideration may be aver'd for which the Bargain and Sale was made. D. 37 El. 3. per Curtian between Nowell and Hudson.

3. If a Man bargains and sells to J. S. to the Use of J. S. and his Heirs, without Mention of any particular or general Consideration, and without the general Words (for diverse good Considerations) yet a Consideration may be aver'd. Dill. 37 Eliz. per Beaumont, in the Case of Nowell v. Hudson, and there had per Serjeant Harris, that this was adjudged in Lambert's Case.

4. If the Father by Deed in Consideration of natural Affection to his Son makes Feoffment in Fee to the Son, without expressing of any other Consideration, and without any general Words of (for diverse other good Considerations) yet may be aver'd that this Conveyance was also in Consideration of Payment of Debts the Father by the Grandfather, and of the Conveyance from the Grandfather of certain Land upon the Father, for this stands with the Deed. Tr. 17 Jac. 3. B. R. Resolved per Curtian upon Evidence at the Bar between Nowell and Harris.

5. If a Man covenants to stand feised of all his Land of which he is now feised, and of all other Land, which he shall after purchase, to the Use of A. his Son, and his Heirs, and after he purchases other Land to the Use of him and his Heirs, the said Use cannot raise any Covenant of this Land newly purchased to the same A., because this is to be raised only by the said Covenant, at the making of which he had not this Land to charge or dispose. D. 37 Eliz. B. R. Adjudged. Bedelton's Cafe.
good Reasons, because he cannot raise a Ufe of that which is not his own. For if a Man that has no Right to the Land can raise an Ufe of the Land, then Law at the same Time might raise Ufes; for no Doubt the Owner may raise what Ufes he pleases. — 11 Mod. 153. in S. C. accordingly.

Upon the Purchase of the Land to the Ufe of himself and his Heirs, the Fee is in the Father; for if a Man binds Lands, you must suppose him to have a Power to oblige them; for no Man can do that which he hath no Power to do; but he that hath no Interest hath no Power to oblige them; and therefore (such a Covenant in Equity, before the Statute, could not oblige him to a Specific Performance; for that were in Equity to bind the Land, which is absurd; and since the Covenant is void in Equity, there can be no Execution by the Statute; for the Rules of Law are equally strict in avoiding this Repugnancy; for in Law every Disposal supposes a precedent Property, and by Consequence every Covenant to stand filed presupposes a precedent Seisin. G. Law of Ufes and Trusts, 116. 117.

No Ufe shall arise upon it; for a Covenant to stand filed, is a Covenant that affects an Alteration of the Land itself, which no Man has Power over the Owner; and it is not now in the Nature of a Contract to do any Thing but that which reaches the Lands themselves. Gilb. Law of Ufes &c. 274.

6. So it would be if he had purchased the Land generally to him and his Heirs afterwards without expressing of any Ufe, for this shall be to his own Ufe. H. 37 El. B. R. Adjudged Belverton’s Case.

7. If a Man for a Consideration covenants to stand filed of the Manor of D, which he shall purchase hereafter to the Use of another, and his Heirs, and after he purchases it, yet the Use shall not arise, because he had not this right to charge at the Time of the Limitation of the Ufe.

Upon every Feoffment or Purchase of the Feoffor or Donor, from whom the Land passes, is to limit the Ufes to the Feoffee or Purchaser, and consequently before the Purchase one cannot limit how the Ufe shall be, viz. that it shall be to his youngest Son, where the Feoffor has limited it to the Ufe of him and his Heirs; for this would be to limit an Ufe out of a Ufe, which the Law will not suffer. Cro. E. 422. In Case of Belverton v. Belverton. — Nov. 19. S. C. accordingly.

8. If a Man covenants to stand filed of the Manor of D, to the Use of another, and after he purchases it, no Ufe shall arise clearly, because he intended to pass the Use presently, and he had not the Land at this Time. H. 37 El. B. R. Agreed. Belverton’s Case.

Upon every Feoffment or Purchase of the Feoffor or Donor, from whom the Land passes, is to limit the Ufes to the Feoffee or Purchaser, and consequently before the Purchase one cannot limit how the Ufe shall be, viz. that it shall be to his youngest Son, where the Feoffor has limited it to the Ufe of him and his Heirs; for this would be to limit an Ufe out of a Ufe, which the Law will not suffer. Cro. E. 422. In Case of Belverton v. Belverton. — Nov. 19. S. C. accordingly.

9. If 2 Jointenants in Fee are, and one covenant that after the Death of his Companion he will stand filed of the Moliety of his said Companion to certain Ufes. Tho’ the Covenantor furnishes, yet no Ufe shall arise, because at the Time of the Covenant he could not grant or charge it. Adjudged. Burton’s Cafe, cited H. 3. In. B. R.


10. If I covenant to purchase certain Land before Michaelmas, and Cro. E. 421. after, before Easter, to levy a Fine of it to B. and that it shall be to the Ufe of A. and his Heirs. If this be done accordingly, the Ufe shall well arise; for there the Ufe is not raised merely by the Indenture, but the Indenture is only an Evidence that his Intent is, That the Conveyance, which he shall make after his Purchase, shall be to such Ufes, and Ufes which shall be raised by Fine or Feoffment, may be directed by his Intent precedent, and yet such Intent is countermandable. Hitch. 37 Eliz. per Curiam. Belverton’s Cafe.

with an Aversion it shall be taken to be to the Ufe mentioned in the first Covenant; but if another Ufe had been expressed in the Fine, that should have control’d the first Declaration of the Ufe. — S. P. and the Ufes are on the Fine, and not on the Deed; per Trevor Ch. J. in delivering the Opinion of the Court. Gibb. 257. in Case of Arthur v. Bockenham. — The Fine by Relation raises the Ufe; per Trevor Ch. J. 11 Mod. 153. S. C. G. Law of Ufes &c. 117. cites S. C. For a Man may declare the Intent of a future Act, which he had no Power to do at the Time of the Declaration; for to declare the
11. Tho' an ESTATE convey'd to the Wife for Life be not mention'd to be for a Jointure, yet it may be averr'd to be so. Jenk. 208. pl. 40.

12. Where one Ufe is expres'd, another Ufe cannot be averr'd or implied; for it would be very mischievous; and go in Destruction of that which is directly contain'd in the Deed. And it was agreed, that if one for 1000 l. paid, infused others, to them and their Heirs, to the Ufe of the Peofees, the Peofees shall have Ufe for Life, and so Estate for Life in Possession; and against this Deed it cannot be averr'd that nothing was paid, or that it was to other Ufe than is expres'd; for if it should, the Consequence would be that every Deed might be defeated. And 313. in Cafe of Dillon v. Frain.

But Posb. 13. A Fine with Render may be to the Ufe expres'd in Writing, not to the Ufe imply'd or declar'd by Parol. Agreed by the Justices. Mo. 106. It's Cafe, says it from pl. 249. Mich. 17 & 18 Eliz. in Andrews's Cafe.

To the Ju- rices, that an Ufe may be averr'd without Deed, upon a Fine for Render—A Fine for Grant and Ren- der, under in special Cases, cannot be averr'd by Parol to be to other Ufe or Intent than is express'd in the Fine, Feoffment, or other Conveyance; but there is Diversity between a Ufe and a Conveyance; for when a Fine, Feoffment, or other Conveyance imports express Conveyance, a Man may aver by Parol other Conveyance which stands with the express Conveyance, but the Parties cannot aver any other Ufe than is contain'd in the same Conveyance, nor shall any Averment be against the Conveyance expres'd. But yet, in some Cases, a Fine upon Grant and Render may be ruled and directed in Part by Averment by Parol; and this is when the original Bargain and Contract, between the Parties, is by Indenture or other Deed; As where the Indenture is That a Fine shall be levied of certain Lands, by the Name of a certain Number of Acres, to divers Persons; and that they shall grant and render the Land again in Fee-simple to certain Ufes, but there is a Variance either as to the Number of Acres in the Fine, or the Fine is levied to only one of the Parties who grants and renders; so that a Variance is between the Co- venant and Fine, yet it may be averr'd to be to the Ufes in the Indenture. Reloved. 2 Rep. 76. Hill. 43. Eliz. C. B. Lord Cromwell's Cafe.—S. P. Gilb. Law of Ufes &c. 57. For in this Fine there is a Ufe implied, because there is a Conveyance, (viz.) pre foendis Concedenda &c. and where-ever a Ufe is either expres'd or implied, there can be no verbal Averment to the contrary; for there is a greater Sign that the Minds of the Parties are alter'd from the verbal Agreement, than that they content the same when they leave no solemn Testimony that there was such a one.—If an Estate in Fee be granted, and render'd back to one in Tail, he shall have it to his own Ufe; and to if the Conveyance keeps the Fee, he shall have it to his own Ufe: But by Deed the Ufe of a Fine for Grant and Render may be directed, and if there be a Deed to lead the Ufes of such a Fine, tho' there be some Variance between the Deed and the Fine, yet it shall be said to be to the Ufes of the Deed, if there are no other Ufes, and that was the Intent. Ibid. 268.

14. If I bargain and sell, or covenant with any, for divers good Con- siderations, that I and my Heirs will stand feited to the Ufe of him and his Heirs, no Ufe will arise hereby without a special Averment. But if it be of my Blood, and in Truth the Covenant was made for Advancement of his Blood, he may aver that the Covenant was made in Consideration thereof; for the Person that shall take the Ufe is certain, and such Averment as stands with the Deed may be taken, tho' it be not expressly com- priz'd therein. 1 Rep. 176. a. in a Noto of the Reporter in Milhimay's Cafe.

15. Tho' an Ufe cannot be declared of a Rent to a Stranger without Deed, as was agreed by the Court, yet they held clearly that it may well be averr'd that the Ufe was to the Stranger, without showing the Deed, or making mention of it. Roll Rep. 72, 73. pl. 15. Mich. 12 Jac. B. R. Parvis v. Yeaton.

(O 3) What
(O. 7) What shall be a good Limitation of an Use. 
Upon a Fine, Feoffment, or Recovery.

1. If a Man levies a Fine of certain Land, and covenants by Inden- 
ture, in Consideration of Blood, and of Marriage of his Baitard-
Doughter, that the Confees should stand feised to the Use of the Daugh-
ter, too, this is not a good Consideration to raise an Use by way of 
Confees, per it is fufficient upon a Fine ; for the Will of the Part}-
ty is fufficient for this without Consideration. Contra 39. 43 4 4 
Ellis. B. K. per Curtiam, between Franpont and Gerard. 

2. If A, in Consideration of 100l. by B, makes Feoffment in Fee to 
B to the Use of B and C, the Son of B, this shall raise the Use to C, 
well enough, tho’ all the Consideration was given by B. Cr. 7 
Jac. in the Exchequer. Saunno’s Cafce.

Heirs, is good ; but it says nothing of the Consideration of 100l. paid by B.—Ley. 11. S. C & S. P. 
of the Consideration-Money being paid by B. Resolved that B (who was the Father of C, and is fince 
deaf, G. C.) did take by the Livery, and that the faid C. took nothing thereby ; but that the faid C. 
by the Limitation of the Use in the Habendum, did take together with the faid B. as Jointenants of the 
Use, which being executed by the Statue of 27 H. 8. of Ufes, did make them Jointenants, and jointly 
feised of the Inteft and Possition ; and that therefore the faid C. upon the Death of the faid Father, 
should be faid to have the whole Land compriz’d in the faid Conveyance, Per juf acrescenti, and not 
to any Part thereof by Defcent from his Father ; which was decreed accordingly. 
An Ufe shall arise to all, on a Bargain and Sale, by Payment of one of the Bargains. Clay. 145. pl. 

3. If A. feised in Fee of 25 Boyleries at Bradie, covenants to levy Lane 33, 
a Fine of all his Boyleries, and that for 24 of them it shall be to the 
Trin. jac. S. C. & S. P. Ufe of C. in Tail 36. and that for the other it shall be to the Ufe of 
himself in Fee, with Power of Revocation ; and after A. leaves a Fine 
moved for 
of 24 Boyleries only. Quære whether the Estate passing by the 
Fine shall be directed by this Covenant or not. P. 5 Ja. in the Ex-

4. Feoffment in Fee on Condition that if Feoffor do fo, he shall re-enter 
and retain the Land to the Use of a Stranger. The Ufe is void, and Feof-
for shall hold it to his own Ufe ; per Mead. Le. 269. pl. 362. 25 Eliz. 

the Daughter of J. S. if the would affent, the faid J. S. covenanted 158. Hill. 
that M. should marry C. if he would affent, Pro quo quidem Maritamto fce 
tes potes ha bending, the faid A. covenanted to make, or caufe to be made, 
an Eftate to the faid C. and M. and to the Heirs of their 2 Bodies, for the 
June of the faid M. Afterwards a Fine was levied, in which C. and 
M. were Plaintiffs, and A. and B. Deoforeants. And in Ejecution it was 
found by Verdict, that the faid Fine jus ad Ufes & Intentiones in Inden-
tura predita specific, by Force whereof the faid C. and M. were feised, piuma b. 
and that C. did, and M. intermarred with L. Whereupon it was 
found, by Gaudy Serji. That inasmuch as the Marriage took no Effcct be-
tween C. and M. the Ufes cannot be in them, but the Fine shall be to the 
Ufe of the Conforf, which was opposed by Walmsley Serji. who faid 
that it was not like a Covenant in Consideration of Marriage to stand feised 
of such a Maner ; for there if the Considerations fail, the Ufes fail also ; 
for
for the Consideration only is the sole and entire Caue that makes the Uses to arise: But in this Case the Consideration is not material, but the Fine is effectual without Consideration of Money paid. The Court being full, they all agreed to the Difference put by Walmley, and Judgment was given for the Plaintiff accordingly. Ow. 49, 4l. Mich. 29 Eliz. Stephens v. Layton.

(P) What shall be a good Contingent Use.

1. If a Man makes Feoffment in Fee, and after declares by Inden-
ture that it shall be to the Uses following, either, after Marriage had between him and Anne Woodler, it shall be to the use of himself and the said Anne, and to his own Heirs; this shall raise an Estate for * Life in Anne, after Marriage between them; for before the Mar-
riage this was to the use of himself in Fee, subject to the said 

The Surrender was to his Child, then an In-
fant, in Ven-
tre fa more. The Child.

He died. The Child was born, and died within 2 Months after. Adjudged that the Limitation is void, and that the Defen-
dant, who claim'd from the Heir at Common Law, had good Title. Cro. J. 576. pl. 2. S. C.—Godd. 264. pl. 264. Simpson's Cae, S. C. adjudged for the Defendant. — Two Buit. 272. S. C. and adquig'd for the Defendant.— Roll Rep. 109. pl. 32. S. C. adjournat. Ibid. 137. pl. 22. S. C. adjournat. Ibid. 223. pl. 21. Mich. 13 Jac. 8. R. S. C. Eys Judgment was given for the Plaintiff. — Trest. of Tenures, 243, 243, 246. cites S. C. and says this Surrender was held to be void to J. S. because the Contingency did not happen in the Life of the Surrenderor; and a Man cannot surrender to take Effect aft- ter his Death. * Twice not resolved absolutely, that a Fee may be limited upon a Fee. See Roll Rep. 109. 138. 252. to explain these Matters. This Case, as reported by Rolls, (as its eaid in Lex. Cull. 1280) is an Authority that such future Use is good. This is the same Case as is reported by Crook, but direct-
ly contrary; and as it seems, not grounded upon to good Reason as the Resolution in Crook: For, as before has been shewn, Surrenders are not conformed to favourably as Wills, (though Coke says they should be taken according to the Intent of the Surrenderor) neither is there the same Reason; for a Man may as well order a Surrender in his Life-time, according to the Rules of Law, as he may any Deed to pass away a Freehold Estate; so that the Intention of the Party has not so strong an Operation in a Sur-
render as in a Will; and therefore that Reason will not support a Fee upon a Fee in that Case, as it doth in a Will. And then 'tis not at all like a Ufe or Trull, in which a Fee may be limited upon a Fee, be-cause there the legal Estate was not by any Limitation extended further than one entire Feemiple, which would be to extend an Estate further than its original Creation warranted. But a Ufe, after a Ufe in Fee, was but only to give an equituable Right to somebody to have the Profits, as long as the Estate in Fee lasted; which is highly reasonable, that a Man that has a legal Estate should dispose of the Pro-
fits of that Estate as long as it should last; for so long had he a Right to the Profits himself, which Right he may transfer to others, and there is no Harm done to any body; but to extend the legal Estate would be to keep the Lord of the Estate eternally out; and it is only allow'd in a Will, because of the want of Counsel to advise with, how to do it. But a Ufe in a surrender is not like this Ufe; for he that hath a Ufe by a Surrender is to be admitted to the legal Estate, and is not fetted to Ufe; and therefor-e if a Fee might be limited upon a Fee in such Cases, the legal Estate would be extended further than its original Creation warranted, and a great Estate be made out of a little one; so that it seems that a Fee upon a Fee in Copyholders is not good.

And Ibid. 246. cites Cro. E. 501. Mich. 36 & 37. Eliz. C. Tautler v. Cornhill, where a Surrender was to the Ufe of one in Fee, upon Condition that he pay 100l. to a Stranger; and if he fail'd, it should be to the Use of the Stranger in Fee. It was moved whether this were a good Limitation to add Fee upon Fee. The Court directed the Matter to be found Specially; and it does not appear what be-
3. If a Man makes a Feoffment to the Use of himself for Years, and after his death to the Use of A. in Tail, Remainder to his own right Heirs, and after the death of A. without Issue, living the Feoffor, the Remainder to the right Heirs is void, inasmuch as it cannot rest in Contingency, there not being any Frankentenement to support it. See Tit. Remainder (1) pl. 4. S.C. For here is no Tenantry to the Precipe, and the not having a perpetual Tenantry to the Precipe, was an Inconvenience the Statute expressly design'd to redress; and consequently to this Rule the statute has submitted all Uses. G. Law of Uses &c. 76.

Husband and Wife, settled in Joint Receipt, levied a Fine with Proclamations, and by Deed declared the Uses; viz. That the Cognizances should stand settled to the Use of the Heirs of the Body of the Husband on the Body of the Wife; and for want of such Issue, to the right Heirs of the Husband. Both died, no Issue then living. It was resolved, that the Limitation is void for want of a particular Estate; and the present Disposition of the Freehold is a Foundation to support the contingent Uses; for otherwise the whole Inheritance must be in Abyance, which cannot be. Erath. 262. Hill. 4 W. & M. in B. R. Davis v. Speed.—4 Mod. 152; S.C. accordingly.—Skin. 351. pl. 20. Pach. 5 W. 3; B. R. S. C. accordingly.—12 Mod. 58. S. C. accordingly—Show. Parl. C. 104. S. C. and Judgment affirmed in Parliament.—5 Mod. 145. Davis v. Speed, is a D. P.

4. A. covenanted to make a Feoffment within a Year to the Use of himself for Life, the Remainder to B. his younger Son, and the Heirs Male of his Body, Remainder over; and if he did not make the Feoffment, be covenanted to stand seised to those Uses, for the Continuance of the Land in his Name and Blood; Provided if H. or any Heir Male make a Feoffment, or levy a Fine, his Estate to cease as if he were dead, and then the Feoffees to stand seised to the Use of such Person to whom the Land should remain. No Feoffment was made within the Year; A. died, H. the Son levied a Fine to the Defendant. Resolv'd that the Feoffees and their Heirs could not stand seised to the Use of the Person next in Descent or Remainder, because no Feoffment was ever made, and the Persons appointed to stand seised are no other than the Feoffees, their Heirs and Assigns. Mo. 592. pl. 799. Trin. 35 Eliz. C. B. Cholmley v. Humble.

5. A Remainder may well enough arise by a Use to a Person not in Ette, but not where it is by way of Possession. Mo. 450. pl. 662. Hill. 38 Eliz. agreed in the Case of Baldewell v. Edwards.

6. A. covenants to stand seised to the Use of himself for Life, and after the Use of his Daughters that should be unmarried at his Death, until every of them successively shall or may levy 500l. Remainder to his eldest Son &c. It was mov'd if such a Contingent Use might be rais'd out of a Covenant, thou out of an Estate executed by Feoffment, it might well be rais'd. Anderdon doubted thereof, but the other J u tices held that it might well be rais'd, because it arises out of the Possession of the Covenantor. Adornator. Cro. E. 800. pl. 53. Mich. 42 & 43 Eliz. C. B. Blackburn, alias, Bradford v. Laffels.

7. Use to A. and his Heirs, provided that if he give a mortal Blow to any Person, that the Use shall cease to him, and shall be to another. This is fraudulent to prevent an Echeat, and void; Per Walmley J. Mo. 633. pl. 868. Pach. 43 Eliz. C. B. in Case of Mildmay v. Mildmay.

LII (Q) Uses.
[Q. 2] [Revoked] How.

1. Uses by Proviso may be revoked in Part, and remain good for the other Part. 10 Rep. 86. Lovell's Case.

2. Where a Conveyance to Uses enures by Way of Transmutation of Possession, the Uses may be revoked without Deed. 2 Salk. 677. Hill. 9 W. 3. B. R. Jones v. Morley.

(R) Uses. Consideration, Contingent. What shall be said a Contingent Use, and not a settled Use.

(S) What Consideration in one Capacity will raise an Use in another Capacity.

If A. seised in Fee of the Manors of D. and S. levies a Fine to B. of both Manors in Fee, upon a Purchase made by B. of the Manor of D. and the Manor of S. is intended for a Security for the Purchase of D. and the Use is limited of the Manor of D. to B. and his Heirs, and of the Manor of S. to the Use of A. and his Heirs, till Eviction made of the Manor of D. by A. S. the Wife of A. and after such Eviction to the Use of B. his Heirs and Assigns, till they shall be satisfied with the Profits of the Land for the Damages received by the Eviction. This is a contingent Use of the Manor of S. so that nothing vests in B. till some Eviction happens. Hill. 9 Car. 2 R. adjudged per Curiam between the Earl of Kent and Steward. Intercurs. 8 Car. Rot. 35.

If A. covenants, in Consideration of a Marriage to be had between him and B. a Feoffee, to make Ablurance of certain Land to the Use of himself and the said B. for Life, and after makes Feoffment and levies a Fine to the same Uses. The marriage never takes Effect, yet
yet the use is well vested in B, for tho' this was in Consideration of a Marriage, yet this was not a contingent but a settled use, when the Feoffment and use were parted, and not to an use raised by way of Covenant to stand seised. Tr. 19 Car. B. R. ad
judged per Curiam without Question upon a Special Verdict between
Jones and Boyle. Intratut Tr. 9 Car. B. R. Rot. 1510.
3. If A. seised of Land, in Consideration of a Marriage to be had between him and B. covnets to stand seised to the Use of himself and B. for Life; this is a contingent use; so that if the Marriage does not take Effect, the Use will not be to B. Tr. 10 Car. B. R. held per Curiam, in the said Case of Jones and Boyle.

be had between R. Hill Son of the said W. Hill, and B. the Daughter of J. S. covnets to assure the Lands to the Use of A. for Life, Remainder to the Use of the said R. Hill and B., and the Heirs of the said R. Remainder to the said W. Hill in Tail, with Remainder over. A. Feoffment and Use were made and levied to the said Uses, but B. married another Man, and R. married another Woman. A. died. Resolved per Cur. and is adjudged, that R. and B. were jointtenants (notwithstanding the Marriage did not take Effect) by Moieties, and not by Entireties. And the same Difference was taken, that if the said Conveyance had been by way of Covenant, in Consideration of Marriage, there, if the Marriage had not taken Effect, the Feme should take nothing; but when Feoffment and Use were made and levied to this Use, it is otherwise.

* The same Difference was taken Ot. 40. Mich. 29 Eliz. in Case of Stephens v. Layton, and agreed to by the whole Court; which see at (O.) pl. 5.---Same Difference taken Arg. 2 Mod. 208, 209. in Case of Bouchet v. Stowell, between a Feoffment and a Covenant to stand seised, for the	Feoffment the Estate is executed presently; cites 1 Rep. 154, the ReStor of Chevington's Case was of So if a Feoffment be to A. for Life, Remainder to B. in Fee, if A. refuses B. shall enter presently, because the Feoffor parted with his whole Estate; but if this had been in the Case of a Covenant to stand seised, and A. had refused, the Covemator should have enjoyed it again till after the Death of A. by way of springing Ufe.

4. If A. seised of Land, in Consideration of a Marriage to be had between B. his Son, and C. a Feme, who are Intra Annoi Nubiles, covnants to stand seised to the Use of B. and C. and after the Marriage is had, and after they are divorced, the Use limited to the Feme shall cease. Hammer's Case, cited per Jones I. in the said Case of Jones and Boyle.

and says it seems there is the same Reason the Use to his Son should cease, since the Consideration ceased; the Marriage being the only Thing the Use was founded upon.

5. A. made a Feoffment in Consideration of a Marriage to be had with M. to the Use of A. for Life, Remainder to the Use of M. for, during, and until four Sons, which he should beget of the Body of M. should attain the Age of 21 Years, and after he should accomplish that Age, then to the Use of M. during the Time that she should live sole. They afterwards marry, and A. dies without Issue by M. She enters and continues sole. Adjudged without Argument, that the Estate to her in Remainder is good, tho' she never had a Son. D. 300. pl. 39. Patch. 13 Eliz. Anon.

6. A. Tenant in Tail, conveyed the Land by Fine to the Use of himself for Life, Remainder to his first Son, and the Heirs Male of his Body begotten &c. and fo to the 6th Son, Remainder to the right Heir Male of the said A. to be begotten after the said 6th Son, and of his Heirs Male. Resolved that this is only contingent Eftate, and not Estate Tail in A. because it was limited to particular Persons. Palm. 359. Mich. 20 Jac. B. R. Waker v. Snow.

(S. 2) Uses.
(S. 2) Uses: Revocation.

A use covenants by Indenture, that a certain Fine shall be levied to the use of the Conventor and his Heirs, upon a Condition of Repayment of a certain Sum at a Day, and upon the whole Quartet the Contract and Assurance will be Usurious, accounting the Profits of the Land which the Conventor ought to have in the mean Time by the Implication of Law, as well as the Use and Principal, upon the Performance of the Condition. The Conventor, before the Fine is raised, may limit by other Indenture the same Uses as before, adding to it a Covenant that the Conventor shall have the Profits in the mean Time till the Condition perform'd, and so rectify the Usury; and this Indenture shall not be any Revocation of the first Indenture, tho' this has not any Reference to the first Indenture, insomuch as this does not differ from the first in the Uses, but only for the Profits; for both Deeds shall be taken but as one Indenture. *See* 15 ½a. B. R. adjudged in Weit of Error, and the Judgment to given in Bank aflirm'd, between Webb and Worfield.


Nov. 152. Bells. v. Martin, S. C. says, that the Lease for Years does not hinder the raising of the contingent Use; but otherwife it had been if the Covenantor by the fame Deed had rais'd a Power to himself to make Leases for Years. But in this Case the Lease (which was for 100 Years) takes Effect as a future Interest out of the Fee, that was in the Covenantor after the Estate determined, and at the world the Feme shall have the Revocatiou and Rent during her Life; and Williams vouch'd Ralph Egerton's Case, where it was adjudged accordingly. And in this Case Judgment was given for the Feme, in an Ejectment brought by her.—Croz. J. 166. 169. pl. 8. &c. refolv'd that the Lease shall not bind the Efft of the Fee, on the contrary a good Efft by the first Limitation, which, if it be not destroy'd, cannot be changed nor incumbert after it is rais'd, because it hath Relation to the first Covenant, and none hath Interesse to charge it; and this Lease shall not destroy it, but may well be construed to arise out of the Revocation which Sir Henry Wythont hath, and may lawfully charge; wherefore it was adjudged for the Plaintiff. Note, Williams cited Sir Peter Lee's Case in the Court of Wards, to be refolv'd in this Point.

G. Law of Uses &c. 158. cites S. C. that this will not prevent the rising of the contingent Remainders, nor bind it; for the Covenantor has Power to demife any thing but the Revocatiou, and consequently the Freehold remains unaltered to support the contingent Remainders; but if the Covenantor in this Case had refolv'd for himself a Power of making Leases, this Lease would have been good, and a Revocation of the former Uses.

*See* pl. 4. infra.

2. If a man devises certain Rents out of certain Land to his youngest Son, and devises further, Item, I will that it my Heir do
pay the said Annuities to my said Children, that then he shall have the said Land, and if he do not, that then my Executors shall have the Land; and if my Executors fail of Payment of the said Annuities, that then my said Children shall have the Land to them and the Survivor of them, and dies, and after the Heir makes Feoffment of the Land, and afterwards the Annuities are not paid. The said Feoffment has not destroy'd the Contingent Remainders, but they shall arise to the younger Children well enough upon Non-Payment of the Annuities; for there is a Difference between a Contingent Remainder which depends upon a Limitation, and Contingent Ufe. For the Feoffment in this Case, does not give away the Limitations which are to Persons known certainly, between whom there is a Perivity, as in this Case, V. 42 Eliz. B. R. per Curtiam adjudi'd, between Parker and Purfœ.

3. If A makes Feoffment to the Wife of his Wife for Life, the Remainder to the Wife of Richard his Son for Life, the Remainder to him who shall be eldest Issue Male of Richard at the Time of his Death, in Tail, with diverse Remainders over. A dies. The Wife makes Lease for Years to Richard, who makes Feoffment to B. and after joins in a Fine to B. Name of the Heir, and the whole Court were of Opinion that this future Ufe was destroy'd; but because there was none of the other Side, they would advise. —Gibb. Law of Ufes &c. 157, cites S. C. that the Wife being alive at the Death of R. the Fine shall take: for the Feoffment of B. draws his own Estate for Life, and a Forfeiture to the Wife and her Entry preserves the Contingent Ufe, which now immediately depends upon her Estate, as if B.'s Estate were worn out by Eflufion of Time; and if it be the Reafon of any of the fame Estates that were created by the same Conveyance, it answers the Notion of a Remainder.

* Right of Entry is sufficient, but then it must be prefent when the Contingency happens. 2 Salk. 517. pl. 2, Hill. 9 W. 3, B. C. Thompson v. Leech. —See pl. [14] infra.

4. If a Han covenants to stand feized of certain Land to the Wife of himfelf, and his Hears till Marriage, and after to the Wife of himself, or his Wife, which fhall be for Life, and to the Hears Hales of his fex. and Body, the Remainder to his right Hears, and after, before the Marriage, he makes a Lease for Years, to commence at the End of a Leafe which was then in Ufe, and then the Marriage was had. This is a Disturbance and Resignation of the Contingent Ufe, as to the Leafe for Years; for this is good; but the Reidue of the Estate will arife well enough, for the Coveneantor is feized to the same Ufe as he was before. Diblurtr. Tr. 42 Eliz. B. R. between Reynolds and Wood.

good, and should bind the future Ufe; but that it fhall not defroy the whole future Ufe, but fhall stand for the Freehold, because the Seilin is not chang'd. And Popham faid, he had confider'd with diverse of the other Juftices at Serjeant's-Inn, who agreed in this Opinion. But Fenner contra, because the Leafe did not disturb the Freehold, when the Ufe is executed this fhall relate to the Limitation, and fhall bind all mean Acts, and therefore fhall not bind the Feime as to her Jointure; wherefore it was adjourn'd. —Gibb. Law of Ufes &c. 123, 124, fays, that if before the Marriage he makes a Feoffment in Fee, Gift in Tail, or Leafe for Life upon good Consideration, without Notice of the Ufes, the Estates limited after the Marriage shall never arife; because here is no Body feized to fuch Ufe, and the fame Law is of Feoffments to fuch Contingent Ufes. But if in this Cafe he had made a Leafe, for Years he would not have defroy'd the future Ufe, but only have bound it; because there is a Seilin, out of which the Ufe rife; and at Common Law, if the Potheoies had made Leafe upon good Consideration, as in this Cafe, it would have bound the Lands, and confequently Celitque Ufe must have the Profits of the Lands that feized; and in this Cafe, the
This shall not destroy the Estate of the Son born after; For there is the Right of the same Estate as was limited; For the Freehold itself receives no variation by the making of a Lease for Years, and if the Remainder to the Son arises, it cannot be bound by the Lease for Years; For Tenant for Life had only Power to devise it during his own Life. Quere tamen. Gilb. Law of Ufc. &c. 139.

6. If A. sold of a Copyhold in Fee surrenders it to the Use of his Will, and after devises it by his Will to B. for Life, the Remainder to his eldest Son in Tail (he not having any Son at the Time) the Remainder to the right Heirs of B. and after B. leaves for Years, and after a Son is born. The Son shall avoid this Lease after the Death of B. D. 249.

If A. sold of a Copyhold in Fee surrenders it to the Use of his Will, and after devises it by his Will to B. for Life, the Remainder to his eldest Son in Tail (he not having any Son at the Time) the Remainder to the right Heirs of B. and after B. leaves for Years, and after a Son is born, the Son shall avoid this Lease after the Death of B. D. 249.

S. C. and Rol. Ch. J. inclin'd that the Contingent Remainder is not destroy'd because it does not here depend upon the Particular Estate, but it ought to expect till the Remainder had been devised, and he conceived that the Word (Heirs) and (Heirs) are all on one by the Intent of the Parties, and the Frame of the Conveyance. Ask. J. held it a good Estate of Fee-simple Conditional executed in B. and Jerman J. conceived the contingent Remainder not destroy'd. Adjournatur. And afterwards Pach. 1614. Ibid. 255. Roll Ch. J. Nicholas, and Ask. J. agreed that the Devise is a Devise to the Heirs of B. and to a Fee-simple, and that the Party comes not in as a Purchaser. And for this Cause the judgment was reversed. — Lex Comum. 125. cites S. C. that Per Cor. the Word (Heirs) being limited to the Body of B. is Nomen Collectivum, and all one with the Word (Heirs) and to B. has a Fee executed, and his Heir shall have this by Devise, and not by Purchase. — Gilb. Treat. of Ten. 234. cites S. C. and says it seems that must be meant of a Fee-tail, because the Heirs are referred to the Body of B. That this Case is not at all contradict Coke, (Co. Litt. 8. b.) who says, that if an Estate be given to a Man, and his Heir, he hath but an Estate for Life; for that is meant by Fee-sound. For he himself says, in the next Folio, that if a Man devise Land to a Man in perpetuity, it is a Fee. And here the Devise was to a Man and a Heir in perpetuity, which fore will create a Fee, as well as where the Word Heir is left out; but because it is added Heir of his Body, it seems the Devise was to give a lasting Fee Tail. Neither is it like Arthy's C. where the Devise was to one for Life, and after to his Heir Male, and to the Heirs Male of the Body of such Heir Male; for there was the Words (for ever) to give a Fee-Tail to the first Tenant for Life; and besides, there the inheritance is by express Words given to the Issue.

* Gilb.
7. If A. covenants with B. that if he doth not such Act to stand. G. Law of Ufe &c. 

8. If a Copyholder in Fee surrenders to the Ufe of J. S. an Infant in Fee, and if he dies before the Age of 21, or Marriage, then he surrenders it to the Ufe of J. D. in Fee, and after the Surrenderor dies before the Contingent happens. The Ufe shall not arise to J. D. tho' the *Contingent after happens; because this doth not happen during the Life of the Surrenderor. B. 13 Ja. B. R. adjudg'd between Simpson and Southwood.

[9] 8. If A. covenants in Contemplation of natural Love and Affection, to stand feised to the Ufe of himself for Life, the Remainder to his Son for Life, the Remainder to D. his reputed Son (he being his Bastard) for Life, with divers Remainders over, and covenants to levy a Fine, and makes Feoffment or other Allistance at the Request of the Covenantees, for further Allistance, which shall be to the same Uses, with a Proviso that if he by his Writing &c. shall revoke, alter, change, diminish, enlarge, or otherwise limit, appoint or dispose, to or with any other Person, or in any other Manner, and Form, any Ufe or Uses, Estate or Estates, Interest or Limitation by the said Indenture given, limited or conveyed to any Person of the Premises, that then the said A. and every other Person should stand feised to the said Ufe, and afterwards A. makes Feoffment in Fee to the said Covenantees in Performance of the Covenants of the said Indenture, to the same Uses, Intents and Purposes in the said Indenture declared, limited and appointed, and no other, which Uses are not recited in the Deed of Feoffment, but generally referred to the Indenture. This Feoffment is not any Revocation of the Uses raised by the Indenture, nor shall give any Estate in Remainder to D. the Bastard Son, the Feoffment being made only for further Allistance, according to the Covenant. This was Sir J. F. Perrot's Case, in the Exchequer, 3 El. adjudg'd, and he lost the Land accordingly. For was refused * See (K) pl. 4, and the Notes there. — (K) pl. 5. — S. C.
9. If A. seised in Fee of the Manors of D. and S. levies 2 Fine to B. of both Manors in Fee upon a Purchase made by B. of the Manor of D. and the Manor of S. is intended for a Security for the Purchase of the Manor of D. and the Use of the Manor of D. is limited to B. and his Heirs, and of the Manor of S. to the Use of A. and his Heirs, until Eviction of the Manor of D. by A. S. the Wife of A. and after such Eviction to the Use of B. his Heirs, and Assigns till they shall be satisfied with the Profits of the Land for the Damages received by the Eviction, and after B. makes Fessiment of the Manor of D. to C. in Fee, and then C. makes a Lease for 1000 Years to E. of the Manor of D. and A. S. the Wife of A. enters into the Manor of D. and evicts it for her Life. No Use in this Case shall arise to C. who is the Assignee of B. in the Manor of S. because the Word (Assignes) is no Word of Purchase but of Limitation, and this Contingent Use is not assignable over. Hill. 9 Car. B. R. adjudged per Curiam upon a Demurrer between the Earl of Kent and Steward. But the Court would not deliver their Opinions readily, whether by the Fessiment to C. of the Manor of D. and by the Lease of 1000 Years before the Contingent happen'd, the Contingent Use should be destroy'd or not: But Richardson and Coke seem'd that it was, and Jones and Berkley seem'd to incline e contra; because the Fessisse do not make the Fessiment, but Certly que ile. For Jones said, that here the Contisse of the Fine, when the Contingent happens, is in by the Common Law, and not by the Statute. Berkley seem'd that he was in by the Statute, because he shall have it only Quoquo, till he has Satisfaction for the Damages received. Inns. Hil. 8 Car. Rot. 333. But the Court said, that there ought to be Privy of Estate and Confidence in him that ought to be seised to an Use.

[12] 10. If A. seised in Fee in Consideration of natural Love and Afection to his Wife and Children, covenants with B. to stand seised thereof to the Use of him, or to the Use of his Wife for Life, and after to the Use of his Wife for Life, and after to the first Son of the Body of C. begotten, and to after to the other Sons of C. in Tail, and after to his own right Heirs. And after A. by Indenture between him and F. granting the said Conveyance and Estates, he grants his said Reverson in Fee without any Consideration to F. and his Heirs, to the Use of F. and his Heirs. This Grant of the Reverson in Fee to F. is not any Destruction of the Contingent Use limited to the first Son of C. but that [the Use to] the first Son of C. born after this Grant, and in the Life of A. or C. shall arise well enough; because by the Grant to F. of the Reverson, the first Uses and Estates being recited in the Deed of Grant, and this being without any Consideration, the Grantee shall stand seised to the first Uses, in as much as he has Concourse of the first Uses; and tho' he limits it to the Use of the Grantee and his Heirs, yet he does not alter the Trust any more now than at the Common Law. B. 1651. between Wigg and Villiers, upon a Special Petition, advised per Curiam, praeter Justice Termyn, who gave no Opinion in it. Inns. Hil. 24 Car. Rot. 457. This was upon a Conveyance made by Sir Edward Coke.

[13] 11. If A. seised of Land in Fee, covenants for natural Afection to his Wife and Children, to stand seised to the Use of him, or to the Use of his Wife for Life, the Remainder to B. his Daughter for Life, the Remainder to the first Son to be begotten of the Body of B. and after to divide other Sons of B. in like Manner, the Remainder to his other Heirs; and after A. grants his Reverson in Fee to J. S. to the Use of J. S. and his Heirs, but without any Consideration, reciting in the Deed the said Uses, by which the Grantee has Concourse of the Uses, and
to be is subject to the said contingent Estate, and this Grant is no
Disturbance of them. And * afterwards A. makes Fee-sillent in Fee of
the Land, and that B. takes Baron, and has Issue a Son, and then A.
dies, and his Feme enters, and after B. dies, and then the Feme dies
so failed. In this Case the contingent Ule to the first Son of B. is
not destroy'd, but he may enter; for the Fee-sillent of A. was a For-
fiture of his Estate, and of the Estate of his Wife in Remainder du-
ing the Coverture; so that B. might have enter'd for the Forfsillent
during the Coverture, and so B. had a Right of Entry which was
sufficient to support the contingent Remainder to the first Son &c. with
our Question. But the Case had been more dubious if B. had not
had any Estate for Life, but that the ** contingent Remainders had
depended on the Estate of the Wife immediately, where the ForFsillent
of the Baron had destroy'd them, inasmuch as the Fee-sillent of the
Baron pass'd his Estate and the Estate of the Wife during the
Coverture; so that none can enter during the Coverture; and so
neither the Estate of the Baron, nor of the Wife in Eife during this
time, to support the contingent Ules. But this Doubt does not
come in Question in this Case, inasmuch as B. had an Estate for
Life in Remainder, which was only destroy'd by the Fee-sillent, and
turn'd to a Right, and she had a present Right of Entry for a For-
fiture. And when A. the Baron dies, and his Wife enters, this
reduce's her Eife for Life, and the Estate of B. for her Life, and
so the contingent Ule reduce's also, and being by Force of the Stat-
ure of Ules in the first Son of B. Palsch. 1651. B. R. between
Wegg and Villars Per Curiam adjudged, prater Justice Termino, who
gave no Opinion, proper Agerusiment, after diverse Arguments
at Bar. This was upon a Conveyance made by Sir Edward
Coke. Intracut Tr. 4 Car. Rot. 487.

[13] 12. In the Debate of this Case between me and my
Brothers Nicholas and Ask; 'twas agreed and resolve'd, that if a
Fee-sillent be made by A. and B. in Fee to the Use of A. for Life, the
Remainder to C. for Life, the Remainder to the eldest Son of C. in
Tail, with diverse Contingent Ules after in Remainder, the Remainder
to the right Heirs of A. in Fee, that in this Case the Fee-sillent of A.
will not destroy the Contingent Ules, because the Remainder to C.
tho' it be devell'd, yet he shall have a Right of Entry for a For-
fiture, and a Right to the Remainder, which is sufficient to support
the Contingent Ules; for this is the Common Assurance upon
Marriages, and the Common Practice.

[14] 13. And it was also agreed and resolve'd by us, that in the
said Case, if C. who is in Remainder for Life, enters into the Land,
either in the Life of A. or after his Death, this shall reduce the Con-
tingent Remainders, so that if a Son be born in his Life, his Con-
tingent Estate shall be sett'lt and execute'd by the Statute of Ules,
without any Re-entry by the first Fee-sillents; for this is an Incident
in the first Liver.

[15] 14. It was also resolve'd and agree'd between us, that if after
the Fee-sillent of A. if C. had not enter'd, but died before Entry, yet if
the first Son of C. was born in his Life he cannot enter, tho' his con-
tingent Estate is not destroy'd, because this was not execute'd in the
Life of C. the Estate of C. being turn'd to a Right, and so the Con-
tingent disturb'd. But in this Case the first Fee-sillents may enter to re-
ceive this contingent Ule, and then by thence the contingent
Ule shall be sett'lt and execute'd in the first Son, by the Statute of
Ules; for there is a Seintella Juris in the Fee-sillents to enter, in such

N n n
Cases of Necessity, to revive contingent Ufes: for otherwise the contingent Use would be destroyed.

[16] 15. It was also agreed and resolved by us, that when a Feoffment is made to certain Ufes, with diverse Remainders over in Contingency, and no Estate left in the Feoffees, and after the Feoffees enter into the Land, and dispose the Tenant in Possession, and make Feoffment in Fee, that this does not destroy the contingent Uses, if the Tenant in Possession, or any in Remainder, in whom an Estate certain was settled before the Feoffment, re-enters; for his Re-entry shall reduce all the contingent Remainders, and shall make them capable of Execution by the Statute of Uses; for the Feoffees are but Conduits to convey the Estates, and have not any Power left in them to destroy any contingent Uses.

[17] 16. It was also agreed and resolved by us, that when a Feoffment is made to certain Ufes, with diverse Remainders over in Contingency, and no Estate left in the Feoffees, yet if the Estates in Essé are devised either by Difference, or by Feoffment, or otherwise, before the Contingents happen, and after the Contingents happen during the Development, and after the Estates in Essé determine before any Re-entry, if the Feoffees release all their Right in the Land, or make Feoffment of the Land, or bar their Entry by any other Way, in this Case, the Contingent can never be revived to be executed by the Statute of Uses, because the Feoffees who had Scissilliam Issus in them in Case of Necessity to revive the contingent Uses, have bar'd their Entry to revive the contingent Uses, and no other can revive them; so that they cannot be executed by the Statute.

18. If a Feoffment be made to the Use of Feoffor in Trust, and afterwards the Feoffees execute Easement to him in Fee, the Use of the Estate is determin'd. Br. Feoffments to Ufes, pl. 47.; cites 35 H. 8.

19. Baron makes Feoffment before the taking of the Wife; the shall never take; for the Possession and State of the Land is alter'd and chang'd, and transferr'd to the Possession of another before the Title of the Feme accurses; but if no deceiving or Alteration had been, then the Use should vest in the Wife. 1 Rep. 136. in Chudleigh's Cafe, cites 17 Eliz. D. 340. Brent's Cafe.

And his Wife; and if he should survive her, then to the Use of him and such Wife as he shall marry, for Life, the Remainder over in Fee; but before the taking such Wife, the Remainder-over, and Feoffees, with Consent of the Baron, made a Feoffment. See D. 539. b. 540. 2 S. &c. pl. 48. &c. Hill. 1; Eliz. Brent's Cafe.—S. P. By the greater Part of the Justices that argued in the Case of Dillon v. Freyne. Mo. 391. in Perrot's Cafe, cites D. 340.—Poph. 76. in the Case of Dillon v. Frain, Anderson said that as to Brent's Cafe, he had always taken the better Opinion to be, that the Wife cannot take in the Cafe for the mean Diffurance, notwithstanding the Judgment which is entred thereupon, which was by Ascent of the Parties, and given only upon a Default made after an Adjournment upon a Demurrer; and said he had view'd the Roll thereof on Purpose.

20. Conditional Use on Payment of 100 l. to Feoffor, shall on Breach be reduc'd to the Feoffor without any Entry, and then the Ufes limited after are void; for an Ufe cannot be limited on an Ufe; quod fuit cessibilis per toti. Cur. Le. 6. pl. 10. Mich. 25 & 26 Eliz. B. R. Stonely v. Bracebridge.

And. 233. pl. 248. S. C. accordingly.

21. A sealed in Fee of the Manor of L. coveneanted with J. S. for Advancement of his Heirs Males &c. to levy a Fine thereon to the Use of himself for Life, and afterwards to the eldest Son of his Body, with diverse Remainders over. Before he levied this Fine, he by Fraud and Covin to defeat the said Covenant, made a Leaf of the same Lands for 1000 Years, and then levied the Fine. It was relev'd, upon Conference with the other Justices, that natural Love and Affection is not such good Consideration as is intended by the Statute of 27 Eliz. of Fraudulent Conveyances; for Valuable Consideration only is good within this Act. And tho' the Ufe was a Purchasor, yet he was not in vulgar and common Intend-
Intendment. 3 Rep. 83. b. cites Patsh. 32 Eliz. as refer'd out of Chancery to two Jutices, in the Case of Nedham v. Beaumont.

22. A. feid of the Manor of D. had Issue 4 Sons, and made a Feeffement in Fee to the Use of himself, and his Heirs of the Body of Mary then the Wife of T. &c. and after his Death to the Use of his Will, and then to the Wife of the Feoffees and their Heirs, during the Life of B. his eldest Son, Remainder to his own right Heirs. A. died without Issue by M. the Feoffees made a Feoffment in Fee to B. without any Consideration (he having Notice of the first Feoff.). Afterwards B. had Issue a Son, and after that Issue ceased, and another Son, and made a Feoffment to J. S. &c. with Warranty. All the Remainder, except Periam Ch. B. and Walmley, agreed that the Feoffment made by the Feoffees to B. (who had Estate for Life by Limitation of the Use) had devested all the Estates, and all the future Uses; and of B. he not that this new Estate could not be subject to the ancient Uses which arose being born out of the ancient Estate devested by this Feoffment. 1 Rep. 120. 134.

23. A. Tenant for Life levied a Fine to B. who was in Reversion, to the Use of B. and his Heirs, upon Condition that B. should pay to A. yearly during his Life 4 l. and if there be any Default of Payment thereof, it should to the Use of the Confor for Life, and one Year over. B. made a Feoffment to J. S. who made a Lease to the Plaintiff; the 4 l. was not paid nor demanded; A. entred. Resolved the Feoffment hath not destroy'd the future Use, which is to arise for Non-performance of the Condition; for it was a Charge or Burden upon the Land, which goes along with the Land in whole Hands forever it comes; Per all the Jutices, prater Glavill. And adjudged for the Plaintiff accordingly. Cro. E. 688.

24. A. covenanted to stand feid for natural Affection to the Use of Mo. 31. pl. himself for Life, and after to W. the eldest Son of his Brother for Life. Remainder to the first Son of the said W. and to the 8th Son. Remainder to the right Heirs of A. A. was attainted of Treason, and executed before any Son born to W. It was resolv'd by the two Ch. Jutices and Ch. Barron, that the Sons born after are all utterly bar'd by the Attaint and that the King shall have the Fee, discharged of all the Remainder limited to the Sons not yet born. Noy 102. Tr. 9 Ja. Sir Tho. Palmer's Case.

The Deed, the Deed was confur'd and damn'd, but there was not any Confir'd of any Person. S. C. cited by Hale Ch. J. Vent. 383. Trin. 26 Car. 2. B. R. in Case of Pibus v. Mitford.

25. If a FemeCovert or an Infant be infeoff'd to an Use precedent since the Statute, the Infant or Baron comes too late to discharge or root up the Feoffment; but if an Infant be infeoff'd to the Use of himself and his Heirs, and [it] J. D. pay such a Sum of Money, to the Use of J. G. and his Heirs, the Infant may disfaggare, and overthrow the contingent Use. Ld. Bacon's Readings on the Statute of Uses 348.

26. Contrary Law. if an Infant be infeoff'd to the Use of himself for Life, the Remainder to the Use of J. S. and his Heirs, he may disfaggare to the Feoffment as to his own Estate, but not to devell the Remainder, but it shall remain to the Benefit of him in Remainder. Ld. Bacon's Readings on the Statute of Uses 348.
1. If Baron and Feme levy a Fine of the Land of the Feme, and the Baron only declares the Ufe, this shall bind the Feme, if the limitation of the Ufe as well as in the Fine. Reel. 2 Rep. 57.

2. So this shall bind the Feme, tho' the Feme be within Age; for an Infant may limit the Ufe as well as levy a Fine. Cr. 8 Tit. B. Pre Currant, between Barry and Taylor.

3. If Baron and Feme levy a Fine of the Land of the Feme, and an Indenture is written in the Name of the Baron and Feme, by which the Land is limited to certain Ufes, and the Baron seals and delivers it, and the Feme will not, but disapproves of it, this limitation of the Baron shall not bind the Feme, tho' the Feme had not expressed her Disagreement by any Deed, or by limitation of other Ufes. Tit. 15 Tit. B. R. Agreed and ruled per rotam Curtiam in Writ of Error between Webb and Warfield.

4. If Baron and Feme sell the Land of the Feme to another for Money by Parol, and after levy a Fine to the Venable and his Heirs, this shall bind the Feme, without any Writing proving her Act. Reel. 2 Rep. 57. Beckwith's Cale.

5. If Baron and Feme levy a Fine to the Ufe of the Conunée in Fée, both sealing the Indenture, which limits the Ufe for a certain Sum given by the Conunée to the Baron and Feme. But there is a Condition of...
of Re-entry on Payment of a certain Sum, which amounts to the principal Sum given and the Use, according to £10 l. for the 100 l. at a certain Day's Years afterwards, so that by the Law the Conouise is to have the Profits of the Land in the mean Time, and to more than £10 l. for the 100 l. and so the Conveyance is in effect. The Baron may after, before the Fine is professed, rectify it, and explain his Intention by another Indenture between him and the Conouise, expressing their Agreement that the Baron and Feme shall have the Profits in the mean Time till the Condition broken; and this shall bind the Feme, tho' she disagrees to this Indenture; for the Use passes by the first Indenture, and this last Indenture only rectifies the Matter of nullity, explaining the Contraet, which belongs more properly to the Baron, insomuch as he did this, and he received the Money. 39. 15 H. 3. between Webb and Wurfeld in a Writ of Error, this was a Question; but this did not come under Judgment, because the nullity was not expressly found.

6. Husband and Wife, seized of Lands in the Right of the Wife, levied 2 Rep. 56. a Fine. The Husband alone, before and at the Time of the Fine, declar'd 58. a. the Uses one way; and the Wife, before the Fine, declar'd the Uses another way. It was resolved, that both the Declarations of the Uses were void, tho' the Uses, unless so far as to bind the Interest of the Baron during the Coverture, were only in the first particular Uses; the Feme limiting it only to herself for Life, and the Baron limiting it to himself and his Wife for their Lives, and all the other Uses in Remainder, limited in both the Indentures, are agreeable to both their Conveyances, yet all the Uses are void. 58. a. S. C. cited Gilb. Law of Uses, 40. says this binds the Husband during the Coverture, but not the Feme afterwards; for the Husband cannot declare the Uses without Concurrence of the Wife, because he has no Estate, and the cannot be presumed to declare where the contrary appears by her Deed; and the cannot declare the Uses alone, because during Marriage she is not Suj Juris; and without the Husband she has no disposing Power. And if there be no Use declared upon this Fine, it is to the Use of the Wife; for where there is no other Intent of a Use declared, it is supposed to be design'd as a farther Security to the present Possessor, and the Use is still in the Wife, since in this Case she has not departed with it.

If Baron and Feme be seized in the Right of the Feme, and join in a Fine, the Baron cannot declare the Use for longer Time than the Coverture, and the Feme cannot declare alone; but the Use goes according to the Limitation of Law unto the Feme and her Heirs. But they may both join in Declaration of the Use in Fee, and if they sever, then it is good for so much of the Inheritance as they concurred in; for the Law voucheth all one as if they join'd. And if the Baron declares an Use to J. S. and his Heirs, and the Feme another to J. D. for Life, and then to J. S. and his Heirs, the Use is good to J. S. in Fee. Lord Bacon on the Statute of Uses, 355. 556. 3d if it be by joint Purchases during the Coverture. 2d if it be by joint Purchases during the Coverture. Ibid. See pl. 7. and the Notes.

7. If Baron and Feme levy a Fine of the Lands of the Wife, and The Reporter, in Limitation of the Use of Part of the Land, and vary in the Limitation of the Recluse, this is good for the Part in which they agree, and void for the Recluse. 2 Rep. 58. a. Trin. 27 Eliz. in the 4th Resolution in Beckwith's Case.

Limitation of the Use of Part of the Estates of the Land, and touching Limitation of the Use of Part of the Land itself. Ibid. — G. Law of Uses 8 & c. 256, 257. says, as to the first Point, that the Reason is, because as to that Part of the Land in which they both agree, all the Requisites are found necessary to make a Declaration, and the Defect of the other Part can have no Influence on that which is good; but as to the Diversity taken by the Reporter, if they agree in the Limitation of Uses for Part of the Estate in the Land, and disagree in the other Estates, there is void; for else there will be another Moulding of the Estates than the Feme designs, and her Consent is requisite to every Estate that shall be created by the Limitation of Uses, and it is to be order'd by her Direction. Thus if the Husband declares the Uses to himself and Wife for Life, the Remannder to the Heirs of the Wife, and the Wife declares the Uses to herself for Life, and then to her own right Heirs, both Declarations are void, and it shall not stand good for the Remannder in Fee, and be void for the rest for the Estate moving from the Wife; whatever Uses do take Effect must be by her Direction and Consent, and in the same Manner as the Places. Tho' the Husband has Power over the Estate of the Wife, during Coverture, yet if he declares the Use one way, he another, his Declaration is absolutely void, and it shall not stand good during the Coverture. The Reason of the Difference seems, that in other Cases the Husband having Power over the Wife's Estate, he may grant an Interest as from himself, during the Coverture, and if he then take it from her, it is void; but when they levy a Fine in Fee, the Estate passes solely and entirely, as an Estate in Fee-simple, from the Wife; and the Uses that are declared thereafter O O O mult...
(T. 2) What shall be said a Direction of the Uses of a Fine or Recovery.

1. If a Man suffers a Common Recovery in Obstabis Michaelis, 3 E. 6. and an Indenture is made, dated 14 November then next following, in which it is express'd, That all Recoveries hereafter to be suffer'd, between the Parties, shall be to the Use contain'd in this Indenture. The Recovery suffer'd before shall not be to the Use of this Indenture, tho' all Michael's Term is but one Day in Law; for the Word (hereafter) excludes all Recoveries before suffer'd, without an Averment of the Intent of it. Rich. 42 & 43 El. B. R. per Curtail, between Whetstone and Wentworth. But adjudged Dr. 43 Cl. accordingly.

2. If Covenants and Agreements are contain'd in Indentures, and no Uses, and it is covenanted by this Indenture, That A. shall recover against B. his Land in D. to the Use of the Recoveror and his Heirs, and to the Uses of the Covenants and Agreements in the Indentures, there, if he recovers, the Recovery shall be to the Use of the Recoveror and his Heirs, and not to the Uses of the Covenants and Agreements in the Indenture, where no Uses are in the Indenture. Br. Feeoliments al Uses, pl. 58. cites 32 H. 8.

3. B. seised of Land acknowledged a Fine, and the Conunfee granted and render'd to A. and his Wife for Life, the Remainder to the right Heirs of A., and 2 Years after B. the Conunfee did declare by Indenture the Use of the Fine to be to A. and his Wife for Life, the Remainder to the Wife in Fee, the being his Baffard; and if this new Declaration shall cross the Grant and Render was the Question; and it seems it shall not; but the Re-grant in the Fine shall amount to a Declaration of the Use; and it shall be intended done by the Procurement of the Conunfee of the Fine himself. Ergo. Clayt. 94, 95. pl. 160. Jennings v. Chantrey.

4. A Deed of Uses, precedent to a Recovery, was explain'd by a Deed subsequent, and so the Land coming by the Wife was secured to her Heirs, failing Issue by the Husband. D. 307, b. pl. 71. Pack. 14 Eliz. Vavitior's Cafe.

5. Indenture
5. Indenture declares the Use of a Fine with Render of Rent to B. and his Heirs, but the Special Render to B. in Tail, with Remainder to the Lord Mountjoy, being agreeing with the ancient Estate is to be preferred. Agreed by the Justices. Mo. 107. pl. 249. Mich. 17 & 18 Eliz. in Andrews's Case.

6. If Use is declared by Indenture, yet the Parties may alter the Use by other Indenture at any time till Estate executed, and the last Indenture shall guide the Use. Mo. 107. pl. 249. Agreed by the Justices in Andrews's Case.

7. Covenant was to levy a Fine with Proclamations, which shall be to such Uses mention'd in a Deed &c. It was held, that a Fine without Proclamation will not do it, viz. raise the Uses. Clayt. 145. pl. 269. Anon.

8. One after the Term sells his Land, with Covenant to levy Fine &c. and takes Fine and Recovery, and causes it to be entered of the Term before, yet the Deed shall guide the Use. And. 127, 128. pl. 173. in Case of Dowman v. Vavil.

9. Before the Statute of Frauds, even a Parol Declaration of the Uses of a Fine was good. 4 Mod. 269. per Cur. Pasch. 6 W. & M. in B. R. in Case of Jones v. Morley.

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(T. 3) What Assurance shall be guided by the first Indenture.

1. If a Man covenants by Indenture to levy a Fine to 2 Persons by Name, to certain Uses limited in the Indenture, and after 2 of the Persons, to whom the Fine ought to be levied, die; and after the Fine is levied to the 2 Survivors, to the Use aforesaid; this shall be well guided by the last Indenture. Mich. 16 Ja. B. R. Admitted per Curiam; but they overruled it before upon Argument at Bar, between Hare v. Hare.

2. A fold Land to B. by Deed indented, on Condition of Re-entry, on S C. cited Payment of 20l. and that all Assurances shall then be to him and his Heirs; and covenants to make other Assurances, and that they shall be to the Use in the Indenture. Afterwards A. infers B. to the Use of B. and his Heirs, and afterwards levies a Fine to B. which was to the Use in the Indenture. Adjudged that notwithstanding this absolute Feoffment, and to an express Use, yet it being upon no New Agreement, 'tis guided by the Covenant, and it shall rule it as well as an express Limitation of the Use, so that the Estate is conditional still. Cro. E. 300. pl. 14. Pasch. 34 Eliz. B. R. Clever v. Gyles.

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(T. 4) Declaration.
(T. 4) Declaration. What amounts to a Declaration of Ufes of a Feoffment.


2. B Afard seised of a Manor makes his Will, by which he devises the Manor; after he makes Feoffment of the same Manor to the Use of such Persons, and for such Estates as he had declared by his last Will, bearing Date &c. Tho' this was now a * countermanded Will, it was sufficient to declare the Use of the Feoffment, and so no Escheat. Mo. 789. pl. 1090. 2 Jac. in the Exchequer-Chamber, Hufle's Case.


1. T HE King, upon his Letters Patents, may declare an Use, though the Patent itself implies an Use, if none be declared. Lord Bacon on the Statute of Ufes. 355.

2. If the Queen gives Land to J. S. and his Heirs, to the Use of all the Churchwardens of the Church of Dale, the Patentee is seised to his own Use upon that Confidence or Intent; but if a common Person had given Land in that manner, the Use had been void by the Stat. 23 H. 8. and the Use had return'd to the Feoffor and his Heirs. Ld Bacon on the Statute of Ufes 355.

3. A Corporation may take an Use without Deed, but can limit no Use without Deed. Ld Bacon on the Statute of Ufes 355.

4. An Infant may limit an Use upon Feoffment, Fine, or Recovery, and he cannot countermand or avoid the Use, except he avoid the Conveyance. Ld Bacon on the Statute of Ufes 355.

See Tit. Fines (Ma) pl. 1. and the Notes.

(T. 6) Declaration of Ufes of Fine or Recovery. Being made by some of the Parties only.


1. T HE Father was Tenant for Life, Remainder to the Son in Tail. A Precipit was brought against the Father, who vouch'd the Son, and a Common Recovery had; and the Indenture recited that this Recovery was made between the Father and others; but inasmuch as no Proof was of the Consent of the Son to such Declaration, nor was be Party to the Indenture, the Court directed the Jury to find the Ufes accordingly, and the Estate which they had at the Time of the Recovery. Lat. 82.
237

2. So they *argued, that if two jointtenants suffer a Recovery, and one declares the Uses of the whole, this shall bind only for a Moiety, unless the Consent of the other be prov’d. Lat. 82. in Cave of Argol v. Cheney.

(U) Uses. Contingent. In what Cases the Contingency shall be said to be happen’d to raise the Use.

1. If a Man by Indenture grants a Rent Charge of 20 l. in Fee, payable at two Feasts by equal Portions, sell. 10 l. at Michaelmas and 10 l. at Lady-Day, and covenants to levy a Fine to the Uses following, sell. that if the said Rent be arrear at any of the Feasts or Days of Payment, and no Distress upon the Land, or Replevin sued for, then it shall be well lawful for the Grantee to enter into the Land, and to retain it till Satisfaction of the said Arrearages; and afterwards the Fine is levied accordingly, and after 10 l. Rent is arrear, and no Distress upon the Land, or Replevin sued for, all the 20 l. is not Arrear, yet the Use shall arise by this Indenture; for the being Arrear of 10 l. is a being Arrear of all the Rent, as a Distress of part is a Distress of all; for this is but one Rent tho’ there are several Days of Payment. 16 Jac. B. R. adjudge’d per totam Curtiam, and would not argue it; between Haverhill and Hare.

16 Jac. Resolved by all the Judges, that when 10 l. only is Arrear, the Rent of 20 l. shall be said Arrear, whereupon there shall be a Title of Entry.— 3 Bulst. 250. S. C.— 2 Rull. Rep. 12 Hill. 15 Jac. S. C. argued.

(X) Uses. Relation. From what Time the Use shall be said to arise.

1. If a Man grants a Rent Charge out of certain Lands by Indenture to another in Fee, and covenants to levy a Fine of the Land to the Uses following, sell. that if the said Rent be Arrear, and no Distress upon the Land, or a Distress taken and a Replevin sued, or Reťsious made of the Distress, or Pound Break, then and from thenceforth it shall be well lawful to the Grantee or his Heirs to enter into the Land and to retain it till Satisfaction of the Arrearages; and after the Rent is Arrear, and after the Fine is levied, and then a Distress is taken and a Replevin sued by the Tenant of the Land. It seems that the Grantee cannot enter and have this Use by this Fine and Indenture, because the Fine was levied after the Rent was Arrear, tho’ the Replevin was sued after the Fine; for the being Arrear of the Rent is as well Parcel of the Cause of the arising of the Use, as the being of the Replevin, and the Words (then and from thenceforth) imply that it shall be from the Fine levied, and not for any Cause before. Dubuc. 16 Car. B. R. Dodderidge and Houghton, that it shall not arise, and Bontagie and Croke, e contra, between Haverhill and Hare.

P p p 2. A.
2. A. covenants with B. in Consideration of Marriage, to suffer a Recovery before the Feast of St. Michael, and if A. before the said Feast doth not, then he shall be feised to Use of B. Trinity Term passes without any Recovery; no Use shall arise before the said Feast; Per Popham. Arg. 4 Lc. 170. And Per Clark J. Ibid. 174. pl. 276. in Sir Francis Englefield’s Case.

3. The Quality of all future Uses is, that tho’ they shall take their Construction by future Act, yet their Inception and Perfection precedes the first Livery, and they are regarded as Uses upon the first Livery; As if A. covenanted by Indenture, in Consideration of 100 l. received for a Marriage to be had between A.’s Son and the Daughter of the Covenantor, that if the Marriage does not take Effect, he and his Heirs will be seised of Black-acre to the Use of Covenantor and his Heirs, till Re-payment of the 100 l. The Covenantor dies, his Heir within Age, and after the Marriage does not take Effect, it is there taken that the Heir shall be in Ward, and shall take this Land by Defeant; yet all which was in the Father was but Inception of future Use, which Inception, by the Breach of the Marriage, became Use in Perfection; but this was after the Death of the Father; Yet this has so strong Relation to the Time of the Commencement, which was in the Life of the Father, that it was held to be an Inheritance descended to the Heir. Arg. Mo. 517. in Lord Buckhurst’s Case, cites 3 Mar. Br. Feesments al Uses 59.

(Y) Rais’d. How.

1. WHEN a Man will raise an Use by way of Covenant, there are 4 necessary Things which ought to concur. 1st. A sufficient Consideration, as of Blood, or Marriage, or other collateral Considerations; as if I covenant with you, that when you incoff me of certain Land, I will stand seised to the Use of you and your Heirs; but if the Consideration be for Money, the Deed should be inroll’d, or otherwise no Use will arise. 2dly. There must be a Deed to testify this Agreement, as was resolv’d 38 Eliz. in Case of Collard v. Collard. 3dly. He that covenants must be seised at the Time of the Covenant, as was resolv’d 37 Eliz. in Yelverton’s Case. 4thly. The Uses must agree with the Rules of the Common Law; as in Chudleigh’s Case a Man covenant’d to stand seised to the Use of A. for Years, the Remainder to the right Heirs of J. S. it is a void Remainder, tho’ by way of Covenant and Use; for the Freehold may not be in Abeyance; Per Hutton J. Winch 59. Hill. 20 Jac. C. B. in Case of Buckley v. Simmonds.

2. Uses may be rais’d in two Ways. 1st. By Transmutation of Estates, as by Feoffment, Fine, Recovery. 2dly. Without Transmutation, as by Bargain and Sale, and by Covenant to stand seised to the Uses. Now to raise Uses by way of Covenant or Bargain and Sale, there must be a Consideration; but in Case of Transmutation of Potfeccion, they may arise without any Consideration at all. Arg. Cart. 143. in Case of Garnish v. Wentworth.

3. In Covenant to stand seised the Estate continues in the Covenantor till the Execution of the Use in City que Use, who for that must participate of the Consideration of natural Affection, which is the Consideration to raise a Use by Covenant to stand seised. If Money be the Consideration, there must be an Instrument, and the Deed enures by Bargain and Sale. Gib. 301. in Case of Goodtitle v. Pettico.

(7) Arise.
(Z) A rise. Void and Good. In what Cases, tho’ some Uses are void, or take not Effect, yet others that are Good shall arise.

1. There is a great Difference between an Ufe rais’d by Feoffment, and an Ufe rais’d by Covenant to stand seised; for in the first Case it is all Feoffor doth dispose of himself utterly, and if it takes not Effect to one Purpose it shall take Effect to another Purpose. But in Case of a Covenant it is otherwise; for the Ufe arises according to the Contract, and not otherwise. Arg. Le. 196. in Ld Paget’s Case.

Trust is gone, and nothing remains but a bare Authority to raise Uses out of the Possession of the Proprietors, and being new Uses, there, tho’ some are void the other shall stand; but in the 2d Case the Covenantor continues in Possession, and the Uses limited, if they be according to Law, shall raise and draw the Possession out of him; but if not, the Possession shall remain in him till a lawful Ufe arise, which before its Time shall not arise for any Defect in the preceding Ufe. Arg. 197. Ibid.—1 Rep. 154. a.b.

The Rector of Cherington’s Case, cites S P. held by Manwood Ch. B in Ld Paget’s Case.


1. THE * Intention of the Parties is the principal Foundation of the Creation of Uses; if by any Clause in the Deed it appears that the Intention of the Parties was to pass it in Possession by the Common Law, there no Ufe shall be rais’d; and therefore if any Letter of Attorney be in per Cur. Sid. of the Deed, or a Covenant to make Livery, or the Like, there nothing shall pass by way of Ufe, but according to the Intention of the Parties in Possession by the Common Law. 2 Inst. 672.

Says this Intent must have three Qualifications, viz. Firstly, It must be manifest out of the Deed. Secondly, It must be agreeable to the Rules of Law. Thirdly, It must be taken upon the entire Deed; for Et Rei & Modis Habendi is to be consider’d; and to this Purpose cites the Case of Buckler v. Symonds; which see at (O. 4) pl. 1.

2. A Recovery was suffer’d by A. to the Intent that Recoveror should make an Estate to A. and his Feme for their Lives, Remainder Seniiori Puerto in Tail, Remainder over. It was agreed that after the Recovery suffer’d the Recoverors shall be seised to their own Use; for if they shall be seised to the Ufe of B. then they cannot make the Estate. But per Southcot and Wray, if they do not make the Estate in convenient Time, an Ufe shall be rais’d in A. against whom the Recovery was had. And they agreed that this Word (Intent) is a good Word to create an Ufe, but not presently, as the Case here is. D. 166. Marg. pl. 8. cites Patch. 17 El. Humerton’s Case.

3. A Fine was levied by A. and the Words of the Indenture leading to the Ufes were, That the Fine was levied to the Intent that Consee should make an Estate to him to whom A. the Father, who was the Confor, should name; and a Proviso was in the End of the Indenture, That the Consee should not be seised to any other Ufe except unto that Ufe specified. It was held by all the Justices, that it shall be to the Ufe of the Consee in like manner as to the Recoveror, in the Cafe above, and after the Nomination they shall be seised to the Ufe of such Nominee; but if A. dies without Nomination, then the Law will settle the Ufe in his [Heirs.] D. 166. Marg. pl. 9. cites 17 El. Betnam v. Rateleton.
4. A seised in Fee made a voluntary Feoffment to J. S. and J. W. and their Heirs, to the Use of A. for Life, and then to the Use of B. and his Heirs for ever; and for Default of Issue of the Body of B. then to the Use of the right Heirs of the said A.—A. died, and B. entered, and by his Will devised those Lands to the Leffor of the Plaintiff, and then died without Issue, and the Defendant was right Heir to A. the Feoffor. The Question was, Whether by the Limitation of the Ufes in this Feoffment B. took an Estate in Fee-simple, or else but an Estate-Tail only, (as if it had been in a Will); for it was agreed on all Sides, that such a Limitation in a Will would be only an Estate-Tail, because the Limitation of a Remainder over, upon his dying without Issue of his Body, shews that it was only intended the Heirs of his Body, and the Intention of the Tettator governs his Will. But this being a Conveyance in the Lifetime of the Feoffor would make a Difference, as it was objected. Sed per Cur. It makes no Difference, because it was a Conveyance by way of Use, which has been always construed like Wills, with respect to the Intention of the Parties, and it is not tied up to the strict Forms of Conveyances at Common Law. Judgment for the Defendant. Carth. 343. Hill. 6 W. 3. B. R. Rot. 929. Leigh v. Brace.

(B. a) Ufes raised by an improper Conveyance, being confirmed as a proper Conveyance, or as another Kind of Conveyance.

1. A. Seised of 391. per Ann. covenants that he will suffer 20l. per Word of a Covenant may be performed by Operation of Law, as by Defendant in the Case above, there no Use shall arise; but otherwise if it cannot be performed by Act in Law; and therefore if, in the Case above, the Covenant had been That the 20l. per Ann. should descend to a Stranger, or to the Daughter and a Stranger, there the Use would arise; per Anderson Ch. J. D. 55. Marg. pl. 3. cites P. 24 Eliz.

S. P. agreed by all. Poph. 21. Hill. 31. Eliz. in Sir Francis Englefield's Case. But if the Word 'Descend' had been joined it would be otherwise; for there is Election how he is to have it. D. Marg. pl. 5. cites 21 Eliz. when it was so held per Manwood and Chute in Scacc. and cites 2 H. 7. 16. By Feoffments to Ufes, pl. 16. cites 21 H. 7. 18.

3. If sufficient Agreement appears, the Word (Covenant) is not necessary. As if I will agree and declare to stand seised to the Use of my Son; per Hobart Ch. J. Winch. 61. Hill. 20 Jac. C. B. in Case of Buckley v. Simmonds.

4. Where a Deed is void in the Frame of it, as where A. gave, granted, and confirmed Lands to his Son after his Death, this shall not ensue as a Covenant to stand seised; for it had been void if Livery had been made. 2 Vent. 319. in Case of Salmon v. Jones, cites Mar. 50. [pl. 78. Trin. 15 Car.] Pitfield v. Pierce.

5. A.
5. A. seised in Fee of a Rent-charge, granted it to a Kinsman for Life, 2 Lev. 213, and the Grantor died before Attornment. It was resolved, that upon the Sealing and Delivery of the Deed an Use arose. Mod. 177, 178. Arg. in the Cafe of Scudamore v. Crofting, cites it as adjudged in the late Time in C. B. in the Cafe of Saunders v. Savin.

6. In Ejection on Not Guilty pleaded, a Special Verdict was That P. the Father, seised of Land 1 Sept. 1645, by Deed gave to his Son in these Words, viz. The Father, in Consideration of tender Affection, hath absolutely given; and Livery was indorsed, but not made; and adjudg'd an Use did arife to the Son. And a Difference taken where the Father by Feoffment gives to a Stranger to the Use of himself, Remainder over, there no Use arifes; but when the Conveyance is to the Party himself, there the Use will arise. Arg. Raym. 48, 49, in Cafe of Potter v. Potter, cites Mich. 1657. Symphon v. Keyles.

7. A. seised in Fee, by Indenture between him and B. his Son of the one Part, and 2 Strangers of the other Part, in Consideration of Natural Love to his Son, gives grants, and enfeoff the 2 Strangers to the Use of himself for Life, Remainder to B. in Tail Male, Remainder over, and covenants with the 2 Strangers that they shall enjoy the said Land to the Uses aforesaid, and exonerated, freed &c. from other Incumbrances. The Deed was seald and deliver'd, but no other Execution by Livery, nor by Attornment. Resolved that no Use was rais'd by this Deed, and that (A. being dead) B. was seised of the ancient Fee; for no Eilate pass'd to the Strangers for want of Livery, and no Use for want of Consideration; and had it been rais'd to them, it could not have come back to A. and B. because an Use cannot be rais'd upon an Use. Here could be no Transmission of Possession, there being no Execution by Livery, and the Words being Give, Grant, and Encoff. Sid. 25, 26. pl. 7. Hill. 12 Car. 2. C. B. Hove v. Dix.

8. Nor in the Cafe above can the Covenant with the Strangers, as above, raise an Use; because, 1. It is made to the Strangers. 2. It is made between the Parties only, without Mention of their Heirs, and so is intended to be personal. 3. If the Deed had been good it would ensue to another Intent, viz. to free the Land from Incumbrances. Sid. 26. pl. 7. Hill. 12 Car. 2. C. B. Hove v. Dix.

9. A. seised in Fee by Deed involv'd, did, in Consideration of Natural Love, Augmentation of her Portion, and Preference of E. his Daughter in Marriage, and for other good and valuable Considerations, give, grant, bargain, sell, alien, enfeoff, and confirm to the said E. and her Heirs, with a cordially Covenant for her quiet Enjoyment, and a Special Warranty. All the Court held, the Land should pass by way of Covenant to stand seised. Vent. 137. 141. Trin. 23 Car. 2. B. R. Crofting v. Scudamore.

---Mod. 175, pl. 11. Scudamore v. Crofting, S.C. in the Exchequer-Chamber, says that no Consideration of Money was mention'd, nor was the Deed involv'd, nor any Consideration of Natural Affection express'd, otherwise than what is implied in naming the Grantee his Daughter, and that there was no Livery endorsed, nor any found to have been made, nor was the Daughter in Possession at the Time of the making the Deed; and that 6 Judges were for affirming the Judgment; but Vaughan Ch. J. and Thurland Puffin Baron, c. contra. The Reasons of the 6 Judges were, 1. That in a Covenant to stand seised, those Words of covenaniting to stand seised to the Use of &c. are not absolutely necessary; and that it is sufficient if there are Words that are tantamount. 2. That no Conveyance admits of such
Variety of Words does this of a Covenant to stand seised. 5. That Judges have always endeavoured to support Deeds, ut res magis valeat &c. 4. That the Granter in this Cafe, by putting in Plenty of Words, shews that he did not intend to tie himself up to any one fort of Conveyance. 5. That if the Words Give and Grant had been alone in the Deed, there would have been no Question; & that if so, then Utile per inutili, the Whole body of every Man's Deed must be understood to stand seised. 2. That the Words Give and Grant endure sometimes as a Grant, sometimes as a Covenant, sometimes as a Release, and must be taken in that Sense which will best support the Intent of the Party. 3. That the very Point of this Cafe has received two full Determinations upon Debate; and that it were a thing of ill Consequence to admit of so great Uncertainty in the Law as now to alter it. 5. That there is here a clear Intent that the Daughter should have this Estate, (viz.) a Deed, a good Conveyance to raise a Ufe, and Words that are tantamount to a Covenant to stand seised. Wherefore the Judgment was affirmed. — S. C. cited 3 Lev. 572: in a Civil of Olman v. Sheaf.

2 Jo 104. S. C. adjudged accordingly. 2 Show. 11. pl. 9. S. C. adjudged.

10. A. seised in Fee dies, leaving a Wife and Son and Daughter. The Widow enters upon the Estate, and takes all the Profits; the Son comes of Age, and to prevent Differences, the Widow, and her now Husband, by Deed (to which the Son is Party) covenant for Love and Affection to stand seised to the Use of the Son &c. and at last the Son covenants, that if he die without Issue, he does give and grant the Lands in Queltion to her and her Heirs. The Son dies without Issue. The Mother enters, and the Daughter brings Ejection. After long Consideration it was resolv'd that the Use was well rais'd to the Wife by the Covenant, being the Intent of the Parties. 2 Lev. 225. Trin. 30 Car. 2. B. R. Colman v. Senhouse.

A. For the Deed was void.
Puces. 11. S. C. and ibid. 537. says it was affirmed in the Exchequer. — S. C. cited 3 Lev. 572. in a Civil of Olman v. Sheaf.

11. A. in Consideration of Marriage to be had between him and M. 5. That Judges have always endeavoured to support Deeds, ut res magis valeat &c. 4. That the Granter in this Cafe, by putting in Plenty of Words, shews that he did not intend to tie himself up to any one fort of Conveyance. 5. That if the Words Give and Grant had been alone in the Deed, there would have been no Question; & that if so, then Utile per inutili, the Whole body of every Man's Deed must be understood to stand seised. 2. That the Words Give and Grant endure sometimes as a Grant, sometimes as a Covenant, sometimes as a Release, and must be taken in that Sense which will best support the Intent of the Party. 3. That the very Point of this Cafe has received two full Determinations upon Debate; and that it were a thing of ill Consequence to admit of so great Uncertainty in the Law as now to alter it. 5. That there is here a clear Intent that the Daughter should have this Estate, (viz.) a Deed, a good Conveyance to raise a Ufe, and Words that are tantamount to a Covenant to stand seised. Wherefore the Judgment was affirmed. — S. C. cited 3 Lev. 572: in a Civil of Olman v. Sheaf.

Vern. 182. pl. 179. S. C. but not S. P. 12. A. by Deed granted, insoff'd, and confirmed his Land to Trustees to stand seised to the Ufe of his three Brothers in Consideration of Blood, natural Love, and Affection; but there was no Livery made. This shall work as a Covenant to stand seised; Per North K. And in the Cafe, tho' not taken Notice of, was an express Covenant that Cefly the Trust should enjoy according to, and for and during the Eaitates thereby respectively limited. Vern. Rep. 141. pl. 133. Hill. 1682. Thorne v. Thorne.

13. It was allowed that a Conveyance purporting a Feoffment, may operate as a Covenant to stand seised. Vern. 40. pl. 38. Patch. 1682. Thompson v. Atfield.

3 Lev. 356. 14. C. being seised in Fee, did by Deed &c. in Consideration of a Marriage to be had, covenant to levy a Fine before Whitsuntide next following, and declared that the said Fine, and all other Fines levied and executed before the said Feast, shall be, and the said C. and his Heirs shall stand and be seised to the Use &c. no Fine was levied; and the Question was, whether the
these last Words shall amount to a Covenant to stand feigned; and ad-
judg'd that they should not; for if fo, it would amount to a Covenant
to stand feigned preentially, and prevent the levying the Fine, as was in-
15. And the Cafe above is not like to a Covenant to levy a Fine, or make a
Feasment before such a Day to such Uses, and that for Default thereof, or
other Defaul in the Conveyance to stand feigned; for in such Cafe there is a
Time let for the levyng of the Fine, or the making the Conveyance the Way intended, which cannot be in the principal Cafe. S Lev. 126.
Poesch. 34. Carr. 2. C. B. Hule v. Cockerill.
16. A Settlement was thus, viz. if I have no Issue, and in Cafe I die
without Issue of my Body lawfully begotten, then I give, grant, and con-
form my Land &c. to my Kinwoman A. B. to have and to hold the fame
to the Use of my felt for Life, and after my Death to the Use of the said
A. B. and the Heirs of her Body to be begotten, with Remainers over
Adjudg'd a Covenant to stand feigned. 3 Mod. 237. Trin. 4. Jac. 2. B. R.
Harriden v. Autilin.

Lands might remain in his Blood and Kindred. The whole Court inclined that it was a Covenant to stand feigned; and afterwards Judgement was given accordingly for the Plaintiff.——Carth. 38. S. C.
and the whole Court held accordingly.

17. Where the Intention of a Deed is to transfer an Estate to a Son, etc. where
that the Uses shall arise out of the Estate so transferr'd, As where A. feigned
the Uses are of a Reverie in Fee expectant on an Estate for Life, dy by Deed Poll in the
Consideration of natural Love to his Wife, and B. his Son, and M. his
Daughter, give, grant, and confer to the Son all those Lands &c. the
convey'd by Reverion and Reversions &c. to hold to his Son to the Uses following (that
is to say) to the Use of himself for Life, then of the Wife for Life, then
of B. and the Heirs of his Body, then of M. and the Heirs of her Body
&c. This Deed had a Warrant but no Execution besides Sealing and De-
livery, either by Inrolment, Attornment or otherwise. A. died, the
Wife died, the Son died without Issue, yet no Use shall arise to M. 2
Vent. 318. Poesch. 2. W. & M. adjudg'd and affir'd in Parliament, and
so reversed a Judgement in the Exchequer Courts, Samon v. Jones.

since the Estate can't pass at Law, it shall pass by raising an Use. 2 Vent. 519. cites 2 Roll. a. 687.

18. A. in Consideration of natural Affection, and 55. to him paid by 2 Vent. 149.
his Son, Deed & Covenant &c. This will amount to a Covenant to stand
feigned, there being no Attornment. But then it must not be pleaded as a
Grant, but as a Covenant to stand feigned expressly. Carth. 293. Mich. — 3 Lev

190. S. C. accordingly.

19. In Replevin, the Cafe was that J. S. granted a Rent Charge of 14l. a
Year to A. and his Heirs, filling out of the Place where &c. and A. by
Deed, for the Love and Affection which she did bear to her Kinwoman B. did
give and grant to him and his Heirs her Annuity of 14l. per Ann. And
uppon Demurrr the Question was, Whether this Deed should operate as a
Covenant to stand feigned? Resolved that it should, the Consideration
being expressed to be for Love and Affection to her Kinwoman &c. and
that the Defendant had done well in pleading it as a Conveyance by
Way of Covenant to stand feigned; for had he pleaded it as a Grant of
the Rent, it would have been void. And Judgment accordingly. Carth

Counsel, tho' 3 Nels. Abr. 489. pl. 28. cites S. C. from thence as adjudg'd &c. nothing whereof is
there
20. A seised in Fee convey'd to Feoffees to the Ufe of himself for 99 Years, Remainder to Trustees to support Contingent Remainders, Remainder as to Part to his Wife for her Life, Remainder to his first and other Sons in Tail, Remainder to his own Right Heirs, with a Covenant for him and his Heirs, That he the said A. was seised of the Lands in Fee, and should continue so seised till the Execution of the said Deed. It was argued, that the Deed cannot have the Force of a Covenant to stand seised; for tho' the Covenant is for A. and his Heirs, yet it is not that he and his Heirs shall be seised; so that at most the Covenant can bind the Lands only for his Life, and the Land must descend to his Heir at Law, discharged from the Covenant: But as this Case is, it is impollible the Deed should have that Effect; for the Trustees being Strangers in Blood to A. no Ufe can arise to them, and then there will be no Estate of Freehold to support the Contingent Remainders; for the Limitation to A. himself is only for 99 Years. Ld. Chancellor was of Opinion the Deed could not enure as a Covenant to stand seised, for the second Reason given by the Counsel; but he took no Notice of the other Reason. Gibb. 146, 147. Mich. 4 Geo. 2. in Canc. Jackson v. Jackson.

(C. a) Arife at what Time.

1. If before the Statute of 27 H. 8. a Man will'd by his Testament that his Feoffees should make Estate to such one, an Ufe was raised pretendly, tho' no Estate was ever made by the Feoffees; sic dictum fuit in C. B. Dal. 88. pl. 3, 15 Eliz. in the Case of Audley, alias, Tutche v. Daniel.

2. A Fine was levied of the Manor of R. to the Ufe of J. S. viz. of Part of the Lands of 20 Marks Value, and of the Residue to other Ufes, and it was held, that the other Ufes shall not take Effect till Election made of the 20 Marks Land. Arg. Mo. 494. cites D. 335. Sir Fr. Calthrop's Cafe, and Windham's Cafe.

3. If one covenants to suffer a Common Recovery within a Year, and if not, to stand seised to the Ufes; if all the Terms of the Year pafs, it is impollible to suffer the Recovery, yet the Ufes shall not arise till the Year ended. Arg. Mo. 328. and agreed by the other Side Arg. But says, if the Covenant had been That before 2 Years in Term-time he would suffer for a Recovery, or otherwise stand seised to the Ufes, there the Ufes shall arise as soon as the Terms are pafs'd, before the 2 Years expire. Mo. 333. in Englefield's Cafe.

So if A. covenate with B. in Consideration of Marriage before the Feast of St. Michael, and if A. before Michaelmas, does not suffer such Recovery, then he shall be seised to the Ufe of C. if Trinity Term passes without any Recovery had, yet no Ufe shall arise before the said Feast. Arg. 4 Le. 175. and ibid. 174. per Clerk J. S. P. in Sir Francis Englefield's Cafe.

4. If a Man covenate that after his Death his Son and Heir shall have the Lands, now the Father has but an Estate for Life, and the Inheritance is veiled in the son. Arg. Le. 195. in Ld. Paget's Cafe.

5. A.


5. A. covenants that after 24 Years he and his Heirs will stand seised to the Use of B. his Son &c. there the Use in Fee voids in B. preently. Arg. Le. 195. in Ld. Paget's Cafe.

6. A. covenants that after his Death he and every one that shall be seised &c. shall be seised to the Use of B. his Brother, the Use shall rise to his Brother preently. Arg. Le. 195. in Ld. Paget's Cafe.

7. A. covenants to stand seised to the Use of B. his Cousin of certain Land for Life, and of other Land to the Use of another Cousin for Life, and after the Use of a 3d Cousin in Fee, after the said two Estates ended. The Eftate of the 3d Cousin shall commence respectively after the two Estates ended. Jenk. 272. pl. 90.

(D. a) *Out of what Things they may arise.*


Recl this cannot be but to the Use of the Grantee. ——— Uses cannot be raised of such Things *Laws into Uses conterminous,* as Commons, Ways in Forest, Authority granted to a Man and his Heirs to hunt in any Park, Chase, or Forest; per Doderidge J. Jo. 127. in Lord Willoughby's Cafe.—Cott. 46. Arg. cites Cro. J. 129. Beady v. Brook.

G. Law of Uses, 281. says that Things which are mere Rights cannot be conveyed by way of Use, as Commons &c. Ways in Forest; for a Man cannot walk over Ground to the Use of a 3d Person.

2. A Sum of Money was deliver'd to J. S. to the Use and Behoof of a Woman, to be deliver'd to her on the Day of her Marriage; and before the Marriage the Bailor revoked it. Two Justices held the Money countermandable, and 2 e contra. But Dyer, who was then absent, says, it seems that the Property of the Money cannot be changed by the Words, To the Use or Behoof. Dyer 49. a. b. pl. 7. &c. Pach. 33 H. 8. Lyte v. Penny.

3. Use may be of a Leave or Chattel. Agreed per Cur. And 294. Englefield's Cafe.


5. In Cafe, the Plaintiff declared that the Defendant seised in Fee of the Lands over which there was a Way, and of other Lands, by Indenture of Bargain and Sale involv'd, convey'd his Lands to J. S. in Fee, with a Way over his Lands, and that J. S. leased the Premises to the Plaintiff, and that the Defendant disturbed him. The Court were all of Opinion that by this Bargain and Sale the Land only pass'd, and not a Way over the same, because nothing but the Use pass'd by the Deed, and there cannot be the Use of a thing which is not in Effe, as a Way, Common &c. newly created, and no Use can be rais'd by Bargain and Sale, and consequently nothing pass'd by the Indenture. Cro. J. 189. pl. 13. Mich. 5. Jac. B. R. Bewdly v. Brook.

R r r 6. One

(b) Possibility is not a Thing in Effe, and a Use cannot arise out of it; and said that That is the Pinch of that Cafe; and adornment.
6. One seised in Fee may bargain and sell, grant and demise Land to B. and his Heirs to the Ufe of C. for Years, because he has a Fee-simple. But Leisfe for Years cannot grant and sell his Life to the Ufe of one for Years. Brownl. 40. a Nofi there.

7. To an Office, as the Office of Great Chamberlain of England, be- 

personal in the Execution, yet it is real in the Perception of Profits; and therefore an Ufe may be rais'd thereof. The Statute of 27 H. 8. is gen- 

eral, and the Word (Other) Hereditaments is very significiant, and reaches to this Cafe; For no Man can doubt but this Office is an Hered- 

ditament, and other than was mention'd before, and such an Heredita- 

ment whereof an Estate Tail may be created; Per Crew Ch. J. Jo. 117. 

1 Car. in Parliament, Lord Willoughby's Cafe.

8. A Serjeanty constituting of Homage and Fealty, the Service being 

merely personal, and to be performed by the Perfon of a Man, and re- 

fused in Feasance, may be granted to an Ufe in respect of the Possibility 

that the Tenancy may escheat, which perhaps never will be; Per Crew 

Ch. J. Jo. 117. 1 Car. in Ld Willoughby's Cafe.

9. A Stewardship or Bailwrick in Fee-simple of a Manor, may be granted 

to an Ufe being Personal Offices in Point of Service; Per Crew Ch. J. 

Jo. 117. in Lord Willoughby's Cafe.

10. So a Liberty of Return Brevium, which is Personal, constituting in 

Execution of Proceeds; Per Crew Ch. J. Jo. 118. in Ld. Willoughby's Cafe, cites it as rul'd 42 Eliz. B. R. in the Countefs of Warwick's Cafe.

11. So of a Sriebility of a County; Per Crew Ch. J. Jo. 118. in Lord 

Willoughby's Cafe, cites 3 Jac. the Earl of Cumberland's Cafe. 

12. Where it is said that a' Turk cannot be rais'd out of a Turk, and 

therefore a Bargain and Sale by Deed indentured and inviol'd, cannot be li- 

mited to an Ufe, because an Ufe cannot be limited to an Ufe; yet not-

withstanding when a Man is seised of an Estate of Inheritance of an Office 

belden by grsnd Serjeanty', wherein there is require'd Turk in the Perfon, 

yet au Ufe, which is a Pernancy of the Profits belonging to that Office, may 

be rais'd of the Estate of Inheritance, otherwise no Land holden by Grand 

Serjeanty could be transferr'd to an Ufe, nor any Ufe rais'd out of the 

fame, Per Crew Ch. J. Jo. 118. 1 Car. in Parliament, in Lord Wil- 

loughby's Cafe.

13. All Lands and Inheritances local, as Rents in Effè, Advouons in 

gros, Common for so many Benefits, Liberties, Franchises visible or local, may 

be convey'd by way of Ufe. Jo. 127. by Dodderidge J. in Parliament 

in Lord Willoughby's Cafe.

14. But Inheritances Personal, which have no Relation to Lands or 

local Hereditaments, cannot be convey'd by way of Ufe, as Annuities; 

Per Dodderidge J. Jo. 127. 1 Car. in Ld Willoughby's Cafe.

15. Nothing that passes by way of Extinguisheinent, can be granted to an 

E. a) To whose Use a Feoffment &c. may be.

1. A Feoffment or Gift to the Use of an Aliens born, is good; for Use if A covenant to stand ifref to the Use of his Brother, an Alien, the same is good, and the Use will arise; Per Curiam. Godb. 27.5. pl. 388. Hill. 16. Jac. B. R. in Case of Godfrey v. Dixon.—But by Rolli Ch. J. the Chancery cannot compel one to execute a Trust for an Alien. St 21. Pach. 21. Case in Cafe of the King v. Holland. An Alien could not compel the Feoffee to execute an Use; for it is contrary to the Policy of the Law that an Alien should plead or be impeded touching Lands in any Court of the Kingdom. G. Law of Uses &c., The King shall have the Use of an Alien upon his Purchase; for the Advantage a Man receives from his Duty, can extend no farther than the Obligation of that Duty reaches; but the Allegiance of an Alien is Temporary, and therefore so is his Property; and since he is incapable of Perpetual Subjection, and the Inconvenience is the same if this be a Feoffment at Law, or a Trust. Ibid.—But the King cannot feize the Land, but may have a Subpoena to get the Profits or the Estate executed to him. Ibid. 204.

2. So to the Use of a Monk is good; Per Yaxley, for the same Reason. But quære of Monk, and yet a Monk may be Executor. Br. Feoffments to Uses, pl. 29. cites 12 H. 7. 27. A Monk cannot have an Use, because he has vowed Perpetual Poverty, and therefore cannot have Property; but he may be an Executor, because permitted to another's Uses. G. Law of Uses &c. 44.

3. A Feoffment to the Use of the Parishioners of A. is void; by the An Use cannot be joined with Continuance, as Feoffment, Lease &c. Parishioners have no Capacity; but contra of Chariot personal. Br. Feoffment to Uses, pl. 29. cites 12 H. 7. 27.

Per Dyer. 2 Le. 18. in Brent's Case.—G. Law of Uses &c. 44. says, The Limitation of a Use to the Poss or of the People of D. is good, tho' no Corporation; For tho' they are capable of no Property at Common Law in the Thing trusted, because the Rules of Pleading require Persons claiming to bring themselves under the Gift, and no indefinite Multitude, without publick Allowance, can take by a General Name, yet they are capable of a Trust; For here the Complainants do not derive to themselves any Right or Title to the Estate, but their that it has been abused and misemploy'd by the Owners, contrary to Confidence.—Ibid. 204. S. P.

4. Feoffment made to the Use of Salisbury Plain, or of the Moon, the Feoffment is good, and the Use void; Per Brian. But per Markham, All is void. Quære inde; for it seems that the Feoffment shall be to the Use of the Feoffor, because it was done without Consideration. Br. Feoffments to Uses, pl. 37. cites 7 E. 4. 16.

5. In Quære Imped a Defendant pleaded a Feoffment of the Matter; S. P. nor nor, with the Advoceon, to the Use of the Defendant for Life, of the Use and after to the Use of the Kind; and per Cur. The King cannot take but by Matter of Record; * for he cannot have Fees to his Use. Br. Feoffments &c. pl. 17. cites 21 H. 7. 27.

S. C.—The King may be Cally que Use; but then the Declaration of Use, and the Conveyance itself, must both be Matter of Record, because the King's Title is compounded of both; I say, not appearing of Record, but by Conveyance of Record: And therefore if I covenant with B. 'tis to give a Fine to him to the King's Use, which I do accordingly, and this Deed of Covenant be not inroll'd, and the Deed be found by Office, the Use velox not; but c converto (f) inroll'd, and the Feoffment alsoe be found by Office, the Use velox. B. Bacon's Readings on the Statue of Ues, 349.—But if I ley a Fine, or suffer a Recovery to the King's Use, and declare the Use by Deed of Covenant inroll'd, the King be not Party, yet it is good enough. B. Bacon's Reading on the Statue of Uses, 435.—G. Law of Uses &c. 44. says that the King cannot have Fees to his Use, because he cannot take but by Matter of Record; yet he may take it when the Use is found of Record, where an Office is found of the whole Matter. 

6. A
6. A Fine was levied to J.S. to the Use of B. for Life; and alter to the Use of the Children of C. procreates. C. at the Time of the Limitation, had 2 Sons, and before the Death of B. had issue two Daughters. It was adjudged by 3 Jutices, but Owen, in, this Case, that the Daughters pothinate should not take, but only the Children which were in Fine at the Time of the Limitation. Cro. E. 334. pl. 1. Trin. 6 Eliz. C. B. Frederick v. Frederick.

7. A Use to a Person uncertain is not void in the first Limitation, but executes not till the Person be in Fine; so that this is positive, that an Use shall never be in Abeyance, as a Remainder may be, but ever in a Person certain, upon the Words of the Statute; and the Estate of the Feoffees shall be in him or them which have the Use. The Reason is, because no Confidence can be reposed in a Person unknown and uncertain, and therefore if I make a Feoffment to the Use of J. S. for Life, and then to the Use of the right Heirs of J. D. the Remainder is not in Abeyance, but the Reversion is in the Feoffor (quouique;) so that upon the Matter all Persons uncertain in Use, are like Conditions or Limitations precedent. Ld. Bacon's Reading on the Statute of Uses, 350.

8. So if I enteoff one to the Use of J. S. for Years, the Remainder to the right Heirs of J. D. this is in Abeyance not executed, and therefore not void. Ld. Bacon's Reading on the Statute of Uses, 350.

9. A Corporation may take an Use, and yet tis not material whether the Feoffment or the Declaration be by Deed; but I may enteoff J. S. to the Use of a Corporation, and this Use may be aver'd. Ld. Bacon's Reading on the Statute of Uses, 350.

10. If a Man covenants to stand feid to the Use of such Persons as J. S. shall name, this is void, tho' J. S. names one of the Covenantor's Sons. But if a Man covenants to stand feid to the Use of such of his Sons or Cousins as J. S. shall name, this is good, if he makes the Nomination; for a general Covenant that extends farther than a Man's own Kindred is void, and falls not within the equitable Confidence; and being in its Creation void, it can never be made good. G. Law of Uses &c. 49.

(F. a) Deed and Will. Out of what the Estate will arise. Out of the Deed, or out of the Will.

S. C. cited G. Law of Uses &c. 36, 37. That the Leaf shall bind the Son; for it being expressly declared to be to the Use of his Will, it supposes a Power in him to change it. —- Ibid. 212. says it is the same if he suffers a Recovery to the
the Uses of his last Will, and declares Uses by Deed in the mean time; yet they are revocable, being founded on a Recovery suffer'd to Uses that were alterable at the Will of A. Therefore in such a Case he may either declare new Uses, or if he makes a Lessee for Years, that shall bind the Persons nominated by the Declaration of the Uses to the Will, cites Hob. 349. Bro. 357. b. 19 H. 8. 12. Dy. 166. 524.

2. When Feoffment is made to perform his Will, or to the Use of his And. 245. Will, and after the Feoffor devi'd that his Feoffees shall have the Land for certain Time, adjudged that the Land passes by the Will; for and agreed that there is a Diversity where feoffment is made to the Use of a Will, or of Feoffor has Performance of a Will, or to such Uses as Feoffor shall declare by his Will; the Fee, and for in the first Cafe the Use of the Feoffment immediately executes in the Land as Feoffor; in the last Cafe it is in him only; for want of the Consideration if no Feoff in the Feoffees till the Will is made: So that in the first Cafe the Devise ment had shall be Devise of a Tenant in Possession of the Land; in the 2d Cafe been made. the Will shall be but Intrument to convey the Use of the Feoffment.

—L. 192. Mo. 230. pl. 434. Mich. 31 & 32 Eliz. C. B. Batty v. Trevilson. but S. P. does not appear.—S. C. and fame Diversitv cited Mo. 516. in Lord Rutland's Case, that when the Reference is to the Disposition by his Will, there the Will is the Substance to guide the Matter. But when the Reference is to the Will of his Owners whom he makes by his Will, there the Will is but Circumstance, and Intrument to name the Persons; and the Persons shall take nothing but the Naming by the Will, and the Substance by the Livery.——See pl. 3.

3. It was Refolved by Advice of all the Justices in England, 18. 6 Rep. 17. That when Feoffment is made to the Use of a left Will, the Feoffor has the Land again by the Ufe, and this is intended to the Feoffor and his Heirs. 2dly, That when he limits the Ufe upon Estates * executed to such a Perfon, and of such Estates as he shall name by his Will, there he has Power to control the Ufe by the Will; and this shall not enure by Will as a Devise, but upon the Statue executed as Limitation of Ufe. 3dly, If he has an Estate which he may pass by Will, and has also a Power to limit a Use of the same Land as is above said, that in such Cafe, if he devises the Land generally, or the Devise is in by the Devise in Estate; but if he limits the Ufe by Special Words, he shall be in of the Ufe upon the Statue executed. 4thly, If he has Power to limit an Ufe, and no Power to devise the Land in Estate, there if he devives the Land generally, this shall enure as a Limitation of the Ufe; because otherwise it shall be void, as in the former Cafe he could not devive the Land because he had convey'd two Parts before. Mo. 567. pl. 773. Parker v. Sir Edward Clare.}

Judgment affirmed. And Coke Attorney General, said that Puffup's Cafe in the Exchequer, after Argument, was adjudg'd accordingly, that it should not enure as a Devise, but as a Limitation upon the former Feoffment; for otherwise the Will would be utterly void.——S. C. cited Mo. 611. pl. 842.—Gilb. Law of Ues 210, 211. cites S. C. and the Distinction as above in Mo.—-S. C. cited ibid. 204, 205, and says the Reason of the Diversitv seems to be this, in the first Cafe he having limited no Uses, and having a Ufe to him and his Heirs, the Feoffment in both Cases being made without Consideration, the Statue executes the Estate fully in him again, and leaves nothing in the Feoffee; but in the latter Case, there being Ues expressly named, that the Feoffor had his Estate again, yet there is a Possibility left in the Feoffee, which becomes an Estate when the Contingency happens: then it will be objected, that the first Feoffment being made upon Truitt and Consideration to perform his last Will, this was a Ufe in Contingency; and to there is the fame Reason for this Case as for the other; but it may be answer'd, that this is no Ufe; or if it were one at Common Law, yet that "is now defroy'd by the Feoffee, who can never perform the Truitt repaid in him because the Estate presently by the Act out of him; at Common Law, it might be a Ufe, for he had an Estate in him; so that he could perform the Will of the Devisee. But in the other Cafe, the Will is but a Direction of the Persons, and the Estates they shall have according to this Power referred upon the Feoffment, and there upon the original Feoffment there was nothing for the Feoffees to do. When the Feoffment was made to the Use of the Feoffor's last Will, this was expounded to be no more than referring a Power to dispose of the Land by Will, which as Owner he might do before, and not that he design'd himself to raise a particular Authority to limit an Ufe to this or that Person upon the Feoffment; to the Feoffment being made without Consideration, was to the Use of him and his Heirs; and therefore when he disposes of the Land, tho' he did it as having a Power by the Feoffment, yet the Will took Effect, as he was Owner of the Land. But this Distinction seems to me to have no Manner of Reafon or Ground for it in any clear Construction. Gilb. Law of Ues, 210.
4. **Feoffment by A. of 2 several Acres**, whereof one was leased to B. and the other to C. to the Ufe of his last Will. A. makes Livery on the several Acres, but B. refuses to attorn.—A. makes his Will, and declares the Ufe to himself for Life, the Remainder to a Stranger. B. grants his Estate to the Feoffee, and the Feoffee dies. Per Cur. This does not enure to make Attornment and Surrender, as express Surrender will; for express Surrender admits of the Reversion to be in the Grantee to whom the Surrender is made. But here, before Attornment, the Grantee has nothing; and after Attornment, the particular Estate being granted, it shall be drownd'd in the Reversion; and tho' the Words of the Devise are That his Feoffees and all other Perfons, which after his Decease, shall be feified, shall be feified to the fame Ufes before declared; and of B.'s Acre he has no Feoffee, but the Feoffment void for want of Attornment, yet it was agreed that the Devise was good. 2 Brownl. 51. Hill. 8 Jac. C. B. Bone v. Stretton.

Ley 50. Mich. 9 Jac. in the Court of Wards. Brand's Cafe.

5. A Fine is levied to the Ufe of 2 several Perfons, and for such Estates, as the Conitor should limit and appoint by his last Will. He after this covenant to stand seised of **26** Lands to the Ufe of his 2d Son and his Heirs, and then makes his Will, and disposes of the Estate therein according to the Power. The Question was, which of those Dispositions should take Place, the Deed or the Will? The Will was according to the Power, relied upon the Fine, and the Deed interceded before they came to execute this Power. It was there held, that having made a Disposition of the Estate by Deed, tho' by a Covenant to stand seised, that should take effect; and the Will, tho' made according to the Power, came too late to execute it. Chan. C afes, 100, 101. per Holt Ch. J. in his Argument in Cafe of Bath v. Montague, cites Lee 39. Broad's Cafe.

6. Copyholder surrenders to the Ufe of his last Will. The Will is only declaratory of the Ufes of the Surrender, and nothing paffes by the Will, but all paffes by the Surrender; per Williams J. and agreed per Fleming Ch. J. Bull. 200. Pach. 16 Jac. Semaine v. ......

7. A. infeoff'd B. and C. to the Ufe of himself for Life, and after his Deceafe to the Ufe of such Perfon or Perfons as he should appoint by his Will, for such Interefts or otherwise as in his said Will should be specifieoted.—A. made his Will, which being without Reference to the Feoffment, the Law will construe it as the Will of him that is Owner, and may dispose of it as Owner, and not as Declaration of the Ufes, which is an Authority only; so that what the Will was sufficient to pass as a Will, passes by it; but other Things therein devised, which would pass as a Declaration of the Ufes of the Deed, will not pass; and it cannot be construed as a Will for one Part, and an Authority for another; Per 3 Justices against Croke J. Cro. Car. 38. pl. 5. Trim. 2 Car. C. B. Brown v. Tailor.

* Cited per Fleming Ch. J. 1 Bull. 200. in Soc. main't.
Rules relating to Uses.

1. **Uses** are not allowable but as they are consonant to the Rules in **Law and Reason**, by Anderson Ch. J. Cro. E. 534. Trin. 36 Eliz. C. B. in Cafe of Frederick v. Frederick.

2. This Rule is to be observed in Uses, that in every Cafe there is to be **Donor and Donee**, who shall take as well in Limitation of an Use as of an Estate executed; and tho' the Common Law knows nothing of Uses, yet now by the Statute an Use is an Estate, and to take such an Estate there ought to be a Donee; per Walmesly. Cro. E. 334. in Cafe of Bond v. Richardson.

Good or not. **Limited upon what.**

1. An Use to be raised on an Impossibility shall never arise, as if I covenant to feal seised to the Use of B. and his Heirs, after the End of a Term for Years, which J. S. has in the Manor of D. whereas J. S. has no Term, in it in such Cafe the Use shall never arise. Arg. Le. 195. And S. P. admitted, ibid. 199. pl. 279. in Ld. Paget’s Cafe.

2. An Use shall begin on a Contingency; Per Gawdy J. and cites 27 H. 3. And if A. and B. covenant by Indenture that A.’s Sons shall marry P’s Daughter, on which B. pays A. 100 l. and A. covenants that if the Marriage don’t take Effect, that A’s Feoffees shall seiser B. his Executors and Affigns to have the Issues and Profits of certain Lands, till B. his Executors and Affigns shall be contented of the said 100 l. by A. his Executors or Affigns, there if the Marriage takes not Effect upon such Contingent, the Use shall arise to B. Per Manwood J. 2 Le. 16. pl. 25. in Brent’s Cafe.

3. A future Use may well be raised on Non-Performance of a Condition; Le. 264. Per Glanvil. Cro. E. 689. in Cafe of Smith v. Warren, cites it as adjudged in Pl. C. Bracebridge’s Cafe.


Limited
(I. a) Limited in futuro.

1. If a man covenants that after his death his heirs shall stand seised to the use of his younger son, 'tis void; Per Hobart Ch. J. Hob. 313. in Case of Kibbet v. Lee.

2. Limitation of an estate on a covenant to stand seised may be made to commence after the ancestor's death; for the old Seizin of the covenantor is enough to support it. Arg. 2 Mod. 208. in Case of Southcot v. Stowel.

3. Where a new rent is created, tho' for life or in fee, it may in its creation be limited to take effect at any time in futuro, because it has no existence till that time comes, and so no suspension of any freehold. Carth. 308. Pach. 6 W. & M. B. R. Olmire v. Sheaf.

But where an old rent is granted for life, or in fee to commence in futuro, there the grant is void, because there is a rent in esse, and so the freehold of that rent which was in esse at the time of the grant will be suspended, and so the grant is void. Carth. 308. Olmire v. Sheaf.—Carth. 352. Arg. S. P. in Case of the King v. Kemp. — The same law of a new office, and the same difference is between a new and old office as between a new and old rent. Carth. 352. Trin. 7 W; 5. B. R. the King v. Kemp.

4. A feoffment to the use of the right heirs of J. S. after the death of J. S. is a future use; but if it were limited to arise after the death of one without issue, this is void, without a particular estate to support it. So is Pell and Brown's Café, unless the dying without issue be within a certain term, as within the life of a man; for otherwise the law will not expect the vesting of it; but will continue the limitation to be void, because the possibility is foreign; Per Holt Ch. J. and says that Holtcraft's Café in *Moor is express. 12 Mod. 39. Pach. 5 W & M. in Café of Davis v. Speed.

(K. a) New Uses. Where well limited upon a revocation or power reserved.

1. A suffer'd a common recovery, and 13 H. 8. declared the uses to be to the intent the recoverors should perform his will touching the disposition of those lands, and then will'd fo and so; Per Dyer Ch. J. A. may at any time after this will and the uses directed in it; for will and last will are intended all one. And this indenture is quia a will which is changeable; and the other justices agreed to this opinion. D. 314. b. pl. 97. Trin. 14 Eliz. Anon.

2. A seised in fee, and having issue only three daughters, B. C. and D. covenanted to stand seised to the use of himself for life, and after his decease, then to the use of his daughters, and if any die without issue their part to go to the survivors and the heirs of their bodies, provided that
it shall be lawful for the said A. to limit any Part of the said Land by Will

for the Advancement of any Person for Life, Years or Years, for Payment of his Debts, or Legacies, Preference of his Servants, or other reasonable Consideration. B. died without Issue, then A. affirm'd great Part of the Land limited before to B. to D. for the Advancement of D. and the Heirs of her Body for 1000 Years. Adjudg'd by all the Justices of England, that the Limitation for 1000 Years was void, and not warranted by the said Proviso. 1 Rep. 175. a. b. Hill. 26 Eliz. in the Court of Deeds &c. Wards, Mildmay's Cafe.

3. M. a Widow made a Feoffment in Fee to the Use of herself for Life, Remainder to B. her youngest Son in Tail, Remainders over, Reversion to her own right Heirs, with a Power of Revocation on tender of 10 l. to the Fees, and that then the said Uses should be void, and that the Fees be void to such new Uses as she should declare; afterwards by another Deed she did revoke the former Uses, and declared, that the Fees and their Heirs should stand seised of the Lands to the Use of G. W. for Life, Remainder to herself for Life, Remainder to B. in Tail, with Remainder as before; afterwards B. died, leaving a Daughter, then M. died, leaving A. her eldest Son and Heir. It seems, that if A. had entered after the Death of M. (which he did not) that in such Case he had defeated clearly the Estates and Uses limited by the first Indenture; but not having entered, the Attorney General thought it clear that the Estate limited in Tail to B. was not avoided. And yet it seems that the last Limitation in the new Indenture is not sufficient to settle good Uses de Novo, but that the old Uses being void the Land descends. No. 744. pl. 1023. Patch. 42 Eliz. in the Court of Wards. Vernon's Case.

4. A. seised in Fee infeoff'd J. S. and J. N. to the Use of himself for Life, Remainders over with a Power of Revocation on Tender of 12 d..create. Allwaters to the Fees, and then the said Uses to cease, and to be to the Use of him and his Heirs; accordingly A. revokes, and by a new Deed declares that J. S. and J. N. for good Consideration in the Deed expressed, should stand seised of the said Land to the Use of himself &c. But held that this 2d Indenture is not sufficient to raise the new Uses; for tho' the Consideration (viz. Blood and Affection) be sufficient, yet he does not covenant to raise them out of his own Pleffion, but that his Fees should be seised. So that none but they shall stand seised, whereas he has not any Fees, and therefore no Use can arise. And the Intent shall not make it to be confused that he himself shall stand seised, seeing that he has no Fees. Cro. E. 856. pl. 21. Mich. 43 & 44 Eliz. C. B. Atwaters v. Bird.
(L. a) Limitation. Good. Fee after a Fee.

1. Fee-simple in Fee by A. to two to the Ufe of A. and B. for their Lives; Remainder to C. their Son for his Life, and after to another two Fee-simplees to the Ufe of the Heirs of the Body of C. &c. All the Justices held that the 2d Fee-simple was not the Fee, because the Fee-simple was given before to the first Fee-simple; and one Fee-Simple cannot depend on another, notwithstanding that after the determining of the former Ufes for Life, the Fee-Simple should be vested again in the Heirs of the Feoffor: And that the Words (That the 2d Fee-simple should be feised) should be void. And the latter Ufe is utterly void, and shall not be raised by Indentment. But otherwise it had been if it had been by Devise. Godd. 7. pl. 9. Patch. 23 Eliz. C. B. Anon.

2. A. seised of Land in Fee and of other Land in Reversion after the Death of J. Tenant for Life, leived a Fine of the Whole, as to that Parcel in Possession to the Ufe of himself for Life, the Remainder to M. his Wife for Life, Remainder to B. his Son and heir apparent, his Heirs and Assigns for ever; And as to the other Parcel in the Possession of J. after the Death of J. and A. to the Ufe of B. his Heirs and Assigns for ever. And in Case B. die, living A. then the Whole to the Heir of A. and his Heirs for ever, B. dies leaving Ilifie C. then J. and M. die. A. conveys the Land to a Stranger and his Heirs. And whether C. or the Grantee of A. should have the same Land, is the Question. This Case was argued by Pollexfen for C. the Heir of B. and he reports that the Court was of Opinion that the Clause, And in Case B. dies &c. being by Way of Limitation of an Ufe, was a good Limitation; but that no Judgment was given, because there were diverse Imperfections in the Verdict, but that a new Venire facias was awarded, and afterwards the Parties agreed. Pollex. 72. and 99. 22 Car. 2. B. R. Carpenter v. Smith.

(M. a) Uses upon Uses.

1. Use cannot be on a Ufe. See (O 3) pl. 4. and the Notes there.

2. Possession is transferr'd to the Ufe by the Statute, and therefore an Use cannot be express'd upon an Ufe, as Fee-simple to J. S. to his own Ufe, and that he shall be seised to the Ufe of R. H. This is void to R. H. because the Ufe and Possession was to J. S. before. Mo. 46. pl. 138. Per Brown J. Mich. 5 Eliz. Anon.

3. A. enfeoffed B. and C. (his two Sons) to the Ufe of himself for Life, and after to the Ufe of them and their Heirs, Ad ultimam voluntatem, and afterwards devised it to D. Per Gaudy, D. shall not have the Land, for an Ufe can't be limited to an Ufe. So that when he limits it to the Ufe of his two Sons and their Heirs, he cannot afterwards limit it to the Ufe of his last Will; but the Words, Ad ultimam &c. are void Words, as to the limiting any Uses thereby. And to that Opinion Clench J. agreed; but Fenner J. doubted. Adjournatur. Cro. E. 382. pl. 2. Patch. 37 Eliz. B. R. Girland v. Sharp.

(N. a) Springing
(N. a) **Springing Uses.** What are, and good.

1. If A. covenants with B. that when A. shall be enfeoffed by B. of three Acres in D. that then the said A. and his Heirs, and all others feised of the Land of the said A. in S. shall be thereof seised to the Use of the said B. in the Court of Wards; or the Land is and was bound with the Use aforesaid, * to whom Hands forever it shall come;* and it is not like to the Cafe where the Feoffee in Ufe sells the Land to one who has no Notice of the first Use. For in this first Cafe the Use was not in Effe till the Feoffment be made of three Acres, and then the Use commenced. Br. Feoffments al Ufes, pl. 30, cites 30 H. 8.

2. Tho' Ufes of a Fine by A. to B. are upon Condition to pay to A. 40l. per Ann. for his Life, but in Cafe of Default, then to the Use of A. for his Life. Per Glanvil J. this being to the Confor himself is a Condition. But if it had been limited to a Stranger to have arifen on such a Condition, it had been a springing Use to him on the Non-Performance thereof. Cro. E. 689. pl. 23. Trin. 41 Eliz. C. B. Smith v. Warren.


4. Feoffment to the Use of A. and his Heirs, to commence 4 Years from thence, is good, as a Springing Use, and the whole Estate remains in the Feoffor in the mean Time; Per Holt Ch. J. 2 Salk. 675. in Cafe of Davis v. Speed.

5. Feoffment to the Right Heirs of B. This is no good Springing Use, so it is, if it were to commence after the Death of A. without Issue, if it is within 20 Years; Per Holt Ch. J. 2 Salk. 675. in Cafe of Davis v. Speed.—12 Mod. 39. S. C. and S. P.—Mod. 120. in Cafe of Pybus v. Mitford.

6. If A. covenants to stand seised to the Use of the Heirs of his own Body, or to the Use of such Son as J. S. shall name, it is good as to the Right Heirs of B. after his Deceafe. 1 Salk. 225. pl. 3. 5 W & M. in B. R. in Cafe of Lamb v. Archer.

7. If A. covenants to stand seised to the Use of the Heirs of his own Body, and there remains an Estate for Years by any kind of Subdivision of the Inheritance or Occupier of my Estate, but marry at the Common Law. Ed. Bacon, on the Statute of Ufes, 352.
(O. a) Second, or shifting Uses.

1. **NOTE** if a Man made a Feoffment in Fee before the Statute of Uses, made Anno 27 H. 8. cap. 10. or after this Statute to the Use of W. and his Heirs till A. paid 40 l. to the said W. and then to the Use of the said A. and his Heirs, and after comes the Statute of Uses and executes the Estate in W. and after A. pays to W. the 40 l. there A. is seised in Fee if he enters; by several. But by some, A. shall not be seised in Fee by the said Payment, unless the Feoffees enter; Quære inde. And therefore it seems to be surest to enter in the Name of the Feoffees, and in his own Name, and then the one Way or the other the Entry shall be good, and shall make A. to be seised in Fee; and therefore fee that a Man at this Day may make a Feoffment to Uses, and that the Use shall change from one to another by A's Ex post facto by Circumstance, as well as it should before the Sate 27 H. 8. of Uses, Br. Feoffments al Uses, pl. 30. cites 6 E. 6.

2. If I limit an Use jointly to two Persons not in Esse, and the one comes to be in Esse, he shall take the intire Use; and yet if the other afterwards comes in Esse, he shall take jointly with the former. J. D. Bacon on the Statute of Uses, 351.

3. A. seised of the Manor of K. leased 6 Acres, Parcel of it to J. S. for 21 Years, without any Remainder, and after letting the 6 Acres to J. D. for 26 Years, to begin after the Expiration of the first Lease, rendering Rent; and afterwards made a Feoffment of the Manor and all his Lands to the Uses of the Feoffees and their Heirs, upon Condition if they did not pay 10,000l. within 15 Days, then it should be to the Use of himself and M. his Wife, the Reversion to C. their 2d Son in Tail, with divers Remainders over, the Remainder to his Right Heirs; Livery was made of the Land in Possession, and not in the six Acres, the Money was not paid; afterwards J. S. attorn'd; A. and M. died; the first Lease ended; J. D. died; M. married the Defendant; C. disfaim'd for the Rent. Adjudg'd, that tho' the Reversion of the 6 Acres did not pass by the Livery without Attornment, yet the Attornment of J. S. the first Leafe, was sufficient; and altho' the Use to the Feoffees and their Heirs was determind before the Attornment, yet the Attornment was good to pass the Reversion to the last Contingent Use, and to the Title of C. to the Rent was good. No. 99. pl. 243. Hill. 14 Eli. Harwell v. Lucas.

4. Conveyance by Fine to A. B. to the Use of C. D. and M. his Wife for Life, Remainder after their Decease to the Use of C.'s Executors for six Months, and after the six Months ended to the Use of E. and the Heirs Male of his Body, Remainder to C. and his Heirs, provided if C. at any Time after have Issue of his Body, or any Wife of C. at his Decease be Enent with any Issue begetten by C. then after such Issue had, and after 500 l. paid to G. or render'd and refused, within six Months after the Birth of such Issue, then the Use of the said Lands immediately after the six Months expired shall be to C. and the Heirs of his Body, and in Default to C. and

5. A. made a Feoffment to the Use of himself in Tail, Remainder to B. his Son in Tail. A. died, B. enter'd, and by Indenture bargain'd and sold (without any Dedi & Conceiff) the Lands to the Use of J. S. in Fee; and in the Indenture was a Letter of Attorney to make Liiver, which was made accordingly. J. S. by the said Indenture covenanted, that if B. before such a Day paid 40 s. that then J. S. and his Heirs would stand seised &c. to the Use of B. and his Heirs, and if B. did not pay &c. then if the said J. S. did not pay to the said B. within 4 Days after, J. S. and his Heirs should thenceforth be seised to the Use of the said B. and his Heirs &c. and B. covenanted further to make such further Affiance as the Counsel of B. should advise. Both fail'd of Payment; B. levied a Fine to J. S. without any Consideration. It was adjudg'd a good Feoffment well executed by the Liiver, notwithstanding the Words of Bargain and Sale only; and that the Covenant to be seised to the new Uses conditionally, upon Payment and Non-payment, being in one and the same Deed, should raise the Use upon the Contingency according to the Limitation of it. Le. 25. pl. 31. Trin. 26 Eliz. B. R. Benicombe v. Parker.

6. A. made a Feoffment to the Use of himself for Life, Remainder to his Wife for Life, Remainder to his right Heirs, with a Premium if his Son interrupted his Wife it should be to the Use of the Wife and her Heirs. A. the Reason thereof made a Lease for Years, to begin after * his Decease, and died. The Removal thereof to Son disturb'd the Wife. Revolved, that the Uses will not arise to give the Wife the Fee. Arg. Cro. E. 765. in Cafe of Wood v. Reynold, cites it as Hill. 42 Eliz. The Cafe of Leigh v. Burton.

But Godfrey Arg. said he conceived the Reason Removal, and no new Estate, and a Condition cannot be antec'd thereto. Ibid. According to Mo. 74 pl. 1052. Mich. 41 & 42 Eliz. Barton's Cafe, S. C. says it was to begin after the Wife's Decease. Revolved by Pagham and Anderson Ch. 7. clearly, that the future Use was check'd by the Lease, and never shall arise; but since it could not arise at the Death of the Wife, by reason of the Lease for Years, it is destroy'd for ever; yet nota, (says the Reporter) that the Lease was only an Interc睥 Termi all the Time of the Wife's Life; and the Disturbance which ought to raise the Use in Fee to the Wife, was made in her Life before the Commencement of the Lease. G. Law of Uses &c. 148, 159. cites S. C. and says the Wife shall not have the Reversion, because the Lease has alter'd it; for there is no Estate to be executed in the Wife as was in being at the Disposition of the particular Estate.

7. A. bargain'd and sold Land to B. and his Heirs for 500 l. upon Condition That if A. paid B. 500 l. he might re-enter, and be seised to the Use of himself and his Heirs, until he attempt to alien without the Affent of B. and then to the Use of B. and his Heirs, and a Fine was levied to those Uses. A. paid the 500 l. and enter'd. Afterwards A. alien'd to J. S. without the Affent of B. Per Ld. C. Egerton, No Use will arise to B. because B. entering for the Condition broken, ought to be in of the old Use and Estate, and cannot be seised to the other Use; also the Fine was levied to B. by which B. who was the Conofor, and also Bargainor, who came in by the Use of the Fine, cannot stand seised to any other Use; for then there should be Use upon Use. Mo. 752. pl. 1554. Pach. 3 Jac. in Chancery, Holloway v. Pollard.
(P. a) Coffers of Uses. How. And in what Cases they arise again.

1. RENT was granted by Fine, with Condition that when any Heir is within Age, that the Rent shall cease during the Nonage, and the Fine recover'd Douce during the Nonage, & Coffers Executio, till the full Age of the Heir. Nota. Br. Judgment, pl. 41. cites 24. E. 3. 61.

2. A. levied a Fine of Free Yard-Land to the Use of his Son, M. and his Wife, the Heirs of the Body of B. Prorofo if Baron die, living A. that M. shall have one Yard-Land and a half in Possession for her Life; but does not say what Yard-Land and a half in certain. B. dies. M. enters, and elects one Yard-Land and a half. Adjudged by all the Justices except Anderson, with the Advice of Popham and Periam, That the Use for the Life of A. ceases by the Election, without Entry into the Land elected by M. Mo. 602. pl. 332. Trin. 39 Eliz. C. B. Marthall v. Marthall.

3. An Estate Tail may cease for a Time, and yet rise again; and may cease as to one Person, and be in Force and Use as to another; per Hobart Ch. J. Hob. 257. in Cafe of Duncomb v. Wingfield, cites Beaumond's Cafe.

4. If I entail a contingent Use, both Estates are alike subject to the contingent Use when it attains; as when I make a Feoffment in Fee to the Use of my Wife for Life, the Remainder to my first begotten Son, I having no Son at that Time, the Remainder to my Brother and his Heirs; if my Wife dies before I have any Son, the Use shall not be in me, but in my Brother: And yet if I marry again, and have a Son, it shall devest from my Brother, and be in my Son. Ld. Bacon's Readings on the Statute of Uses, 350, 351.

(Q. a) Uses interrupted.

1. LESS E. for Life, with Condition to have Fee, makes a Lease for Years. This does not suspend the Power to inerease the Estate by the Condition. Arg. See Mo. 612. in pl. 842. Anon.

2. Nothing can disturb the future Use, but what would destroy a present Use at Common Law. Arg. See Mo. 614. in pl. 842.

3. A. levied a Fine to the Use of his Son and his Heirs, till a Marriage had between B. his Son and M. and after to the Use of A. for Life, and after to his Executors for 21 Years, for Payment of Debts and Legacies; and after Determination of the said Term, or for want of Limitation of the same, to the Use of B. in Tail, Remainder to the Use of A. in Tail, Remainder over. A. devies Portions to his Daughters out of the Land by his Will, and dies, before the Marriage, seized of the said Lands. Afterwards the Marriage took Effect. The two Ch. Justices, for Difficulty, would not resolve the Case; but they inclin'd clearly, that if there had been a Devise of the Land, that this would interrupt the Rising of the future Use for the Jointure and the Tail; but they doubted of the Devise, because he devies the Portions out of the Lands, and did not devise the Land. Mo. 731. pl. 1018. Strangewayes v. Newton.

G. Law of Uses &c. 126. cites S. C. thus, viz. Feoffment to the Use of A. in Fee, and if B. pays for much &c. then to B. in Fee. A. devies this Land, and dies. It destroys the contingent Estate; otherwise it is, if he had devised Portions out of the Land; for that could not alter the Freehold.
4. A. covenants to stand feised to the Use of his Wife which shall be, and then he makes a Lease of the Land, and afterwards takes a Wife. This is such an Interruption, that the Use shall not arise to the Wife. Lame. 61. in Sir Edward Dimmock's Case, it was said by Bromley J. to have been so adjudged, but that in Winter's Case, 4 Jac. B. R. and also in Russell's Case, tho' it seem'd agreed that the Lease for Years should be good, yet it was not resolved but that the Wife may have Freehold well enough, by virtue of that Covenant.
5. Feoffment to the Use of A. when he marries my Daughter: If I sell the Land before A. marries her, and after he marries her, A. never shall have the Land. Arg. Litt. R. 254. in Beck's Case.

(R. a) Uses. Forfeited or barr'd. In what Cases.

1. If Ceily que Use be attainted of Felony, the Lord shall not be aided by Subpoena to have his Ejectment; and if the Heir be barr'd by the Corruption of his Blood, then the Feoffee, as it seems, shall retain the Land to his own Use. Cary's Rep. 14, 15. cites Brooke, 34.

2. No Use can be forfeited at this Day, unless it be of a Chattle or a Lease; for all Uses of Franktenement are, by the Statute of 27 H. 8. executed in Possession; and so there is no Use which can be forfeited, and it would be in vain to give Uses where no Use is at the Time. And. 294. pl. 302. in Sir Francis Inglefield's Case.

(S. a) Uses chang'd. In what Cases.


2. Where it was found by Office that it was covenanted by Indenture between two, that the Lands and Tenements of the one shall defend, revert, or remain to his Son and Heir apparent in Consideration of the Marriage, and to the Heirs of the Body of him and his Wife, this shall not change the Use for two Causes, the one because the Matter is future, and to be done and the Justices, not executed, the other is inasmuch as the Party by this disjunctive (Remain, Defend or Revert) may do which of them he will; therefore this shall not change the Use, but rest in Covenant explicable to be done; and
3. If Feoffment makes Feoffment with Warranty in Deed or by Deed, which Cave implies a Recompense, yet this shall not alter the Use. Arg. D. 10. pl. 31. Trin. 28 H. 8.

4. A Man cannot change a Use by a Covenant that is executed before. Br. Feoffments al Ufes, pl. 54. cites 36 H. 8. Per Hales.


6. If a Feoffment be by Indenture rendering Rent, it seems that this does not alter the Use; for this Rent makes no Consideration; because it issues out of the Land, and the Feoffment shall be seised of it to the Use of the first Feoffor &c. Quere inde. Arg. D. 10. pl. 31. in Cave of the Abbot of Bury v. Bokenham.

7. If A. in Consideration that B. had convey'd Lands to him in Fee after the Death of B. covenses to levy a Fine to R. and S. of other Lands to the Use of A. for Life, the Remainder to B. in Tail. It was held that no Use shall be alter'd unless a Fine be levied; for if the Use should be alter'd immediately, the Covenant could not possibly be perform'd. D. 96. a. pl. 41. Hill. 1 Mar. Bainton's Cave.

8. Covenant for Marriage or Money that B. shall have the Manor of D. by express Words, this shall change the Use. D. 96. pl. 41. in Bainton's Cave.

9. A. covenanted for Love and Favour, and divers other Considerations her moving, to affuire such Lands by Recovery before such a Day to J. S. (who had married the Daughter of A. and were Parties to the said Indenture) his Heirs and Assigns, to such Uses &c. therein after to be declared. And J. S. covenanted to make Estate within 8 Months after to the said A. for her Life, the Remainder to J. S. and his Wife in special Tail, Remainder to the Wife in Fee. The Recovery was bad, but no Estate executed again by the said J. S. It seem'd to the two Chief Justices, and Staunford and Dyer J. that no Use was chang'd by the Indenture and Recovery only, without an Estate executed; for if it was, then it would be impossible to perform the said Covenants; and no Use is after declar'd. And they thought that after the 8 Months, and no Estate executed, the Use ought not to be chang'd; for then A. should have her first Estate, viz. a Fee-simple, which never was imagin'd; and no Subpoena will lie for her as for
For Ceffy que Ue to compel J. S. to execute Estate &c. because the has her Remedy at Common Law by Action of Covenant. D. 162, a. pl. 48.

Trin. 4 & M. W. Mingfield and Littleten.

10. A made a Peomint to Trystees, and afterwards by Indenture, re-
citing the Pemint and the Date, and also that it was to the Intent that
his Feoffees should perform his Will, as follows in Effect, viz. My Will is Wrs-
that B. (one of the Trystees) shall receive 100 l. Debt, and also shall stand liab.
feied to pay A.'s Debts, and after the Debts paid shall make Estate of the
said Lands to him the said A. and M. his Wife, and the Heirs of their Bo-
dies, with diverse Remainders over. A. had illue by M. and had a
Daughter by a former Wife. The Feoffees never made Estate to A. and
Hill. 1 his Wife; and it was the Opinion of several Judges that no Ue was
changed; for it is not a last Will, but an Intent. And that the Feofees
shall be feied to the Ue of A. the Feoffor and his Heirs, because there
was no Consdonation for which they should be feied to their own Ue,
yet that cannot make a new Ue to A. and M. in Tail, without con-
veying an Estate; for the Wife is a Stranger to the Land, and alio to the
other Ue. And it cannot be a Testament or last Will; for the Estate
mention'd in the said Writing ought to be made to A. and M. A.
ought not be taken by his own Will. This was depending in Chancery; and
-D. 324 b. and the Advice of the Judges being require'd, they gave their Opinions that
no Ue was changed, nor any Estate vested in A. and M. A Decree
was made accordingly, till Proof might be made of such an Estate
made. 2 Le. 159. pl. 194. 28 Eliz. in Can. Edswodley's Case, brought
in again, because the Opinion of B. R. was against the former Resolutions: Whereupon the Judges of both Benches, and the Chief Baron and the King's Counsel, met at Serjeant's Inn, where the Case was
debated; And by the Opinion of the Attorney General, the Ch. Baron, and the 4 Judges of C. B. the frst
Reposnion in 1 Eliz. was confirm'd. But Bromley Solicitor General seem'd contra, and adher'd to the
Opinion of the Judges of B. R. But the Book says there was an Addition to the principal Case, to infoce
the Opinion, contrary to the former Reponsion; -S. C. cited No. 515. 516. in Lord Burchett's Case.

11. J. N. Ceffy que Ue in Tail, 14 H. 8. by Indenture between him And be had, covenanted with the said J. S. That neither be, nor any of the Feos-
fees feied to his Ue, have made, or hereafter shall make any Estate. Releale
Grant of Rent, levy any Fine, or do any other Incumbrance whatsoever of any of his Manors, Lands, &c. But that all the said Manors
&c. shall immediately desend or remain to his said Son, or the Heirs of his Body, after the Decease of the said J. N. It was the clear Opinion of all the
Judges in this Case, that by the said Indenture no Ue is changed in
J. N. nor any Ue rais'd to the said Son and Heil, but that it is only a bare Covenant. 3 Le. 6. pl. 18. Micbic. 4 Eliz. C. B. Anon.

12. Covenant that Bargainee shall stand seied to the Ue of the Bargainer
and his Heirs on Payment of 20l. The Ue is not alter'd by a Tender, 5 S. C. and
but upon Payment it is. But otherwise in Case of a Feoffment, Per S P by
Dyer. Mo. 35. pl. 115. Trin. 4 Eliz. Anon.

13. If the Words had been, that if the Feoffor pays the Money to the
Feoffee, or tenders them &c. in this Case by the Tender the Ue shall be 5. S. C. ac-
alter'd; Per Dyer. Mo. 35. pl. 115. Trin. 4 Eliz. Anon.

14. A before the 25 H. 8. covenanted with C. in Consideration of a Mar-
rriage to be had between F. his Daughter and Heir apparent, and B. the
Heir apparent of C. that he would retain Land for Life, and after his Death

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that his Daughter and her Husband shall have it in Tail, and that he and all others then or after severed shall immediately after the Effousals be severed to the said Use; and also that he would make Affurance to the said Use. The Marriage is had. Afterwards he bargain'd and sold the Land for 200l. (but nothing paid) to one who had Notice of the Covenants and Use, and levied a Fine and suffer'd a Recovery, but retain'd the Land during his Life, and died; and the Son and his Wife entred, and made a reoeftment to their first Use. And adjudg'd good, and the Ufe chang'd by the first Indenture and Agreement. D. 235. pl. 20. Mich. 6 & 7 Eliz. Aflaby v. Lady Manners.

15. Covenant to stand seifed for Acquaintance to the Use of A. for Life, and after to B. for Consanguinity in Tail, or in Fee. The Remainder is good, and yet the particular Estate is not alter'd, but remains in the Covenantor during the Ufe of City que Vie. Arg. Mo. 310. in Englefield's Cafe, cites Le Paget's Cafe.

16. Covenant to stand seifed to the Use of himself for Life, Remainder over, is an Alteration of the Ufe; but not if it be without Remainder, or if it be limited to himself in Fee. Arg. Mo. 528. in Englefield's Cafe.

17. Covenant to stand seifed to the Ufe of himself in Tail, is an Alteration of the Estate, and not part of the old Estate. For he is become Tenant for Life by the Covenant, and he shall pay Fine for Alienation to the King; per Clark J. Mo. 325. in Englefield's Cafe.—13 Rep. 56. Resolvd Mich. 7 Jac. in Samme's Cafe; for by the Operation of the Statute the Estate which he hath at Common Law is divested and a new Estate vested in himself, according to the Limitation of the Ufe.

18. If one seifed in Fee covenants to stand seifed to the Ufe of himself for a less Estate, and after to the Use of another; so that the other cannot have his Estate without an Alteration of the Ufe in the Covenantor himself, there the Ufe must of Necessity alter in himself, because of the Estate of the other. Arg. Mo. 505. in Lord Buckhurst's Cafe, cites it as fo adjudg'd in the Exchequer in Englefield's Cafe.

19. A Fine was levied to A. B. C. and D. and the Parties by Indenture declar'd that it was levied at Intenion, that the Covenantor should make an Estate to such a Person as the Covenantor should name; and afterwards was a Provifo that the Covenantor should not be seifed to any other Use than that which was specified before, and that they should not incumber the said Lands. The Covenantor named A. one of the Covenantor, and willd that the other 3 should release to him. Gawdy J. held, that by this Nomination the Ufe did vest in A. but Wray and Jellieries e contra, because after this Release A. is in the whole by the Covenant, and not by his Co-Feoffees; and by this Limitation the Covenantor ought to name such a Person as ought to take the Estate, and fo cannot one Jointenant do from his Companion; besides the Words are, that they four shall take [make] the Estate. 4 Le. 23. pl. 72. 18 Eliz. B. R. Bettuan's Cafe.

20. A. devis'd Land to the Ufe of B which Ufe by Possibility may or may not be good; if afterwards City que Ufe cannot take, the Devise shall be to the Ufe of the Devise and his Heirs. Per Anderon. Le. 254. pl. 342. Trin. 33 Eliz. in the Court of Wards, in Ellis Hartop's Cafe.

21. If one covenants upon good Consideration, that he will stand seifed to the Ufe of the Feme during her Life for her Jointure of Lands whereof he is seifed in Fee, or by Deed, or without Deed, bargains and sells his Land for 100 Years, the Feoffee shall have for Life, the Bargainee for Years; and those that had the Fee have it in them as they had before,
fore, and not of any new Estate, but out of their Estates of Fee those Estates are deriv'd. And 329. in Case of Dillian v. Frein, alias Chudleigh's Cafe.

22. If J. S. is seised to Use of A. for Life, of B. in Tail, and of C. for Life, and of the Feoffor in Fee, and the Feoffor by Fine grants the Reversion, the Fee-timple part, and the Feoffees have not the general Fee, as they had before, but Estate in Fee till all the particular Estates are determin'd. And if Tenant for Life in the first Limitation makes a Grant of the Land during his Life, yet Estate remains in the Feoffees to the Use of the Tenant in Tail in Use, and Remainder-man for Life; and so of like Estates created by the Statute. And 333. in Case of Dillian v. Frein, alias Chudleigh's Cafe.

23. A Man infeoffs another to the Use of A. for Life, and after his Death to the Use of his Daughter till B. pay her 100l. and then to the Use of B. Per Winch and Hutton J. only in Court, the Daughter has no Remedy for the 100l. if B. will not pay it, except he makes a New Promit, and then upon that the shall have an Action upon the Use, upon which, if the recover, and have Satisfaction, the Use will arise to B. but otherwise, tho' the has Judgment to recover; and whether the same is discharg'd is tiable by the Record of the Recovery. Winch. 71. &c. B. Barley v. Fother.

another and his Heirs, this is good, and the Use shall well arise; cites 8 Rep. 69. to Eltchetlock's Cafe.

As when J. S. shall marry, or come to his Age of 21 Years, then to the Use of another and his Heirs, this is good by way of Limitation of Use. Avg. 2 Bull. 273. in Case of Simpson v. Southerne.

(T. a) Determined. When the Uses shall be said to be determined in Respect of the Words of Limitation.

1. A Gave Land to W. R. and J. S. for their Lives and the Life of the Receiver, the Statute thought the Estate determined, if the Bar can be made if the estate being gone upon which the Use was rais'd. D. 186. pl. 1. Mich. 2 & 3 Eliz. Anon.

Statute of 29 H. 8. — 3 Bull. 18. in Case of Cowper t. Franklin, it was said by Dodridge J., that this Cafe is good Law. — A Rent was granted to W. R. and J. S. during the Life of B. to the Use of B. and afterwards W. R. and J. S. die. The Court held that the Rent continues to B. For the Use is vested by the 27 H. 8. D. 186. a. Marg. pl. 1. cites Mich. 41 & 42 Eliz. Crawley's Cafe. — Cro. 721. pl. 50. S. C. held, that it was granted to the Use of B. it vested in him by the Statute 27 H. 8. so as he had an absolute Estate during his Life; and the Lives of the Grantees are not material, the Estate being transfer'd from them: Otherwise it had been of a Grant to a Use before the Statute. — Ow. 186. S. C. accordingly, and that the Statute has conveyed the Use with the Possession. — 2 And. 130. pl. 74. S. C. makes a Difference between a Grant of the Rent to W. R. and J. S. to the Use of B. during his Life, and a Grant of Rent or Land to W. R. and J. S. during the Life of B. to the Use of B. that in the first Case the Rent determines by the Death of the Grantees, and shall not be continued by the Statute, or otherwise; for B. had no greater Estate in the Rent than W. R. and J. S. had, and yet the Statute says, That Cefly the Use shall be seised of such Estate as he had in the Use; and the last Part of this Branch of the Statute is, That he shall have the Estate of him who is seised according to the Form, Manner, Quality, and Condition as he had the Use; In which Case none of those Branches make B. by the Words, to have such Estate in the Rent as he had in the Use; but that in the last Case B. shall have it during his Life, because the Uses and Estates agree together. And that all this was agreed by all the Judges.

2. Land was given to Baron and Feine, to the Use of them and the Heirs of their Belles. This was adjudg'd an Estate Tail, and the Judgment of Car. 31st A. that to go all to one Person, and is as if it had been said Habendum to them both,
and the Heirs of their Bodies; and is not like the Case in * D. 186. 2 & 3 Eliz. For true it is, when the Estate is limited to one or two to the Use of others, and their Heirs, the first Estate is not enlarg’d by this Im- plication, and the Use cannot pass a greater Estate. But here it is to the fame Perfon, which shews the Intent of the Parties, and is a good Limi- tation of the Estate; for it is not a Use divided from the Estate, as where it is limited to a Stranger, but the Use and Estate go together, and so the Limitation is all one as if it had been to them and the Heirs of their Bodies. Cro. Car. 244. 245. pl. 6. Hill. 7 Car. B. R. Meredith v. Jones.

(U. a) Revived.

1. A T Common Law, if Feoffee to Use had been divided, this Diffi- culty should not have suspended any contingent Use, but the Entry of the Feoffee might have revived it, and Possession shall be executed to the Use by the 27 H. 8. of Uses; and if there be no Interruption or De- struction of it by Feoffment or Death of the particular Tenant before the Con- tingent happens. Jenk. 276. pl. 98. in Chudleigh’s Case.

2. If Lands are given to A. and the Heirs which he shall beget on the Body of an English-woman, and A. marries a French-woman, who dies, and then he marries an English-woman; this was said Per Catlin, to be a good Estate in Special Tail. Ow. 32. Mich. 40 Eliz. in an Anonymous Case.

3. A and M. his Wife feised &c. to them and to the Heirs of A. bargain’d and sold the Lands to P. for 500 l. upon Condition that if they, or either of them, or their Executors &c. paid the Money on such a Day, they might enter as in their former Estate; and that after such Payment the sold Indenture, and all Fines &c. should be to the Use of A. and his Heirs, and to no other Use. They leaved a Fine to P. before Imposition of the Death; then A. died, leaving Iffue only one Daughter E. who was his Heir at Law, and married to B. who paid the 500 l. in the Right of his Wife, and entered, and made a Lease to the Plaintiff, upon whom the Widow re-enter’d, claiming for her Life. Adjudged for M. against E. the Heir, because P. was in by the Fine, and not by the Bargain and Sale; and by the Payment of the Money the old Use was again revest’d in M. as was the ancient Ufe before the Fine, and that by the express Words in the first Part of the said Proviso. And the subsequent Clause, which appoints the Use to A. and bis Heirs, will be regurgitant, and so void, or otherwise it shall be continued to be the Use of A. and his Heirs in Reversion, after the Estate for Life of his Wife. Mo. 680. pl. 933. Hill. 43 Eliz. Wilmot v. Knowles.

4. A Man feised of Lands in Fee, conveys it by Feoffment to the Use of himself and Wife, and to the Heirs of the Survivor of them; the Husband afterwards makes a Feoffment of this Land, and dies; the Wife enters and dies. Tho’ Feoffment of the Husband hath destroy’d this future contingent Use of the Fee; For whatsoever cannot accrue at the Time of the Death of the Party who first dies, cannot afterwards, by any Act, be revive’d, but is absolutely extinguish’d. Affirmed in Exchequer Chamber. Cro. Car. 126. pl. 3. Hill. 3 Car. C. B. Biggot v. Smith.

(W. a) Sta-
(W. a) Statute of 1 R. 3. cap. 1.

1. 1 R. 3. cap. 1. *Very Estate, Feoffment, Gift, Release, Grant, Lease*, The Rest. and Confirmedations of Lands, Tenements, Rents, Ser- tion of this vocies, or Hereditaments made bad, or hereafter to be made bad by any Statute. Perfon or Persons, being of *full Age, of sober Mind, at large, and not in Dures, to any Perfon or Persons,* alien'd the Lands, and then the Reoffices exerced, which can't a great deal of Vexation and Chancery-Suits; and to the Statute gives to Cefily que Ufe in an immediate Power of Alienation, without the Consent of the Reoffices. G. Law of Ufes &c. 27.

This Statute intends to remedy 4 great Mischiefs, by Repon of secret Feoffments to Ufe. 16. Uncertainty to the Purchasers, and other Subjects of the Queen. 24. Trouble. 33. Causes. 48. Grievous Vexations; so that it was not only Uncertainty, but Uncertainty with Trouble, and not that only, but with Trouble and Costs, and also with great Vexation; Examples of which are given in the Premable. Arg. 1 Rep. 123. 9. in Chudleigh's Case.

This Act extends only to Cefily que Ufe in Possession; for Cefily que Ufe in Receivers' or Remainder, is both out of the Letter and Intent of the Statute. Arg. Pl. C. 539. b. in the Case of Delamere v. Barnard.

* In pleading a Feoffment or Grant of Cefily que Ufe, one must plead that he was of *full Age, of Sane Memory, and at large, and not in Dures;* for Dyer, Pl. C. 516. b. in the Case of Tofield v. Toftell, cites 16 Ch. 6. it refolv'd, because the Purview of the Statute is, That all Feoffments &c. made by Perfon of full Age &c. shall be good &c. So that it warrants no Feoffment &c. but of Persons void of such De-fects; and therefore it must be shown.

And *all *Recoveries and Executions had or made, shall be good and effect.* By this word (All) Fince Recovery, as well as Recoveries upon good Title, are comprehended. But they are good only against the Grantors &c. and their Heirs claiming only as Heirs to such Grantors &c. So that they are not good against him that claims as Heir to the Grantor and his Feme in Tail per fema Domi. Arg. Pl. C. 4. a. b. Mich. 6. Eliiz. in Maxwell's Cafe.

† If a Man recovers by erroneous Judgement, and makes Feoffment to his Ufe, and the other brings Writ of Error, and recovereth the Judgment, he may enter without Scire facias against the Reoffices; For it is a Recovery, and therefore it shall bind him and his Heirs and Reoffices by the Statute 1 R. 3. Br. Feoffments at Ufes, pl. 3. cites 26 H. 2. Per Englefield and Baldwin.— Br. Error, pl. 1. cites S. C. G. Law of Ufes &c. 53. 34. cites S. C. and says this is within the Letter of the Statute.

And against the Sellers, Feoffors, Donors, or Grantors, bis or their Heirs, Yet if Cefily claiming the same only as Heir or Heirs to the same Sellers, Feoffors, Donors, or Grantors, and every of them,

Feoffes are diffilled, the Grant shall be good against the Difffidor; and yet he does not claim only by the Cefily que Ufe. Arg. 2 Le. 113; pl. 195. in Case of Cordell's Executors v. Clifton.— 3 Le. 60. pl. 87. S. C. in the same Words.

And against all others having or claiming any Title or Interest in the same, This Statute did not take away the Power of Feoffees; for they may yet make Feoffments; but enlarged the Power of Cefily que Ufe, who may now make Feoffments likewise. Godr. 525. in Case of Lord Sheffield v. Racilli, cites Pl. C. 551, 552. The Case of Delamere v. Barnard.

Seeing to every Person or Persons such Right, Title, Action, or Interest, * It was by reason of any Gift in Tail thereof made, as they ought to have had, if this Act had not been made.* Tenant in Tail in Possession, and not Tenant in Tail in Ufe; for Cefily que Ufe in Tail has no Right nor Interest. Br. Feoffment at Ufes, pl. 40. cites 24 H. S.

Y y y

2. Feme
2. Feoff Covert was Cefty que Ufe, and the and her Baron made Feoffment. This was good but during the Life of the Baron only, by Equity and Reason, tho' the Statute r R. 3. says nothing of a Feoff Covert, Br. Feoffment to Ufes, pl. 43. cites 6 H. 7. 3.

3. Cefty que Ufe is bound in a Statute Merchant, and the Court held that Execution shall be sued of the Land in Ufe. And the same Law of Statute Staple and Elegy, by the Letter of the Statute r R. 3. For this is in Effect a Lease; and if this Execution was sued before the Statute of r R. 3. was made, there the Plaintiff who recover'd might re-enter; per Keble; because the Statute is That all Feoffments, Gifts, Grants, Leases, Releases, and Confirmations of Cefty que Ufe, made or to be made, shall be good. But Jay contra; and that if Cefty que Ufe had made a Feoffment, or such like, before the Statute of R. 3. who continued in Possession till the Statute made, this is good, and shall not be ousted by the first Feoffees; but contra where the Feoffment was avoided by Entry before the Statute. Br. Feoffments al Ufes, pl. 29. cites 7 H. 7. 6.

4. Kingsmill thought that where others are seised to my Ufe, and I afterwards fell the Land, and my Vendee makes Feoffment over, this is within the Statute r R. 3. and shall bind the Feoffee in Trust, and likewise his Heir. Otherwise if I am sole seised to my own Ufe, and my Vendee makes Feoffment, this is out of the Statute r R. 3. but a Subpenna will lie against the Vendee and his Heir; and Frowicke Ch. J. and others were of the same Opinion. But yet they made a Doubt; for they said the Law has been held the same in both Cases within these 2 Years, tho' they thought the Law would alter: For where I am in Possession, this remains at the Common Law, and is only in the Nature of a Covenant, which cannot make a Ufe; and where another is Feoffee to my Ufe, and makes a Feoffment over to his own Ufe, in Law the 2d Feoffee is Feoffee to my Ufe; yet if I make Feoffment, this is out of the Statute; but a Subpenna lies against the 2d Feoffee. Kelw. 42. pl. 6. Pach. 17 H. 7. Anon.

5. If Feoffee in Trust makes Feoffment over, the Feoffor has no Remedy against the Feoffee; so if he dies, the Heir of Feoffee, it seems, is seised to his own Ufe; for the Confidence which the Feoffor put in the Person of his Feoffee can not descend to his Heir, nor pass to the Feoffee of the Feoffee; but he is Feoffee to his own Ufe, as the Law was taken till the Time of H. 4. But if the 2d Feoffee had Notice of the Ufe, a Subpenna would then lie; and the Heir of the Feoffee in Trust was seised to his own Ufe to the Beginning of Ed. 4. and then commenced the Subpenna against the Heir, and against the Feoffee of the Feoffee. But it is a Doubt, at this Day, whether the Heir be within the Statute r R. 3. or not; but refers to the Words of the Statute. But as to the Matter, the Feoffor is only Tenant at Sufferance, and this merely at the Will of the Feoffee by the Common Law; Per Frowicke Ch. J. Kelw. 46. b. Mich. 18 H. 7. Anon.

6. Where Cefty que Ufe leases Land for Term of Years, rendering Rent, this is a good Reversion, tho' the Statute r R. 3. does not speak of Reservations; for when it speaks that Feoffments, Leases, Releases, and Confirmations shall be good, then all Things arising thereupon are good, and such Rent shall go to his Heir, tho' Heirs are not mention'd in the Reversion.
Power to make Estates at Law, they are governed by the Rules of the Common Law.

7. If Ceily que Ufe makes a Feoffment in Fee, with Condition to re-enter S. C. cited for Non-payment, there he or his Heirs may enter; per Rede Ch. J. and G. Law of Kingmill J. Quid nota. Brooke makes a Quære, if by his Entry the first Feoffees may enter, and says it seems that they may not; for the que Ufe may Statute of 1 R. 3. says that the Feoffment shall be good, and then the Intereft of the Fee of the first Feoffees is determined for ever. Br. Feoffments al Ufes, pl. 18. cites * 21 H. 7. 25.

8. In Replevin the Defendant avow'd for Rent-charge, because ʃ. D. S. C. cited and ʃ. B. were sedit of 40 Acres of Land, out of which &c. in Fee, to the Ufe of R. N. of the Gift of R. and granted the Rent to Alice, who was Feoffe to R. for Term of Life, with Clause of Distresses, and avow'd as in Rent shall Land charged to his Distresses; and the Plaintiff said that ʃ. D. and ʃ. B. were sedit in Fee to the Ufe of W. N. and granted the Rent to the said Alice, the having Notice of the said Ufe; and ʃ. D. and ʃ. B. informed H. and after W. N. who was the Ceily que Ufe, released to the said H. all his Right in the Land, aboue bec that the said ʃ. D. and ʃ. B. were sedit to the Ufe of the said R. N. And the Defendant demurr'd in Law upon the Bar to the Avowry; and the Matter is if the Rent shall be to the Ufe of Ceily que Ufe, as the Land out of which &c. was; or if the Rent should be to the Ufe of the Grantee; and per Pollard, Brooke, & Fitzh. J. the Rent shall be to the Ufe of Ceily que Ufe; and then the Release of Ceily que Ufe to the Feoffees shall extinguish the Rent by the Statute of 1 R. 3. which wills that the Release of Ceily que Ufe shall be good against him, his Heirs, and Feoffees and their Heirs. Br. Feoffments al Ufes, pl. 10. and so in Confidence &c. cited 14 H. 8. 4.

9. If Feoffees in Ufe release to the Tenants who hold of the Manor, this shall not be to the Ufe of Ceily que Ufe. Br. Feoffments al Ufes, pl. 10. cites 14 H. 8. 4.

10. Grant, Lease, Release, Feoffment, nor Recovery suffer'd by Ceily que Ufe in Tail, shall not bind his Feoffees after his Decease; by almost all the Justices, and by Fitzherbert, and by the best Opinion. Quid nota. And this to be understood that the Feoffees may enter; for they were not solely sedit to his Ufe, but to the Ufe of him and of the Heirs of his Body, and therefore the Statute of 1 R. 3. shall not serve it for ever. Br. Feoffments al Ufes, pl. 10. cites 19 H. 8. 13.—But see 27 H. 8. 20. that Fitzherbert was there in a contrary Opinion, and that it was good against the Heir, viz. Fine of Ceily que Ufe in Tail. Br. Feoffments al Ufes, pl. 2. cites 19 H. 8. 13.

11. Gift of Land for Years, or of a Lease for Years, to a Ufe, is good, notwithstanding the Statute of Rich. 3. For the Statute is intended to avoid Gifts of Chattels to Ufes, to defraud Creditors only; and so is the Preamble and Intent of this Statute. Br. Feoffments al Ufes, pl. 60. cites 3 M. 1.

12. Ceify
The Statute of 27 H. 8. cap. 10. And what is executed thereby.

27 H. 8. Enacts that, Where any Person or Persons stand or be * seised, or at any time hereafter shall happen to be seised of or in any cap. 10. Honours, Coffers, Mansions, Lands, Tenements, Rents, Services, Reversions, Remainders, or other Heridiments, to the Ufe, Confidence, or Trust, of any other Person or Persons, or of any Body Politick, by Reason of any Bargain, Sale, Feoffment, Fine, Recovery, Covenant, Agreement, Will, or otherwise by any Manner or Means whatsoever it be, in every such Cafe, all and every such Person and Persons, that have or shall have any such Ufe or Trust in Fee-Simple, Tail, for Life, or Years, or otherwise, or any Ufe, Confidence, or Trust in Remainder or Reverter, shall from henceforth stand and be seised.

*This Word (seised) excludes Chattels and Rights of Likwise excludes Contingent Ufes, because the Seisin cannot be but to a Fee-Simple of a Ufe; and when that is limited, the Seisin of the Feoffee is spent. Le Bacon's Readings on the Statute of Ufes.

† This Word (Heridiment) is to be understood of those Things whereof an Inheritance is in Effe; for if I grant a Rent-Charge de Nave for Life to a Ufe, this is good enough; yet there is no Inheritance in being of this Rent. It likewife excludes Annuities and Ufes themselves; so that a Ufe cannot be to a Ufe. Le Bacon's Readings on the Statute of Ufes.

‡ The Statute having spoken before of Ufes in Fee-Simple, in Tail, for Life or Years, addeth, or otherwise (in Remainder or Reverter) whereby it is manifest, that the first Words are to be understood of Ufes in Feoffment. Le Bacon's Readings on the Statute of Ufes.

§ It was the Opinion of divers Judges, that by these Words Cellit que Ufe is immediately and actually seised and in Possession of the Land, so as he may have an Affile or Tidship before Entry, against any Stranger who enters without Title. Cro. E 46. pl. 2, in a Note there. Patch. 28 Eliz. C. B. Anon.
And be deemed and adjudged in lawfull Seift, Estate and Possession of The Words
and in the same Honours &c. to all Intent &c. of and in such like Estate as
they had or shall have in the Use &c. of and in the same.

a Possession in Law only, but a Seif in Tll; not a Title to enter into the Land, but an actual Estate.


And the Estate, Title, Right and Possession of such Person or Persons as Lord Ch. J.
were or hereafter shall be sieued of any Lands, Tenements, or Heredita-
ments, to the Use, Confidence, or Trust, of any such Person or Persons, or of any
Body Politick, be from henceforth clearly decied and adjudged to be in Statute,
him, or them that have, or hereafter shall have any such Use, Confidence, or Trust,
after such Quality, Manner, Form and Condition as they had before to bring to-gether the Possession and the Use,

when the Use was to one or more Persons, and the Possession in one or more other separate Persons, was
soon after the Statute wholly decied, on what good Constructions or Inference he knew not; For now the Use (by the Name of Trust) which were one and the same before the Statute, remains separately in some Persons, and the Possession separately in others, as it did before the Statute, and are not brought together but by Deede in Chancery, or the voluntary Conveyance of the Possessor of the Land to Cefty que Trust; So as now the principal Use of this Statute, especially on Fines levied to Usfs, is not to bring together a Possession and Use, but to introduce a general Form of Conveyance, by which the Condonors of the Fine, (who are as Donors in the Case) may execute their Intents and Purposes at Pleasure, either by transferring their Estate to Strangers, or by enlarging, diminishing, or altering them to and amongst themselves at their Pleasure, without observing that Rigour and Stringency of Law for the Possession of the Conuife as was requisite before the Statute. Vaugh. 50. in the Case of Dixon v. Harrison.

Notwithstanding this Statute, there are 3 Ways of creating an Use or a Trust, which still remains as at Common Law, and is a Creature of the Courts of Equity, and subject only to their Control and Direction.

Where a Man feited to Feoffment to A for Years, and limits it in Trust for B. For this the Statute cannot execute, the Terminor not being seised. 2dly. Where Lands are limited to the Use of A. in Trust, to permit B. to receive the Rents and Profits; for the Statute can only execute the first Use. 3dly. Where Lands are limited to Trustees to receive and pay over the Rents and Profits to such and such Persons; For here the Lands must remain in them to answer these Purposes; and those Points were agreed to; Trin. 1700. Abr. Equ. Cases 535. Simpson v. Turner.

S. 2. Where diverse Persons shall be jointly seised to the Use or Trust of any of them, those which shall have such Use or Trust, shall be adjudged to have only such Estate, Possession, and Seif in the lands &c. as they had in the Use or Trust, saving to all Persons other than those which shall be seised to any Use or Trust, all Right &c.

S. 3. Also saving to all those Persons which shall be seised to any Use, all The Hus-band being seised in Fe made a Leafe to O. and S. but it was in secret Conference for the Preferment of his Wife, and afterwards he made a Feoffment to O. and others of the time Land to other Uses. It was decreed, by the Advice of Wray, Anderson, and Manwood, That the Term was not extinguish'd by this Feoffment, by Reason of the Province; and because O. had this Lease to his own Use, it is not extinguish'd by the Feoffment which he took to the Use of another. Mo. 196. pt. 3d. Trin. 2- Eliz. in the Court of Wards, Cheyney's Cafe. — 2 And. 192. pl. 9. S. C. says the Lease was made really in Trust to the Use of the Wife, and Executors of their Sons and Daughters, notwithstanding that diverse Covenants were therein contained, and a Rent was reserved; and says that the Feoffment made afterwards was to the Use of the Husband himself, and his said Wife for their Lives, with Reminders over; and that the same was held accordingly.

S. 4. 5. Where any seised to any Use or Intent that another shall have a yearly Rent out of the same Lands, Ceify que Use of the Rent shall be decied in the Possession thereof of like Estate as he or she had that Use.

A. in Consideration of natural Love and Affection, cov-}

wanted to stand seised to the Use of himself for Life, Remainder to B. his Son in Tail, and to the Intent that B. shou'd have a Rent infuing out of the Lands, during the Life of A. The Son dies, and his Executors brought Deed for the Arrears of the Rent. It was resolved and adjudged, that thefe Words of the Statute B. in this Cafe had a good Rent, as well upon Covenants as by a Feoffment, or Bargain and Sale. Jo. 179. pl. 1. Trin. 4 Car. B. R. Rivers v. Godin.

Z z 7 12. It.
2. It was agreed, that if Ceify que Ufe devises that his Feejeees shall make Estate in Fee or in Tail to B, S. and dies, the Ufe changes before the Estate executed. D. 96. pl. 41. Mich. 1 Mar. in Bainton's Cafe.

3. A. covenant that all Persons who should be Feejeees of certain Lands, should be seised thereof to the Ufe of A. for Life, and after his Decease to B. his Son, and M. and the Heirs of their Bodies. Remainder to the right Heirs of A. and afterwards made a Feejee to the Ufe in the said Intestate. Afterwards B. married the said M. then A. died. B. after the 27 H. 8. alien'd all the Lands, and died. M. enter'd into the whole.

Wetton and Fendlews held her Entry lawfull into all, but 3 Justices contra; For the Possession shall be in the same Degree as the Ufe, and the Ufe was in Husband and Wife by several Moieties before the Marriage, and therefore the may lawfully enter into a Moiety only. No. 92. pl. 228. Trin. 10 Eliz. Symonds's Cafe.

4. A. Tenant in Tail, Remainder to his Sisters (who were his Heirs at Law) in Fee. A. made a Deed in this manner, viz. I the said A. bare given, granted, and confirm'd for 100 l. without the Words (Bargained and Sold) Halden'm to the Feejee, with Warranty against A. and his Heirs, and a Letter of Attorney was to make Livery and Seisin; so that the Deed began like a Deed-poll, viz. To all Christian People &c. but it was indented and inrolled within a Month, and 4 Months after the Involvement the Attorney made Livery and Seisin; A. died without Issue. The Sisters entered, and the Feejee oust'd them. They brought Trespas. It was clearly agreed by the Court, That by the Words Give for Money, Grant, or Confirm for Money &c. if the Consideration be for Money, and the Deed is inrolled within 6 Months, that the Lands shall pass both by the Statute of Ufes and by the Statute of Involvements, as well as upon the Words Bargain and Sale. 3 Le. 16. pl. 39. Mich. 14 Eliz. B. R. Anon.

5. Lease to A. for Life, Remainder to the right Heirs of A. for 25 Years after his Decease; this Term is not in A. but is in Abeyance till after his Death, and then it commences in his right Heir, as Purchaser by this Name. D. 310. pl. 58. Patch. 14 Eliz. in Cranmer's Cafe.

6. A. poiss'd of a Lease for Years, grants all his Eiate and Interest to B. and C. and their Alligus, to the Ufe of the said A. and M. his Wife for their Lives, and of the longer Litter of them. Afterwards A. granted to J. S. all such Interest as he then had in the said Lands in Lease, and died. The Question was, Whether this Grant by A. gave all the Term of B. or C. or not? And being put by the Lord Chancellor, it was answer'd by all the Justices and Chief Baron, that the Grant of A. was void, and not within the Statutes of Ceify que Ufe &c. D. 369. a. pl. 50. Patch. 22 Eliz. Anon.

S. C. cited Mo. 64. in pl. 82.2 —
G. Law of Ufes &c. 198
Cites S. C. in addition that A.'s Grant was void;
For he had nothing but a Truf, which he could not assign over; For a Truf cannot be assign'd over, because it lies in Privy, and tho' A. may repose a Truf and Confidence in the Lessee, yet his Alligus, that is no Party to the Agreement, cannot do it, because not Privy, (i. e.) not Confect of, nor Party to that Agreement, whereby by the Contract between the Parties, a Truf was repose'd in the Tenant of the Land; For tho' he might be willing to hand intrusted for the Benefit of his Friend, it does not thereby follow that he would for every Body's Advantage. But it seems to him in this Case, that if A. had assign'd over the Land itself, it would be good by I. R.; but the Words he us'd were not sufficient to pass the Land itself, for he had no Interest therein; For 2: H. 8 executes no Possession to a Ufe, but where some Body is seised to the Ufe of another for Years, Life &c. So that the Tenant must have a Freehold in the Land, e. l. the Statute executes no Possession to the Ufe, but if a Fine be levied to the Ufe of one for Years, then it is executed; for the Confect of the Fine is seised.
7. Feoffment in Fee Sub Conditione, ea Intentione, that his Wife should have the Land for her Life, Remainder to his younger Son in Fee. The Feoffor died without making any Estate. The Heir of the Feoffor entered. It was resolved that it was not a Condition, but an Estate which was executed preently, according to the Intent. 4 Le. 2. pl. 3. Mich. 23 Eliz. Anon.

8. A. feid B. and C. and after the 27 H. 8. devised to the Use of his youngest Son C. S. C.—Sav. certain Lands in Tail, Remainder to his first Son B. on Condition not 76. S. C. to alien or discontinue, but for Jointure to his Wife or Wives, and only for Life or Lives of such Wife or Wives. Device has a Fine to a Stranger, and by Deed declares the Use to himself and his Wife, and to the Heirs Male of his own Body, Remainder to the Heirs of his Father; and averrs that this Fine was for Jointure of his Wife. The Justices were clear, that the levying the Fine is a Breach of the Condition, but they doubted what Person should take Benefit of it; for when Cefy que Use before 27 H. 8. made the Devise conditional, and now by that Statue he has the Possession in such Quality as he had the Use, they thought that the Condition is transferred into a Limitation, and so the Breach shall ensue to determine the Estate by Cellor; and so he in the next Remainder shall enter, otherwise the Condition is gone by Confusion of it in the Possession; Yet at last they adjudged the Cafe with the Heir of B. (B. being dead) by Reason that the Statue of 27 gives the Possession in Quality and Condition with the Use, and also gives to Cefy que Use such Benefit and Advantage as the Feoffees had; so that Quacunque via data the Heir of B. was enabled to take the Benefit of the Breach, be this a Condition or a Limitation. Mo. 212. 213. pl. 353. Mich. 27 & 28 Eliz. Rudhall v. Milward.

9. A. feid B. and C. with Warranty, and another Indenture bearing Date the same Day with the first, was made between the Feoffees and the Feoffor, whereby reciting that whereas A. the Day, Hour, and Instant of these Present, by Indenture hath given &c. to B. and C. the said Lands, Habendam to them, their Heirs and Assigns for ever, they the said B. and C. granted by the same Deed, that immediately after the said B. and C. their Heirs and Assigns, have peaceably taken &c. the Profits of the Lands during the Term of 101 Years, then it should be lawful for A. his Heirs and Assigns, to re-enter and have the said Lands as in their first Right and Title, the said Feoffment and Livery of Seisin thereof made at one Instant notwithstanding. The Indenture had several Labels, and were laid one on the other, and the Labels fix'd and conjointly bath together in one Seal, viz. the Original with the Seal of A. and the Counterpart with the Seals of B. and C. and deliver'd accordingly, B. and C. and their Assigns, enjoy'd the said Lands peaceably without Interruption during the said Term. It was resolved by the Justices in this Case, that the Intent upon the Livery was, that A. should re-have the Lands after the 101 Years quiet Potfeffion of the Feoffees, and that the Use did immediately arise out of the Potfeffion of the Feoffees to the Heirs of the Feoffor, as soon as the Lands had been enjoyed for 101 Years, and that by the Statue of 27 H. 8. the Heirs of the Feoffor might enter. And decreed accordingly. Mo. 722. pl. 1009. Mich. 33 & 34 Eliz. in the Court of Wards, Boydell v. Walthall.


11. If A. for good Consideration covenants to stand seid to the Use of himself in Tail, and after to the Use of B. in Tail, and after of C. and his Heirs, now by 27 H. 8. A. is seid in Tail, with Remainder in Tail, Re-
mainder in Fee, according to the several Limitations of the Uses; and yet here, as to his Estate Tail, no other Person was feised to his Ufe, and none to this Respeét feised to the other Ufe, as the Words of the Statute are.

12. A granted a Rent to B. and C. (without more Words) to the Ufe of his Wife for Life; if this had been before the Statute 27 H. 8. B. and C. have Estate in the Rent during their Lives, to the Ufe of the Wife; but if after the Statute, or before, B. and C. die in the Life of the Wife, the Rent is determined, and shall not be continued by the Statute, or otherwise; For she has not in this Case other or greater Estate in the Rent than B. and C. had; and yet the Words of the Statute are, that Ca|ty que Ufe shall be setced of such Estalate as he had in the Ufe; and the last Part of this Branch of the Statute is, that she shall have the Estate of him that is feised in the fame Form, Manner, Quality and Condition as he had in the Ufe. In which Case neither of those two Branches of the Statute aforesaid in Words, will make the Wife to have such Estate in the Rent as the had in the Ufe; but if the Rent or Land had been granted to B. and C. during the Life of the Wife to the Ufe of the Wife, then by this Statute she shall have it during her Life; For the Uses and Estate agree together. So in the principal Case the Ufe and Estate agree, because there was not greater Estate in the Ufe than the Estate of B. and C. in the Rent, which is during the Life of the Wife conditionally, if B. and C. so long shall live; and if not, then the Ufe to caese.

13. There are many Uses which are not executed by 27 H. 8. as ter- tions Uses, fraudulent Uses, Uses upon Uses, troublesome Uses; As to stand feised to the Ufe of A. on Tuesday, and of B. on Wednesday. So of Uses of Perpetual Freeholds; Per Warburton J. Mo. 632. Paol. 43 Eliz. C. B. in Case of Mildmay v. Mildmay.

14. 27 H. 8. of Uses does not execute Uses that are in Abeyance. Arg. Godb. 319. in Case of Sheffield v. Radcliffe.

15. The Case was: A Man possiis'd of a Term for Years of a Reclitory, devised the Profits thereof to his Wife for so many Years as she should live; and after he devised the Profits to 20 of his poor Kindred, and that after the Death of his Wife the Reclitory should be let by the Advice of his Overseers, and the Rent distributed to his said poor Kindred, and made the Wife his Exec- cutrix. Resolved by all the Justices in the Exchequer-Chamber, that altho' a Devise of the Profits is a Devise of the Land itself, if there be no other Circumstance in the Case, yet because in this Case the Devi- nor has declared, that the poor Kindred should not have the Property of the Term, and he appoints a Lease to be made for Rent, and the Rent to be distributed amongst them, the Executors should have the Term upon the Confidence to make the Lease, and distribute the Rent; and that the poor Kindred had only a Truit, and no Interest in the Term. Mo. 753. pl. 1090. Mich. 2 Jac. 2 Griffith v. Smith.

16. If a Man enfofs A. to the Ufe of A. and B. they are Jonte- nants; for both come in by the Statute. 13 Rep. 55. Mich. 7 J ac. in the Court of Ward's, Samne's Cafe.

17. In
17. In all Cases where a Ufe may be *raised by the Common Law,* and The Statute that it shall be performed by Order in Chancery, the Ufe shall be executed by 27 H. 8. of Ufes. Arg. 2 Brownl. 291. Hill. 7 Jac. C. B. in the Cafe of Smallman v. Powis.

Lawfully be compell'd to be executed before the Statute, which cannot be of an Estate Tail; for the Chan-

18. A. makes Feoffinient to the Ufe of the Heirs Male of his Body begotten. Adjudged an Estate Tail executed in himself; for by Implication of Law he has an Estate for Life, and therefore the Estate limited to the Heirs of his Body is an Execution in him; per Coke Ch. J. Roll Rep. 240. cites the Cafe of Fenwick v. Mitford.

19. Where the Party feized to the Ufe, and the Cefty que Ufe, is one Per-
son, he never takes by the Statute, except there be a direct Impollibility or Impertinency for the Ufe to take Effect by the Common Law. Ld. Bacon's Readings on the Statute of Ufes, 352.

20. If I give Land to J. S. to the Ufe of himself and his Heirs, and if J. D. pay a Sum of Money, then to the Ufe of J. D. and his Heirs, J. S. is in of an Estate for Life, or for Years, by way of Abridgment of Estate in Course of Possifion, and J. D. in of the Fee-simble by the Statute. Ld. Bacon's Readings on the Statute of Ufes, 352.

21. If I enfeof J. S. to the Ufe of himself in Tail, and then to the Ufe of J. D. in Fee, the Estate Tail is executed by this Statute; because an Estate Tail cannot be re-occupied out of a Fee-simble, being a new Estate, and not like a particular Estate for Life or Years, which are but Portions of the absolute Fee. Ld. Bacon's Readings on the Statute of Ufes, 352.

22. And therefore if I bargain and sell my Land to J. S. after my Death, without Issue, it doth not leave an Estate Tail in me, nor veits any present Fee in the Bargainer, but is an Ufe Expectant. Ld. Bacon's Readings on the Statute of Ufes, 352.

23. So if I enfeof J. S. to the Ufe of J. D. for Life, and then to the Ufe Contra if I of himself and his Heirs, he is in of the Fee-simble merely in Course of enfeof J. S. Possifion, and as of a Reversion, and not of a Remainder. Ld. Bacon's J. D. for Readings on the Statute of Ufes, 352.

24. If I enfeof a Bifhop and his Heirs to the Ufe of himself and his Suc-
cessors, he is in by the Statute in the Right of his See. Ld. Bacon's Readings on the Statute of Ufes, 353.

25. And as I cannot raise a present Ufe to one out of his own Seifin, so if I limit a contingent or future Ufe to one, being at the Time of Limita-
tion not feied, but after becomes at the Time of the Execution of the contin-
gent Ufe, there is the fame Reafon, and the fame Law, and upon the fame Difference which are put before. Ld. Bacon's Readings on the Statute of Ufes, 353.

26. As if I covenant with my Son that after his Marriage I will ftead But if I had feied of Land to the Ufe of himself and his Heirs, and before Marriage I let to him enfeof bin to the Ufe of himself and his Heirs, and then be married, he is in by the Common Law, and not by the Statute; like Law of a Bargain and Sale. Ld. Bacon's Readings on the Statute of Ufes, 353.
27. If I have an Eigne Right, and be infeoff'd to the Use of 7. S. for Life, then to the Ufe of myself for Life, then to the Use of J. D. in Fee, and 7. S. dies; if I be in by the Common Law I cannot waive my Estate, having agreed to the Feoffment; but if I am in by the Statute, yet I am not remitted, because I come in by my own Act. But I may waive my Use, and bring an Action presently; for my Right is saved unto me by one of the Savings in the Statute. LD. Bacon’s Readings on the Statute of Ufes, 354.

28. If a Distress were committed to an Use, it is in him by the Common Law upon Agreement; so if one enters as Occupant to the Use of another, it is in him till Disagreement; for whereas Cealy que Ufe has Remedy for the Possession by Course of Common Law, there the Statute never works. LD. Bacon’s Readings on the Statute of Ufes, 354.

29. If a Feme infeoff a Man (Casea Matrimonii praecepti,) the bate Remedy for the Land again by Course of Law; and therefore, in those Casea, the Statute works not; and yet the Words of the Statute are general, (where any Person flands feized by Force of any Fine, Recovery, Feoffment, Bargain and Sale, Agreement, or otherwise) but yet the Feme is to be restrain’d for the Realon aforesaid. LD. Bacon’s Readings on the Statute of Ufes, 354.

S. P. Arg. Cart. 8. in Case of Taylor v. Shaw—S. P. Gilb. Treat. of Ten. 175. For then a Tenant would be introduced without the Lord’s Consent.

An Eflate for Years cannot be feized or posses’d at this Day to any Use; for it has only Possession, whereas the Statute of Ufes, 27 H. 8. cap. 19. of Ufes, toucheth not Coplyholds; because the Transmutation of Possession by the sole Operation of the Statute, without Allowance of the Lord, would tend to the Lord’s Prejudice. Cro. C. 44. Mich. 2 Car. C. B. in Cafe of Rounden v. Malster.

31. A Trust is nothing in Law; and Ufes being abolilhed, and join’d to the Possessions, a Trust of a Lease for Years cannot be said to be an Use; for if so, the 27 H. 8. of transferring Ufes into Possession, would be to no Purpoze; for this Statute requires a Seizin at the Ufe, but there is only a Possession in a Leefe for Years. By the Judges of both Benches. Jenk. 244. pl. 30.

32. J. S. granted a Rent-charge to B. and C. in Trust for M. in Discharge of a Jointure, which M. being then a Widow, had on the Premises, Habend’ to B. and C. their Heirs, Executors &c. in Trust for M. for Life. Per tor. Curt. This Rent-charge is executed by the Statute of Ufes, by the express Words thereof, which executes fuch Rents granted for Life upon Trust. 2 Mod. 138. Mich. 28 Car. 2. C. B. Cook & al. v. Herle.

33. When the Statute transfers an Estate, it transfers together with it such Remedies only as are by Law Incident to that Estate, and not Colateral ones. Mod. 223. Mich. 28 Car. 2. C. B. Bofcawen & Herle v. Cook.—2 Mod. 138. Cook v. Herle.

As where the fild Grant contain’d a Covenant for Payment to B. and C. to the Ufe of M. the M. may diltrain, because it is an Incident to the Estate transfer’d, yet she cannot bring a Covenant, because that is collateral, Mod. 223. Bofcawen & Herle v. Cook.—And 2 Mod. 138. S.C.

34. To know how an Ufe is turn’d into a Right to an Ufe, it must be consider’d How it was before the Statute, and was thus; Before the Statute the Feoffees had the Estate, and the Cealy que Ufe had the Ufe, and this depended upon the Estate of the Feoffees; for the Feoffees had the Estate upon Confidence and Trust that the Cealy que Ufe should take the Profits,
Profts, which was a Collateral Interest annex'd in Privity to the Estate of the Forfeeters. If the Estate of the Forfeeters was devolved, the Use consequently was turn'd into an equitable Right, and the Cofly of Use could not have the Use any longer than the Estate had its Being; so that such Use, which displace and devest the Estates out of the Forfeeters, do by Consequence turn the Use into a Right. Arg. Poffex. 97. in the Case of Carpenter v. Smith.

35. If Land be devise'd to A. in Fee, in Trust that B. may take the Profits, it is an Use. Arg. Skin. 299. admitted in Cafe of Durdant v. Burchet.

36. Devise of Land to B. and C. for Payment of Debts, and after in Trust for the Use of A. and his Heirs Male, but declar'd his Will to be that A. should have no Benefit of this Devise, unless A.'s Father should settle on A. so much, and in Default thereof devise'd the said Estate to the Truste's; or in Cafe A.'s Father should make such Settlement, yet if A. should die without Issue, in such Case likewise he gave the said Estate to his Trustees, dischardg'd of the Trust for A. Per Lord Chancellor, This is no Trust, but an Estate vested at Law, and well executed by the Statute of Uses; for the Trust here arises out of the Estate; and in such Cafe the Devisee might, by the Statute 1 R. 3. have made Leavees. Vern. 79, 82. pl. 73. Mich. 1682. Popham v. Bamfield.

37. Lands were given by Will to Trustees and their Heirs, in Trust for A. the Defendant's Wife, and her Heirs, and that the Trustees should from Time to Time pay and dispose of the Rents and Profits to the said A. or to such Person or Persons as he shall appoint, by any Writing under her Hand, as well during Coverniture as being Sole, should order or appoint the same, without the intermeddling of her Husband, whom he will'd should have no Benefic or Disposal thereof; and as to the Inheritance of the Premisses in Trust for such Person or Persons, and for such Estate and Estates as the said A. by any Writing purporting her Will, or other Writing under her Hand, should appoint; and for Want of such Appointment, in Trust for her and her Heirs. The Question was, whether this was an Use executed by the Statute, or a bare Trust for the Wife; And the Court held it to be a Trust only, and not an Use executed by the Statute. Vern. 415. pl. 593. Mich. 1686. Nevil v. Saunders.

38. But a Devise of all the Rents and Profits of Lands to A. the Wife of J. S. during her natural Life, to be paid by his Executors into her own Hands, without the intermeddling of her Husband; and after her Deceafe and amongst J. B. M. B. and R. B. &c. Holt Ch. J. feem'd strongly to incline that the Executors were Trustee's for the Wife; but Rokeby and Ch. J. (at Eyre J. e contra, and Judgment accordingly. 1 Salk. 228. pl. 7. Trin. 7 W. & M. in B. R. South v. Alleine,

by Implication of Law, or else the Will cannot be perform'd; and the other Justices agreed with him, but afterwards Holt said the Devise of the Rents and Profits is a Devise of the Land to A. and then the subsequent Words (to be paid &c.) are void, and cannot exclude the Husband; and that the Man was mistaken in the Law. But all the other Judges retain'd the contrary Opinion, and said that a Devise of the Rents and Profits it not always a Devise of the Land; for which they relied on Mo. 152. 754. Griffith v. Smith; and it was adjoin'd against the Opinion of the Chief Justice.—5 Mod. 63. Mich. 7 W. 3. Bath v. Allen, S. C. Holt Ch. J. thought this a Devise to the Executors for her Life, upon Trust to pay the Profits to her; and that this is fully to perform the Will, the Intent whereof was wholly to exclude the Husband; Et adjoniturum. But another Day Holt thought it a Devise to her; for a Devise of the Rents and Profits, is a Devise of the Land itself, and if this should be confirmed a Devise to her, then the last Words contradict the former; and so the Executors will have a Devise by Implication, against an express Devise before. But Rokeby J. replied, that then the Husband shall intermeddle, where the Deviseor intended to exclude him; and said he relied on the Case of Griffith and Smith. Mo. 153. But Holt replied, that in that Case the Inveigh remain'd in the Executors, and not in the Devisees. Eyre J. thought the subsequent Words made it a Devise to the Executors in Trust for the Wife. Judgment was given according to the Opinion of the Justices. Holt difsentient.—Ibid. 101. S. C. and Judgment according to the Opinion of the other Justices.—9ec pl. 15. 484.
39. A conveys to Trustees and their Heirs, *in trust to permit A. to receive the Profits* during Life &c. This cannot create such an Estate in A. as will be executed by the Statute of Uses; For if a Man is feised in Fee of an Estate, and makes a Declaration thereof in Trust for J. S. this is no Colour to make an Estate for Life in J. S. Arg. 3 Mod. 146. 147. in Cafe of the King v. Lenthall.

Wherever the Estate is in fee, and the Profit and Benefit in another, it is executed by the Statute of Uses. Skin 209. admitted Arg. in Cafe of Durdant v. Burchet.

40. Where the Limitation of the Use is different from the Estate of the Land; As where a Feoffment is made to the Use of the Feoffor for Life, Remainder to J. S. the Feoffee is in by the Statute; Per Holt Ch. J. Cumb. 313. Hill. 6 W. 3. B. R. in Cafe of Tipping v. Cofins.

41. Where the last Feesimple of the Use is limited to him who has the Estate of the Land, he is by the Common Law, as in the Cafe Init. 22. b. where a Feoffment is to the Use of the Feoffor in Tail, and after to the Use of the Feoffee in Fee; Per Holt Ch. J. Cumb. 313. Tipping v. Cofins.

42. Where A. makes a Feoffment to B. and C. and their Heirs, to the Use of them and their Heirs in Trust for J. S. this Trust is executed by the Statute; Per Wright Serjeant. Arg. Cumb. 313. Tipping v. Cofins.

43. Ceify que Ufe is in nearly by Operation of Law, and not in the Per. Refolv'd, and for Authorities the Cates in the Margin * were cited. Carth. 316. Trin. 6 W. & M. B. R. Reynell v. Long.

44. J. S. feised of Lands in Fee, devolved them to Trustees and their Heirs, to the Uses, Intents and Purposes herein after menti'd, viz. to the Intent and Purpose to permit A. to receive the Rents and Profits for his Life, and after that the Trustees should stand seised of the Profumis to the Use of the Heirs of the Body of A. Holt Ch. J. pronounc'd the Judgment of the Court, and said that this would have been a plain Trust at Common Law; and *what at Common Law was a Trust of a Freehold, or Inheritance, is executed by the Statute,* which mentions the Word Trust as well as Ufe; and the Cafe in 2 Vent. 312. *Burchet and Durdant,* is not a Law; and that the Change of Expression in the principal Cafe, by using the Word Permit in the first Clause, which are Words of Trust, and afterwards making Mention of a Use, is immaterial, in regard Trusts at Common Law and Uses are equally executed by the Statute. Salk. 679. pl. 6. Hill. 1 Ann. B. R. Broughton v. Langley.

45. The last Limitation in a Deed of Settlement was to the Trustees and their Heirs in Trust for A. (the Grantor) and his Heirs. It was intituled that this, upon the Determination of the intermediate Estates, will be executed to A. in Possession as absolutely as if it had been said To the Use of A. and his Heirs; For the Statute makes no Difference between an Use and a Trust, but mentions them both promiscuously. Arg. And this upon reading the Deeds seem'd to be given up as a clear Point. Ch. Prec. 345. Trin. 1712. in Cafe of Eare v. Howard.

46. To the Execution of a Use 4 Things are necessary. 1st. There ought to be a Person seized. 2dly. Ceify que Ufe in Revum Natura. 3dly: A
Ufe in Life in Possession, Reversion or Remainder. 4thly. That the Estate, cites of the Feejee may vest in Cesy que Ufe. G. Law of Ufes &c. 80. 

Dissertation's Cafe, S. P. So that a Right of an Ufe, or a Future or Contingent Ufe, are excluded till they come in Eife. And D. 58. a. [pl. 5. Trin.] 56 H. 8. that it was held [The Book is Semble] that if Cefly que Ufe in Tait, with diversie Ufes in Remainder, makes Feejeemt, and dies, and the Statute of 27 H. 8. is made, now the lies in Tait has Right of an Ufe in Eife, but no Execution of it till Entry by the Forfeeties ; and that this accords the Cales in D. 88 b. [pl. 100. Trin.] 7 E. 6. Stephen Baa-

ait's Cafe ; and D. 530. [329. b. pl. 17. Mich.] 13 & 16 Eliz. Dame Bankewill's Cafe, that if Celly que Ufe in Possession had made a Feejeement before the Statute, no Right of an Ufe neither in Pos-

session nor in Remainder, shall be executed by the Statute of 27 H. 8. till Regrefs of the Forfeeties. —


Where there is no Specie to the Ufe, there can be no Ufe. And. 254. in Cafe of Dillan v. Freine, alias Shindleigh's Cafe.—And as there must be one that is leisled to the Ufe, so there must be one that both the Ufe. Ind 356.

To the Execution of a Ufe in Possession by the Statute, it is requisite that there must be a complete Possession; for the Forfeeties must make an actual Entry; because the Intent of the Statute was not to help our Possession already good. So it seems, if a Reversion be granted to one to the Ufe of another, that this is not executed before Attornment, for the Reversion passes not till then: But if a Man hath a Re-

version granted to him by Fine, and before Attornment he bargain and sells it to another, the Rever-

sion is executed by the Statute in the Bargainee; for as, in the first Cafe, the Graunter had no Reversion for want of Attornment, and it consequently could not be executed, so in the last Cafe the Confehee had a Reversion before Attornment, which he sold to the Ufe of and to another, and then the Statute executes the Possession to the Ufe, but in the same Plight as the Ufe is, and consequently till Attornment, there wants a Privity of Difftrainment &c. Gilb Law of Ufes &c. 231, 232.

The Statute is to be understood of Cefly one Ufe that has an Ufe in Eife, in Opposition to him that has only a Remainder or Remainder of an Ufe. G. Law of Ufes &c. 28.

47. A Conveyance was to such Ufes as shall be by Will directed. The Ufe declared by the Will was, that the Trustees shall convey to the Ufe of A. till B. comes of Age, or be married, and after such Age or Marriage, one Moiety to A. for Life; and if B. shall die during his Minority, then all the Estate to A. but if B. shall attain such Age, or marry, then one Moiety in Possession, and the Reversion of the other to B. and his Heirs. The Question was, whether this be an Ufe executed by the Statute; and it was lent to the Judges for their Opinion. MS. Tab. Tit. Ufes, Feb. 9. 1727. Rich v. Beaumond.

48. Where Lands were devoted to Truftees and their Heirs, in Truft to pay several Legacies and Annuities, and to pay the Surplus of the Rents and Profits to a married Woman, during her Life, for her separate Ufe, or as she should direct, and after her Death the Trustees to stand leisled to the Ufe of the Heirs of her Body, with Remainders over, the Question was, Whether this Devise to pay the Surplus of the Rents and Profits to the Wife, was such a Ufe or Trust as was executed by the 27 H. 8. For if it was, then it was urg'd, that the being Tenant for Life, the Limita-

tion after to the Heirs of her Body, being coupled with it, gave her an Estate-tail, according to Shelley's Cafe, 1 Rep. But if it did not, then the eldest Son was to take as a Purchaser. And it was held by the Court, that she had only a Trust for Life, and consequently the Heirs of her Body must take by Purchafe; and the rather in this Cafe, because it was limited to the Heirs of her Body severally and successively, as they should be in Seniority of Age and Priority of Birth, and the Heirs of their respective Bodies ensuing. And a Difference was taken between this Cafe and that of Stroughton and Langley, 2 Salk. For there it was to permit A. to re-

ceive the Rents and Profits for Life, but here it is a Trust in the Truftees to pay over the Rents and Profits to such and such Persons; and therefore the Estate must remain in them to answer these Trusts, otherwise the moit be the Trustee, contrary to the express Words of the Will. Mich. 1728. decreed and affirm'd in the House of Lords. Abr. Equ. Cales. 354.

Jones v. Lord Say and Seal.

4 B 

(Y. a) Result-
(Y. a) Resulting Uses.

If a Man at this Day makes a Feoffment without Consideration, and expresses no Use, the Feoffment is intended by the Law to be to the Use of the Feoffor and his Heirs; and therefore Brooke says it seems to him, that he in Reversion and in the Remainder shall not have Sub- 
ouns, but Formedon, and the Feme Cui in Vita. Br. Feoffments al 
Uses, pl. 32. cites 5 E. 4. 7.

1. WHEN a Man makes a Feoffment without Consideration, and expresses no Use, the Feoffment is intended by the Law to be to the Use of the Feoffor and his Heirs; and therefore Brooke says it seems to him, that he in Reversion and in the Remainder shall not have Sub-

2. It was moved upon Evidence, if A. recovers by Common Recovery against B. and B. infesso A. afterwards, that A. shall be feised to B.'s Use; for A. shall be adjudged in by the Recovery, and not by the Feoffment, which Shelley and Fitzherbert J. in a manner affirmed. D. 18. pl. 105. Trin. 28 H. 8. Anon.

3. That which cannot vest in him to whom it is limited, shall return to the Feoffor; As if I make a Feoffment in Fee to the Use of myself for Life, and after to the Use of my second Wife, all the Fee is now in me, and when I take a 2d Wife, then the Feoffees shall be feised to the Use of such Wife in Remainder for her Life; per Manwood J. 2 Le. 19. pl. 25. in Brent's Cafe.

4. A. infesso a Common Recovery to B. to the Intent that B. shall make Estate to A. for Life, Remainders over. Agreed that after the Recovery B. shall be feised to his own Use; for if he should be feised to the Use of A. then he cannot make Estate to A. &c. But per Southcot and Wray J. he ought to make it in convenient time, otherwise an Use shall be raised in A. D. 166. pl. 9. Marg. cites Patch. 17 Eliz. Humfrington's Cafe.

5. If I infesso A. on Condition to infesso B. who refuses, now A. shall be feised to my Use; but if it were to give in Tail, his otherwise; per Dyer. Le. 256. pl. 355. 19 Eliz. in Bracebridge's Cafe.

6. Copyholder in Fee surrenders to such Uses as the Lord shall appoint; the Lord limites the Use to J. S. for Life. Refolv'd that the Use of the Fee shall return to the first Copyholder. Litt. Rep. 26. Arg. cites Patch. 35 Eliz. C. B. Rot. 334. Wroth's Cafe.

If he surrenders to the Use of his Wife for Life, Remainder to his Son for Life, the Reversion in Fee continues in the Surrenderor. Arg. cites it adjudged Hill. 26 El. Rot. 2640. and the Record was produced. But Haughton J. thought it was a Surrender of the Inheritance but Doderidge] contra; but thought if he had accepted an Estate back for his own Life only, it might be a Quellion. The Court directed a Special Verdict. Roll Rep. 256. in case of Southcot v. Adams.

7. Where a Feoffment is made to several Uses for Life, for Years, and in Tail, but no Use is limited of the Fee after the Estates for Life, for Years,
8. Feoffment by A. on Condition to convey to A. for Life, Remainder to the eldest Son of A. in Fee. No Use results to A. for Life, Remainder to the eldest Son in Fee; for it is, then the Estate would vest by the Statute of Uses, and so then the Feoffee could not make Estate to A. for Life, Remainder to the eldest Son in Fee. Jenk. 253. pl. 44. 40 Eliz. Julius Winnington's Cafe.

9. I make a Feoffment to the Use of my Wife that shall be, or to such Persons as I shall appoint, tho' I limit no particular Estate at all; yet the Use is good, and shall in the Interim return to the Feoffor. Ld. Bacon's Readings on the Statute of Uses, 350.

10. If I once limit the whole Fee-simple of the use out of Land, and Part thereof to a Person uncertain, it shall never return to the Feoffor by way of Fraction of the Use. Ld. Bacon's Readings on the Statute of Uses, 350.

11. If the King gives Lands by his Letters to J. S. and his Heirs, to the Use of J. S. for Life, the King has the Inheritance of the Use by Implication of the Patent, and no Office needs; for Implication out of Matter of Record amounts ever to Matter of Record. Ld. Bacon on the Statute of Uses, 355.


13. There is a Difference between a Feoffment in Fee to Uses, and a Arg. Le. Covenant to stand sealed to Uses. If Feoffment in Fee be, and Use is limited to a Person incapable, Remainder over, nothing returns to the Feoffor; but otherwise 'tis in Covenant to stand sealed as in Ld. Paget's Cafe. 1 Rep. 134. in the put in the Register of Chedington's Cafe. The same in Cafe of Refusal 'tis in the Coffer of by Tenant for Life, Remainder over. Arg. Litt. R. 262. Pach. 5 Car. Chedington's Cafe, cites it at F. in C. B. in Beck's Cafe.

Manwood Ch. B. in Ld. Paget's Cafe — 2 Lev. 77. S. C. and S. P. cited in Cafe of Pibus v. Mitford: Arg. — Same Difference taken by Holt Ch. J. between a Covenant to stand sealed, and a Feoffment to Use; for till the Contingency happens, or the Time comes for the future Use's rising, it shall return again to the Feoffor. 12 Mod. 39 in Cafe of Davis v. Speed.

14. Feoffment of Lands to J. S. in Fee until he should make a Lease to A. B. for 21 Years to begin at the Feast of &c. If J. S. does not make a Lease accordingly, the Use shall be to the Feoffor; for here is only a matter of Power, and the Intent is not that the Feoffee shall have anything by the Non-Performance of the Trust; Per Roll Ch. J. and Ask J. S. 205. Hill. 1049. Watts v. Dixey.

15. A. feified in Fee conveys it in Truitt with Power to make a Lease for 21 Years. A. made a Lease for 21 Years to B. and C. in Truitt for himself for Life, and after for his Wife for Life, and that after the Death of A. and his Wife, the Trustees during the Residue of the said Term, should permit such Person &c. as the said A. should nominate, and for want of such Nomination, or after the Death of such Nominee, the Heir of A. should take &c. the Rents thereof. A. nominated J. S. to take the Rents during the Residue of the said Term. J. S. the Nominee died. It was agreed that such Limitation to the Heir of the Person limiting is a void Limitation; and the Estate in Interest did again revert to A. who made the Limitation, and the Remainder of the Term, upon the Decease of J. S. belongs to the Executors of J. S. Chan. Cafes, 8. Hill. 13 14 Car. 2. Goring v. Bickerfaff & al'.

16. Feoff
16. **Feoffment of a Manor.** by A. to divers Ufes, excepting two Cloes for the Life of the Feoffor only. It was agreed by all that no Ufe was limited of those two Cloes; for the Ufes were limited of the Manor Exceptis pre-exceptis, which excluded the two Acres. For tho' there were not sufficient Words to except them, yet there was enough to declare the Intention of the Feoffor to be so. *Vnt.* 106. Mich. 22 *Car.* 2. B. R. Wilson v. Armorer.

17. A Feoffment is made by a Father to a Son generally, no Ufe rises back to the Father unless it be expres'd. Arg. 2. Chan. Cases. 232. Thin. 29 *Car.* 2. in *Cae.* of Elliot v. Elliot.

18. In Case of a Trust at Common Law, if a Man was feid Ex parte Materna, and made a Feoffment without any Consideration, the Trust resulted to the Feoffor, and was of the same Quality with the Estate; but if the Feoffor had re-infosied the Celty and Trust, the Nature of the Estate was altered, and the Land Ex parte Materna, should not descend to the Heir Ex parte paterna; for he could not Inteoff the Celty que Trust to him and his Heirs Ex parte Materna, because there was not a such Limitation of the Inheritance in him; Resolved per Cur. *Carth.* 141. Thin. 2 W. & M. B. R. in *Cae.* of Rice v. Langjord.

19. If a Feoffment in Fee is made to the Ufe of A. and the Heirs of his Body begotten, the Remainder in Fee to the Right Heirs of T. S. who is then living, there in such Fee the Fee-Simple is not in Abeyance, nor in the Feoffor, but the Ufe of the Fee shall result to the Feoffor, and remain in him until the Contingency (viz.) the Death of T. S. shall happen; *Per Holt Ch.* J. *Carth.* 262, 263. *Hill.* 4 M. & M. in *B. R.* in *Cae.* of Davis v. Speed.

20. If a Feoffment were made to the Ufe of the Heirs of the Body of the Feoffor from and after the Decease of J. S. There no Estate for Life would result till after the Decease of J. S. cited by Holt *Ch.* J. *Cumb.* 313. *Hill.* 6 W. & M. B. R. in *Cae.* of Tipping v. Coling, as said by Hale, in the *Cae.* of Pybus v. Mitford.

21. A. seïd in Fee by Deed and Fine, conveys to Trustees for 70 Years, if A. so long live, Remainder to Trustees for 3000 Years, and from and after the Death of A. then to B. Whether the Remainder to B. is good? The Objection was, that an Estate of Freehold was to commence in future; For the first Freehold is limited to B. which is not to arife till the Election of both the Terms, and after the Death of A. and no Estate for Life is limited to A. unless it be supposed to result back to him. To prove the Remainder void, it was inferred that here the Conveyance working by Way of Transmutation of Possession no Estate for Life can result nor arife by Implication of Law as there may in a Covenant to stand seïd or in a Will, but it must be by express Limitation. The Court took Time to consider of it. *2 Vern.* 370. pl. 334. Mich. 1699. *Penhay v. Hurrell.*

There being no Estate for Life vested in the Father; but if it had been in *Cae.* of a Covenant to stand seïd, it might have been otherwise. — And ibid. 235. pl. 507. Mich. 1699. S. C. says it was agreed that in *Cae.* of a Covenant to stand seïd, what was not limited out of the Covenantor, did continue to him; and therefore, if a Man covenant'd to stand seïd to the Ufe of the Heirs of his Body, it should be an Estate-Tail, because the old Estate for Life continued in him; And my Lord Coke's Opinion in *Cae.* of *Ftitrich & Smith,* it, that it will do in *Cae.* of a Feoffment to Ufes, which Opinion, as was laid by Judge Powell, my Lord Chief Jfl. Hale did seem to be of in the *Cae.* of *Pybus v. Smith.* And my Lord Coke, when he came to be Ch. Jfl. continued the same Opinion, as appears in *2 Roll Rep.* 259. 317. And it was said that this differs from the *Cae.* of *Davies & Smith* (Spred) in the House of Lords, because there it appear'd the Estate moved from the Wife, and to the Husband should not take an Estate by Implication; but here it was A.'s own Estate, and so to the Judge and the Ld. Chancellor were of Opinion, that the Ufe should result, according to my Ld. Coke's Opinion, and the rather, because contingent Ufes are not favour'd in Law, but where it may be Remainders shall Vtil. But it was said the Earl of *Wolfort's* Case seems contrary.
trary; and the Ch. Justices were of another Opinion; and therefore the Ld. Chancellor defined the Opinion of all the Judges, it being a Point never yet settled by any solemn Resolution. And ibid. 252. pl. 326. Trin. 1702. S. C. That Ld. Keeper, after Consideration had, and a Cafe being stated, gave his Opinion, that A. had an Estate for Life by Imagination, and so the Remainder all good, there being a Freehold to support them; and he went upon the Cafe of Pybus and Airford, in Mod. Rep. 159, and brought the Book into Court, where it seems to be the Opinion of the Ld. Coke and Hale, that as well in a Fine or Fragment, as in a Covenant to stand ejected, so much of the Use as a Man did not depart with, remain'd in him; and so he said is 1 Inst. 22, and gave Judgment accordingly.


cular Use was limited upon the Release, the Rest would resulf back. Ibid. 77.


24. If a Fragment be made, or a Fine be levied, or Recovery be suffer'd without Consideration and no Uses are expressed, it is to the Use of the Feoffor and his Heirs. But if any Uses be expressed, it shall be to those Uses, tho' no Consideration be had; and herein is the Difference between railing Uses by Fine, Feoffment, or other Conveyance, operating by Transmutation of Possifion, and Uses raised by Covenant; for upon the first, if no Uses were expressed, it is Equity that assigns the Feoffor to have the Use; for by the Law, the Feoffor has parted with all his Interest; but where he expreffes Uses, there can be no Equity in giving him the Use against his own Will; and there can be no Pretumption that the Conveyance was to the Use of the Feoffor against his own Declaration; but in Cafe of a Right by Law; therefore in such Cafe there can be no Use without a Consideration; for there is no Equity there hould. G. Law of Uses, &c. 222, 223.

25. A Trust is limited thus, if such a Marriage takes Efect, after M's Age. See 2 Vern. of 16 (he being the Daughter of H.) and she shall have Issue Male of the Body 338. pl. of S. than to bat for Life. He marries her at twelve Years of Age. She lives 1685. The till near seventeen, and dies without Issue. He shall have no Trust for Life; Duke of because the having no Issue Male, there was a Failure of the precedent Southamps- Qualification to enable him. It seems, the living till after sixteen, fulfils ton v. Cran- the first Words well enough &c. [viz.] if the Marriage should take Ef- feft after her Age of sixteen. After the Death of S. and M. the Daugh- ter of H. without Issue, the Trust was limited over to others; but de- creed that till the Daughter of S.'s [H.'s] Death, he in Remainder could not take, but that the Heir should have the Trust till that happen'd; 


show. Parl. Catas, 81. &c. Sir W. Wood, a- 

mer v. the Duke of Southampton.
(Z. a) Covenant to stand seised. Good. In respect of the estate of the covenantor, or the manner of the covenant.

1. Tenant in tail by indenture on consideration of marriage, covenant with another that A. and B. shall be seised to his use for term of his life, and after his decease to the use of his son and heir apparent. By this covenant there is no use changed, unless only during the life of tenant in tail; per tot. cur. Het. 110. Trin. 4. Cat. C. B. Bromfield's case.

2. Tenant in tail covenants to stand seised to the use of himself for life, and after to the use of his eldest son and his heirs; and after covenants with a stranger to levy a fine to the use of the stranger and his heirs; he levies a fine accordingly, and dies. It was resolved that the son should not have the land by the first covenant; for when tenant in tail covenanted to stand seised to the use of himself for life, that is as much as he could lawfully do; and the limitation over is void, and he remains seised as before. And the justices and council of the Court resolved accordingly; Cro. E. 895. pl. 15. Trin. 44. Eliz. in the court of wards, Bedingfield's case.

3. Covenant to stand seised of as much as shall be worth 20l. per annum, is merely void. Agreed; and said that so it was lately adjudged. Het. 147. Mich. 5. Cat. C. B. Rile's case.

4. A. seised in fee, in consideration of the marriage of B. his son, and a marriage portion, covenanted to levy a fine to B. and that B. should stand seised to the use of A. the father and his heirs, till the marriage had, and after to B.'s own use in tail, with diverse remainders over. And A. covenanted in the same deed, that he was seised in fee, and so should be till the use vested in B. the son. It was resolved by Powell and Rooksby J. the only judges then in Court, that A. could not covenant that the son should stand seised of lands whereof the father is seised; and the subsequent covenant was intended against incumbrances only, as is usual in such cases, and not to raise any use. 3 Lev. 306. 307. Trin. 3 W. & M. in C. B. Barrington v. Crane.

* The covenant is good, and passes a base fee to J. Per Holt Ch. J. Ann. in case of Machil v. Clark.

Rep. 121. pl. 84. in S. C.

5. If tenant in tail covenants to stand seised * to the use of A. and his heirs, or to the use of A. for life, + remainder to B. in fee. The covenant is not void, but puts the estate out of the covenantor. Per Holt Ch. J. in delivering the opinion of the Court. 2 Salk. 620. Trin. 1 Holt Ch. J.

Comyn's case.

6. But if tenant in tail covenants to stand seised to the use of A. and his heirs after his death, it is void. 2 Salk. 620. Per Holt Ch. J. in case of Machil v. Clark.

when the right of the estate out of which it would issue, is in another person by a title paramount, the conveyance, viz. per forman doni.

7 Mod. 26. S. C. & P. because it is to commence at a Time
But if **Tenant in Fee** does, it is good; and there being no **Transmutation of the Possession**, the Estate remains in himself in the mean Time. 2 Lev. 17; in *Cafe of Pibus v. Mitford*, cites 1 Rep. 154. b.—Per Hale Ch. J. *Raym. 250*. in *Cafe of Pibus v. Mitford*.

7. **Tenant in Tail** covenanted to stand feised to the **Use of himself for** 7 Mod. 18 *Life*, Remainder to *f. 3. and his Heirs*, it is void; For the Remainder to *28. S. C.* is to take Effect after his Death, when by his Death the Title of the succeeding Estates commences; and the Covenant, as to the **Estate for Life** to himself, is void in this Cafe, because here is no **Transmutation of Possession**. Such a *Covenant* is in any Cafe, good only in respect of the **Remainders**; and since the **Remainders** are void, the Covenant and the first Estate are likewise void.


8. A **Covenant** was to stand feised in **Confederation of Love &c. to his Wife**, and after to *T. and his Heirs*, (T. was Sifter's Son to the Covenantor, and his Heir at Law) but the **Deed** was without the general **Confederation** (viz.) to continue the **Estate** in his Name and Family; nor is it express'd in the Deed that T. is of the Blood of the Covenantor; and therefore Raymond doubted whether the **Confederation** is not too freitig to **extend to T.** If the **general** **Confederation** had been express'd in the **Deed**, it might be aver'd that T. was of the Blood of the Covenantor, but here the **Averment** must be, not only that he is of the Blood of the Covenantor, but also that the **Confederation** was for the Advancement of his Family, which he doubted cannot conif without the special **Confederation** mention'd in the **Deed**, which is confin'd to the **Wife**, and to which T. is a Stranger. The other 3 Judges deliver'd themfelves to the fame **Effect**. But per *tot. Cur. The Cafe deferves further **Confederation**. Gib. 299. *Trin. 5 Geo. 2. B. R. Goodtitle v. Petticoe*. 

(A. b) **Covenant to stand feised.** In what Cases there shall be a **Particular ESTATE by Implication.** And in what Cases **Uses** by Implication are excluded.

1. A **Made a Fee-simple to the Use of himself for Life, and after his Death** See *Pollекс*; and the **Death** of *M. his Wife, to B. his Son in Tail*. And it was *28. S. C.* held in this **Cafe**, that no implied **Use** did arise to M. and therefore the **Estate** to B. contingent. *Arg. Pollекс*. 94. cites the **Cafe** of *Weale v. Self*.

you'd to maintain that an **Use** did arise by Implication of *Law* to A. yet himself cites it held above.

2. **Covenant to stand feised to the Use of the Heirs Male of his Body**, *Raym. 228.* omitting himself; Per 3 *Justices*, but *Twilden J. contra, it is good, and S C. argued, he himself takes by Implication; and so Judgment was given for the **Defendant**. *Vent. 372*. *Trin. 26 Car. 2. B. R. Pibus v. Mitford*.

was given for the **Defendant**—2 Lev. 73. *S. C. adjudg'd accordingly.*—*Mod. 121*. pl. 27. *S. C. being the Opinion of *Hale Ch. J.*—*Mod. 159*. pl. 2. *S C. says Judgment was given for the **Defendant** on the Point here.*—If a Man covenants to stand feised to the **Use of the Heirs of his Body**, this is all one as if the **Limitation** had been to himself and the **Heirs** of his own **Body**, and not as if he had covenanted to stand feised to the **Use** of the **Heirs of the Body of J. D.** For there the **Covenantor** would have had a Fee-simple in the mean Time; *Per Hale Ch J.*—*Mod. 98*. pl. *3. Mich. 25* Car. 2. *B. R. Anon.* but seems to be in the **Cafe** of *Pibus v. Mitford*.

The
3. Covenant to stand seised to the Uses in the Indenture, and to no other; this cannot exclude Uses by Implication, but only express Uses. 2 Lev. 76. Arg. in Cafe of Pybus v. Mitford.

(B. b) What passes by Covenant to stand seised, and who shall take thereby according to the Limitation.

Covenants to stand seised to the Use of B. his Brother, for natural Love, and upon Confidence to levy Portions for his (A.'s) Children; this settles a good Fee in the Brother, subject to this Trust in Equity. Jo. 419. pl. 7. Hill. 14 Car. B. R. agreed in the Case of German v. Rylley.

2. Where by Covenant to stand seised the Estate is limited in Fee upon a Trust, as Payment of Portions, and after the Portions paid, to a Son of the Covenantor in Tail, Remainder over, when this becomes impossible by the Act of God before the Day of Performance of it, the Estate continues absolute in the Trustee, if he be of the Blood, as a Brother, and so call'd, and so able to take, which a Stranger is not. Jo. 119. pl. 7. Hill. 14 Car. B. R. in Case of German v. Rylley.

3. A seised in Fee has Issue two Sons B. and C.—A covenant to stand seised to the Use of B. and the Heirs Male of his Body on M. his Wife to be begotten; and for Want of such, to the Heirs Male of the Covenantor, and for Want of such Issue, to his own right Heirs for ever. B. had Issue of M. a Son and a Daughter; A. dies, and then the Son dies; the Daughter shall not take as Heir general, but the Uncle, viz. C. shall take Performance Doni, and not by Purchase but by Descent. 2 Mod. 207. 211. Pauch. 29 Car. 2. C. B. Southcott v. Stowell.

not by Purchase but by Descent from B.'s Son; For after the Death of the Father, both the Estates in Tail were vested in him, and he was capable of the Remainder by Purchase, and being once well vested in a Purchaser, the Estate shall afterwards run in Course of Descent. But Scroggs doubted. Adornatur. —— Ibid. 237. Pauch. 29 Car. 2. S. C. adjudg'd accordingly, and Scroggs agreed to the Judgment. —— Freem. Rep. 216. pl. 224. Mich. 1676. S. C. Adornatur. —— And ibid. 225. pl. 252. Pauch. 1677. S. C. adjudg'd accordingly.

(C. b) Power
(C. b) Power to direct future Limitations by Covenant to stand seised; where good.

1. Feme covenvants to stand seised to the Use of herself in Tail, Remainder to such as she by Will or Writing under her Hand should appoint; and for Want of such Appointment to the Use of the Plaintiff her Kindman in Fee. Whether the Remainder to such Uses as he should appoint, be not a void Remainder, being on a Covenant to stand seised, there was a Trial at Law, and a general Verdict for the Plaintiff, [who it seems was Heir at Law;] and Lord Chancellor decreed accordingly; Quere tamen. 2 Vern. 7. pl. 4. Trin. 1686. Warwick v. Gerrard.

2. A covenants with B. and C. in Consideration of Love and Affection to his Wife, and for some Provision and Livelihood for her, in Case the survival'd him, and for the following Uses, to stand seised to the Use of herself for Life, Remainder to his Wife for Life, Remainder to the Heirs of his Body on her begotten, and in Default of such Heirs to the Use of such Person as the Wife should appoint; and for Want of such Appointment to T. the Leilor of the Plaintiff (who was the Sister's Son, and Heir at Law of the Covenantor) and his Heirs. A. died without Issue, and the Wife afterwards convey'd the Lands to J. S. the Defendant. Per Raymond Ch. J. The Consideration seems to be restrained to the Covenantor himself and his Wife; and therefore if the Use had been to the Wife and her Heirs, it had been good; For it could not be said that the Heirs of the Wife were Strangers to the Consideration; For the more all her Heirs in herself, and that had serv'd only to limit the Use to her in Fee: But here it is a Power to the Wife to appoint the Use, and tho' that Appointment had been made in Favour of one of Covenantor's Blood, it would not have alter'd the Case; For the Power was void in the Creation within the Rule of Millman's Cafe, which was never disputed. But if the Power had been to appoint the Use in Favour of any of the Covenantor's Relations, in Consideration to continue the Estate in the Family of the Covenantor, that might be good, and it might be serv'd after the Appointment, that he to whom the Use was appointed, was of the Blood of the Covenantor. Now if the Power was void in its Creation, the Use vested immediately in T. as if no such Power had been, provided that T. be a fit Person to take the Use. Gibb. 299. Trin. 5 Geo. 2. B. R. Goodtitle v. Thornton.

(D. b) The Difference between a Feoffment to Uses &c. Sec (Z) and and a Covenant to stand seised, as to the Uses arising, or Powers reserved.

1. If a Man raises Uses upon a Fine, Feoffment, or Recovery, he may refer to himself a Power of making Leaves; but he can not do it on a Covenant to stand seised, or on a Bargain and Sale; for upon a Fine, Feoffment, or Recovery, a Use may be raised without a Consideration, and therefore will arise to those Leisues without Consideration; and the former Estates, which were raised without Consideration, may be defeated without it. But in a Bargain and Sale, and Covenant to stand seised, no 4 D Uses
Uses will rise without Consideration, therefore not to the Leesees; for where the Persons are altogether uncertain, and the Terms unknown, there can be no Consideration; and for which Reason the former Estates raised upon good Consideration, cannot by such Leesees be defeated. G. Law of Uses and Truths, 46.

1. There is a Difference between a Covenant to stand sealed and a Feoffment; for if a Man covenants to stand sealed to the Use of A. a Stranger for Years &c. the Remainder to B. his Son in Tail, this is void as to A. for want of a Consideration, and the Use ceases immediately in B. and a void Use is as if no Use be limited; and it no Use be limited, B. must take immediately, and not by way of Remainder, or else he can not take at all; for a Remainder ex vi Terminii, supposes a particular Estate, and B. must not be excluded; because Uses being Creatures of Equity, the Party’s Intent must be made good as far as possible, where there is a just and good Ground for any Part of the Conveyance. But if he makes a Feoffment in Fee to a Stranger’s Use, the Remainder to B. in Tail, this is good to B. because there wants no Consideration. Gilb. Law of Uses &c. 113, 114.

(E. b) Actions by or against Celfy que Ufe.

1. If Celfy que Ufe makes a Lease for Life, yet the Reversion remains in the Feoffees, and not in the Leilor; and they shall have Action of Wofe, notwithstanding that there be no Privy, and the Statute of R. was made for the Advantage of the Leiffe or Peoffee, and not in the Advantage of the Celfy que Ufe, nor of the Feoffees. Br. Feoffments al Uses, pl. 23. cites 5 H. 7, 5. Per tot. Cur. except Davers.

2. Celfy que Ufe could not have Action, Accracy, nor such like; but this should be in the Names of the Feoffors. Br. Feoffments al Uses, pl. 39. cites 15 H. 7, 2.

3. Celfy que Ufe by the Occupation of the Land, was a Trespassor at the Common Law, and could not justify it. Br. Feoffments al Uses, pl. 39. cites 15 H. 7, 2.

By the Common Law the Feoffees of Truth might have

Trespass against Celfy que Ufe; by all the Justices of C. B. Br. Feoffments al Uses, pl. 13. cites 15 H. 7, 2. S. P. For the Land was as much the Feoffee’s as if no Use had been of it; so that if they had ousted him, and fued him for Perception of Profits, he had no Defence at Common Law, but must have applied to Equity; but this was remedied by 1 R. 5, 1. Arg. Pl. C. 549. b. in Cafe of Delamere v. Bernard. S. P. by Anderson Ch. J. 1 Rep. 140 in Chudleigh’s Cafe. And 320. S. C. Arg. cites 15 H. 7. 4. S. P. in Sandilton’s Cafe, Pl. C. 3 cites 5 H. 7, and the Marg. cites it as 5 H. 7, fol. 5, and that he was only Tenant at Sufferance to the Feoffees, in case they permitted him to enter and take the Profits; and that he was not able to answer to a Practice quod reddat, because he had no Estate of Frankenement; but every such Writ must be brought against the Feoffees, for the Land is theirs. And if one had recover’d the Land against the Celfy que Ufe, and had enter’d, or by an Hab. fac. Sedlman had Execution, and the Feoffees been ousted, they might have Allot; but when they had recovered, they should be leifed again to the first Ufe.

The Feoffees recover’d against the Celfy que Ufe; for he could not prent without their Agreement; per Frowick Ch. J. Ibid. 47. Mich. 18 H. 7.

4. It was said per Frowick Serj. to have been lately adjudg’d, That where Adversary appellant became void, and Celfy que Ufe fuller’d his Tenant at Sufferance to prent, and was disfurb’d, he cannot maintain a Quare Impedit. Quod nota; no more in the same Cafe than a Stranger, and not like to a Lease at Will; for the Tenant at Will has his Potentfion by an Act done by the Feoffee, and so has not the Tenant at Sufferance &c. Kelw. 42. b. pl. 7. Pauch. 17 H. 7.

5. Celfy
5. Cefty que Ufe shall be impannell'd in a Jury, and if he lose Issues, they are leviable of the Lands in the Possession of his Feeffees. Quod
fuit concellum. But it was said that this commenced by Sufferance, for
the Advantage of the King. Kelw. 42. b. pl. 7. Patch. 17 H. 7.
6. Cefty que Ufe shall not have Trefpafs before an actual Entry; for Nov 73.
that is grounded on a Possession; per Glanvll. Owen 87. Mich. 41 & S. C. says
he may have
Aoffs, but not Tref-
pafs, without actual Possession, and fo not EjeBment. — S. C. cited D. 51. b. Marg. pl. 17. He is im-
mEDIATELY and actually seized, and in Possession of the Land, so as he may have Affes or Trefpafs be-
fore Entry against any Stranger, who enters without Title; and this by the Words of the Statute 17
H. 8. viz. That Cefty que Ufe shall stand and be seised &c. and this was the Opinion of several Juftices,
C1. 46. Patch. 28 Eliz. C. B. Anon.

(F. b ) Pleadings.

1. Fees in Ufe shall plead such Pleas as Cefty que Ufe will minifter to
them; by the Juftices. Brooke says, Quære of Delays. Br.
Confine, pl. 27. cites 7 E. 4. 29.
2. He who pleads a Grant &c. by Cefty que Ufe, shall say that Cefty que Ibd. pl. 67.
Ufe at the Time &c. was of full Age, sound Memory, and out of Prison
&c. at the Time &c. as in the Statute 1 Ric. 3. Br. Feeffments al Ufes, cit-
es 4 H. 7. 8.
3. If a Man pledges Grant &c. of Cefty que Ufe, he shall say that the Fee-
s where a
fees were seised to the same Time at the Time &c. and so seised did demife, in-
4. If a Man pleads that A. B. and others were seised to his Ufe in Fee, S. P. Br.
this good Pleading, without shewing the Commencement of the Ufe. Br.
Pleading, pl. 170. cites 13 H. 7. 18.
S. P. G. Law of Ufes &c. 276. — S. P. As to say that A. was seised in Fee, and seoff'd J. N. and
W. to the Ufe of T. P. Br. Pleadings, pl. 160. cites 36 H. 8. — S. P. For it was granted that if a
Man diffuse R. to the Ufe of B. he shall not shew this Difjunct, in shewing how he came to his Estate.
Br. Feeffments al Ufes, pl. 10. cites 14 H. 8. 4.
Contra where he says that they were seised to the Ufe of him and his Heirs of his Body, because this is a
5. If a Man has Land in Ufe, and sells the Land to another, the Sale &c. cited
changes the Ufe, and the Buyer may, and make a Feeffment, if the G. Law of
Ufes &c.
Sale be perfect. Quære, if he pleads that he bought the Land for 20l. by
82. and says
which he enter'd and made Feeffment. Quære if this be good, and the Plea-
Money not paid, nor any Day of Payment alleg'd. But it seems to me, that ing is good;
it shall be intended in the Law a good and perfect Sale and Buying, for Buying
when
when a Man pleads that he bought; For if it be not a perfect Bargain, then he did not buy, and then it is a good Replication for the Plaintiff to say That he did not buy, proud &c. And per Fineux, It is a good Buying, because the Defendant has entered, and the other may have Action of Debt. Br. Feoffments al Usfs. pl. 15. cites 21 H. 7. 6.

6. In Debt the Plaintiff counted upon a Lease for Years made by his Father, rendring Kent. The Defendant said, that the Father and others were feised in Fee to the Use of the Father, abique loco that the Recession descended to the Plaintiff. And a Good plea to the Count; For the Plaintiff ought to have counted specially that they were seised to the Use &c. and that the Father leaved, and because not, the Writ and Count shall abate; per Rede Ch. J. & Kingmell J. For per Rede, the Defendant may say that the Father had nothing at the Time of the Dimise, and then the Plaintiff cannot maintain the Declaration by the Use, but it is a Departure; for he ought to have shewn it at first. Br. Count, pl. 49. cites 21 H. 7. 25.


8. In Ejectment the Defendant pleaded a Feoffment made to J. S. who by Force thereof was seised and leased to him, and that one G. entered and leased to the Plaintiff, but did not say that he entered upon 7. S. Owen J. said he ought to have alleged a Dileinum, but Anderfon held that Ceify que Ufe has Possession of the Land before Agreement or Entry; but if he disagree, then it shall be out of him presently, but not before he disagree. And the Cafe being mov’d in another Term, Walmsley said that he might be disquieted before his Entry or Agreement, and the Pleading shall be that he did enter and did dilate him; and to this Glanville J. agreed. Ow. 86. 87. Mich. 41 & 42 Eliz. C. B. Green v. Wilseman.

9. In Wafe the Writ sets forth a Feoffment to such Persons to several Uses. After Verdict Exception was taken to the Writ, because it does not say the Feoffment was to them and their Heirs, without which there could be no Inheritance in Ceify que Ufe, and so no Difesification as the Action of Wafe imports; but the Plaintiff had Judgment, because all the Forms of the Writs had been so since the making the Statute; and the Declaration laid the Seifin in Fee, as it must, and yet the Plaintiff might have had a general Writ, and declar’d specially. Hob. 84. pl. 112. Trin. 12 Jac. Sket v. Oxenbridge.

(G. b. ) Equity.

1. Ufepna commenc’d in Time of E. 3. but it was always against the Feoffee in Trust himself, and was never allow’d against his Heir till H. 6. and in this Point was the Law chang’d by Fortescue Ch. J. Per Vavifiin. Kelw. 42. b. Pach. 17 H. 7.

2. If the Feoffee made Feoffment over, the Feoffor had no Remedy; so if he did the Heir of the Feoffee was (as Fortescue Ch. J. thought) feised to his own Ufe; for the Confidence was personal only, and the Feoffee’s Feoff was seised to his own Ufe till H. 4th’s Time, but if the 2d Feoffee had
had Notice of the Ufe, Chancery will reform it now, and the Heir of
the Feoffee in Truth was feited to his own Ufe till the Beginning of E.
4th's Time, and then commended the Subpoena against the Heir and the
Feoffee of the Feoffee; Per Frowike Ch. J. Kelw. 46. b. 18 H. 7.

3. A Man had 4 Feoffees feited to his Ufe, and sold his Land to H. and
said to two that his Will is, that they 4 make Feoffment to H, which two no-
tified his will to the other two, and they refused to make Feoffment, by which
the Feoffees the first two made Feoffment to H of that which to them belong'd; and after are not
the Keeper sold the Land to J, and require the Feoffees, who refuse'd, to make bound to
J to make it accordingly, and H. the first Vendee brought Sub-
poena against the two first Feoffees who refuse'd, and the Matter adjourn'd into
the Exchequer Chamber; and because the two Feoffees did not say to the by his Ser-
other two that their Feoffor commanded them to infeoff H, but said that his
Will was that they infeoff H, which they are not bound to do without
Commandment, therefore the Defendants went quit of this Subpoena; which
Brook lay is wonderful to him. Br. Confcience, pl. 5. cites 37 H. 6. 36.

the Remainder to H and J. refuse to take Estate, H. shall have Subpoena
against the Feoffees to make them execute Estate to him after the Death
of J. Per Jenny, quod Finch conciliate. Br. Confcience, pl. 5. cites 37
H. 6. 36.

5. If a Man is bound to F. to the Ufe of C. there C. may have Subpoena
against F. to bring Action to the Ufe of C. Per Moyle and Davers. Br.
Confcience, pl. 9. cites 2 E. 4. 2.

in Ufe to compel them to maintain Action in their Names. Br. Confcience, pl. 27. cites 7 E. 4. 29.

6. If my Feoffee in Ufe be diffeited, I shall have Subpoena to bring A. Cary's Rep.
ife; Per Moyle and Davers. Br. Confcience, pl. 9. cites 2 E. 4. 2.

That if the Feoffee be diffeited, the Feoffor shall compel him to sue an Affife.

7. If 200 Marks are deliver'd to A. to keep and deliver to his Executors
Br. Obliga-
or Administrators after his Death, to dispose for his Soul, and A. delivers the
200 Marks to keep and re-deliver to A. when he shall require, and he who
first deliver'd makes Executors, and dies, there the Executors or Admini-
Br. Prohibi-
trators shall have Subpoena against A. to sue the Bond against B. to have
rators shall have Subpoena against A. to sue the Bond against B. to have
Br. Obliga-
cites S. C. cites 2 E. 4. 7.

Delivery of the Money, because the Bond was made to the Ufe of the Owner who first deliver'd the 200 Marks. Br. Confcience, pl. 10. cites
4 E. 4. 37.

8. Where a Man makes Feoffment, and declares his Will for Years, and Br. Defec-
dies, leaving a Son and a Daughter by one Venter, and a Daughter by another
Br. Defec-
Venter, and the eldest Son dies before the Will perform'd, the Sifer of the
B. Obliga-
whole Blood shall have Subpoena to have Execution of the Estate of the Feo-
rators shall have Subpoena against A. to sue the Bond against B. to have

9. If a Man infeoffs A. to his Ufe, and declares his Will, and after A. sells to R. and infeoffs him, yet if A. gives Notice of the Intent of the first Feoff-
mament to R. he shall be compell'd by Subpoena to perform the Will. Br. Feoff-
ments al Ufes, pl. 32. cites 5 E. 4. 7.

10. If Tenant in Borough Englishe infeoffs two to his Ufe and his Heirs, Br. Confcience, pl. 11. cites 5 E. 4. 7.

11. If a Man infeoffs of Trufi of the Land to him descended of the
the Part of the Mother, and dies without Issue, the Heir of the Part of the Mo-
Mother shall have Subpoena. Br. Feoffments al Ufes, pl. 32. cites 5 E. 4. 7.

4 E
12. If Tenant in Tail makes Feoffment to his Use, and dies without Issue, no Will declared, he in Reversion shall have Subpoena. Br. Feoffments al Ufes, pl. 32. cites 5 E. 4. 7.

13. If Baron and Feme are seized in Sure uxoris, and the Baron makes Feoffment without declaring his Will, the Feme shall not have Subpoena. Brooke says the Reason seems to be inasmuch as when a Man makes Feoffment without Consideration, and expressing any Use, the Feoffment is intended by the Law to be to the Use of the Feoffor and his Heirs, therefore it seems the Feme shall have Cui in Vita. Br. Feoffments al Ufes, pl. 32. cites 5 E. 4. 7.

14. If a Man gives Goods to his Use, and another takes them, the Donee is bound in Conscience to maintain Action of Trespass thereof, but not Appeal of Robbery; per Chocke & Littleton, The Reason seems to be inasmuch as the Plaintiff shall not be compell'd to wage Battel, if the Defendant tends Battel. Br. Conscience, pl. 27. cites 7 E. 4. 29.

15. It was moved, that if a Man has Notice that W. is incoff'd to my Use, or has Goods given to him to my Use, and M. knowing it, buys the Land or Goods, Subpoena lies against both; for there is a Purchase; but contra of a Release. But by the Reporter all is one; for it is Conscience in the one Case or the other. Br. Conscience, pl. 17. cites 11 E. 4. 8.

16. If the Feoffor relieves to the Trespassor, Celty que Use shall not have Subpoena against the Trespassor, tho' he had Notice of the Use. Br. Conscience, pl. 17. cites 11 E. 4. 8.

17. Subpoena brought by Celty que Use against three Feoffees of a Trust, to execute an Estate to Celty que Use. 'The one said, that the Feoffor incoff'd him and the other two, and the two took Livery, and he was not at it, nor ever agreed to it, and the Land is held of him, so that he cannot incoff the Plaintiff for extinguishing his Seigniory, and a good Answer by the best Opinion. But Quere if a Man may disclaim in Chancery. Br. Conscience, pl. 18. cites 16 E. 4. 4.

18. Subpoena. The Chancellor enjoind the Defendant, Feoffee of Trust, to make Estate to Celty que Use, upon Pain of 100 l. If he does not do it, Scire facias shall not issue thereof; for it is only in Terraeus. Br. Conscience, pl. 29. cites 10 H. 7. 4.


20. If I give Money to one to purchase Lands therewith to him and his Heirs, and to permit me to take the Profits thereof during my Life, and he with-holds the Profits, he shall be compell'd by Subpoena. Cary's Rep. 14. cites Crompton, fol. 48. b.

21. A Devis is to the Father for Life, Remainder to the first &c. Son in Tail, Remainder to Trustees for their Lives, to support the Contingent Remainders. The Court declared, that this is a good Term to support the Remainders, notwithstanding the same is limited to the Trustees, and inferred after the Limitation to the first &c. Sons, (it being in the Case of a Will,) 2 Chan. Rep. 169. 31 Car. 2. Green v. Rooke.

22. By a Marriage-Agreement the Land was to be charged with the Payment of Portions for younger Children, and Maintenance to begin from the Death of the Husband; but in the Settlement the Limitation was to the first &c. Son in Tail Male, Remainder to Trustees for 500 Years, to raise Portions
Ufury.

Portions &c. The Matter of the Rolls said, He would not destroy this Settlement, but would set it right; and that he did not regard the placing of the Term, but would help the Mifake, which would otherwise prevent the Agreement of the Parties from taking Effect; For that the younger Children are as much Purchasers of their Portions as the eldest Son is of his Estate Tail limited to him. 2 Wms.'s Rep. 151. Trin. 1723. Uvedale v. Halipenny.

For more of Ufes in General, see Bargain and Sale, Covenant, Estate, Fines, Grants, Recovery Common, Remainder, Resturer, Trust, Voucher, and other Proper Titles.

* Ufury.

[A] [In General.]

1. In Italy they have houses of Free Loan to the Poor. Edw. Sand's his Book, intitled, A Relation of the Religions used in the West Parts of the World, circa Principium.

whether the Borrower makes any Advantage of it, or the Lender suffer any Prejudice for the Want of it, or whether it be repaid on the Day appointed or not. And in a larger Sense, it seems that all undue Advantages taken by a Lender against a Borrower come under the Notion of Ufury, whether there were any Contract in relation thereto, or not; as where one in Possession of Land, made over to him for the Security of a certain Debt, retains his Possession after he hath received all that is due from the Profits of the Land.

2. In Statuo Walliae in Magna Charta, 2 Part, fol. 6. the Sheriff ought to inquire in his Tourn of Ufurers.

3. Among the Petitions in Parliament, 18 E. 1. fol. 1. there is this Petition. Wilhelmus de Cleram queritur de Ufuraribus modo corum Ordinariorum, & perquirat sefundum legem terrae.


5. 5 E. 1. Rot. Patentium. Hemb. 27. in Dorset, That no Christian ought to take Ufury.

That it was anciently held absolutely unlawful for a Christian to take any kind of Ufury, and that whoever was guilty of it, was liable to be punished by the Cenfures of the Church in his Life-time; and that if after Death any one was found to be an Ufurer while living, all his Chattels were forfeited to the King, and his Lands escheated to the Lord of the Fee.

6. Mirror of Justices, 17. b. cap. 1. Sect. 17. one of the Articles inquiring in a Leer, was of Christian Ufurers, and of all their Goods.

7. See

* Hawk. Pl. C. 245. cap. 82. S. 1. 2.

† Hawk. Pl. C. 245. cap. 82. S. 1. P.
7. See the same Article Capite Trin. in Magna Charta, fol. 157. Article 16.
8. Hill. 16 E. 3. B. R. Rot. 28. Johannes hoperd is found Guilty by a Jury Pro ultima capienda 11 s. 8 d. pro 20 s. praestan-
dis et be suumibus.
9. 15. E. 3. 6. It is accorded and asserted that the King and his Heirs shall have the Cognizance of the Usurers dead, and that the Ordina-
    ries of Holy Church have the Cognizance of Usurers alive, as to
    them appertaineth to make Compulsion by the Tenures of Holy
    Church for the Sin to make Restitution of the Usuries taken against
    the Laws of Holy Church. (But this Statute was repealed after-
    wards in the last Year.)
10. 5 D. 4. Rot. Parliamenti. N. 68. Pray the Commons that as in the City of London and elsewhere throughout the Realm, the
    horrid, and damnable Sin of Usury, customably used under the
    Name of The面包 Colours, and by Strangers named Brokers, who
    have not whereas to live unites by such their Gain, in many Forms
    very publickly and openly by their Debaution perpetrated, whereby several of all Estates as well Spiritual as Temporal, have been impoverisht, and their Beasts and Lands lost.
    That it pleaseth to ordain that no Alien nor Denizen be Broker of
    Usury for the Time to come, and that it be inquired every Year,
    and he who is attainted of being a Broker forfeit to the King all his
    Goods.

Answer,
Be this Matter govern'd and ruled according to the Law of Holy
Church, during the Life of such Usurers.

ingly.
11. A Promise was to pay so much, and the Interest inde debendam
at Michaelmas next. It was argued, whether the Payment of Interest
was lawful or not. The Judges compounded the Matter between the
Parties to avoid making a Precedent. Palm. 291. to 294. Trin. 20 Jac.


All the Goods of an Usuror, who died an Usuror, were forfeit-
to the King.

Win. 114. Mich. 22
Jac. C. B. Arg. in Cas. of Gibson v. Ferrer, cites Glanvil, lib 9. cap. 14. S. P. but says, that is to be intended of
such as live by the common Oppression of the People.

Shene Regiam Majestatem, 61. 1. The Law of Scotland is ac-
cordingly,

The Lands of such Usurers ought to escheat to the Lord of whom
they were held, and should not belong to their Heirs.

Shene Regiam Majestatem, 61. 5. The Law of Scotland is ac-
cordingly.

A Man could not at Common Law maintain an Action upon an
Actions (T) Ulurous Contract. 26 E. 3. 71. admitted.

Use of Money at this Day is no good Consideration, because against Law Natural; Agreed by

Doderidge
Doderidge and Whitlock J. absolutebus allis, but Noy, Arg. said that Consideration of Ufe, if it does not exceed 101. per Cent. is good to ground an Action. 2 Roll. Rep. 469. in Cafe of Oliver v. Oliver.

Hawk. Pl. C 235. S. 5, 6, 7, says, it seems to have been the Opinion of the Makers of Some late Acts of Parliament, as 4 Ed. 6, 24. 15 Eliz. S. Par. 4, and 21. Jac. I. 17. Par. 5. That all kinds of Uhury are contrary to good Confequence. And accordingly here, it seems formerly to have been the general Opinion, That no Action could be maintained on any Promifce to pay any Kind of Ufe for the Forbearance of Money, becaufe that all fuch Contracts were thought to be unlawful, and consequently void. But it seems to be generally agreed at this Day, that the taking of reasonable Interett for the Ufe of Money is lawful, and that a Covenant or Promifce to pay it in Confiueration of the Forbearance of a Debit, will maintain an Action; For why should not one who has an Estate in Money, be as well allow'd to make a fair Profit of it, as another who has an Estate in Land? And what Reaon can there be, that the Lender of Money should not as well make an Advantage of it as the Borrower? Neither do the Passages in the Medical Law, which are generally urged against the Lawfulness of all Uhury, if fully confider'd, fo much prove the Unlawfulnes as the Lawfulness of it; For if all Uhury were against the Moral Law, why should it not be as much in Refpect of For-}


gerigners, of whom the Jews were expressly allow'd to take it, as in Refpect of thofe in the fame Na-}


tion, of whom alone they were forbidden to receive it? From whence it feems to follow, That the Prohibition of it to that People was merely political, and confequently doth not extend to any other Nation.

2. If A. Surrenders a Copyhold to B. upon Condition that if he pays Act. (T) 801. to B. at a certain Day that the Surrender shall be void, and after it is agreed between them that A. shall not pay the Money, but B. shall forfeit it, and in Consideration thereof, B. allows to pay to A. at Rep. 469. a certain Day 60 l. or 61. a Year from the said Day, Pro Uti & In-} S. C. after the said 60 l. till it be paid. An Action upon the Cafe lies upon this Promifce; For it is a good Promifce, and not against the Law; For this 60 l. shall be taken to be Interette Danni and not lock J. ab-}


sentius, a-


litis, and that this was only in Nominum Penea, or Obligation with Condition. Such. 22. Jac. B. R. between Oliver and Oliver adjudged, it being moved in Arreft of Judgment (scil.) that it appears to be for Ufe, and all Ufe is against the Common Law. Intratit. 21 Jac.


cannot be Ufe, becaufe no Money was lent, and if he had referred more than 201. for 101. it had been good, and that the Difference between Penalaty and Ufe appears 26 E. 5. 71. And notwithstanding the Words (Pro Uti & Interette) yet this was not Uhury, becaufe no Money was lent. And the Report says, that Noy of Council for the Plaintiff took the Diffiniution of Interette Lucr, and Interette Danni.—There is a great Difference between Interette Lucr, and Interette Danni; Per Jo. Powell J. And for this cite Grotius de Jure Belli & Pacis, lib. 2. cap. 12. par. 20. and 21. Latw. 274. Trin. 15. W. 3. in Cafe of Ycoman v. Barlow.

2. If A. be indebted to B. 101. and A. in Consideration that B. gives him Day for a Year next enuing for the Payment of it, promises to be bound by his Obligation to the said B. for Payment of the said 101. with the Interett thereof at the End of the Year aforesaid. An Action * upon the Cafe lies upon this Promifce, alleging that A. did not pay the 10 l. nor became bound to pay the 10 l. with Interett therein at the End of the Year. For this Interett is only Damage for the Money by Way of Penalty. Hill. 3. Car. B. R. between B of and Violence adjudged, this Matter of the Interett being mov'd by my self in Arreft of Judgment after Verdict for the Plaintiff, and three Damages given.


5. Jewish Uhury was an Offence at Common Law, being 40 l. per Cent. and more; but no other; Per Hale Ch. B. Hard. 4a2. Trin. 17. Car. 2.
What shall be said Ufury.

If a Man obliges himself in nine Marks to pay at a certain Day, and that if he does not pay at the Day, he obliges himself by the same Deed to pay him 17 Marks. This is not Ufury, but it is only a Pain. 26. E. 3. 71.

If Money be lent to be repaid with Ufury at above 10l. in the Hundred at such a Day, if 3 Men or one Man so long live, the Bargain is void by the Statute; Per Tanfield Ch. B. Line 103; said it had so adjudged.

If any Money is lends at greater or less Interest, or to have 40l. for 20l. if A. be alive such a Day, that is not any Ufury; For the Bargain was bona fide, and not for Loan; But if the Intent hereby was to have a Shift, it is otherwise. Cro. E. 643. Per Anderdon, Walmifley, and Owen (Glanvill absenere.) Mich. 40 & 41 Eliz. C. B in Cale of Burton v. Downham.

The 6 Months upon the Statute of Ufury shall be accounted half a Year, according to the Almanack, and not according to 28 Days in the Month. Nota Per Popham, which none gain said. Noy. 37. Anon.

The Agreement on borrowing Money was to pay the full legal Interest, and to take a House at an extraordinary Rent; and held Ufury without swearing in Certainty what the Bargain was. Cro. J. 440. pl. 13. Mich. 15 Jac. B. R. Bedo v. Sandersoaon.

Where a Bond or Mortgage is forfeited, it is no Ufury to take more than legal Interest. Jenk. 248. pl. 39.

If A. promis 100 l. for legal Interest at the End of the Year, and B. pays the Interest, but never received the Principal, this is not Ufury but Breach of Promis. Jenk. 248. pl. 39. 283. pl. 13.

A. sold an Office to B. for 950 l. B. paid 500 l. and on A.'s resigning B. and C. gave Bond to A. for 450 l. Afterwards A. came to Agreement with B. that B. should pay A. 80l. yearly, till the 450 l. and every Part of it was paid. This was adjudg’d in C. B. not to be ufurious; but Jefferies C. on the Circumstances of the Cate vacated the Securites, but gave no Relief for 300l. overpaid. Vern. 352. pl. 348. Mich. 1685.

If A. owes B. 100 l. B. demands his Money. A. says he has not the Money, but would pay it if B. can procure it to be lent by another Perfon. Whereupon B. having present Occasion for his Money, contracts with C. that if C. will lend A. 100 l. B. will give C. 10 l. Upon which C. lends the Money, and the Debt is paid to B. This is a good and lawful Contract between B. and C. for B. has Benefit by it; Per Holt Ch. J. Carth. 251. Mich. 4 W. & M. in B. R. in Cale of Bartlett v. Viner.

9. If
Ufury.

9. If a Man has great Occasion for Guinea, and can make great Advantage by them, and for this Purpose gives to another more Money for them than the Value of them amounts to, this is no Ufury. Per Powell J. and also by Blencowe J. as the Reporter says he thinks. Lutw. 273. Trin. 13 W. 3. in Cafe of Yeoman v. Barlow.

10. Where there is no Loan there can be no Ufury; Per Powell J. S. P. By Lutw. 273. Trin. 13 W. 3. Yeoman v. Barlow.

11. If there be a just Debt due, and a Bond is given for Payment thereof with unlawful Interest, it is Ufury. 6 Mod. 303. Mich. 3 Ann. B. R. Villars v. Cary.

(D) By Statute.

See (I)

1. 37 H. 8. cap. 1. Enacts, That all Statutes heretofore made concerning Ufury shall be void.

2. No Person shall sell his Merchandizes to any Person, and within 3 Months after buy the same, or any Part thereof, upon a lesser Price, knowing them to be the same.

3. No Person by way of any corrupt Bargain, Loan, Exchange, Chevifance, or Shift, or Interest of any Wares, or other Things, or by any other deceitful Way, shall take in Gains for the forbearing of one Year for his Money, or other thing that shall be due for the same Wares or other Things above 10 l. in the 100 l. continue to for 10 Years, it is not Ufury now after this Statute to pay or receive the said 10 l. according to the Agreement, whether the same be with Writing or without; for the Statute be general, yet it shall have reasonable Constructions. Agreed by all the Justices of C. B. Dal. 12. pl. 17. 13. 17. E. 6. Anon.

4. If any Person do sell or lay to Mortgage any Lands or Hereditaments, upon Condition of Payment or Non-payment of Money at or before any Day, the Person to whom such Lands shall be sold, or laid to Mortgage, shall not have in Gains above 10 l. in the 100 l. for one Year.

5. If any Person shall do any thing contrary to this Statute, he shall forfeit the treble Value of the Wares and other things sold, and the treble Value of the Profits of the Lands taken by Mortgage, and also shall suffer Imprisonment and make Fine and Restitution at the King’s Will, the Money of which Forfeiture of the treble Value shall be to the King, and the other Money to him that will sue for the same in any the King’s Courts of Record.

6. Provided that this Act shall not extend to any lawful Obligation with a Condition, nor to any Statute, or Recognition for Payment of a less Sum, so that such Obligation &c. be made for a true Debt, or Performance of true Covenants, upon any just Intent between the Parties, other than in Cases of Ufury, corrupt Bargains, Shift, or Chevifance, nor to any Recovery, Fine, Forfeiture, Release, Confirmation, or Grant, other than such as shall be on Condition, extending to Ufury, Interest &c.

2. 13 Eliz. cap. 8. 3. Enacts, That all Bonds, Contracts, and Assignments, collateral or other, for Payment of Money lent, or Covenant to be performed upon any Ufury in any thing against the Act 37 H. 8. cap. 9. upon which there shall be taken upon the Rate of 10 l. for the 100 l. for one Year, shall be void.

S 5 A12
Money to him that lends the Money, and not be

S. 5. All Usury, Loan &c. mentioned in the said Statutes, whereupon is not referred above 10 l. for the 100 l. shall be punished in Form following, viz.:

such Offender shall forfeit so much as shall be preserved by way of Usury's above the Principal, to be recover'd as by the said Statute.

and the Surety; per Walmsley J., Noy 72. in Case of Dowman v. Butler.

It was agreed, That if there be a Communication and an Agreement after the Forgiveness of a Recognisance, and the 2d Detainee is for more than 10 l. in the Hundred, according to the principal Debt, yet it is not within the 3d. of Usury, but it had been otherwise before the Forfeiture. And by Glanvill and Walmsley, Anderson beingobst, That altho' that the 2d Detainee bears Date the same Day of the Payment of the 1st Detainee, yet it is not within the Statute; for it is not for the Forbearance of the first Principal, but of that Penalty; also when the Confor perceives that he was not able to have the Forfeiture, it was adjudged that the first Contract was not unlawful Noy 2. Hollingworth v. Parkehurst.

S. C. cited Hawk. Pl. C. 248. Cap. 52. S. 2. says, That a 3d Bond, made after the Forfeiture of a former, and condition'd for the Receipt of Interest, according to the Penalty of the forfeited Bond, is as much within the Statute as if it had been made before the Forfeiture; for if such a Practice should be allow'd, nothing could be more easy than to elude the Statute; and tho' the whole Penalty be due in Strictnes to the Obligee, yet the true principal Debt is in Conscience no greater after the Forfeiture of the Bond than it was before.

S. 7. The Statute 37 H. 8. 9. shall be construed largely and strongly against the Party offending, by way of Device, directly or indirectly.

S. 8. This Statute shall not extend to any Allowance for the finding of Orphans, according to the Customs of the City of London, or any other City.

S. 9. If any Person offend contrary to the said Statute, such Offender may also be punished according to the Ecclesiastical Laws; and all offending in Usury, Shifts, or Consequence against this Act, and not taking but only after the Rate of Ten in the Hundred for a Year, shall be only punished by the Forfeitures appointed by this Act, against such as shall not receive above 10 l. in the 100 l.

3. 21 Jac. 1. cap. 17. S. 2. None shall upon any Contract, directly or indirectly, take for the Loan of any Money, or other Commodities, above the Rate of 8 l. for 100 l. for one whole Year, in Pain to forfeit the treble Value of the Money, or other Things lent.

S. 5. This Law shall not be construed to allow the Practice of Usury in Peace of Religion or Conscience.

A Mortgage was made at 8 l. per Cent. before the making this Statute reducing Interest to 6 l. per Cent. The Mortgagor continued paying Interest of 8 l. per Cent. for 15 Years after this Statute, and then the Mortgagor eed. The Mortgagor brought a Bill to redeem. The Question was Whether the 2 l. per Cent. received for the 15 Years, should not be allow'd in Discharge of so much Principal. The Court denied Relief as to the Money paid by the Plaintiff; but decreed 6 l. per Cent. only, to be allow'd from the Defendant's Entry on the Estate. 2 Vern. 42. pl. 37. Fitch, 1638. Walker v. Penn. — On a Re-hearing the Decree was confirm'd, as to the 2 l. per Cent. ibid. 75. pl. 75. — Lord C. Jeffries having been of Opinion, that the Statute had no Retrospect beyond 1660, but look'd forwards to Contracts and Agreements then after to be made, and not to any Contracts and Agreements before that Time, and having decreed Account to be taken accordingly, as above, now upon the Bill of Review, Ld. Commissioner Trevor, because there was a Decree already made in it, would not reverse it, But Ld. Commissioners Rawlinson and Hutchins, on reading the Act of Parliament, held the Act had a Retrospect, and makes it unlawful to take more than 6 l. per Cent. upon any Contract, where made before or after the Act of Parliament; but that Part of the Statute, which adds Penalties, relates only to Contracts and Agreements then after to be made. 2 Vern. 145. 146. pl. 141. Trin. 1690. Walker & al. v. Penn & al. — Abr. Eq. Calis. 288. (D) pl. 1. cites 2 Vern. 145. 146. S. C. That Rawlinson and Hutchins, Lds. Commissioners, held the Decree should be reversed, against Ld. Trevor. But that it seems to be now settled, that the Statute of 12 Anne, cap. 16, which reduces the Interest of Money to 6 l. per Cent. has not a Retrospect to any Debts contracted before, but that they shall carry Interest according to the Interest allow'd, or Agreement made at the Time of the Debt contracted. — And Serj. Hawkins, from the Expositions made of former Statutes, says, That a Contract made before the Statute is no way within the Meaning of it, and therefore it is still lawful to receive 6 l. per Cent. in respect of any such Contract. Hawk. Pl. C. 246. cap. 82. S. 10.
5. 12 Ann. Stat. 2. cap. 16. Enacts, That no Person upon any Contract, which shall be made after the 29th of September, 1714, shall take for Loan of any Money, Wares &c. above the Value of 5 l., for the Forbearance of 100 l. for a Year; and all Bonds and Affinances for Payment of any Money to be lost upon Usury, if it be gone upon there shall be referred or taken upon free in the Hand, shall be void; and every Person which shall receive, by means of any corrupt Bargain, Loan, Exchange, Chevissance, Shift, or Interest of any Wares or other Things, by any deceitful way, for the forbearing or giving Day of Payment for one Year, for their Money or other Thing, above 5 l. for 100 l. for a Year &c. shall forfeit the treble Value of the Monies and other Things lent.

For further Explanation of the above Statutes, see the following Letters.

(E) Usury. What, in respect of the Communication, or see (F) Agreement.

1. WHERE a Man for 100 l. sells his Land, upon Condition that if the Vendor or his Heirs repay the Sum before the Feast of Easter, or the said Vendor is to repay such a Day, a Year or two Years after, this is Usury; for he may repay the next Day, or any time before Easter, and therefore he has no Gain certain to receive any Profits of the Land. Br. Usury, pl. 1. cites 29 H. 8.

2. B. deliver'd Wares of the Value of 100 l. and no more, and took a So where Bond, with a Condition to redeliver the Wares to B. within a Month, or to pay 120 l. at the End of a Year. The Obligation was adjudged void by Wares of the Statute of Usury. Arg. Mo. 397. pl. 520. in Cafe of Reynolds v. Clayton, citizens as it adjudged in B. R. Becher's Cafe.

3. If A. comes to borrow Money, and B. says he will not lend Money, but he will sell Corn &c. and give Day for Payment at such a Rate, which Rate exceeds 10 l. in the 100, 'tis Usury. Mo. 358. pl. 520. cites as Wicks's Cafe of Gloucester, in the Exchequer.

4. A. asks to borrow of B. upon Interest. B. refuses to lend for Interest; cro. E. 25. But says that for Annuity or Rent be well; and so it was agreed, and a rent Grant for 23 Years, amounting to more than the Statute allows. But if 12 l. Interest &c. Agreed not to be Usury within the Statute. And. 121. pl. per Cent be 169. Pach. 26 Eliz. Finch's Cafe.

says he will not meddle in such manner, because of the Danger of the Law, otherwise that he would accept it; but if he will assure him an annual Rent, then he will lend him; this may make it Usury. Quere. — And. 121. S. P. in Finch's Cafe; but the Book says Quere. But says, it seems that if one agrees to take 12 l. in the 100, and, to defend the Lessor, they agree that a Rent of a greater Value shall be assured, that this is within the Statute. — If the Original Contract was to have a Rent charge, that is not Usury, but a good Bargain and Pennyworth. But if the Party had come to borrow Money, and then such a Contract had ensued for Security, then that is Usury. Agreed per Cur. Nov 15. Symonds v. Cockrell.

4 G

5. If
5. If one gives the *Profits of his Lands*, worth 10l. for Interest for a Year of 100l. tho' he receives Part of the Profits daily, this is not Usury above 10l. for the 100; per Popham, Gawdy, and Yelverton; but Fend-er contra. Mo. 644. pl. 890. in Worley's Case.

As if I lend to one 100l. for 2 Years, to pay for the Loan thereof 20l. and if I pay the Principal at the Year's End, he shall pay nothing for Interest. This is not Usury; for the Party hath his Election, and may pay it at the Year's End, and so discharge himself. Ibid. —


7. One mortgages Land for 100l. and takes Bond for the Interest of 6 l. a Year, payable Half-yearly. The Question was whether that makes the Bargain usurious against the Statute, because, as it was inferred, the Ufe ought not to be paid until the End of the Year, and contracting to have Half of it [Half] yearly, is not warrantable by the Statute? But the Court held that it is not any usurious Contract, contrary to the Statutes, because the 100 l. is lent for a Year, and the Referrvation is not of more than what is permitted by the Statutes; and the referring it Half-yearly is allowable; for he doth not receive any Interest for more or less Time than his Money is forborn. It was adjudg'd for the Plain-tiff; and affirmed in Error. Cro. C. 232. pl. 26. Mich. 8 Car. B. R. Grisw. v. Whitecott.

As if a Mortgage be for 100l. with a Proviso to be void on Payment of 100l. at the End of one Year, and no Covenant for the Mortgagor to take the Profits till Default in Payment; so that in S. C. the Mortgagee is intitled both to the Interest and the Profits, yet if this was not expressed, the Agreement is not Usury. Ibid. — Freem. Rep. 255. pl. 268. Pauch. 1678. Anon. seems to be S. C. where it was held, that if a Scrivener do, through Mistake, make the Money payable sooner than it ought to be, or refuses more Interest than ought to be, this will not make it void within the Statute; because there was no corrupt Agreement — S. P. Ibid. 264. pl. 286. Mich. 1679. Booth v. Cooke.——S. P. 2 Vent. 107. Mich. 1 W. & M. in B. C. Bucker v. Millard.

So where the Plaintiff agreed 23 May, 17 4 Jac. to lend the Defendant 120l. for a Year then next following, and to have 12l. Interest therefor, on the 24th Day of May, 17 4 Jac. whereupon the Defendant entered into a Bond dated 23 May, condition'd for Payment of 12l. on the 24th of May then next ensuing; by which Words (next ensuing) the Payment of the Principal and Interest was to be the very next Day, but this was found to be done by Mistake of the Scrivener, and likewise that the Agreement was to make a Loan for a Year, and that the Security was for Payment at the Year's End. It was held per toto Car. not to be Usury within the Statute; For here was no corrupt, but a true and absolute, Agreement, and the Act of a Stranger shall not bring him within the Statute, especially it being found that he did not require the Money till the Year. Wherefore it was adjudg'd for the Plaintiff — Cro. J. 671. pl. 14. Mich. 21 Jac. B. R. Bucker v. Gulbank.——2 Roll. Rep. 590. S. C. adjournment. ——Ibid. 414. S. C. Adjournment.

So if the Scrivener that make the Bond referes more than 8 l. per Cent. This is not an Usurious Contraet; Per Car. Het. 111. Pauch. 3 Car. C. B. Anon.

10. The Defendant, in Consideration of 12 l. paid him by the Plaintiff, gave Bond to pay the Plaintiff 14 l. if he live'd 6 Months after the Date of the Bond. It was objected, that it appears by the very Condition of this Bond that the Contract was usurious, it being to pay 14 l. for 12 l. in 6 Months after the Date of the Bond, tho' this might have made the Bond void, in case the Statute had been pleaded, yet that not being done, this Objection comes too late. 3 Salk. 391. pl. 7. cites Latw. Grange's Cafe.
11. Bankrupt having borrowed a great sum of money of the Defendant for one quarter of a year he was to give the Defendant 6 l. for every 100 l. that he borrowed; and some silk being the security, he was to give him one pound more for every 160 l. for that quarter, for the use of his warehouse. The question upon the trial was, whether this contract made between the Bankrupt and the Defendant is an usurious contract? And the jury having found a verdict for the Defendant, Serjeant Chevins mov'd for a new trial; for he said the verdict was against law. Holt Ch. J. said he thought it was a wrong verdict, and it was order'd to be mov'd again. Holt's Rep. 706. Le Blanc & al v. Harrison.

(F) Usury. What. By way of Annuity. See (E) pl. 41.

1. A gives 300 l. to B. to have an annuity of 50 l. affur'd to him for 100 years, if A. and his wife and 4 of his children should live. Per cur. This is not within the statute of usury. So if there had not been any condition. But care is to be taken that there be no communication of borrowing of any money before. Held per tot. cur. 4 Le. 208. pl. 334. Mich. 29 Eliz. B. R. Fuller's cafe.

2. A. on 17th July 1579. lent 100 l. to B. who thereupon granted to A. and his heirs an annuity of 20 l. a year, on condition that if the said B. the granter paid to A. at Christmas 1580 the said 100 l. that then the annuity should cease. Adjudg'd this is not within the statute; for no thing was to be paid for interest either within a year and a quarter after and agrees with the grant; and if the 100 l. had been paid on the day, the annuity was to cease without paying any thing; so that it is only a plain bargain, and a conditional purchase of an annuity. 5 Rep. 69. Mich. 33 & 34 Eliz. B. R. Burton's cafe.

Money, D. by agreement with C. paid the money, and took the assignment to himself, and then demised the house to C. for 39 years 4 quarters, at 3 l. a year, whereof 5 l. goes to the landlord, and the 30 l. residue to D.'s own use. C. covenants to pay the rent, and to repair &c. as usual. D. covenants that if C. pays 300 l. at 4 years end, the rent shall cease, and that he will convey the remainder of the term to C. D. not having any security for repayment of the 300 l. nor there being any collateral agreement to pay it, but only C. may pay it at 4 years end, if he will, Per Hale Ch. J. it is only a purchase of annuity determinable, if Grantor please, at 4 years end. But otherwise it would be, had there been any security or collateral agreement to pay the money. 2 Lev. 7. Pech. 25 Car.


3. But if it had been agreed between A. and B. that notwithstanding Hawk. pl. such power of redemption the 100 l. should not be paid at the day, and [fo] C. 248. cap. 82. B. 19. that the clausus of redemption was inserted to evade the statute, then this had been an usurious contract and bargain within the statute; for if in that the truth the contract be usurious against the statute, no colors or shadows of words will serve, but that the party may shew it, and he shall not be concluded or eltop'd by any deed in any other matter whatsoever; for the statute gives averment in such case. Refolv'd per cur.


Nature must be governed by the circumstances of the whole matter, from which the intention of the parties will appear in the making of the bargain, which, if it was in truth usurious, is void, however ingeniously it may be by a specious assurance.
4. A for 120 l. granted a Rent of 20 l. for 3 Years, and another of 20 l. a Year for 2 Years, if B. C. and D. should so long live. In Replevin the Defendant avow'd for this Rent, and the Plaintiff pleaded the Statute of Ufury, and set forth the Statute and a special ufurious Contract. Brownl. 186. Patch. 16 Jac. Cottr. on. Harrington, [says, but not by whom.] If it had been laid to be upon a Loan of Money, then it was Ufury, but if it be a Bargain for an Annuity, it is no Ufury; but that this was alleged to be upon a Lending.

5. In Debt upon Bond, the Defendant pleaded the Statute of Ufury, and how he came to the Plaintiff to borrow of him 120 l. according to the Rate of 10 l. per Cent. who refused to lend the same, but corruptly offered to deliver 120 l. to him, if he would be bound to pay him 20 l. per Annum during his and his Wives, and his Son's Lives; Wherupon he entered into the Bond. Refolv'd that this being an absolute Bargain, in Consideration of the Payment of 20 l. per Annum during the Lives, and no longer, and no Agreement to have the principal Money, was out of the Statute of Ufury; but if there had been any Provision for the Repayment of the Principal, all the not expressed within the Bond, it had been an ufurious Agreement within the Statute. And Judgment for the Plaintiff. Cro. J. 252. pl. 7. Mich. 8 Jac. B. R. Fountain v. Grymes.

6. A after the Statute 12 Car. 2. viz. 3 June 13 Car. 2. agreed to lend B. 100 l. and that for the Forbearance thereof for the Time underwritten, B. the Defendant should pay to A. the Plaintiff 120 l., as follows, viz. 40 l. upon the 20th Jan. and 20th July, by equal Portions annually next after the 25th Day of the then Instant Month of July, till the 120 l. be paid; which exceeded the Rate of 6 l. per Cent. And for further Security B. gave a Bond of 200 l. and confessed a Judgment. Twidell j. said that the Contract here was not ufurious, but is a Purchafe of an Annuity for three Years. Sid. 182. pl. 1. Patch. 16 Car. 2. B. R. Rowe v. Bellasis.

(G) Upon a Hazard.

1. In Debt upon Obligation of 60 l. the Defendant pleaded the Statute, and shew'd that it was agreed between the Plaintiff and Defendant 14 Decemb. that the Plaintiff should lend the Defendant 30 l. to be repaid the 1st of June following, and that the Plaintiff should have 3 l. for the Forbearance, if the Defendant's Son should be then living; and if he died, then to repay but 26 l. of the principal Money. The Court inclin'd that it was within the Statute of Ufury; whereupon the Plaintiff who had demurr'd, became Nonuit. No. 397. pl. 520. Patch. 37 Eliz. C. B. Reynolds v. Clayton.

2 And 15. pl. S. S. C. All the Court held upon the 2 Statutes of 37 H. 8. and 13 Eliz. that the Bond was void, because it appears to be made by corrupt Means to have more than 10 l. per Cent. which the Statute of 37 H. S. intended to punish. And by the Provifo it appears that the Intent was, if one was indebted to another truly without Loan and Intention of Ufury, then in such Case Bonds and Conveyances of Land for securing the true Debt, one out of the said Statutes; but if there is a Borrowing of Money, and a Communication for Interest, the Device to have beyond the Rate of 10 l. per Cent. is fraudulent, and within the said Statute, otherwise the Statute would be void; For he might as well have made the Condition, that if 20 Persons, or any of them, should be living at the Day &c. then he should have 3 l. And of this Opinion were Popham Ch. J. of B. R. and Peryam Ch. B. -- 5 Rep. 76. Clayton's Case, S. C. refolv'd that it was an ufurious Contract.
So where A. agreed with J. S. to give him 10 l. for the Forbearance of 20 l. for a Year, if B. had 
Sun were alive. It was held by 3 Julijces (Glanvil absence) to be Usury, by reason of the corrupt 
Agreement. And it is the Intent makes it so or not so. Cro. E. 642. pl. 45. Mich. 40 & 41. Eliz. C. B. 
Barrow v. Downham.—2 And 121, pl. 65. S. C. 

The Obligor was bound in a Bond of 500 l. condition'd to pay 22 l. 10 s. Premium, at the End of the 
first 5 Months after the Date &c. and 6 d. in the Pound at the End of 6 Months, as a farther Premium, to-
gether with the Principal itself, in Case the Obligor be then living; but if he die within that Time, then the 
Principal to be lev'd. Adjudg'd this is an Usurious Contract, because there was a Possibility that the Obligor 
might live so long; and there is an express Provision to have the Principal again. 5 Salk. 390. pl. 3. 

2. A. deliver'd to B. 100 l. who by Indenture covenanted with A. to pay to every one of A.'s Children which then were and should be living at 10 Year's End, 80 l. A. having then 5 Daughters; and for Assurance mortgag'd a Manor, and was bound in a Statute of 500 l. It is not Usury, but a meer casual Bargain. But if it were to pay 400 l. at 10 Year's End, if any were living, then it would be a greater Doubt; But if it had been to pay 300 l. if any were living at one or two Years End, that had been Usury, because of the Probability that one would continue alive for so short a Time; but in 10 Years are many Alterations. Cro. E. 741. pl. 15. Hill. 42 Eliz. C. B. Bedingfield v. Ashley. 

3. A. lends B. 150 l. for Re-payment of which A. lease'd a Close to M. 2 Roll Rep. for 60 Years, to begin at the End of 2 Years, upon Condition that if he paid 47. Roberts the 150 l. at the End of the 2 Years, the Lease to be void; and agreed that for the delivering and giving of Day of Payment for the 2 Years, A. should pay to M. for Interest 22 l. 10 s. quarterly, if M. should so long live. M. no Regard lent the 150 l. A. made the Lease, and granted by Fine to M. the Rent of 22 l. 10 s. to be paid quarterly, if M. so long liv'd. Refolv'd that it was an Usurious Contract, for by Intendment M. might have lived above the 2 Years, and it was an apparent Possibility that he should receive that Consideration, whereby he is within the Statute; and also that the Lease taken for the Payment of the principal Money, and not for any Part of the Usury, is within the Statute, because it is for Security of Money lent upon Interest, and for the Securing of that which the Statute intended M. affair'd of the should lose. Cro. J. 517. pl. 20. Mich. 16 Jac. B. R. Roberts v. Usury in the Tremaine. 

4. If I lend 100 l. to have 120 l. at the Year's End upon a Casualty, it was if the Casualty goes to the Interest only, and not to the Principal, it is Usury; for the Party is sure to have the Principal again, come what will; but if the Interest and Principal are both in Hazard, it is not then Usury. If A. agreed, that Per Dodridge J. Cro. J. 508. pl. 20. Mich. 16 Jac. B. R. Roberts v. Usury in the mean Time. 

'th' the Interest do exceed the allow'd Rates of 6 l. per Cent. And when there is an Hazard that the Plaintiff may have less than his Principal, it is no Usury. Show. 8 P. Ch. 1 W. & M. Mafflin v. Abbee. 

4 H (H) Usury.
(H) Ufury. What. Ex post Facto.

1. NOTE, if one contracts to have more than the Statute allows, but he takes nothing of the Interest contracted for, he is not punishable by the Statute; but if he takes any thing, if it be but a Shilling, it is an Affirmance of the Contract, and he shall render for the whole Contract. Cro. Eliz. 20. pl. 5. Patch. 25 Eliz. C. B. in Cafe of Pollard v. Scoly, cites Hill. 20 Eliz. B. R. Mallory v. Bird.

2. The Plaintiff held to the Defendant 20l. on the 22 June, for 26 l. 6 s. 8d. to be paid on the 1st of November, following, at which Day the Defendant declared longer time; and thereupon the Plaintiff gave him to the first of next May, paying 3 Squaures of Wheat for the Forbearance, which was above the Value of 10l. per Cent. according to the Statute of 15 Eliz. And this Matter was pleaded to avoid the Contract; but the Justices were of Opinion, that the Statute did not make the original Contract void, that being made Bona fide; but the subsequent Contract was void. Cro. Eliz. 20. pl. 5. Patch. 25 Eliz. C. B. Pollard v. Scoly.

3. In Debt upon an Obligation, where the Statute of Ufury was pleaded, it was laid by Popham, upon the Evidence, That if a Man lends 100l. for a Year, and to have 10l. for the Use of it, if the Obliger pays the 10l. 20 Days before it be due, that does not make the Obligation void, because it was not corrupt. But if upon making the Obligation it had been agreed, That the 10l. should have been paid within the Time, that should have been Ufury, because he had not the 100l. for the whole Year, when the 10l. was to be paid within the Year; and Verdict was given accordingly. Noy 171. Trin. 42 Eliz. in Dalton's Cafe.

S. P. and resolved by the whole Court, that this Taking the Uf: Money within the Year, shall not avoid the Obligation, and is no Ufury within the Statute, because it was not usurious at the Beginning. And Judgment for the Plaintiff. Bulk. 17. Hill. 7 Jac. Anon.— See pl. 5.

4. The Plaintiff lent the Defendant 100l. for a Year, at the Interest of 10l. per Annum. At the End of 6 Months he received 5l. for half a Year. Popham and Gowyd J. thought that this was not Ufury, because he had no more than 10l. Interest for his 100l. But Fenner and Yelverton J. contra, because the Interest ought not to be taken till the End of the Year; for if it is taken before, then the Borrower hath not the Profit of the whole principal Money for a Year, but only of 95l. and no more. And Judgment was given by the Opinion of all the Justices of England against the Plaintiff. Yelv. 30. Hill. 43 Eliz. B. R. Barnes v. Worlich. Fenner and Yelverton held it Ufury; but that Popham, Gowyd, and Williams held e contra. And Judgment was given for the Defendant. Quod quidem nil capat &c. And Stephens said, he was of Counsel in one §holn's Cafe, where it was adjudged accordingly. — No. 644. pl. 99. Worley's Cafe, S. C. That Popham, Gowyd, and Yelverton held it no Ufury; but Fenner e contra. And the Reporter says that the Cafe, Trin. 2 Jac. was adjudged no Ufury.

Noy 41. the same Point by Popham in S. C.— S. P. Mo. 644. in Worley's Cafe —

5. But if he had agreed to take the 5l. for the Forbearance instantly, when he lent it, that had made the Affirmance void; for then he had not lent the entire Sum for one Year, and the other had not had the Uf of the Money according to the Intention of the Law; per Popham, Gowyd, & Williams. And Williams said, He knew that upon this Difference
6. Where the first Contract is not usurious, it shall never be made so by Matter ex post Fatto; per Williams J. Built. 17. Hill. 7 Jac. Anon.

7. A Contract was, That he, to whom the Money was lent, should give such a Sum for the Loan of the Money, and by this Agreement the Sum he received to Days after, the Loan was more than per Annum for . This was adjudged per tot. Cur. to be an Usurious Contract ab Initio. Built. 20. Hill. 7 Jac. Anon.

8. If a Scrivener by Mistake, in wording the Bond, makes the Money payable the next Day, instead of the next Day Month; as by making the Money payable on the 10th Day of May next ensuing, and the Bond is dated on the 9th of May, so that the next ensuing is to be construed the next Day, unless something be to alter the Construction; tho' this is no Usury, being confider'd as aforesaid, yet per Lea Ch. J. if the Obligee had endeavour'd, by reason of this Mifprijion, to take Advantage of the Forfeiture for Non-payment on the next Day, peradventure this would have discover'd a corrupt Intention in him, and that he knew of the Mispriion at the Beginning, and would take Advantage of it; and this should bring him within the Statute of Usury. Cro. J. 678. pl. 14. Mich. 21 Jac. B. R. in Cafe of Buckley v. Guilbank.

9. Where there is no Contract before or during the Continuance of the Money, Payment of excessive Interest after may be no Usury. But Pecun- broker refusing to deliver without more was paid, forfeited 51. 2 Keb. 332. pl. 40. Trin. 21 Car. 2. B. R. The King v. Walker.

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(1) Forfeiture of Treble Value, in what Cases. And See (D) in what Cases the Security shall be forfeited, or avoided.

1. Bond made for more than legal Interest, but at the Payment the Where A. Obligee takes only legal Interest. He shall not be punished for the Bond; but perhaps the Bond shall be void. 2 Le. 39. Arg. in Van Henbeck's Cafe.

2. A. mortgaged to B. on an usurious Contract for 101. and before the Day of Payment B. is ousted by C. B. brings Action against C.—C. cannot plead the Statute of Usury; for he has no Title; for the Estate is void against the Mortgagor; per Periam J. Le. 307. pl. 427. Mich. 32 & 33 Eliz. C. B. in Cafe of Carter v. Claypole.

3. If
Ufury.

3. If a judgment be given upon an ufurious Contract, and it is Part of the Agreement to have a judgment, the Defendant may avoid such judgment by Addita Querela, or by Scire Facias brought on the fame. Chan. Rep. 9. in the Earl of Oxford's Cafe, cites M. 3 Jac. B. R. Harning v. Cator.

4. If Fines are levered upon an ufurious Contract, it may be avoided by Averment, by the Statute of 13 Eliz. cap. 8. 3 Rep. 80. a. in Fermor's Cafe.

5. Information upon the Statute 12 Car. 2. cap. 13. set forth that the Defendant, 16 Novemb. 20 Car. 2. lent f. S. 20 l. till June next following, and that afterwards, (viz.) Ad finem termini predicti' he took of the said J. S. corrupte & extorsive, 30 s. for the Loan thereof, which is more than the Statute allows. The Jury found against the Defendant. And it was moved, that this corrupt Agreement ought to be within the Statute at the making the Contract, and not at the End of the Term, as Laid in the Information. Twifden J. took a Difference upon the 2 Clauses in the Statute. That if the Lender contrahis for more, so that the Agreement is corrupt at the Time of the Loan, all the Assurance is void; But if it be a Contract for no more than the Statute allows, but will afterwards take more, the Assurance shall not be avoided, but the Party shall forfeit the treble Value. But judgment was stay'd till the other Side moved, because the Court would advise. Raym. 196. Mich. 22 Car. 2. B. R. The King v. Allen.

6. A. (when Money was at 8 l. per Cent.) lends Money and takes Bond for the same, and then the Statute 12 Car. 2. is made, and he will continue the Interest on that Bond, the Bond shall not be avoided by such Acceptance of Interest, but the Party shall forfeit the treble Value by the Statute; Per Twifden J. Raym. 197. Mich. 22 Car. 2. B. R. in Cafe of the King v. Allen.

7. In Debt on an Obligation condition'd to pay by a certain Day; the Defendant pleaded the Statute 12 Car. 2. cap. 13. and said that the Contract was Ufurious; but per Cur. [the Contract] being made after the Bond forfeited to receive Interest according to the Penalty, which was double the Principal, it doth not void the Obligation that was good at first, but only subjects the Taker to other Penalties; And Judgment for the Plaintiff, Nifi. 3 Kebe. 142. pl. 13. Patch. 25 Car. 2. B. R. Radley v. Manning.

8. A. lent B. 45 l. on a Pledge of Jewels, and it was agreed to pay 9 l. for it for a Year; afterwards B. gave a Bond for the fame Money; Per Holt at Nifi Prius, It is a Question if the Bond be void or not. Farr.
119. Mich. 1 Ann. at Nisi Prius in Middlesex, the Queen v. Sewell, alias, Beaus.

9. If a Man makes an Usurious Contrad, and gives him unlawful Interest, and agrees to give him a Bond for the Principal, and after, by a subsequent Agreement, gives a Bond for the Sum lent to F. S. to whom the Lender owes so much, in Satisfaction of his Debt. This Bond is not voidable by the Statute; Per Holt Ch. J. 7 Mod. 119. in Case of the Queen v. Sewell, alias, Beaus.

10. If a Man lends Money at a legal Interest, and after a subsequent Agreement is made for more Interest, which is Usury; that will not avoid the first Contract; Per Holt Ch. J. Far. 119. in Case of the Queen v. Sewell, alias, Beaus.

11. It is not material, whether the Payment both of the Principal, and also of the Usurious Interest be secured by the same or by different Conveyances; but all Writings whatsoever, for the Strengthening such a Contract, are void. Hawk. Pl. C. 248. cap. 82. S. 21.

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(K) Purged. As to Assignees.

W was indicted in 1001. to A. upon an Usurious Contra, on a Bond, and A. being indebted to E. transferred the Debt to E. Cro. J. and W. became bound for the same Usurious Debt to E. whose Debt was just, S. C. Train. 22. pl. 6. and be ignorant of the Usury. It was adjudged upon great Deliberation, 2 Jac. that the Obligation made by W. to E. was not avoidable for the Usurious B. K. ad- Contract made between W. and A. because it was given to A. for a true judg'd by Debt, and he knew nothing of the Usury, tho' the Ground between 2 Justices, A. and W. was Usurious Mo. 752. pl. 1035. Paich. 1 Jac. Ellis v. Warnes. Abente Popham, for the Plaintiff.

45. S. C. adjudg'd accordingly by 7 Justices; For the the Statute of Usury is to be taken strictly, in Order to suppress Usury, yet it must be between such Parties who make the Corrupt agreement, and not to punish the Innocent as the Plaintiff is; but if no Debt had been due to E. the Plaintiff before, then clearly it had been Usury in the Plaintiff. But Popham and Fenner doubted; for they thought the Plaintiff should have travelled the Defendant's Plea, but the Reporter says that cannot be; because he cannot traverse a thing which lies not in his Conscience nor to which he is no Party. — Brownl. 85. S. C. seems only a Translation of Yelv.

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(L) Information &c. Good or not.

If the Informer sets forth an Usurious Contract cum quodam Homine An Information interrogato, it is insufficient. Arg. 2 Le. 39. pl. 52. in Martin Van Henbeck's Case cites 5 H. 7. 17. 18.

with Persons unknown was held ill (because with Persons unknown) that not being allowable but in Case of an Indictment Pro nonte Homines Ignoni. Noy. 143. Nafe's Case.

2. Upon an Information on the Statute of Usury, and Subpoea a. D. 346. b. warded out of C. B. against Defendant, and upon Issue join'd, and found Pl. 9. Hill. for the Informer, it was alleges'd in Arrest of Judgment, that the Court and S. P. and of C. B. is not to hold Plea by Proofs of Subpoea but by Original, and it is another
Question was, if the Defendant might plead by Attorney, as he did Ex Gratia Curiae, and whether Not Guilty, be an apt Issue or not, in this Action? But at length Judgment was given against the Defendant by Reason of the Statute of Jeofails, which relates to misconveying of Process, and misjoining of Issues. * * *

3. An Information was exhibited and shew'd the Ufurious Contract in certain, whereby it appeard that more than 10 l. was reserved and received for the Loan of 100 l. and concluded Contra Formam Statuti, yet because he did not expressly say, that it was Per corruptam Accompromission, or modatationem, according to the Words of the Penal Statute, the Information was adjudg'd insufficient. Arg. 11 Rep. 56. a. Dr. Forrest's Case, cites it as adjudg'd. Pash. 20 Eliz. in the Exchequer.

An Information upon the Statute of Ufury, for a Contratt with Persons unknown, reci- piendo ultra 10 l. in the Hundred, was held ill because an Informer, who is not Party, altho' the Contract was ultra 10 l. &c. per Capita, was not known; and if the Recipiendo had not been given, there was no Receipt of the Ufury according to the Contract. And for that the Receiptido is naught, because there is no Receipt but the Receipt, which is now transferable in that Information. Nov. 143. Naffe's Cafe.

5. The Information must shew whose Money it is; Per Manwood Ch. B. Le. 97. in Sir Woollaston Dixy's Cafe.

6. If an Information be exhibited in the Exchequer against an Ufurer, and charges that he took more than 10 l. in the 100 l. without showing How much, such Information is utterly insufficient; For the Informer ought to set forth the Quantity of the Interest received, and yet the same is not to be recover'd. Arg. 2 Le. 39. pl. 52. Trin. 30 Eliz. in the Exchequer in Martin Van Henbeck's Cafe.

7. An Information upon the Statute of Ufury, for an Ufurious Mortgage made, charged the Defendant, that esprit ultra 10 l. in 100 l. for the Forbearance for one Year, and that was out of the Issues, Reuts and Profits, which he took in Middlesex of Lands in Glamorganhere in Wales mortgaged.
8. In Debts upon the Statute 35 H. 8. of Ufury, the Writ [Count] And it was held in this Case, that such a Day he lent him 20 l. &c. against the Form of the Statute; but [as if the Defendant had not say corruptive. After Verdict for the Plaintiff, it was objected, that he ought not to have Judgment for either of the Sums, it being clearly ill for the 20 l. for want of the Word (Corruptive). But upon the Declaration, it had been good for the one, and the Plaintiff should have had Judgment for that Part. 

9. Information, for that the Defendant Per viam corrupte Bargaine &c Hawk. Pl. recit'd &c. After Verdict for the Plaintiff, it was mov'd in Arreit of C. 248. cap. 82. 8. 24. Judgment, because he did not set forth what the Bargain was, but generally, Per Viam corrupte &c. Sed non allocutur; for this is the usual way of pleading Courts of the Exchequer, and the Bargain is to be given in Evidence. But it was agreed that in Pleading to avoid a Bond or Affurance, it ought to be particularly set forth, because the Party is privy to his own Contract, but the Informer is not; and therefore it is sufficient for him to shew it particularly in Evidence. 

10. Information, for that the Defendant by way of a corrupt Contrat, capit & ad Lucrum suum convertit 40 s. for deferring the Day of Payment of 25 l. from the 29th of July to the 30th of May, (the Day on which he took the 40 s.) Contra formam Statut. After a Verdict it was mov'd mov'd that that did not appear that the 25 l. was Money lent, but it appears that the taking the 40 s. was after the Lending, and there is no corrupt Agreement there; and adjudge'd against the Defendant; for tho' it be not well laid so as to give Judgment against Party might the Defendant upon the Statute 12 Car. 2. cap. 13. to pay treble the give what he pleas'd in Reconcilement in Fine and Imprisonment. 

11. No Indictment will lie on the Statute of Ufury; for the Method the Act prescribes must be follow'd; therefore the Indictment must be quash'd. 11 Mod. 174. pl. 17. Parch. 7 Ann. B. R. The Queen v. 

(M) Plead-
1. IN Debt Qui tam &cc. the Plaintiff declar'd that the Defendant lent him 85 l. for a Month, for the Loan whereof he was to have 20 Marks of Interest and Ufury at the End of the Month, and that Defendant Habeit & Receipt the same Contra formam Statuti &c. The Defendant pleaded Quad non recepit &c. 20 Marks ultra the said 85 l. It was found for the Plaintiff. It seems that this negative Plea was a Confession that the Plaintiff should lend and deliver the Money for Ufury; and then the Court ex Officio ought to give Judgment upon this Confession. But no Judgment was given, tho' it long continued. D. 95. a. b. pl. 36. &c. Mich. 1 Mar. Whitton v. Marine.

2. A. agrees to deliver Wares of the Value of 20 l. to B. and that B. should pay for the same within 6 Months 34 l. and Bond was given for the Payment. In Debt on the Bond by A. the Plaintiff should have been that the Bond was given for Payment of this Money. Cro. E. 104. pl. 12. Trin. 13 Eliz. B. R. Peterfon's Cafe.

3. In an Action of Debt brought upon a Bond the Defendant pleads the Statute of Ufury, and shoots a corrupt Agreement for Money lent in the Year 32. to be paid in 33. and afterwards in 35 a new Bond given for Part of the first Sum; and it was pretended that this Bond was Void. But it was adjudg'd that because the first Bond was no Corruption, the latter should not be. Brownl. 73. Trin. 20 Eliz. Rot. 145. Vaughan v. Chambers.

4. A Bill upon a Recognizance; the Defendant pleads the Statute of Ufury, and the same is insufficient, ordered to put in such a Plea as he will stand unto. Toth. 87. cites 25 Eliz. Walch v. Marshall.

5. The Offence must be within the Year; for if one make a corrupt Bargain for this Year, and 10 Years after he takes excessive Ufury, the same is not within the Statute to inform upon it; and in Truth there is no such Offence without corrupt Bargain; Per Manwood Ch. B. Le. 97. pl. 125. Mich. 29 Eliz. in the Exchequer, in Sir Woolaston Dixy's Cafe.

6. In Debt on Bond the Defendant pleaded the Statute of Ufury made 6 Feb. 13 Eliz. (whereas the Parliament began 2 Feb. 13 Eliz.) The Plaintiff replied that it was not made for Ufury Contra formam Statuti Modo & Forma predict. Tho' both Parties agree that there is such a Statute, yet the Court knowing that there is not, and so cannot be Contra formam Statuti, the Court held that no Judgment could be given for the Plaintiff; and it being in the Bar of the Defendant the Court held it clearly ill. Cro. E. 245. pl. 4. Mich. 33 & 34 Eliz. B. R. Love v. Wotton.

7. Scire facias upon a Judgment of 240 l. The Defendant pleaded that he borrowed of the Plaintiff 100 l. and contracted to give 20 l. for the Loan for a Year, and for the Payment of the 120 l. the Plaintiff would have the Defendant confess that Judgment, and pleaded the Statute of Ufury to avoid it. It was objected that this was no Plea; for the Statute 13 Eliz. is, That all Bonds, Contracts, and Affurances collateral &c. shall be void; whereas this Judgment cannot be term'd an Affurance, nor be avoided by such Surmise. And the whole Court was of that Opinion, that Judgments shall not be avoided upon Surmisè; for if there had been any such Matter, the Defendant might have pleaded it upon the Action brought, and not have fuller'd a Judgment; and tho' it may be a Practice to avoid the Statute, yet it is rather to be tolerated than to avoid Judgment on such Suggestions; and Judgment for the Plaintiff. Cro. E. 588. Mich. 39 & 40 Eliz. B. R. Middleton v. Hill.


Goldsb. 128. pl. 20. Midilteton. B. R. Fall, S. C. adjudg'd accordingly, and said that this Judgment cannot be paid any Affurance, but a Judgment upon the Affurance.

Sid. 182. pl. 1. Pach. 16 Car. 2. B. R. Rolle v. Bellamy, upon a Plea in Scire facias upon a Judgment, the
the Defendant pleaded the Statute 12 Car. 2. which has the same Words with that of 15 Eliz. but upon the Authority of the Case of Biddiston v. Fall, it was accordingly null'd ill, and Judgment for the Plaintiff. — Hawk. Pl. C. 245, cap. 82. S. 20. says, That a Judgment suffer'd in Pursuance of an
Infringing Contract, may be avoided by an Averment of the corrupt Agreement, as well as any Common
Specialty or Parol Contract. But a Specialty cannot be avoided by Usury appearing on Evidence, or
on the Face of the Condition, but it must be pleaded. — See (Q) Taylor v. Bell, Dignall & al.

8. Upon a Demurrer in a Replein for 20 l. and an Aworony &c. the *The Original
Plaintiff pleads in Bar that the Defendant * had given 100 l. and for that, he
had agreed to him 20 l. per Annum for 8 Years annually, as a Rent,
charge; and after that for 2 Years more, if 3 Men live to long; and
it concludes that it was a corrupt Deed. The Party ought to plead Quod suft
per viam corrupta. Baragene. And it is not sufficient to conclude that it
was corrupt, altho' by the Demurrer only it be confes'd. Noy 151.

152. Symonds v. Cockerill.

9. The Defendant borrowed 200 l. of the Plaintiff; and it was agreed
between them that he should pay the 200 l. at such a Day, and 20 l. for the
Interest for one Year; and that such Lands should be conveyed to the Plaintiff
upon Condition that if the Money was paid at the Day, then the Grant
should be void. The Defendant pleaded the Statute of Usury, and aver'd that the
Land was worth 12 l. a Year, and so be had double Use. The Plaintiff
replied, that upon the borrowing the 200 l. it was agreed that the Defendant
should have the Profits of the Land until Break of the Condition, and tra-
er'd that there was any Agreement that he should have the Profits, and also
for Interest. And upon a Demurrer it was objected that the Replication
was ill, because the Lands being convey'd to the Plaintiff, by Consequence the Profits are fo too; and therefore he cannot aver a ver-
al Agreement against the Deed, that he had not the Profits. But the
Plaintiff had Judgment. Roll Rep. 41. pl. 8. Trin 12 Jac. B. R. Dodd
ev. Ellington.

10. Tanfield Ch. Baron faid, that upon an Information betwixt 
Pimmorr and Robinson in B. R. where several Contracts upon Usury being
alleg'd, Usury was join'd where other it were Corrupt agreement Mato & Forma
proint. It was reliev'd by all the Justices of England to be an ill Issue;
for it ought to have terers'd the Agreements, because they were several.
Cro. J. 544. pl. 4. Mich. 17 Jac. in B. R. in Cafe of Heath v. Daun-
ley.

11. Debt on a Bond for 100 l. dated 12 July &c. condition'd to pay To. 396. pl.
59 l. at six Months End. The Defendant pleaded the Statute 21 Jac. 3. of
Usury. The Plaintiff replied that he lent the 50 l. on the 12th of July,
&c. for a Year, and that the Defendant should pay for it 8 l. [4 l.] for the
Forbearance for a Year, and that Plaintiff should not demand it till the S. C. the
End of the Year; but that by the Mislake of the Scriver it was made but
for half a Year, which is not knowing, accepted it. The Defendant re-
join'd that the lending was only for half a Year, and that he was to pay 8 l.
[4 l.] for it for that Time, altho' he say on the said 12th July it was
agreed that the Loan should be, or that he should forbear it for a whole Year.
Upon Demurrer it was objected that the Plea was ill, because it was not
pleaded that Corruptagreement last &c. And so the Court, abente Bram-
ifton, held. And they all held the Allegation, against the Words of the
Condition, was good; for it is only flowing the true Agreement; but they
all held the Rejoiner ill, because in the Traverse the Defendant
had made the Day, (viz. 12th July) Parcel of the Issue, when he should
only have travers'd the Agreement. But no Judgment was given, be-
Neivton v. Whitley.

Plaintiff ought to have Judgment; For the corrupt Agreement was the Ground of the
Matter; and if there was no such Agreement the Obligation is good.
12. Debt was brought on a Bill to pay 7 l. the 1st of May, and if Default of Payment be, to pay 3 s. 4 d. for every Month that it shall be in Arrear after May 1st. Defendant makes no Averment that the Agreement was to pay the 3 s. 4 d. for every Month Pro Lucro, Interesse & Diem dando Solutionis, but only with a sic, the said Sum exceeds 8 l. per Cent. whereas he should have aver’d that the said did exceed 8 l. upon the 100 l. those being the effectual Words in the Statute. Judgment for Quer. Jo. 409. pl. 2. Mich. 14 Car. B. R. Swailes v. Baranen.

13. 300 l. was lent upon Articles dated the 8th of March, to be paid at such a Time; and in the mean time to pay 15 l. half-yearly from November before. In Debt the Defendant demurred, for that it appear’d by the Declaration that the Contract was ofurious; but it was answer’d, that the Defendant ought to have pleaded that Corruption Agregatum fit &c. and to give the Plaintiff an Opportunity to reply to it. But upon reading the Articles it was, Whereas Money was lent &c. which might be in November, or before; and therefore Judgment was given for the Plaintiff. Sid. 283. pl. 21. Pach. 19 Car. 2. B. R. Dande v. Currer.

14. Indebitatus Aulumpus for 10 l. and a Computatess for 33 l. in the same Declaration. The Defendant pleads the Statute of Usury to the Indebitatus, and averrs that both the Indebitatus and the Computatatess were for the same Cause of Action. It was refolved, that the Averment was naught; for the Ground of the Indebitatus is the Debt, and the Ground of the Computatatess is the Account; and so it cannot be aver’d that there is the same Cause of both, especially as it is here, where one is for 10 l. and the other for 33 l. But Hale said, He should have pleaded the Statute to the Indebitatus, and then that afterwards they came to an Account for the same Wares &c. Freem. 367. pl. 472. Pach. 1674. Taylor v. Herbert.

15. Debt upon a Bond. The Defendant pleads the Statute 12 Car. 2. of Usury, and says that corrupte aggregatum fuit, that he should pay more than 6 l. per Cent. The Plaintiff replies, Quod non corrupte aggregatum fuit, and held a good Replication; for it by the Mistake of the Writer the Money was made payable without any corrupt Agreement, it is not ofurious within the Statute. Freem. 264. pl. 286. Mich. 1679. Booth v. Cook.

16. Debt on Bond. Defendant pleads Quod corrupte aggregatum fuit, that Interest should be paid for it above the Rate of 6 l. per Cent. Plaintiff demurs, and held good; for that the Plea fhews not what Interest, nor that the Bond was for the very Money, but only by Indemnity; (to wit) super Agreamento pradicto, the Bond was given; and lays not expressly Pro eadem Pecunia. Judgment pro Quer. For that they would not easily avoid a Bond, and the corrupt Agreement ought to be special-
1v. and particularly set forth, and the Quantum of Interest, otherwise personal, that the Plaintiff can never tell what to answer. 2 Show. 329. pl. 339. Mich. 35 Car. 2. B. R. Hinton v. Roffe.

not exceeding 8d. nor did he swear when the Interett was to commence, and on what Day it became due. And Judgment for the Plaintiff, because the Defendant ought to have set forth the Agreement, and apply it to the Sum in the Declaration.

17. Usurious Contract was pleaded in Bar of Debt upon a Bond, but not said that Defendant was indebted to Plaintiff at the Time of Bond given, or that there was an Agreement to lend Money upon the usurious Contract; and for that Judgment nil to pro Quer. 12 Mod. 385. Pauch. 13 W. 3. Crow v. Brown.

18. Where the Statute is not pleaded, the Bond, tho' usurious, is good. 3 Salk. 391. pl. 7.

19. Error of Judgment in the Palace-Court, wherein the Plaintiff declared that the Defendant became indebted to him by Bond in the Sum of 107l. The Defendant, without craving Over, pleaded that he was indebted truly to the Plaintiff in 92 l. 5 s. 9 d. and that by way of corrupt Agreement for the Forbearance of that Sum for a Year, this Bond was given &c. The Plaintiff replied, That the Bond was given Pro vero & juro Debito, and traversed the corrupt Agreement. And upon Demurrer to this Replication, it was insisted that it was ill, because the Plaintiff did not show how much the just Debt was. Sed non allocatur; for there was sufficient to induce the Traverf; and if it had been alleged, you could not have traversed the Inducement, and the Declaration sufficiently shews the Debt. 6 Mod. 393. Mich. 3 Anna, B. R. Villars v. Cary.

20. The Plaintiff declares upon a Promissory Note for 30 l. dated 4 Feb. The Defendant pleads, That it was corruptly agreed between him and the Plaintiff, that he would pay unto the Plaintiff 45 s. for the Loan of the said Sum of 30 l. for 3 Months; and then sets out the late Statute against Usury &c. It was excepted to the Plea, that it was not aver'd that the Note was given subsequent to the late Act against Usury. To which it was aver'd and resolved by the Court, That by the Date of the Note it appears to be so. Gibb. 130. pl. 2. Trin. 3 & 4 Geo. 2. B. R. Baynham v. Matthews.

(N) Trial. Where.

By trespass, &c. in the Exchequer, for taking more than 6 l. per Cent. contra formam Statuti. After Verdict for the Plaintiff, it was moved in Arreft of Judgment, That it lies not in this Court for Usury committed in London, two it would be upon the Statute of 21 Jac. And in Truth the Interett taken here was more than 10 l. per Cent. And by the General
General Conclusion of Contra formam Statuti, it shall be intended aga

in the Form of that Statute which allows the largest Interest; and

there are 4 Statutes against Usury, one of H. 8. which allows 10 l. per

Cent. another of Q. Eliz. which allows 8 l. per Cent. a third of K. Ja.

and a 4th of Car. 2. which allows but 6 l. per Cent. By the Statute Jac.

1. cap. 4. there must be no Suit upon a Penal Statute, but as therein di-

rected, which does not extend to the Court of Exchequer, unless the

Offence is done in Middlesex. But per Hale Ch. B. The Offence laid in

the Information being for taking more Interest than 6 l. per Cent. shall

be taken to be grounded upon that Statute that prohibits taking more than

6 l. per Cent. and that Law gives the Suit in no Court in particular, and

therefore may well be prosecuted here; tho' if a particular Court had been

named, as in 21 Jac. it would be otherwise. The Court took time to


4. The Defendant was indicted at the Old Bailey for Usury, and being

convicted, he brought a Writ of Error, and the Judgment was reversed be-

cause the Court of Sessions had no Jurisdiction in this Matter. 3 Salk.

188. pl. 8. Pafch. 5 W. 3. the King v. Bakestraw.

5. Indictment was at the Sessions before the Justices of the Peace at Hick's

Hall for Usury contra Formam Statuti; and Judgment was against the

Defendant, upon which a Writ of Error was brought in B. R. and the

Judgment reversed; For the Justices of the Peace have no Juris-

diction in this Cafe. 2 Salk. 630. pl. 1. Pafch. 4 Ann. B. R. the Queen v.

Smith.

why the Indictment should not be quashed. It was admitted by the Council that moved. That upon the

Statute of Q. Eliz. which prohibits the Taking above 10 l. per Cent. the Justices of Peace at Sessions

have Jurisdiction; but intimated that they have not upon any of the later Statutes. 2 Barnard. Rep in

B. R. 143. Pafch. 5 Geo. 2. The King v. Pexley.

(O) Found. How. And in what Cases it must be

found by the Jury, or may be judg'd of by the

Court.

If an Information be brought against 2, upon the Statute of Usury,

and one only is found guilty, no Judgment can be given in the Cafe.

Arg. To which the Court agreed. Lane. 19. Pafch. 4 Jac. in the Ex-

chequer, in Page's Cafe.

in the Exchequer, in Cafe of Vaux v. Auffini

2. An Information upon the Statute of Usury. The Defendant pleads

Nil Debet. The Jury finds an usurious Receipt, but does not find any

Loan. A new Venire Facias should be awarded, and not a new Nifi


3. A Special Verdict found that it was agreed, but did not find that it

was Corruptly agreed. Exception was taken thereto; Sed non allocutione;

because it appear'd to the Court judicially, that the Bargain was corrupt,

and therefore it need not be found. 2 Roll. Rep. 48. Mich. 16 Jac.

B. R. Roberts v. Tremoile.

There is a Difference between an Information in which it ought to be

specifically al-

leged, that Corrupte agradation fact, and a Special Verdict wherein all the Circumstances are found, which

being apparent to the Court to be Usurious, and cannot by Intendment have any other Construction,

it sufficiently, and in the principal Cafe 'tis apparent that the Money was lent for Interest, and is more than

the Statute permits; wherefore being Usury apparent, the Court shall judge it accordingly. Cro. J.

308. in Cafe Roberts v. Tremoile. —Ibid. cites it to have been so adjudge'd in the Cafe of Higgins v. Meredith.

4. Usury
4. Usury shall not be intended unless the Jury find it expressly. Arg. 3 Nels. Abr. 512, pl. 27, cites S. C. Bridgm. 112. in Case of Webb and Juckes v. Worfield.

5. In Case &c. upon a Special Promise the Plaintiff first forth that he was solleffed of several Pieces of houn'd Money &c. and that the Defendant in Consideration the Plaintiff would pay that Money, being in Number and Tale 500 l. he promised to repay 300 l. of new Money; together with 4 l. 10 s. more for the Interest of every 100 l. for 8 Months &c. and then declares upon an Indebitans afternoon for 313 l. 10 s. After Verdict, it was moved that the Contract was Usurious, it being to pay 4 l. 10 s. for the Interest of 100 l. for 8 Months: but per rot. Cur. Judgment was given for the Plaintiff, Trin. 1 Ann. It was agreed, that if it had appeared by the Plaintiff's own Declaration that the Contract was Usurious, and could not be otherwise, Judgment ought to be given against him; but that it does not appear here that the Contract must necessarily be Usurious; and the Jury having found the Affirmant, the Court would not intend Usury, but the contrary. And Powel J. observed that the Consideration of the Promise here is, viz. that the said Plaintiff would pay to the said Defendant the said 300 l. so that here is no Loan, without which there can be no Usury; and they would not intend a Loan, unless the Jury had found one. Lutw. 271. 272. Trin. 13 W. 3. Yeoman v. Barlow.

(P) Sureties. Punish'd or favour'd.

1. In Debt on Bond Defendant pleaded that he himself borrowed 100 l. of W. paying for the Forbearance excesse Usury, and the Plaintiff was his Surety for the Payment, and that the Obligation upon which the Affirmant is brought was given by him to the Plaintiff to indemnify him against W. Manwood held this a good Bar. For when the Plaintiff was impeached upon the principal Bond, he might have discharged himself upon that Matter, and therefore his Laches shall turn to his Prejudice, and therefore the Usue was join'd upon the excessive Usury. 3 Le. 63. pl. 93. Hill. 19 Eliz. B. R. Porkin's Cafe.

and P. was bound unto the Plaintiff in a Bond, as a Counter-Bond, to save the Plaintiff harmles from the said Bond of 500 l. B. is sued for the said Bond, and is dammified: and thereupon B. sued P. upon the Counter-Bond, who pleaded the Statute of Usury, pretending that all Alliances depending upon such Usurious Contracts are void by the Statute. But by the Opinion of Wray Ch. Jul: the same is no Plea; For the Statute Is, That all Bonds, collateral Affirmants, made for the Payment of Money lent upon Usury, shall be utterly void; But the Bond here, upon which the Action is brought, was not for the Payment of the Money lent, but for the Indemnity of the Surety. 2 Le. 168. pl. 200. Patch. 25 Eliz. B. R. Butfer v. Prove.

2. In Debt on Bond to save the Plaintiff harmles from an Obligation wherein he and the Defendant were bound to W. &c. and from all Suits concerning the same. The Defendant pleaded the Statute of Usury, and that it was made upon a corrupt Agreement between him and W. But the Court held the Plea ill; For tho' the first Obligation were void, yet the 2d Obligation is forfeited, because the Defendant hath not favored him harmles from Suits concerning it, nor does the Defendant answer thereto, but to the Obligation only. Cro. E. 642. pl. 43. Mich. 40 & 41 Eliz. C. B. * Burton v. Downham.

But says that Glanvil said it would be a dangerous Precedent to avoid the Statute. For the Surety may be a Friend of the Ulurers, who will not plead the Statute in an Action of Debt brought against him, and the Statute would be to little Purpofe. And after the Judgment given for the Plaintiff, Glanvil said that Judgment will be quickly carried to Cheapside. ——— S. C. cited Mo. 358. pl. 520. in Case of Reynolds v. Clayton.
Ufury.

* Luw. 469, 470. in the Case of Mason v. Fulwood, the Reporter says he has seen the Roll of this Cafe, which is 585, by which Record it appears that as well the Interest as the Principal was in Haz-

ard, tho' it does not fully appear in Cro. R. or Mo.

There is a
Noth added
that the
Reason con-
ceived was
that the Sure-
ty by Intend-
ment cannot
know of the
corrupt Con-
tract to plead
it in Avoid-
ance of the
Bond, and therefore the Principal ought to take Care thereof. Ibid. —Goldab. 174, pl. 107: S. C. held
accordingly per tot Cur. But the Reporter adds, Sed Queere.

(Q.) Relief. In what Cases given.

1. THe Court decreed Money to the Plaintiff against the Defendant, albeit he had Judgment and Execution, being upon the Point of Usurious Contract. Toth. 231. cites 37 Eliz. and 28 Langford and Barnard.

2. A Woman resorted to Gaming-places at Court, and by supplying Persons of Quality there with Money, made great Profit; for which Purpose she borrow'd much Money, and gave the Leaders great Rewards from time to time; but afterwards she borrow'd more, and being arrested for this last Money gives Bond and Judgment for it, and then brings a Bill to have an Allow-
ance for the former excessive Premiums which she had given before, and to bring the Defendants to an Account. The Defendants, by Answer, confes'd the Receipt of 5 or 10 Guineas for the Loan of Ten Guineas for a Week or 10 Days; but insisted that the Sums so received were paid as Profit, and not towards Satisfaction of the Money lent. The Court or-
der'd the Plaintiff to pay principal Interest and Costs at Law, and here, or the Bill to be dismissed with Costs; for that it would not interpose or meddle with Play-Debts, or Things of this Kind; per Lds. Com-
imioners. 2 Vern. 170. pl. 156. Trin. 1690. Taylor & al' v. Bell, Bagnall, & al'.

3. Upon a Trial at Guildhall, in an Indebitatus Assumpsit for Money received to the Use of the Plaintiff, the Cafe was, the Plaintiff was Co-
obligor with J. S. to the Defendant, and between J. S. and the Defen-
dant there was an usurious Contract; the Plaintiff paid Part of the Mo-
ey to the Oblige, and after pleaded the Statute of Usury upon this Bond, and this is adjudged an usurious Bond; upon which he brought this Ac-
tion for the Money, which he paid before the Bond was prov'd usurious; and the Question was if the Action lay: And Holt Ch. J. seem'd to incline strongly that it did not lie; For here there was a Payment actually made by the Plaintiff to the Defendant, in Satisfaction of this usurious Con-
tract; and if they will make such Contracts, they ought to be punisht; and he was not for encouraging such Kinds of Indebitatus Assumpsits;

and an Account, for it is like to the Cafe of Bribes, and he who receives it ought to be pu-

nil'd,

5. A. entered into a Bond to B. for a Sum of Money, to pay 6 l. per Cent. S. C. cited Interest. Afterwards A. being unable to pay off the Bond, committed to pay 10 l. per Cent. for the Money, and continued paying at that Rate for 14 Years. B. died. A. became Bankrupt. The Assignees of A. brought a Hinc. Caves a Bill, and thereupon the Executors of B. was decreed, by the Master of the Court, in the Rolls, to Account; and that, for what had been really lent, legal Interest should be computed and allowed, and what had been paid more should be deducted out of the Principal to be due on the Account; and if B. had received more than was due with legal Interest, the same to be refunded by the Executors, and the Bond to be deliver'd up. And afterwards the Ld. Chancellor affirmed the Decree; but said, he did not determine How it would be, had the Securities been deliver'd up, that not being before him. Caves in Equ. in Ld. Talbot's Time, 38 Mich. Party rec. 8 Geo. 2. Bofanquet v. Dalwood.

If in this Case it was said by Lord Chancellor, Suppose a Mortgagee makes a Covenant for a collateral Advantage above legal Interest, not for Payment of Interest; as in Consideration of a Sum to enable one to build, another should grant Ground-Rents which are above the Value of legal Interest; yet even in Things of this Kind not strictly within the Statute, this Court will not allow such Advantage, but relieve the Borrower. And he said, That if an Action of Law is brought upon an Usurious Contract, there is no doing the Whole, or admitting of the Mortgage either lost or gained the Whole; but suppose the Borrower Plaintiff, is there no Medium to go by to make the Thing agreeable to the Statute. Bills waiving the Penalty, where the Plaintiff submits to pay the Principal with legal Interest, are frequent, and Decrees thereupon. Where Part of the Money is advanced only, it is usual to send it to the Master to see what was really lent; but this Court does not meddle with Penalties, unless to relieve against them, but does that which is reasonable, and brings Things to a proper Standard between the Parties: So that it is plain, where the Bill is to redeem, the Court may direct that legal Interest may be computed for it, and illegal Interest ought not to have been paid, and shall be employ'd to the right Part.
Utlawry.

There is no Letter to this in Roll.

1. If Outlawry of two be, that they Quarto exacti non comparare, upon which they were outlaw'd; this is erroneous, because it is not Nec crom alquias; For peradventure one of them appeared. B. 14 Ja. B. R. Army & Watkins, reversed for this. Mich. 11 Jac. B. R. Clark's Cafe adjudged. D. 13 Ja. B. R. Taverner's Cafe adjudged. S. C. accordingly, Palm. 338. — S. P. 3 Mod. 89. 90. Hill. 1 Jac. 2. B. R. Anon. accordingly.

2. If an Outlawry be return'd in this Manner, Ad Comitatum meum tentum apud Ciceftriam in Comitatu Suffex &c. it is erroneous, because it is not ad Comitatum meum Suffex tentum &c. For tho' it may be intended that it was at the County of Suffex, because Suffex comes after, yet it is not Reason that a Man shall lose his Goods by Intendment. B. 7 Ja. B. Whitting's Cafe adjudged and reversed. * 6 D. 7, 15. b. 11 D. 7. 10.

For more of Usury in General, see Assurance and Bottomry, Conditions, and other proper Titles.
U outlawry.

So where the Proclamations were return'd to be Ad Comitatum memorem test. aulh such a Place, in Com. predix, instead of Pro Comitatus, the Outlawry was revers'd; for as in those one Sheriff's Counties, and might hold the Court in one County for another. Vent. 108. Hill. 22 Car. 2. B. R. Anon.

So where the Sheriff in the Return of the Exigent, had return'd Exigint faci ad Comitatum mem ornunt. pro Comit. predix. aulh Paypawick, and it did not appear that Paypawick was in the County; and for that Cause it was revers'd. Frem. Rep. 533. pl. 769. Mich. 1689. The King v. Mason.

So where Error to reverse an Outlawry for Murder was assign'd; That it did not appear upon the Return of the Exigent in the Prima Exigent. that the Court was hold Pro Comitatus, it was revers'd. 5 Mod. 59. Hill. 1 Jac. 2. B. R. Anon.

3. If the Names of the Coroners who outlaw'd the Party, are not Roll Rep. put into the Record, it is erroneous. 9. 13 Jac. B. R. adjudge'd. 266. pl. 28. Anon. accord-

Clerk inform'd the Court that their Names ought to be put to the Judgment of Outlawry in all Coun-
ties besides London; For that there it is not usual.

Where a Return was Quod ad quor unb Comitatam &c. non compararetur. Ideo per Judicium Coro-
natorum ingressum factum, but did not shew that there is any Coroner, or his Name. The Court doubted thereof; For all the Exigents in London are so return'd where the Mayor is Coroner. Cro. J. 358. pl. 17. Mich. 12 Jac. B. R. Middleton's Cafe. — But where one was outlaw'd, and assign'd for Error that he was outlaw'd Per Judicium Coronatorum, and did not shew the Name of any of the Coroners, the Judg-
ment for this Cause was revers'd. Cro. J. 528. pl. 7. Patch. 16 Jac. B. R. Patrick's Cafe.

Outlawry upon the Statute of Reculancy was reversed in Error, because it was per Judicium Coro-
natorum, and did not name them. Palm. 121. Mich. 18 Jac. B. R. Markham Sheriff's 2 or 3. And after 2 Scire Façain's ad Audientem Errores, and upon Default of the Defendant, and Examination of the Jurors, Judgment was entered 'That it be revers'd. But at the End of the Term the King's Attorney inforim'd the Court for the King, That this Outlawry was certified into the Exchequer, and that the Exigent, which is the Ground of the Outlawry, is good, and had the Names of the Coroners: and that the Court of the Bank is to, to make Entries without particular Names of the Coroners in the Roll, but Relation is had to the original Writ, and alleg'd Diminution in the Record, and prov'd a Certorari to the Custos Breivitt for the Writ. The Court doubted if he should be admitted to this after Judg-
ment given; for by what appear'd to the Court, the Record before them was Error. But it was held, that tho' the Party himself was bound by this Default, yet the King was not; and as to the Judgment, it was in the Brevitt of the Judges all this Term. And as in Qs. Imp. against 2, if the Right of the King appears, the Court ought to award a Writ to the Bishop for his Clerk, who is Party, so here. And the Original was certified upon a Writ of Diminution, with the Names of the Coroners; where-
upon Judgment as to this was recall'd. But afterwards the Judgment was revers'd for Variance. Ibid. — Cro. J. 576. 577. S. C. but S. P. does not appear.

The Judgment in an Outlawry was, Ideo per Judicium A. B. and C. Armigeras, and omitted Coronatures, and Comitatum predixit; and it was held clearly that both were Error. Palm. 45. Mich. 17 Jac. B. R. Anon.

* 8. P. 2 Roll Rep. 82. Anon. S. P. and seems to be S. C.

4. But otherwise it is upon an Outlawry in London, because there S. P. Dyer the-use is Not to put the Names of the Coroners. 9. 13 Jac. B. R. 577. a. pl. 6. Mich. 14 & 15 Eliz. that the Return in London is made generally, without saying Per Judicium Coronatorum.— Cro. J. 531. pl. 11. Patch. 17 Jac. B. R. Garrard v. Regem. Exception was taken for not naming any Coroners, who can't allego for. For this Outlawry was in London, where there is not any Coroner, but the Mayor for the Time is perpetual Coroner; and the Court is not to return there Per Judicium Coronatorum, but generally Ideo utlagatis eff. ---


6. If a Ban be return'd outlaw'd in this Manner, Ad Comitatum Deum S. tentum &c. Anno Regni Domini nostri Jacobi &c. leaving out this Word (Regis) it is erroneous. 9. 7 Jac. B. R. Butford's Cafe adjudged.

7. So if the Return be Ad Comitatum mem S. Deum &c. Anno 44 Regine, leaving out (Elizabetheae) it is erroneous. 9. 7 Jac. B. Brundian's Cafe adjudged. 4 M. 8. 36.
8. If the Return of the Exigent be, Ad Comitatum meum Oxon. ten- 

tum apud Oxon. 22 Junii 6 Jac. Angliae &c. & Scotie 42. exactus & 

non comparuit ad Comitatum &c. temtam &c. 19 Julii anno supradie.; 

* Pol. 863. 

* Ad Comitatum meum &c. 16 Aug. anno 6 Jac. Angliae &c Scotie 43 

&c. The Return of the 2d County is not good, because it is not 

Anglia; for tho' the 1st and the 2d are good, and therefore the 2d 

may be intended to be so also, yet because it shall not be taken by 

Intendment, it is not good. D. 7 Jac. 4 Per Curtum, Per's Case. 

(9) 8. If a Return upon an Exigent in London be, Ad Hulstingum 

tenum in Guildhalda Civitatis London tali die A. B. exactus fuerit, & non 

comparuit, it is not good, because there are two Hulings in Lon- 

don, one is De Compunibus Placitis, the other is De Placitis 

Terre, by which in such Case he ought to say Ad Hulstingum de 

Placitis Terrae, or Communibus Placitis, or otherwise it is uncertain 

in which Hulings it is, and so not good. * 6 D. 7. 15. b. said to be 

unjustified erroneous. 11 D. 7. 10. said to be used several Times 

to defeat an Outlawry, by leading out of those Words (Communibus 

Placitis.) 

* Br. Error, 

pl. 146 cites 

S. C.— 

Br. Ut- 

ula- 

gery, pl. 43. 

cites S. C. 

Upon a Re- 

covery in 

Debt, and 

Outlawry 

upon it, the 

Judgment 

among 

other Errors) was revers'd, for that the Sheriff return'd that he was outlaw'd in Hulings, and did not 


Johns.—It was affirm'd for Error to reverse an Outlawry, that the Proclaimations of Outlawry com- 

menced in the Hulings de Communibus Placitis to proceed upon the Exigent, and that the first Procla- 

mation was in the Hulings de Placitis Terrae; and therefore ill for the Variance. But the Court doubted; 

For there are Precedents that the said Hulings are held Alternately every Forriform &c. Cro. J. 666. 

pl. 16. Hill. 20 Jac. B. R. Archer v. Dalby.—Palm. 2. 8. Hill. 19 Jac. S. C. lays, that upon exam- 

ining two Clerks of the Hulings upon Oath, they informed the Court that Proclamation of Outlawry 

may be made either in Placitis Terrae, or in Communibus Placitis; but when it commences in the one, it is 

not the Cause to change or proceed in the other; but in Case of Alleoer Comitari, the Courte is to proceed 
in the next Huling, tho' it be not of the same Nature as the Huling where the Proclamation commenced. 

And the Court afterwards allur'd to this Course, because the Words in the Proclamations are Ad Proxi-

mum Hulstingum hacjus existenter. 

10. Capias issu'd, the Sheriff return'd Non inveni for Non est in- 

ventus, and the Defendant was outlaw'd, and this alleg'd for Error; and it 

was awarded Error; Quod nota. Br. Error, pl. 190. cites 9 H. 

5. 12. 

11. The Sheriff return'd that Capit Corpus W. N. and one J. S. re- 

cul'd him, and upon this J. S. was outlaw'd upon Process, and without Addi-

tion, and well in this Case. But it was revers'd by Writ of Error, 

because he did not return the Place where the said Process was made. Br. 

Error, pl. 194. cites to 4. E. 15. 

12. Proclamation issu'd to the Sheriff, who return'd the Writ thus, 

Quod Virtute eius Brevis proclamari faci ad Comitatum meum tenatum tali 

Die, but does not mention the Year. This Return is ill; Per Curiam. 

Br. Return of Writs, pl. 3. cites 27 H. 8. 29. 

13. The Sheriff who was out of his Office, return'd a Proclamation upon 

an Exigent; and therefore the Justices held that the Outlawry was void 

by the Stat. 6 H. 8. and awarded that no Process be made upon it. D. 


14. In Debt, upon the Exigent a Writ of Proclamation issu'd accor- 

ding to the Statute, and was return'd serv'd, but the Sheriff had not put his 

Name to the Return; and therefore the Outlawry was challenge'd. Dyer, 

Brown and Welton thought this no Caufe of Reverfal, it appearing by 

the Return that he was legally demanded; for the Words are Ad Comi- 

tatum meum tenatum &c. proclamari feci; so that it appears to have 

been done by the Sheriff; and the Statute of York only lays a Penalty 

on the Sheriff for not setting his Name to the Return of a Writ, but his 

not doing it is not Error; tho' if nothing be written, nor any Return 

made on the Back of the Writ, this will be Error. But Welth and 

Harpur contra, and [cited]* 26 H. 8. 3. an Exigent was return'd 

serv'd,
U lawlry.

served', and the Sheriff's Name omitted in the Return, and held Error. And the Clerks said there were many Precedents where Returns for this Cause, were adjudged insufficient. But Dyer said we will be advis'd of it. Mo. 65. pl. 176. Trin. 6 Eliz. Anon.

15. Upon a Recovery in Debt and Outlawry upon it, Errors were af-
sign'd. 1t. The Defendant brought Debt against Lancelot and J. S. and the Sheriff return'd Quod non habatur Bona aut Catalla quod summuniri possit; whereas it ought to be Per quod quoque munoniri &c. 2dly. It ought to be Neque erum aliquis habet. 3dly. It is return'd Quainto exacti sunt per quod utlaga existunt, whereas it ought to be Per judgment Coronatorum ut-
lagati; for they are Judges, and the Certificate is to be by them; and for these Errors the Judgment was revers'd. Cro. E. 50. pl. 2. Mich. 28 & 29 Eliz. B. R. Lancelot v. Johns.

16. A Man was outlaw'd, and the Sheriff return'd that on such a Day, certaines & singulares Proclamationes fieri feci, but did not shew that on such a Day he made the first, and such a Day the second &c. and this being af-
sign'd for Error, the Outlawry was revers'd. Goldsb. 97. pl. 16. Trin. 35 Eliz. Anon.

17. An Exigent issu'd into London. The Sheriff return'd that he had pro-
clam'd the Party de Comitatu in Comitatum quoque; whereas he ought to say De Husfings in Husfington ; and it was held Per Cur. to be clearly

18. Capias utlaga. was awarded 25 Eliz. and was returnable 35 Eliz.
and so meryly void; for every Capias ought to be returnable the ensuing
Term, for the Mischief which otherwise might befal the Prisoner, to be
kept always in Prison, as appears 2t H. 7. 16. 8 E. 4. 4. Dy. 175. and then he was never lawfully his Prisoner, and might well lett him at large. Cro. Eliz. 467. (bis) pl. 17. Hill. 36 Eliz. in B. R. in Cafe of Necto-
& al. v. Gennet.

19. A Person was outlaw'd, but because it did not appear by the Re-
turn that the judgment of the Outlawry was by the Coroner, as it ought to be, it was revers'd upon Error brought. Cro. E. 643. pl. 3. Hill. 41 Eliz. B. R. Beverley v. Beverley, cites 2t H. 7. 73.

20. Outlawry was revers'd, because It was not shown where the Outlaw was Inhabiting. 2dly, Because it was shewn that Proclamation was made, but not that it was made at the Parish-Church where &c. Mar. 20. pl. 46. Patch. 15 Car. Anon.

21. An Outlawry was revers'd, because the Place where the County-
Court was held is not shown in the Secundo Exactus. Sty. 451. Patch. 1655. Anon.

22. Exception was taken to the Return, that the Value of the Lands in Toro was found, but not the Value of every particular Parcel. Sed non allocatur. Hard. 7.pl 7. Trin. 1655. Croft's Cafe.

23. Error to reverse an Outlawry in High Treason was assign'd, that it did not appear where the Husings were held; for it is at a Court of Husfings, without saying pro Civitate London. The Outlawry was re-

It was assign'd for Error, that the Husings are said to be held in Ci-
vitate London, and not pro Civitate; and therefore the Outlawry was revers'd. 2 Barnard. Rep. in B. R. 298. Trin. 6 Geo. 2. Martin v. Duffield.

(A. 2) Error.

1. If an Outlawry be, That the Party suif exac/us at 3 several times, Anno 10 Jac, and that he suif quarto exactus 25 Die Februarii, & non Comparuit without any year, and quinto exactus such a Day in March 10 Jac. The it may be intended that he was quarto exactus in 10 Jac. yet an Outlawry shall not be good by Intendment, for peradventure the Clerks would have made it quarto exactus Anno 8 Jac. before, which had been clearly ill. H. 14 Ja. B. R. Chapman's Case, reversed for this. And the Court said, that it is not like to the Case of Co. 4. of a Caption before a Coroner in the County, which is intended of the County, because that is by way of Expulsion of a Word, but here is a Defect.

Litt. S. 457. the 3d Part, S. P. and Co. Litt. 1759. b. says
nota, the Original is Reverenda tiei Utlagari per Brief de Error. But the Imprisonment be good Cause to render an Outlawry, yet it must be by Proofs of Law in Issue, and not by Consent or Coven, for such Imprisonment shall not avoid the Outlawry, because upon the Matter it is his own Act.
He ought is say under whose Custody, and in what County, and if not it is not good, and he shall be hanged, and ought to over his Plea. Br. Utlagary, pl. 68. cites 1 H. 7. 13.
This Plea and the next belong more properly to (A. 4)

S. P. Br. Utlagary, pl. 79. cites 11 H. 7. 5. and it shall be tried by the Letters Patents.

2. If a Man be imprisoned at the Time of the Outlawry pronounced, it is erroneous, be it in Utlagary for Felony, or in a personal Action. 7 H. 6. 25. 38 Att. 27. 3 H. 6. 46. b. 1 H. 7. 13. b. 21 E. 4. 73. b.

3. If a Man be in the Business of the King by Commandment, by Letters Patents, at the Time of an Outlawry pronounced, it is erroneous. 11 H. 7. 5.

S. P. and it shall be tried by Certification of the Captain. Br. Utlagary, pl. 79. cites 11 H. 7. 5. — S. P. Ibid. pl. 47. cites 2 E. 4. 1.

4. If a Man be in Calais, under a Captain there in the King's Service, at the Time of the Outlawry pronounced, it is erroneous. 11 H. 7. 5. 2 E. 4. 1. 4 E. 4. 10. b. Co. Litt. 74. Co. 9. Abbot de Strata Marcella, 31. b.

5. At the Sessions held at Lancaster die Lune in Fiesti Saneti Bartholomei Apofoi, Capias was awarded returnable die focus post Feftum Saneti Barb. and did not say Proximo post Feftum Saneti Barb. proximo futur where it is uncertain whether it shall be the next Die focus, or a Year after, it is Error. Br. Error, pl. 175. cites 18 E. 4. 12.

6. And another Capias was returnable prima Septimane'Quadr' and did not say proxi futur it is Error. Br. Error, pl. 175. cites 18 E. 4. 12.

7. And also a 3d Error, that one Sessions was held within the Date of one Capias and the Return, where it should be return'd at the next Sessions, and per Cur. it is Error, wherefore it was awarded that the Record should be reversd, and the Party restored to all that he lost by the same Judgment. Br. Error. pl. 175. cites 18 E. 4. 12.

8. Exception was taken to the Return of an Outlawry, That the Outlawry is recited to have infiued at the Feast of the Conversion of St. Paul in 1653, without laying in what Year of our Lord Christ. Sed non allocatur; for 1653 must relate to the Year of our Lord, and can have no other Intendment. Hard. 6. pl. 7. Trin. 1653. Crofs's Cafe.
[A. 3] How it shall be [express'd.]

If the Record be That a Feme is outlaw'd, it is erroneous: for the ought to be waived. P. 14. 1. B. R. between Haiman and his Wife and Cottan. The Judgment reversed for this.


When a Feme is outlaw'd, she is said waived quasi relista ab lege, and not outlaw'd as a Man is; for a Feme is not found at the Lects as a Man shall be, therefore the one is within the Law, and the other not.

Br. Utlawry, pl. 70. cites F. N. B. 161. — Co. Litt. 122. b. S. P.

2. Error &c. to reverse an Outlawry, for that the Capias was awarded against 3 Men and two Women, and so to the Exigent, and the Return was Idea per Judicium &c. Utlagati sunt; whereas for the Women it ought to have been vaneate fount; and the Outlawry was reversed. Cro. J. 333. pl. 17. Mich. 12. Jac. B. R. Middleton's Cottan.

[A. 4] What Persons. In respect of the Place where they are at the Time of the Outlawry, shall be bound by it.

1. If a Man be over the Sea in the King's Service, by his Letters intents, or with any Captain of the King, at the Time of the Outlawry pronounced, it is erroneous. 2 C. 4. 1. 11 H. 7. 5. 26 H.


2. If a Man goes over the Sea of his good Will for his Pleasure, or for his own private Business, and not for the Business of the King or Realm, and then the Exigent is awarded against him for Felony, and is outlaw'd, he being there, yet it erroneous as well as if he had been there for the Business of the Realm; for he being there he cannot take Consequence of the Proclamations. D. 15. Jac. B. R. Carter's Cottan adjutry'd, and the Outlawry reversed, tho' it was said by the Clerks, that in all the Precedents (except one Skirrow's Cottan in 23 El. which was adjutry'd accordingly to this Judgment) it is alleged that he was over the Sea in the Business of the King or Realm.

3. If a Man be indicted of Felony, and after the Exigent pronounced departs voluntarily out of the Realm to the Parts over the Sea, without any Business of the King or Realm, and then the Outlawry is pronounced against him, he shall never avoid this Outlawry by Writ of Error, inasmuch as he was here at the Time of the Exigent pronounced, by which he had Consequence of the Matter with which he was charg'd; For otherwise every one may defeat the Course of Justice by his own Act, and remain beyond Sea till the Witnesses who are to prove him Guilty are dead, and then to come back. Hill. 15. Jac. B. R. in Carter's Cottan, relitry'd per Curtiam.

4 N 4. But
Utlawry.

4. But otherwise it is if he went beyond Sea, in the Busines of the King or Realm after the Exigent pronounced, and before the Outlawry; for then the Outlawry is erroneous. Hill. 15 Jac. 2 R. in Carter's Case, agreed per Curiam.

5. But in the Case before, where he departs voluntarily before the Outlawry, and after the Exigent, if he brings Writ of Error he may align for Error, that he was over the Sea Tempore Promulgationis Ultrajurarii predicto generally; for if he was within the Realm after the Exigent pronounced, and departed after, this shall come of the other Part. Hill. 15 Jac. 2 R. Carter's Case adjudg'd, and the Outlawry revers'd.

Note, where Exigent, if he was proced'd that the Pleading was good, and the Outlawry was revers'd; but by all the Justices, if the Attorney had confess'd that he went over Sea after the Exigent awarded, then the Outlawry could not be revers'd, but now this Covin does not appear.—The King's Attorney might have replied that after the Exigent, and before the Outlawry pronounced, he departed; but since he has confess'd the plea, & non Contest Curiam, that he departed after, therefore the Outlawry was revers'd. Cro. J. 464. 2 C.

6. If one be imprison'd who is sued in an Action, and brought to the Bar, and demanded if he will appear, if he will not, but after is outlaw'd, this Imprisonment is not an Error. 9. 8 Jac. 3.

7. 3 P. 6. 1. 23. Rot. 25. Revocatio Ultrajurarii diversarum, ex quo iphi habeatur Terras in Comitatu predicto quamvis Vicecomes recumavit * fraudulentor quoed non fuit Inventii nec aliquid habeuerunt, & quod Rectius tuamur &c.

8. 5 E. 3. cap. 13. Enacts, That if any will defeat an Outlawry by Reason of Imprisonment testified by the Sheriff or others having no Record, let the Party yield himself to Prison; and then the Justices shall cause the Plaintiff to appear at a certain Day, at which Day the Aversion of such outlaw'd Person shall be receiv'd, and fo also shall the King's Counsel or Prosecutor have their Aversion against such Testimony.

9. 26 H. 8. cap. 13. Enacts, That all Processe of Outlawry to be had or made within this Realm against any Offenders in Treason, being Rebellious or inhabiting out of the Limits of this Realm, or in any of the Parts beyond the Seas, at the Time of the Outlawry pronounced against them, shall be as good and effectual in Law to all Intents and Purposes, as if such Offenders had been resident, and dwelling within this Realm at the Time of such Process awarded, and Outlawry pronounced.

10. The Statute of 5 & 6 E. 6. cap. 11. is in the same Words. And enacts further, That if the Party so to be outlaw'd, shall, within one Year next after the said Outlawry pronounced, yield himself to the Chief Justice of England for the Time being, and offer to traverse the Intendment or Appeal whereon the said Outlawry shall be pronounced as is aforesaid, that then he shall be receiv'd to the same Travers, and being thereupon found Not guilty by the Verdict of 12 Men, he shall be clearly acquitt'd and discharge'd of the said Outlawry &c.

* A Question was, whether the Statutes extend to Treasons generally, viz. at Common Law, and declar'd by the 25 E. 3, or only to the new Treasons made fo by the said Acts; and the Opinion was, that they extend to all Treason, by Reason of the Words (against any Offenders in Treasons.) D. 287. a. pl. 49. Hill. 12 Eliz. Anon. 5 Intr. 32. cap. 2 and 216. cap. 101. S. P. and cites S. C. 2 Hawk. Pl. C. 465. cap. 50. S. S. accordingly.

One Outlaw'd for High Treason went beyond Sea, and was taken at Leyden in Holland, and brought into England, and being brought to the Bar of B. R. desir'd Leave of the Court to reverse the Outlawry, and be tried by Virtue of this Statute of E. 6. He alleg'd that it was not a Year since he was outlaw'd
Utiawry.

outlaw'd, and therefore defirct the Benefit of this Law; but the fame was denied, because he did not render himfelf according to the Statute, but was apprehended and brought before the Chief Juflice. And thereupon a Rule was made for his Execution at Tyburn, which was done accordingly. 3 Mod. 47. Titin. 36 Car. 2. B. R. The King v. Sir Tho. Arfwonft.

The Defendant was indited for High Treafon in counterfeiting the King's Coin, and outlaw'd in February laft; and would affirm for Error, that he was out of the Realm at the Time of the Outlawry. But that being objected to, he f aid, I do now surrender myself into the Hands of the Chief Juflice, in Purfuance of the Statute of § 6 E.6.11. and am ready to traverse the Indictment; and pray that my Render may be recorded. But the Attorney General oppof'd it, and f aid that when the Outlawry was laid before him, he f should offer fem Reafons to fhew that the Prifoner was not within the Benefit of that Act. The Court f aid they could not allow fuch Entry; for that would be to admit his Surrinfence good, which was in Dispute; but an Entry was made thus. viz. Memorandum, The Prifoner being brought up by the Keeper of Newgate, charg'd with an Indictment of High Treafon, and alleging that he was outlaw'd for the fame, and that he was beyond the Sea at the Time of the Outlawry, has offer'd to surrender himself up to the Chief Juflice, and to traverse the Indictment; and then he was remand'd back. Barnard. Rep. in B. R. 79. Mich. 2 Geo. 2. 1728. The King v. J ohnfon.

[A. 5] What Persons may be outlaw'd.

1. An Infant of the Age of 14 may be outlaw'd, and it is not cc roncous. D. 1. 2. N N. 104. 12.
2. But an Infant within the Age of 14 cannot be outlaw'd; for if It was agreed he be it is c roncous. D. 1. 2. N N. 104. 10. 12. 3 P. 5. Fitzh. Mich. 3. H. Utiawry 11.
3. But the Outlawry of such Infant is not void, it being a Record, but voidable by Error. * D. 7. El. 239. 39.

in the Age of 12 Years, of Felony or Treafon, is void; and to this agrees Hill. 3 E. 3. 5, and that an Infant outlaw'd shall not be imprison'd. And it appears that the Law was fo in the Time of Brafon, who fays in Lib. 3. Tract. 2. cap. 11. fol. 125. Minor vero & qui intra Statutum 12 Annorum fuerit, utlaryg gani non poterit, nec extra Legem ponit; quia ante talem Emum non est sub Lege aliqua, nec in Decena. Thelwall's Dig. of Wrifs, lib. 1. cap. 15. S. 19.—Co. Litt. 128 a. (3) S. P. and cites Brafon accordingly.

* And 10. pl. 22. Hawtry v. Aurcher, S. C accordingly.—Mo. 74. pl. 203. S. C accordingly.


5. In Treafon it was agreed, that Proces of Outlawry by Capias Br. Proces, and Exigent does not lie againft a Corporation, as Mayor and †Common. pl. 22. cites 8. C.

† S. P. Br. Corporations, pl. 11. cites 45. El. 3. 2. 3.


6. Mainpernor's were outlaw'd by Exigent upon their Mainprize, and yet they were not Parties to the Original. Br. Exigent, pl. 56. cites 8. H. 4. 7.

7. Proces of Outlawry lies not againft an Earl or Baron; for it is in. S. P. Br. Exi tended that they are fufficient. Br. Exigent, pl. 72. cites Old Nat. Brev. gent, pl. 22. cites 26. H. 7. 8. — S. P. And so of a Duke or Countef, not only because it is intended that they have Lands, but for the Dignity which is in them; for it was brought againft the Baron and his Feme, Counsell of B. Br. Exigent, pl. 57. cites 14. H. 6. 2.
Utlawry.

But if Refcns be return’d upon a Duke, Baron, or Lord, Capias shall issue against him for the Contempt, but adds Nota. That generally Capias does not lie against a Lord; for he is intended sufficient to be disentitled; but for Contempt Capias lies. Br. Exigent, pl. 55. cites 11 H. 4. 14, 15, and 1 H. 5. 11.

If a Nobleman be indicted, and cannot be found, Proces of Outlawry shall be awarded against him per Legem Terrae, and he shall be outlaw’d per Judicium Coronorum; but he shall be tried per Judicium Parium (orum, when he appears. 2 Hulth. 49 — 3 Hulth. 51. S. P. — 2 Hulth. 49. cap. 44. S. 15. S. P. says it seems to be clear, That if a Peer absents himself, and cannot be found, he may be outlaw’d per Judicium Coronorum &c.

Where in Affid against a Peer a Dilettin found, the Judgment was Ideo capitur, it was alleg’d for Error, That a Capias pro Fine lies not against a Peer; but the Court held it good; a Fine being given in this Case upon the Statue, and no Person being exempted therein, it shall bind a Nobleman as well as any other. And for a Contempt a Capias lies against a Nobleman, and this Fine is for a Contempt to the Law, and so is 1 H. 5. and Judgment was affirm’d. Cro. E. 150. pl. 9. Hill. 32 Eliz. B. R. The Ld. Stafford v. Thynne. — So in Debt against a Peer, who pleaded Non est fatum, which was found against him, and Judgment was Ideo Capatur, and held well, a Fine being due to the Queen. And Judgment affirm’d. Cro. E. 515. pl. 26. Mich. 58 & 59 Eliz. B. R. The Earl of Lincoln v. Flower. — In Cases of Contempt Capias lies against them; per Curt. 6 Rep. 54. a. Mich. 3 Jac. in the Star-Chamber, in the Councils of Rutland’s Café.

A Peer was indicted for incroaching on the Highway. Exception was taken for not staying of what Place he was. Sed non allocatur; for the Proces of Outlawry lies not against him, but Differs; and so it was ruled in Ld. Paget’s Café. Cro. E. 143. pl. 16. Mich. 31 & 32 Eliz. B. R. The Lord Dacres’s Café.

8. Proces of Outlawry does not lie against a Knight; for it is intend-ed that he is sufficient. Br. Exigent, pl. 72. cites F. N. B. Tit. Debt. But Brooke says this does not hold good at this Day; for Knights are outlaw’d often times. 

Capias does not lie against a Knight; for a Man may be a Knight, and have no Lands, and therefore upon a Testatum a Man shall have Eligit in a Foreign County.

9. If a Bishop be fixed in a County where he has nothing, and the Sheriff returns him Nichil, where he has Land in the County Polatine of L. or C. where Writ of the King does not run; Upon such Return, Proces of Outlawry shall not issue; for he is a Peer of the Realm, and therefore Exigent shall not issue; said by some of the Justices in the Exchequer-Chamber. Br. Exigent, pl. 47. cites 5. E. 4. 103. 


But upon Recovery against a Bishop a Man shall have Eligit, but not Capias ad Satisfacendum. Br. Exigent, pl. 5. cites 27. H. 8. 22.

But if Refcns be return’d upon a Lord of Parliament, Capias lies for the Contempt. Ibid. — And Exigent lies against a Lord of Parliament, if he be not certified a Lord of Parliament. Ibid.

If a Lord of Parliament be outlaw’d, ’tis Error as it is held. But Brooke says he heard this denied of ancient Custom. Br. Exigent, pl. 72. cites F. N. B. Tit. Debt.


[A. 6] At what Time they shall be said Outlaw'd.

1. D 15 Cl. 317. b. Puttenham brought Covenant, and Defendant pleaded an Outlawry, which was certified That the Exigent was deliver'd to the Plaintiff there, but was not return'd at the Day; but thereupon Tilletain tuit in Curia pro Regina, that he was outlaw'd; and after the Defendant relinquitly'd the Idea of the Outlawry, and pleaded in Bar, for the Outlawry, certified as above, shall be sufficient as to the Queen, but shall not be so against every Subject.

2. By this Case it appears, that a Man cannot plead an Outlawry S.P. And in Difability of the Person, unless the Exigent be return'd.

3. In Mortdauct for the Defendant pleaded Outlawry in the Demandant, Theel's Dig. Lib. 1. cap. 15. S. 20. cites 28 All. 49. S. C. but the Book is misprinted, as in 28 All. (4. 9.) where it should be (49.)

4. Before the Defendant can disaile the Plaintiff, the Outlawry must appear of Record; and the Judgment, after the Quinto exactus given by the Coroners in the County-Court, is not sufficient, until the Writ of Exigent be return'd, and the Outlawry appear of Record. Co. Litt. a Certitorari, 128. b.

5. Popham said, It is clear that if an Exigent be awarded against A. and after he is quintus exactus, and before the Return of the Exigent A. dies, yet the Outlawry shall stand in its Force, and shall not be reversed; for Judgment was by Coroners upon the Quinto exactus, and they may certify the Outlawry. But otherwise if A. had died before the Quinto exactus, which was not denied. Noy 49. Hartland v. Yates.

6. The Defendant not having appear'd before or on the Return-Day, the Sheriff actually return'd him outlaw'd before a Superfeder was issued. The Question was Whether such Return should be conclusive to the Defendant, or whether he had not 4 Days after the Return of the Exigent to appear and put in Bail, and to the Outlawry on the Return-Day irregular: For the Plaintiff was cited a Cafe in Point, which had been determined lately in B. R. between Santone and Gore. And there Id. Ch. J. Raymond declared, That the Return of the Exigent Foxius on the Return-Day was conclusive, and refused to relieve the Defendant. But
the Court, on hearing Counsel on both Sides, (notwithstanding that Cafe) held that by the Practice of this Court, Defendants always had till the Quarto Die post to appear to the Exigent; and order'd that the Outlawry should be discharged at the Plaintiff's Expense, but gave no Costs to the Defendant. Rep. of Prac. in C. B. 23. Est. 11 Geo. 1. Colt v. Hall.

[A. 7] By whom [the Judgment shall be given.]


2. But in other Counties, by the Common Law, Judgment in an Outlawry is given by the Coroner.

3. When the Exigent went out, it was to be sued to the County where the Person really was, for there the tactualy Action was originally laid; for the Creditor was to follow the Debtor wherever he was to be found; and because the Outlawry was only first for Treason, Felony, or very enormous Trespasses, therefore the Process was to be at the Torn, which was the Sheriffs Criminal Court; and this held not only before the Sheriffs, but before the Coroners, who were the ancient Conservators of the Peace, being the best Men in every County to preside with the Sheriff in his Torn, and they pronounced the Outlawry upon him. G. Hist. of C. B. 13. cap. 2.

See [A. 12] [A. 8] In what Actions they may be outlaw'd. At the Common Law.

1. *At the Common Law, Process of Outlawry was only in Writs which were supposed Vi & Armis. 35 H. 6. 6. b.*

2. Also Outlawry lay for Felony, because it was Contra Pacem. 35 H. 6. 6. b.

3. Also it lay in Writ of Diffet, because it is in Nature of a Trespafs. 35 H. 6. 6. b.
[A. 9] [In what Actions.] By Statute.

1. In Trespass for Entry Ubi Ingressus non datur per Legem. 110 Outlawry lies, because it is not Vi & Armis. 35 H. 6. 6. b.
2. Otherwise if the Writ supposes that he enter'd with strong Hand, Br. Force
35 H. 6. 6. b.
37 H. 6. 25.—2 Hawk. Pl. C. 302. cap. 27. S. 113. says he takes it to be certain that Proces of Outlawry lies in all Indictments of Trespass Vi & Armis.

3. By 18 Ed. 3. cap. 1. An Exigent shall be awarded against the Re
cessors of the King's Wool or Money, who detain'd the same, and against those
who export Wool not Cocketed, or without Custom, against Conspirators or Con
defederators of Quarrels, those who commit Riots, who bring in false Money,
if they cannot be brought in by Attachment or Distress, and not against any
other.
4. By 18 Ed. 3. cap. 5. No Exigent shall issue where one is indicted of
Trespass, unless it be against the Peace, or for Offences against the last-men
tioned Statute.
5. By diverse Statutes, Proces of Outlawry doth lie in Account, Debt,
Dativus, Annuity, Covenant, Action sur le Statute de 5 Rl. 2. Action sur le Cafe, and in diverse other Common or Civil Actions. Co. Litt. 128. b.

[A. 10] To whom the Writ shall be directed to make the Return of the Outlawry. Who shall do it, and How. To whom the Writ directed.

1. D. 25 El. 317. b. By the Custom of London the Writ is direc
ted to the Sheriff of London, and not to the Coroner (who is the Mayor) Per Communem Bancum.

[A. 11] How it is to be certified.

1. D. 25 El. 317. b. The Return of the Outlawry out of London in Banco, is generally made without saying Per Judicium Coron
atoris, and to are the Precedents; Per omnes Prothonotarios. This Cafe is
D. 317. a. pl.
15 Eliz.
Puttenham's
Cafe.

[A. 12] In
An Attorney brought a bill of Privilege upon an Obligation, and after Judgment the Defendant was outlaw'd. He brought a Writ of Error to reverse it, and assigns it for Error, that Processe of outlawry did not lie upon that Judgment, because there is no Capias in the original Action; and therefore, by the Opinion of the whole Court, the outlawry was rendered. Le. 219. pl. 465. 


Account was brought by Bill in B. R. against two. One pleaded, and it was found against him, the other made Default. The Court were of Opinion that no Outlawry could be against the Default, inasmuch as the Suit was by Bill, and not by Originals, but only Alias Capias in infinitum. Sid. 159. pl. 12. Mich. 15 Car. 2. B. R. Davis v. Pase and Martin.


Br. Exigent, 2. Indictment of Petty Larceny shall not be outlaw'd. The local Dig. of pl. 61. cites 22 Aff. 97.

That in Appeal of Larceny, if the Defendant is return'd Nihil at two Counties, Exigent shall issue.

Br. Exigent, 3. In Appeal of Rape, the Defendant pleaded Not guilty, and was let by Maunypye to attend the Inquest, and after did not come; and therefore Capias lies, and Alias & Pluries and Exigent, and no Inquest awarded by Default, inasmuch as it was a Case of Felony. Br. Enquet, pl. 28. cites 16 Aff. 13.

Exigent the Issue is waived, and without Day.—And Ibid. pl. 66. cites Firth. Corone 5. That if the Defendant in Appeal appears, and pleads to Issue, and after makes Default, Exigent shall issue; Quod non bene.

So if in Appeal of Felony or Robbery in the County, the Defendant is return'd Nihil at 2 Counties, there Exigent shall issue; Quod non upon the 2d Capias in Felony. Br. Exigent, pl. 61. cites 22 Aff. 97.

In Appeal the Sheriff return'd Quod requisitum Capiam of the Defendant, and sent him &c. who skill'd Extra Custodium his poterit quipsum duixit &c. by which the Sheriff was answer'd; and Plaintiff's Attorney said that the Sheriff had been commanded to have the Body 2 or 3 Times, by which he prays the Exigent against the Appellee. Per Sward, This cannot be against him who is in Prison, but the Writ to the Sheriff, and if he returns as you, you shall have Exigent. Br. Exigent, pl. 45. cites 20 Aff. 23.

Sergeant Hawkins says he takes it to be certain, that Processe of Outlawry lies in all Appeals whether of Felony or Malbom. 2 Hawk Pl. C. 502. cap. 27. S. 115.

Co. Lit. 4. In Account, the Defendant was return'd Nihil, by which Capias is fixed, and not Vere facias Clericum; For it seems that this Writ does not lie but where there is no other Processe given by the Law; but now Processe of Outlawry is * given in Account. Br. Exigent, pl. 58. cites 21 E. 3. 38.

*This is given by the Statute of Wills 2. 13 E. 1. cap. 11.

2 Hawk Pl. C. 502. cap. 27. S. 115. says he takes it to be certain that Processe of Outlawry lies in all Indictments of Trespass or Felony, and on all Returns of a Record.
6. **Destruction of a Box with Charters. The Sheriff return'd Nil, and the Plaintiff pray'd Capias.** Per Mombray, You shall not have it for the Smallness of the Demand; For it may be that the Box is worth nothing; and therefore it was denied; Quod mirum. **Br. Exigent, pl. 62. cit**es Charters &c. Charters de terre, pl. 7

cites 9 H. 6 20. — If it be of Charters of Land Exigent does not lie, because it founds in the Realty Contra of other Writings. Br. Charters de terre, pl. 29. cites 8 H. 6. 29. — S. P. Br. Arbitrement, pl. 2. cites 9 H. 6. 60. — S. P. Br. Proces. pl. 69. cites 21 H. 6. 32. And says nota, that the Charters and Writings were put all in one and the same Writ, and there Exigent was awarded; Quod nota. — But if the Writ had been of Charters only, then Exigent should not have issued; For this touches Frankentrement; Quod nota Diversity; **Br. Exigent, pl. 27. cit**es S. C. — Br. Attorney, pl. 43. cites S. C.

**Destruction of a Box with Charters and Monuments, who came by Exigent, and the Plaintiff count'd in Special as a Charter, by which I. enfeoff'd his Father &c. and now because'tis of Charters of Land, therefore Exigent ought not to have issued; but this does not appear before the Count, by which it was taken miscontinued, but not discontinued, and the Defendant appear'd and pleaded as if he had not come by Exigent, by which he pleaded in Bar. Br. Exigent, pl. 26. cites 8 H. 6. 29.**

D. 225 a. pl. 24 Pech. 5 Eliz. Proctor's Case says, that in that Case the Matter was well debated, whether Proces of Outlawry lies in Writ of Destruction of Boxes with Charters, Writings and Monuments, and it found that it did not. Lambert v. Proctor. — But the Reporter says, see many Books there- of in the Time of H. 6. Proces of Outlawry lies in Detinue. Co. Litt. 125. b. — It was given in Detinue by the Statute of 25 E. 3. cap 17.


8. In *Affig.* if the *Differs* be found with *Force,* the Court shall award Capias pro Fine, and upon this Exigent. **Br. Exigent, pl. 16. cit**es 1. H. 4. 39. 40.

9. The Plaintiff in Replevin has the Beasts of the Defendant in With- naman, and was compelld to gete Deliverance thereof after Issue, and Writ awarded against the Plaintiff to deliver them, and the Sheriff return'd Avex ria Elongata; by which the Defendant had other Withman against the Plaintiff, and the Sheriff return'd it Nil, by which 3 Captains were ifued, and thereupon Exigent. And to see that the Plaintiff may be outlaw'd in his own Suit. Quod nota. **Br. Replevin, pl. 18. cit**es 11 H. 4. 10.

10. *Juitici* was remov'd out of the Country by Pone, and it was for Debt, and the Sheriff return'd the Defendant Nil, and the Plaintiff pray'd Capias. And the Opinion was that he shall not have Capias; for the Statute gives Capias in Writ of Debt, which is intended Original, and *Juitici* is only Commission to hold Plea in the County above 40s. **Br. Exigent, pl. 57. cit**es 3 H. 6. 54. 55.

11. It was doubted whether Proces of Outlawry lies in *Affig.* upon the Statute of *Loveries;* and per Babbington, in Action given by Statute no other Proces lies, but such as is given by the Statute. But where *Affig. which was at the Common Law is given De Novo,* as Debt against Executors, or Tredaps by Executors de bonis aportat in Vita Teifat &c. it seems agreed that it lies not on any Action nor any Statute unless it be given by such Statute, either expressly, as in the Case of a *Pramunit,* and many other Cases; or impliedly, as where a Recovery is given by an Action wherein such Proces lay before, and agreeably hereto it has been adjudg'd, that it lies not in an Action on the Statutes of Loveries, or of Maintenance, nor in a *Devis.* But says, it seems to be holden in the Year-Book, 8 H. 6. that it lies on all Indiments or Statutes; but the contrary is adjudg'd in 22 Ed. 4. as to the Statutes against *forcefulling,* and it is there laid down as a general Rule, That it lies not on an Indiment any more than in an Action on a Statute, unless it be expressly or impliedly given by such Statute.
Utlawry.

12. It does not lie in Conspiration; per Martin; but several denied it. Br. Exigent, pl. 25. cites 8 H. 6. 9.

13. Upon Presentment or Indictment for the King, it is agreed that Proceeds of Outlawry lies. Br. Exigent, pl. 25. cites 8 H. 6. 9.

14. It was agreed that Proceeds of Outlawry lies not in Maintenance, per Martin, 59. Br. Maintenance, pl. 11. cites 8 H. 6. 36, 37.

15. A Man shall not have Exigent in Precipe quod reddat, unless three Writs are return’d served, viz. three Capia’s, nor Recovery upon Voucher against the Tenant, unless three Writs are awarded against the Voucher, where he is return’d nihil; per Pafton J. Br. Exigent, pl. 38. cites 14 H. 6. 21.

16. If Recordare or Pone is sued to remove Plaintiff in Replevin out of a Court, the Writ is good, tho’ it has no Will nor Addition where the Plaintiff is, and shall agree with the Plaintiff, and Exigent shall go upon it; per June & New Replevin is tan. Br. Exigent, pl. 39. cites 14 H. 6. 21.


19. In Writ of Covenant the Proceeds is only Diligens Infinite by the Common Law, and the same here, but lately it is meane Proceeds of Outlawry
lawry in Writ of Annuity; and in Writ of Covenant by the Statute 23 H. 6. 6.


B. R. The King v. Challoner. — S. P. because the Statute expressly gives a Recovery by such Writ and such Proces lies in it by the Common Law. 2 Haw. Pl. C. 503. cap. 27. S. 114.

21. In Premonire A Man may have Proces by Proclamation only, S. P. Br. and may have Exigent if he will. Br. Proces, pl. 80. cites 9 E. 4. 2. Exigent, pl. 53. cites 9 E. 4. 2. 5. — See the Note to pl. 11.

22. In Debt A Man may have Capias Infinites, and may have Exigent, S. P. Br. if he will. Br. Proces, pl. 80. cites 9 E. 4. 2. Exigent, pl. 53. cites 9 E. 4. 2. — Co. Litt. 128 b. — Proces of Outlawry was given in Debt by the Statute of 25 E. 3. cap. 17.

23. Outlawry upon Indictment of Forstalling. It was reveral'd by Error, Br. Exigent, because such Proces lies not upon such Matter of Forstalling. Br. Error, pl. 185. cites 22 E. 4. 11.

For it is not Vi & Arms, but Contra Paece only. — See the Note to pl. 11.

(B) Forfeiture. Forfeiture in Respect of the Person outlaw'd.

If the Executor recovers in Account against the Receiver of Testa- tor, and after is outlaw'd, yet he shall not forfeit this Debt; for it continues the Debt of the Testator, and is only put in certain by the Judgment. 20 D. 6. 8. b.

2. The Father shall have the Ward of his Son or Daughter, and Heir, whether the Land be held of the King, or not; and if he be outlaw'd, yet he shall not forfeit the Ward; For he cannot compel the Heir to marry, as the Lord may. Nor Guardian in Sease cannot compel him; therefore it is no Chatte in them, therefore an Outlawry in them shall not lose them the Ward. But if Guardian in Chivalry in Right or in Fact be outlaw'd, he shall forfeit the Ward. Note the Diversity; Per Littleton. Br. Garde, pl. 6. cites 33 H. 6. 55.

3. A
Utlawry.

3. A Feme Executrix married, and then she and her Husband bring an Action of Debt, as Executrix, and have Judgment. But it was pleaded in Bar that he was outlaw'd, and pray'd a Stay of Judgment. The Court agreed that in this Case the Husband did not forfeit the Goods which the Wife had as Executrix, because he had them only in her Right, as Executrix. 3 Bulk. 210. 211. Trim. 14 Jac. Hix v. Harrifon.

4. Executor brings an Action for Monies had, and received to the Use of Tellator. The Defendant pleads Outlawry of the Tellator; Per Treby Ch. J. the Debt is forfeited to the King, and vested in him, notwithstanding the Death of Tellator. 2 Lutw. 1601. 1604 Mich. to W. 3. Powis v. Williams.


1. If a Man be outlaw'd in a Personal Action, he shall forfeit his Goods. 11 H. 6. 17. 37.

See Stand. Perrog. 42. b. Sec. Sup. 16. —— Fin. Law Soc. 351. S.P. —— But shall not forfeit his Lands, but only the Profits thereof. Br. Forfeiture de Terres, pl. 50. cites 9 H. 6. 20. —— Ibid. pl. 75. cites S.C. —— Br. Utlawry, pl. 59. cites S.C. —— But contra in 5 E. 5. For in Dover the Feme shall not recover Damages, because the Baron was outlaw'd for Trefpafs; so that against her the Frankenement was void. But Brook makes a Quare thereof; for it is void in Respect of the Profits, but is not void in Respect of the Frankenement. Nevertheless the Damages follow the Profits, as it seems. Br. Forfeitures de Terre, pl. 50. cites 9 H. 6. 20.

2. If Tenant for * Term of Years be outlaw'd, the Term shall be forfeited to the King, and he may seize it, and plow at his Pleasure. 9 H. 6. 21.

Bond given to a Feme sole is not forfeited by the Outlawry of the Husband. Arg. 10 Mod. 165. in the Case of Miles v. Williams, cites Nov. 6.— The constant Practice in Outlawry is to seize all the Debts due to the Wife; Per Parker Ch. J. 10 Mod. 245. Trim. 13 Ann. B. R. in Case of Miles and Williams.


3. But if Feme Covert possess'd of a Term be waived, the King shall not have the Term. 9 H. 6. 52. b.

4. If an Executor be outlaw'd, he shall not forfeit the Goods of the Tellator. 11 H. 6. 17. 37.

5. If Tenant at Will sues, and after is outlaw'd, the King shall have the Corn. 9 H. 6. 21.

6. If a Man be outlaw'd in a Personal Action, he shall not forfeit Debts due to him upon Contracts. 9 H. 43. 44. Cl. B. R. between Shear and Cuttref, per Curiam.

* There is no Letter to this, nor to any of the following Divisions in Roll.

Bond given to a Feme sole is not forfeited by the Outlawry of the Husband. Arg. 10 Mod. 165. in the Case of Miles v. Williams, cites Nov. 6.— The constant Practice in Outlawry is to seize all the Debts due to the Wife; Per Parker Ch. J. 10 Mod. 245. Trim. 13 Ann. B. R. in Case of Miles and Williams.


5 Rep. 116. b. in Oland’s Cafe, S. P.


If a Man be Outlaw’d of Felony, and J. S. was bound to him by Specialty in a certain Debt, the King shall have this Debt. Be Forfeiture de terres, pl. 47. cites 50 Ali. i. —— Br. Chafe en Action, pl. 9 cites
7. If the Recoveror of Damages be Outlaw'd in a Personal Action, the King shall have Execution upon them, and shall have Execution in the Exchequer, between York and Allen, Per Curiam.

— S. P. by all the Justices. Le. 64. pl. 84. Mich. 29 Eliz. C. B. in the Case of Beverly v. Cornwall. And the Defendant may plead it in Bar to a Service which by the Plaintiff after Imparlance. Jo. 259. Pasch. 7 Car. B. R. Wortley v. Savill.

Damages which he is to recover as by Reason of Trespass done to his Land, Battery, False imprisonment &c. are not forfeited to the King. Fin. Law. Svo. 351. cites 28 Eliz. 5. 92. Saum. Praeg. 188. B. — S. P. Br. Forfeiture de terre, pl. 197. cites 24 Eliz. 5. 56 and 4 H. 7. 17. accordingly. — But Damages recovered are forfeited. Lane 20. York v. Allen. —— S. P. per Hyde Ch. J. Cro. C. 166. Mich. 5 Car. B. R. in the Case of Benfon v. Flower.

Damages for not repairing according to Covenant are not forfeited by the Outlawry. 5 Salk. 275. pl. 17. Anon. — 2 Lawr. 1513. Hall. 12 W. 3. Clerk v. Scroggs, S. C.

8. If the Coninue of a Statute in Nature of Statute Staple, takes Cro. J. 515. the Conoulor in Execution upon the Statute, and after is outlaw'd in a Personal Action, the Debt shall be forfeited to the King; so that the King may discharge the Conoulor out of Execution; for the being of his Body in Execution, is not any Satisfaction, but only a Means to come at it. P. 11 Car. B. R. between North and Fines, Per Curiam in Writ of Error. Intraint Mict. 11 Car. Rot. 520. in Action upon the Case for procuring the Discharge from the King.

9. If A. takes an Obligation in the Name of B. in which C. is bound to B. but it is taken to B. only in Trust for A. and after A. is outlaw'd in a Personal Action, this Trust shall be forfeited to the King, and he shall have the Benefit of the Obligation. W. 24. 25 Eliz. in the Exchequer, Morgan’s Case reéstold and decreed accordingly. W. 16. Jac. in the Exchequer in the Lord of Somerset’s Case, cited by the Lord Chief Baron.

10. If a Man be to present to a Church by Poindance of it, and after is outlaw’d in a Personal Action, he shall forfeit it to the King, and he shall have a Quare Impedit. 8 R. 2. Quare Impedit, 200.

11. If A. possess’d of a Lease for Years, grants it over to B. in Trust Cro. J. 515. for himself, and after is outlaw’d in a Personal Action, this Trust shall be forfeited to the King. P. 8 Car. in the Exchequer, between the King and Land and others. Resolved per Curiam; for there [it is] resolved, that a Plea of the Purchase of the Lease of B. with our Notice of the Trust, without Travers of the Trust, was not good.

Tract of a Lease in Graft is forfeited on an Outlawry in a Personal Action, but not a Lease to attend the Inheritance. N. Ch. R. 133. 21 Car. 2. in the Exchequer, in Case of the Attorney General v. Sir George Sands, admitted, and cited the Earl of Somerset’s Case, Hoe. Dacomb’s Case. 2 Cro. Babington’s Case, and Sir Walter Raleigh’s Case.

4 Q

12. Matters
12. Matters of Account may be forfeited for Outlawry. Fin. Law, 8vo. 351. cites All. pl. 5. 28 E. 3. 92.—Hard. 490. Arg. cites it as adjudg'd Hill. 30 Eliz. B. R.

13. A Man has a Defiance upon a Statute Merchant, and after is outlaw'd, and then gets a Charter of Pardon, and after files Audita Querela upon the Defiance; and good, notwithstanding the Outlawry which was in Action Personal; for this Suit is only to discharge his Land, which Discharge cannot be forfeited to the King, nor was the Land by such Outlawry forfeited. Br. Utlagy, pl. 71. cites 29 All. 47.


17. If a Man outlaw'd purchases Goods, or takes an Obligation in Tryst, the King shall have them; agreed by Counsel. Lane. 45. Pach. 7 Jac. in Cafe of the King v. the Earl of Nottingham.

18. Goods mortgaged, if not redeem'd, shall not be forfeited for Outlawry; per Williams J. Bult. 29. Trin. 8 Jac. in Cafe of Ratcliffe v. Davis.—Per Doderidge J. 3 Bult. 17. in Cafe of Waller v. Hanger, the King shall not have the Goods before the Party is satisfied.

19. A makes *Fugitive on Condition to B. that A. pay 100 l, to B. and his Heirs or Executors, and B. is outlaw'd, and A. pays the Money to B.'s Executors, as well he may, the Executors, and not the King, shall have the Money; per Hutton J. Winch. 58. Hill. 20 Jac. C. B. in Cafe of Bulloigne v. Jervife.

20. Quere, if by Outlawry of a Legatee of a Thing certain, before the Executor's Affent, such *specific *Legacy be forfeited? Went. Off. Executors, 28. and says it cannot be given or granted before such Affent.


22. When Goods are sold for as much as they are worth, the Value of them may be ascertained by Averment, and such a Debt may be forfeited for Outlawry; per Powell J. Cumb. 426. Trin. 9 W. 3. B. R. in Cafe of Hayward v. Davenport.

23. A Foreigner, that never was in England, was outlaw'd in an Action on several Promises for Goods sold and deliver'd; and upon a Special Cap. Utl. a Ship and other Effects belonging to the Foreigner were seised as forfeited. But see Carth. 459. Mich. 10 W. 3. B. R. Matthews v. Erbo.

[D] [For-
[D] [Forfeiture of Land &c.] of Franktenement:

1. If a Man be outlaw'd in a Personal Action, he shall not forfeit his Land, whereof he has an Estate of Franktenement. * 8 Pl. 16. 20. b. 21. D. 7. 7. 9. H. 6. 52. b.
2. But he who is outlaw'd shall forfeit the Profits of his Land of Franktenement to the King. 9. H. 6. 20. b. 21. D. 7. 7.

3. If a Man leaves at Will, and Lessor sows, and after Lessor is outlaw'd, the King shall not have the Emblems, but only the Rent; principal, for he shall not have more than the Lessor himself should have. 9. D. 6. 21. Colo. 5. Oland 116. * 8.

4. But if the Tenant at Will had not sown, then by the Outlawry of the Lessor the King should have the Profits, because by the Outlawry the Will is determined. 9. H. 6. 21. Colo. 5. Oland 116. 8. [b]

5. If a Man be outlaw'd in a Personal Action, the King shall present to his Churches when they void, tho' he has a Franktenement or Inheritance in them. 22. M. 33. admitted.


7. Where the Tenant is in Arrears of Rent to the Lord, and after the It was agreed Lord is outlaw'd, and then gets Charter of Pardon, the Lord shall not have by the whole the Arrears. Per Martin J. But Brook makes a Quere thereof; but the Court saith they are the Issues of the Land which is real, and therefore the Law may be with Martin. Br. Forfeiture de Terres, pl. 73. cites 9. H. 6. 57. forf'd upon an Estate for Life, are not forfeited by Outlawry, because they are real, and no Remedy for them but a Di- fresch; Otherwife if upon a Leafe for Years &c. Hct. 164. Hill 5 Car. C. B. a Nula. —— Litt. Rep. 352. Mich. 6 Car. C. B. the S. P. in the same Words.

If Tesaurator leaves for Life rending Rent, and the Rent is Arrears, when the Tesaurator is outlaw'd, and dies, this shall not be forfeited, but his Executors shall have the Rent; Per Hutton J. Winch. 53. in Case of Bulloigne v. Jervise.—Hurt. 54. S. P. in S. C.

Lord Raym. Rep. 738. Hill 9 W. 5. in the Case of Britton v. Cole, it is said by Holt Ch. 1. delivering the Opinion of the Court, that it is a Doubt whether the Arrears of Issues in such Case shall be charg'd upon the Reveries, because the Charge ariseth from the particular Default of the Tenant for Life, and not from any Charge upon the Inheritance, as in the Case of Issues.


9. If the Husband be outlaw'd in Trefpaß &c. the same shall not aft the Wife of her Dower; for by such Outlawry he shall not forfeit Freehold or Inheritance. Perk. S. 388.

10. Lands appointed to be sold by the Administrators of the outlaw'd Person who died intestate, or Lands in Mortgage, are not forfeited. Winch. 58. Hill. 20 Jac. C. B. by Hutton J. in Case of Bulloigne v. Jervise.

[E] For
Forfeiture in Personal Actions. How the King shall take the Profits.

1. If a Man be outlaw’d in a personal Action, by which the King is entitled to the Profits of his Land of which he has Estate of Franktenement, he may take the Profits, as Rent or Corn, or by Manureance of the Fatture. 9 H. 6. 20. b.


2. But the King cannot upon such Forfeiture plow the Land to low. * 9 H. 6. 20 b. Curia. 21 H. 7. 7.

Br. Livery, pl. 5. cites S. C. Br. Office deviant, pl. 2. cites S. C. * Unless he is intituled by Office. Br. Feoffments de Terres, pl. 3. cites H. 6. 20. For the Land is not forfeited, but he shall take the Profits.

3. Nor can cut Underwoods nor Trees. 9 H. 6. 21.


5. The King by such Forfeiture has not any Possession of the Land.

21 H. 7. 7.

* Br. Feoffment de Terres, pl. 3. S. P. cites S. C. 9 H. 6. 20. * But otherwise where the King is intituled by Office to seize; for there he cannot make Feoffment till after Livery thereof fail’d. — If the King has a Term by reason of an Outlawry against Lessee of a Term, and the Lessee will make Feoffment, the Feoffment is void, because of the Possession of the King; For none can by any Means put the King out of Possession by Matter in Fact; Quod nota. Kelw. 53. b. Trin. 19 H. 7. pl. 12.

6. The King cannot grant over such Land which he has by such Outlawry, but it is void. * 9 H. 6. 20 b.

7. So he can not lease the Land. 21 H. 7. 7.

8. But he may grant to another to levy the Profits in his Name. 9 H. 6. 20 b.

9. If a Man be outlaw’d, he shall not forfeit his Deer in his Park. Br. Account, pl. 94. cites H. 7. 6. Per Vavifor.

10. Where the King has the Profits of any Land, by reason of Outlawry in Action Personal, he may justify for Damage feasant, and have Trespa’s; for he has interest in the Land. Quod nota. Br. Avowry, pl. 63. cites H. 7. 2.

11. A
In what Cases the Forfeiture of one shall be Forfeiture also as to another.

1. If 2 Conuniess of a Statute take by Capias the Body of the Conuniss for in Execution, and after one of the Conuniss is outlaw'd in a Personal Action, this shall be a Forfeiture of the Debt against both; so that the King may put the Conuniss out of Execution at large. P. 11 Car. B. R. between North and Fines, per Curiam, in Writ of Error upon a Judgment in Bank in Action of Cafe, whereas the Consideration was to procure a Discharge from the King to set him at large out of Execution, in the Case aforesaid. Sich. 11 Car. Rot. 520.

2. Holt Ch. J. in delivering the Opinion of the Court, in the Case of Britton v. Cole, Ld. Raym. Rep. 358. cites Lane. 96. and 2 Roll's Abr. 159. [Prerogative (I)] pl. 4. which he says is obscurely reported, viz. That the Cattle of one Tenant in common shall not be taken upon a Levari Facias upon the Outlawry of the other; if the Estate of the other Tenant in common be particularly found, it is good Law: For if a Levari Facias be to levy the Profits of a Moiety, the Cattle of the other Tenant in common there levant and couchant cannot be taken; for the Tenant in common, which was outlaw'd, can only forfeit the Pernancy of the Profits of his Moiety. But that Matter of the Tenancy in common must be intended to be found upon the Inquisition, otherwise it is not Law; for if A. hath Land in which B. has Common of Fashure for Sheep; A. is outlaw'd, and the Title of B. is not found upon the Inquisition, his Cattle may be taken upon a Levari Facias, unless he hath pleaded his Title in the Exchequer, and hath it allow'd. Contra if his Title had been found upon the Inquisition. In 2 Ro. Abr. 159. there are some Cases which seem to the contrary; but they are not intelligible. As the Case there 159. pl. 2. 3. Stafford v. Bateman (the fame Cafe, 3 Cro. 431.) which says, That upon a Levari Facias the Sheriff may seize, but not sell, which is a Contradiction; for every Levari Facias requires a Sale as well as a Seifure; therefore the Book is false printed, and it ought to be a Fieri Facias, as 3 Cro. 18. Now no Levari issues for a Debt against the Person, but where the Land is Debtor. Ld. Raym. Rep. 358. Hill. 9 W. 3. in Case of Britton v. Cole.

4 R
[G] *Who shall have the Forfeiture.*

1. If A. leaves to B. a Coal-Mine within the County Palatine of Durham for Years, rending Rent, and after the Rent being Arrear, A. is outlaw'd in an Action of Debt in Banco, and the Bishop of Durham is to have the Chartels of outlaw'd Men within his County, yet it seems, because this Debt follows the Person, that the King shall have the Arrearages, and not the Bishop. *Dubitatur 9. 8 Jac. Bromley's Cave.*

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(H) *Forfeiture. How much shall be forfeited.*

1. A. has a Recognizance or Bond, and after is outlaw'd on Attaint, the King shall seize all the Land of the Conserver or Obligor, tho' he himself could have had but a Moiety. *5 Rep. 56. Mich. 30 & 31 Eliz. C. B. in Knight's Cave.*

2. A. had recover'd against J. S. in an Action for Words, 500 l. Damages. Afterwards J. S. and W. S. purchased Land in Fee, and alien'd it to B. A. was outlaw'd, and so his Debt became forfeited to the King. The Question was Whether the King should have the Moiety of the Moiety of A., or the entire Moiety. And it was resolved, that he should have the entire Moiety, tho' A. should have had but the Moiety of the Moiety. But the Debt coming to the King, he by his Prerogative shall have Execution of the entire Moiety; and it was adjudged accordingly. *Cro. J. 513. Mich. 16 Jac. B. R. The King v. Death.*

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(I) *Forfeiture. Goods of whom may be taken.*

**Strangers.**

1. If a *Man* is bound to two in an Obligation, and the one is outlaw'd, the King shall have the entire Obligation to himself alone. *Br. Chofe in Action, pl. 2. cites 19 H. 6. 7.*

S. P. per
Doderidge
J. Roll Rep.
5. in Cave
of Cullom

S. P. 5 Bult.
210. in Cave
of Her v.
Harrison.

2. Where a *Feme Executrix* takes Baron *who* is outlaw'd, the Goods of the Testator by this shall not be forfeited; per Prior. *Br. Forfeiture de Terres, pl. 71. cites 33 H. 6. 31.*

3. So it is where the Executor himself is outlaw'd, the Goods of the Testator shall not be forfeited. *Br. Forfeiture de Terres, pl. 71. cites 33 H. 6. 31.*

4. *Trespassor* takes my Goods, and after is outlaw'd, these Goods are forfeited; per Hobart; and those of the Exchequer wrote for them. Quære if by Information without Office? But it seems that the first Owner
Owner shall have them upon Suit made; for his Right remains. Br. Forfeiture de Terres, pl. 53. cites 6 H. 7. 9.

5. If there be a Commoner, or other Tenant in Common with Defendant, his Beasts may be taken on the Land, unless the Title of the Commoner or of the Tenant in Common be found by the Inquisition; and so it is of a Lease for Years prior to Outlawry; for they are bound by the Inquisition, and so is their Title, till they avoid it by Moniturs de Droit in the Exchequer. 1 Salk. 395. Hill. 9 W. 3. B. R. Britton v. Cole.

6. If an Outlaw makes Feoffment of his Lands after Inquisition, the Court of the Feoffee may be taken for the Issue of those Lands, a fortiori the S. C. & P. Castle of a wrong Deed, who has no Pretence of a Title; Per Holt Ch. J. Carth. 442. in Cafe of Britton v. Cole.

(K) Forfeiture. Strangers. How for the Title &c. of Strangers are affected by it.

1. If the King has a Term by reason of an Outlawry against a Lease of a Term for Years, and the Leifor will make Feoffment, the Feoffment is void, because of the Poliellion of the King; For none can by any Means put the King out of Poliellion by Matter in Fact; Quod nota. Kelw. 53. b. Trin. 19 H. 7. pl. 12.

2. If a Lease be outlaw'd, he shall not forfeit the Profits of the Land. Arg. Goldsb. 55. pl. 8. in Beverley’s Cafe.

3. If a Copyholder be outlaw’d, the King shall have the Profits of his Lands, and the Lord has not any Remedy for his Rent. Arg. Le. 99. in Cafe of Suliard v. Everard.

164. that Lord Coke says that if a Copyholder be outlaw’d, the Lord upon Presentment shall have the Profits of the Lands; but that it is said Lec Catto 216. that if a Copyholder be outlaw’d in a Personal Action, it is no Forfeiture of his Copyhold, but the King shall have the Profits. But the Lord Ch. B. for a Quere of this; for then how can the Lord have his Services paid him?

4. A. acknowledged a Recognizance to B. and after to C. At the Suit of B. the Lands of A. were extended at 20l. per Ann. Afterwards C was outlaw’d, by which the Recognizance came to the King, and Proceeds of Extent illud for him. It was found that A. had nothing but the Land extended by B. and that it was worth 40l. per Ann. more than the 20l. It was extended at. Scire Facias was awarded against B. to answer the Surplusage above the 20l. per Ann. B. pleaded his first Extent by Inquisition, and that he was not yet satisfied. Judgment for B. for the Consee is to take his Chance. But Clerke the 2d Baron held strongly the contrary. Cro. E. 265. 266. pl. 8. Mich. 33 & 34 Eliz. B. R. the Queen v. Wall and Green.

5. The King shall not have the Profits of the Land on an Outlawry But if Cofly against the Cofly que Ufd, or Cofly que Truft. Sty. 41. per Roll Ch. J. in Cafe of the King v. Holland.

outlaw’d, the King shall have the Bond. Cro. J. 515. in Cafe of the King v. the Executors of Sir J. Dacomb.

6. A recover’d a Judgment against B. After Judgment B. was outlaw’d at the Suit of J. S. and his Lands seised into the Hands of the Crown. Afterwards A. took out an Elegit. The whole Court were of Opinion that the Lands being seised by the Crown before the Iuing out of the Elegit, there could
could not be an Amoveas Manum awarded, altho' the Judgment was prior to the Outlawry. Show. Parl. Cases, 75. in Case of the King v. Baden, cites Hard. 166. [in the Exchequer, Trin. 1657. Masters v. Whitfield.

7. A. was outlaw'd at the Sui of B. and Lands in his Possession were extended. So. claim'd Title to them, brought Ejectment, and pleaded to the Injunction. An Injunction was pray'd for the King to stay Proceedings at Law, but it was denied; For tho' a Person outlaw'd cannot after Extent present or avoid the King's Title by any Alienation as appears H. 7. yet the Outlawry gives no such Privilege to the Possessor of a Disseisor, but that the Disseise may enter and bring his Ejectment; For by the Outlawry the King has a Title only to the Profits, and no Interest in the Land. But it was order'd that the Ejectment should be brought in this Court, because the King's Revenue was concerned. Hard. 176. Hill. 12 & 13 Car. 2. in the Exchequer, Hamond's Case.

8. If there be two Tenants in Common of a Rentroy for Years, and one is outlaw'd, yet the other upon hearing of the Matter may have Debt for the Moiety. Sid. 49. pl. 11. Mich. 13 Car. 2. B. R. in Case of Cole v. Banbury.

9. If Tenant for Life is outlaw'd, and dies, it may be a Question whether the life's Arrear can be extended on the Reversioner; Per Holt Ch. J. Crotch. 42. Britton v. Cole.

10. A owes Money to B. on a Judgment, and to C. on a Bond. A. is outlaw'd at the Suit of the Obligee, and his Lands seized on the Outlawry; And the Question was, Whether the Conouee of the Judgment could extend these Lands? And it was held the Outlawry should be prefer'd, and that the King's Hands should not be amoved, unless the Conouee could faw Comun, and practice between the Obligor and the Obligee. Salk. 495. pl. 2. Mich. 5 W. & M. Attorney General v. Baden.

(L) Actions forfeited. What. And what the King may have, in Respect of the Outlaw.

1. A Man was bound in a Recognizance, and had a Decease, and Execution is found against him, and he pleads the Decease; and notwithstanding this Execution is awarded erroneously, and after the Conouee is Outlaw'd in an Action Personal, and then gets a Pardon, and files a Writ of Error, and well notwithstanding the Outlawry; for he is not to recover any thing, but to discharge his Land by this Suit, which Discharge, nor the Land, was not forfeited to the King by Outlawry in Action Personal; quod nota. And therefore the Title and Cause to have Writ of Error was not forfeited. Br. Forfeiture de Terres, pl. 72. cites 29 Afl. 47.

2. It was awarded that he who is outlaw'd for Trespass, and after gets a Pardon, shall have Action of Trespass of Battery or False Imprisonment done before the Outlawry, and shall recover his Damages tax'd by the Court; for otherwise the Tort shall be dispunish'd. Br. Forfeiture de Terres, pl. 38. cites 29 Afl. 61.

3. For the King may have Debt or Action of Goods carried away from him who is outlaw'd, but he shall not have Action for the Tort. Br. Forfeiture de Terres, pl. 38. cites 29 Afl. 61.
Utlawry.

4. The King shall have Action of Detinue of the Obligation of him who is Outlaw'd; Per Brian, quod non negatur. Br. Forteiture de Terres, pl. 107. cites 16 E. 4. 4. and 49 E. 3. 5.

5. Where the King has the Profits of any Land by Reason of Outlawry in Action Personal, and Damage is done in depauperating the Goods or Corn, he shall have Action of Trespafs; for he has Interest in the Land, and yet he has not the Land it self. Br. Trespafs, pl. 172. cites 15 H. 7. 2.

(M) Forfeiture. Patentee. Actions. What Actions Patentee may have, and in whose Name. See Prerogative (M. b. 9)

1. Ranee of the King cannot have Action of Goods of a Person outlaw'd without Possession; Per Grenchfeld; to which it was anwer'd, that it is the common Course in the Exchequer. Br. Prerogative, pl. 45. cites 39 H. 6. 26.

2. A. was accountable to J. S. and afterwards J. S. was outlaw'd in a Personal Action. A. died. The Queen granted to B. omnia Bona & Cataloga, Exitus, Provincia, forisfactur & Advantagia quaecunque, which came to her by the Outlawry of J. S. — B. brought Account against the Executors of A. de son Viti. It was agreed of all Sides, that if this Action had been granted specially, it had been clearly good; and tho' this Matter of Account is, at the Time of the Grant, uncertain, yet it may be reduced to a Certainty by Matter ex postFacto, viz. by the Account. And tho' the Account be not expressly named in the Letters Patents, yet the Words of the Grant (ut supra) do amount to as much. And Gawdy J. conceiv'd this Account ought to be brought in the Queen's Name. And per omnes J. If A. had been living at the Time of the Grant of the Queen, the Grant had not been good; for then the Action against the Executors, which is the Matter of Prerogative, had not been vested in the Queen. 3 Le. 197. pl. 250. Hill. 30 Eliz. in the Exchequer. Anon.

3. If a Man be outlaw'd in a Personal Action, and the Queen has the Profits of the Land, and lets the same to another, the Grantee shall have Trespass Quare Clausum fregit; per 2 Juftices. 3 Le. 213. pl. 282. Mich. 30 & 31 Eliz. B. R. in Cafe of Hitchcock v. Harvey.
(N) Patentee. Value. How the Value to be consider'd on an Extent.

1. Defendant was outlaw'd at the Suit of an After-judgment Creditor, who got a Lease from the Crown at a Quarter-part of the Value, viz., for 120 l. per Annum, where the Lands were well worth 478 l. and he levied only the 120 l. per Annum, and let the Outlaw take the rest. The first Judgment Creditor brought an Ejector, and would have the Lease account for the whole Value. But it was decreed (by which a former Decree was set aside) that the Lease could be, no more than the extended Value, which was at 120 l. per Annum, and could not enter and take all the Profits; for the Crown has no Interest in the Land extended, but only Perception of Profits, but the Party may take out a Melius Inquirend', and have them extended at a greater Value. And it was agreed that the Lease would change Place, and let in the first Judgment Creditor, and he pay the Lease 200 l. per Annum till Lease's Debt was satisfied; and the Outlawry to remain in Force. And the Extent upon the Ejector after the Extent upon the Outlawry, was held void quoad the Protecor. Hard. 106. Maiters v. Whitfield and Hoskins.

2. When the Profits of the Land are found by an Inquisition to be of such a yearly Value, then the Lands remain a Debtor to the Value till the Debt is satisfied; but he can only agit or mow those Lands; Per Cur. 5 Mod. 118 in Case of Britton v. Cole.

See (E) pl. 5. 6. — (P) pl. 5.

(O) Forfeiture. Prevented, or ousted, by Alienation &c.

In Outlawry 1. If one is outlaw'd in Action personal, and Office is found that he was seised of such Lands the Day of the Outlawry, he may make *Forfeiture of his Land well enough; for the King is not seised. Br. Office deviant &c. pl. 2. cites 9 H. 6. 20.

is good before the King has Possession. But a Recovery against the Heir after Office and before Livery, is good between the Parties, but not against the King if it be upon Junt Title. Br. Forfeiture de terres, pl. 17. cites 21 H. 7. 7. — The Court of the Exchequer is, that by Forfeiture before Seisure, the King is ousted of the Pernanny of the Profits. But not by Forfeiture after Seisure. 1 Lev. 35. Patch. 13. Car. 2. B. R. Windor v. Saywell.

* S. P. And after this the King shall not have any Profit of it, Quod Curia concipit, Quod nota; For the King has not the Possession, and the Owner has Power to make Forfeiture, therefore the Profits shall go to the Office. Br. Prerogative, pl. 33. cites 21 H. 7. 7. — Br. Forfeiture de Terres, pl. 30. cites S.C. — Ibid. pl. 24. cites S. C. because the Crown cannot lose for Outlawry in Action personal, but where the King may lose, the Party cannot be oust of the Land. —— Br. Illus. Petern, pl. 9. cites S. C. — S. C. cited by Gaudy J. Golds. 181. pl. 115. Anon. —— Ed. Raym. Rep. 507. Hill. 9 W. 3. in Case of Britton v. Cole it was said by Holt Ch. J. in pronouncing the Opinion of the Court that the Forfeiture in such Case is good, but the Interest of the King to take the Profits continues notwithstanding the Forfeiture; 'tis the Opinion in 21 H. 7. 7. is contrary —— 1 Sle. 355. S. C. and S. F. —— The Sale shall hold but the King shall have the Pernanny of the Profits. 12 Mod. 438. Anon.

2. A fraudulent Gift of Goods will not defeat the King of the Forfeiture by the Outlawry of one indicted for Recusancy. See tit. Fraud (C) pl. 1. in the Notes, Pauncefot v. Blunt.
Utlawry.

3. If a Man outlaw'd buys Goods in another's Name, the King shall have
the Goods in the same Manner as if he had taken them directly in his own Name. 12 Rep. 2. Pach. 4 Jac. in Ford and Sheldon's Case.

define the King of his lawful Duty, or Forfeiture by the Common Law, or Act of Parliament, the King shall not be barr'd of his lawful Duty or Forfeiture Per Olderane, which belongs to him by the Law if the Act was made De directo. 12 Rep. 2. Pach. 4 Jac. Ford and Sheldon's Case.

4. A recover'd Damages against B. who at the Time of the Judgment, was jointly joined in Fee with C. Afterwards B. and C. alien'd. Then A. is outlaw'd. The King, 8 Years after this Outlawry, extends the Monev of this Land for these Damages recover'd against B. The Barons were clear in Opinion that he shall have it in Extent; for it was liable to the Extent of the Party outlaw'd before the Alienation, and then when it comes to the King by the Outlawry, although it be after the Alienation, it continues extindible for the King, tho' the Alienation was before the the Outlawry. Lane 20. Pach. 4 Jac. in the Exchequer, York v. Allein.

5. One outlaw'd made a Leaf of his Lands, and afterwards these Lands S. C. cited amongst others were found by Inquisition, and this Leaf was pleded in Bar to bind the King, it being before Inquisition. And the Court held that in Case of a Leaf or other Estate made after the Outlawry and before the Inquisition, it made bona fide and upon a good Consideration, will prevent the King's Title; but otherwise if it be in Tryst for the Party only, but that no Conveyance whereover made after the Inquisition will take away his Title. Hard. 101. Pach. 1657. in the Exchequer, the Attorney General v. Freeman.

prevents the King from the Pernancy of the Profits, cites 19 H. 7. 39. But if after Inquisition found, it will not; For 'tis by the Inquisition that the Interest is vested in the King, and before that he has nothing at all. Cumb. 469. per Holt Ch. J. in delivering the Opinion of the Court, Britton v. Cole. 1 Salk. 395. S. C. and S. P. cites Lane 79. 3. Cro 431. 2 Roll. 159—ld. Raym. Rep. 507. S. C. and S. P. by Holt Ch. J.

6. B. was outlaw'd in Debt, after Judgment at the Suit of S. and an Extent being taken out, it was found by Inquisition 1 Oct. 1654. that he was seised for Life of several Lands in Hampshire. They were seised into the King's Hands, and demised to the said S. under the Exchequer-Seal. The Defendants as Tenenants pleaded, that before this Inquisition and Seifure the said B. by Fine for conceifit &c. granted these Lands to one Abdy for 500 Years, if he should so long live; That Abdy died, and that after the Inquisition his Executors demised them to the Defendants for 460 Years. The Attorney-General demurr'd, for that the 2d Leaf was made since the Inquisition and Seifure, during which Time no Ealate could be granted of the Lands seised. But the Court said, that any one who has an Estate or a Right precedent to the Outlawry may grant it over, unless it be the Outlaw himself, who cannot by his own Act defeat the King's Interest. Hard. 422. pl. 9. Trin. 17 Car. 2. in the Exchequer, the Attorney General v. Fox & al'.

7. Outlaw in Personal Action leaves a Fine before Seifure. The King cannot seise the Lands in the Hands of Conuec, but if the Seifere be before the Fine, the King may retain against the Conuec. Raym. 17. Trin. 13 Car. 2. Windfor v. Seywell.

8. If a Person outlaw'd aliens his Lands before any Inquisition taken for the King, which he lawfully do, yet the Alience must plead of the Extent in the Exchequer by seizing his Title Precedent. Carth. 442. in Cafe of Britton v. Cole, cited by Holt Ch. J. as Mich. 22 Car. 2. Riffdon v. Rainer.

(P) Forfeiture.
Utlawry.


1. IN Ailisse it was found by Verdict that the Plaintiff leas'd the Land to the Defendant for Life rendering Rent, and for Default of Payment to re-enter, and the Defendant did Felony, by which the Exigent was awarded, and the Lessee ejected for Rent Arrear, the Lessee ousted him and after was outlaw'd; but the King did not seize, but the Defendant continued Seisin, and the Defendant is now a Clerk convi<ed. And by all the Justices, tho' the King had Caufe to seize and did not seize, the Plaintiff shall recover the Land. And by the Reporter it ought to have been inquired when the Rent was Arrear; for if it was before the Exigent, then the Entry of the Plaintiff is lawful; Contra if it was Arrear after the Exigent. And therefore it seems that the Judgment upon the Exigent, shall have Relation to the Time of the Exigent. Br. Conditions, pl. 199. cites 27 Aff. 59.

2. Note, by all the Justices except Markham, if a Man be attainted of Felony or Treason by Outlawry, he shall forfeit all his Lands which he had at the Day of the Felony or Treason done, or ever after. Quare inde; for it seems but from the Time of the Outlawry pronounced, or after; for Outlawry has no Relation, as Verdict has. Br. Forfeiture de Terres, pl. 98. cites 30 H. 6. 8.

3. In an Appeal of Death, or other Felony &c. Proceeds is awarded against the Defendant, and hanging the Proceeds' the Defendant conveys away the Land, and after is outlaw'd, the Conveyance is good, and shall defeat the Lord of his Escheat. Co. Litt. 13. a.


S. P. and fo in Case of High Treason. Fin. Law, 8vo. 352.

1. WHEN a Person is outlaw'd or indicted of Felony, and absents himself for so long a time that an Exigent is awarded against him, he shall forfeit all his Goods and Chattels which he had at the Time of the Exigent awarded, tho' he render himself upon the Exigent, and be afterwards found Not Guilty. 5 Rep. 110. b. 111. a. Patch. 43 Eliz. B. R. in Foxley's Case.

2. If a Man has a Charter of Pardon of elder Date than the Exigent, the Chattels are saved; for the Caufe of the saving them appears of Record. 5 Rep. 111. a. in Foxley's Case, cites 43 Eliz. 3. 17. but says that it does not appear by the Book what Remedy the Party has, if the Caufe of the saving of them be by Matter in Fact, as by Imprisonment, or that the Party was beyond Sea &c.

(R) Admoni-
(R) Advantage of the Forfeiture. How to be taken. See (S)

1. DEBT upon Obligation. The King's Servants said, that the Plaintiff was outlaw'd, and prayed to have the Obligation for the King. Per Brian, We cannot give Judgment of it as Justices without Writ, but the King may have Writ of Detinue; and if this Matter was upon this Contention, there Judgment may be given for the King. Br. Utлагary, pl. 41. cites 4 H. 7. 17.

2. B. recover'd in a Quare Impedit, and before he had Execution he was outlaw'd. The Queen brought a Scire Facias to execute the Judgment.Resolved by per ton. Cur. That the Scire Facias to execute the Judgment was well brought, and there was Privity enough to sue Execution of the Judgment, because the Thing is in the Queen as it was in the Plaintiff, and that is a Thing in Action, and therefore it cannot be a Thing in Possession in the Queen; and fo he is not to present, but is to prosecute the Execution of the Judgment. Mo. 241. pl. 378. Mich. 29 Eliz. Beverley's Cafe.

3. A. outlaw'd B. in an Action of Debt, and J. S. having Goods of B. in his Hands, A. brought a Bill against J. S. to discover whose Goods he bad of B.'s. But J. S. demurr'd, because A. show'd no Title to those Goods. It was inflected against the Demurrer, that the Crown was only a Trustee for the Plaintiff. But Ld. Commissioner Gilbert held contra; and that it is meerly out of Grace that the King makes such Grant of Goods of Persons outlaw'd to the Plaintiffs, who have no manner of Right before the Crown has granted them to him, and fo allow'd the Demurrer. 2 Wms.'s Rep. 269. Panch. 1725. v. Bromley.

4. And in such Cafe the Attorney-General must be made a Party. 2 Wms.'s Rep. 269. v. Bromley.

(S) Forfeiture. Remedies to get at it. See (R)

1. A Bill was exhibited against one outlaw'd, to discover his Real and Personal Estate, and what secret Gifts and Conveyances he had made, because by the Outlawry his Goods and the Profits of his Lands were forfeited. The Defendant demurr'd, for that Nemo tenetur proderes lepimum, and to discover his Estate upon a Forfeiture. But the Court e in Cafe of contra; and that he ought to answer, because the Crown is intitled to the Attorn's ESTATE by Courte of Law, and the Outlawry is in Nature of a Gift to the General Estate; the King, or a Judgment for him; and a common Person may have a Bill like Bill in a like Case, to enable him to take out Execution. And he fact of such was ruled to answer. Hardr. 22. Mich. 1655. in the Exchequer. The Protector v. the Ld. Lumley.

already, and not to discover a Cause of Forfeiture.

2. It is the Course of the Exchequer, in Cafe of an Outlawry, to prefer an Information in the Nature of a Treaver and Conversion against one who has the Goods of the Party outlaw'd; per Hale Ch. J. Mod. 90. pl. 58. Mich. 22 Car. 2. B. R. Anon.

4 T

3. When
3. When the Inquisition is taken, it is return'd by the Sherif into C. B. and then a Transcript of the Outlawry and Inquisition is transmitted into the Exchequer; and therupon if any Debts be return'd due from any one to the Outlaw, on Application to the Exchequer a Seire Facias is issue to such Person, to prove Cause why the King should not have such Sum found due on the Inquisition to the Outlaw. The Reason of returning the Transcript of the Record from C. B. into the Exchequer is, that when the Inquisition has return'd the Outlaw to be possesse'd of any Goods or Lands, he being out of the King’s Protection cannot enjoy any thing, and the Profits of the Lands are to be seiz'd into the King's Hands; but the Lands are not forfeited, unless it be in a Capital Cafe, and then after the Year and Day he forfeits as if he had been convicted: But in other Cases the Profits are seiz'd whilst he continues outlaw'd, and therefore the Transcript of his Record is sent into the Exchequer, that the Court of Ordinary Revenue may have it in Charge; but the Court of Exchequer usually grants a Custodiam to such Person as sued the Outlawry. G. Hill of C. B. 13, 14. cap. 2.

(T) Forfeiture. Seisure or Office. Necessary; in what Cases. And in what Cases the King shall be said seiz’d by Office.

1. It was in a manner agreed, that where it is found by Office that if N. was outlaw’d in Trespass, or other Action Personal, and was seiz’d of such land the Day of the Outlawry, that by this the King is not seiz’d, nor the Exchequer cannot seize by such Office. And it was agreed per Cur. That the Party, in such Case, may disturb the Exchequer from taking the Profits; for the Office is not sufficient for the King. Br. Office Devant &c. pl. 9. cites 9 H. 6. 20.

2. Obligation in a Suit in Banco is put into the Caufedy of an Officer, and after it is firmly set that the Plaintiff is outlaw’d, and the King’s Attorney came and demanded the Obligation for the King, and the Court would not grant it till the Plaintiff, and the Officer who kept it, were war’d. Br. Obligation, pl. 38. cites 37 H. 6. 28.

3. In Outlawry the Queen shall have Obligations, Statutes, Recognizances, Leafe for Years, next Avoidances, without Office, because the Queen is institted by the Record of the Outlawry; per Clark J. Mo. 292, 293. Patch. 32 Eliz. in the Exchequer, in the Cafe of Sir M. Finch v. Throgmorton.


4. If the Outlaw purchaseth Cattle after the Outlawry, the Property of them is immediately vested in the King; Per Holt Ch. J. Earth. 442. Hill 9 W. 3. B. R. in Cafe of Britton v. Cole.

5. By Outlawry, Leafe for Years is forfeited before any Seizure; and therefore if it be sold after Outlawry, and before Seizure, the King shall avoid the Sale; but if one Outlaw’d fell an Estate in Fec before Seizure, the Sale is good, and the King shall not have the Remain of the Profits; but if the Sale be after Seizure, the Sale shall hold, but the King shall
shall have the Pernancy of the Profits; but even in Case of a Lease there
ought to be an Office found for the King. Per Holt Ch. J. 12 Mod.

(U) In what Cases the King may feise, and when.

1. A Man les’d for Years, or at Will, and after was outlaw’d in a Per-
fsonal Action, as Trespass, and Writ issued to inquire of what
Land he was feised at the Time of the Outlawry; and it was found that
he was feised of the Land les’d, by which the King committed it to an-
ter who entered, and the Leafe for Years brought Writ of Trespass; and
the Defendant pleaded the Matter above. And the Opinion of the Court
was, that of the proper shewing of the Defendant himself, the King
cannot feise, and then the Grant is void. Br. Patents, pl. 3. cites 9 H.
6. 20.

2. A Leafe of Goods to A. for Years. A. is outlaw’d; a Scire facias
issues for the King. He shall not have the Goods till the Leafe be ended;
Per Doddridge J. 3 Bulst. 17. Hill. 2 Jac. in Case of Waller v. Han-
ger, cites 13 R. 2.

(W) Seifure. Of the different Writs of Seifure, and their
different Operations; and what may be taken by them.

1. The Writs of Execution for the King are Ca. Sa. to take the Bu-
dy, Fi. Fa. to take the Goods, Extendi fac to take the Lands,
and the long Writ in the Exchequer, which comprehends them all. Now
even by that Writ the Goods of a Stranger cannot be taken, because the
Sheriff has no such Authority thereby. But otherwise it is of a Levari
Cole.

2. The Cattle of a Stranger being Levant and Couchant on the Land of
the Person outlaw’d, may be taken by Virtue of a Levari fac. for the

S. C. & P.—For they, and not the Cattle of the Owner of the Lands, are the Issue of the Lands; Per
Holt Ch. J. Carrth. 432. S. C.—— 5 Mod. 117. S. C.—— Skin. 617. pl. 15. S. C. ac-
cordingly.— Comb. 434. 446. S. C. accordingly.— 12 Mod. 1-6. S. C. accordingly.— Ed Raym.
Rep. 305. S. C. accordingly.— And Ibid. 366. Per Holt Ch. J. The Land is Debit or to the King,
and that makes the Cattle upon it liable to this Execution; For if the King should not have this Re-
medy, the Pernancy of the Profits of the Land upon Outlawry would be very small, and it may be
would be worth nothing; for then it would be in the Power of the Man outlaw’d to defraud the King
of the whole, by letting of the Land to Paffurage; in which Case, if he could not feize the Cattle
Levant and Couchant upon the Land, he could not have any Remedy against him who should hire the
Land for Agitation; nor could he have the Money payable by such Contract, because it would be an
Agreement in gro’s.— But if the Outlaw had made a Leafe of such Lands before the Existent return’d,
then the Cattle of a Stranger cannot be feized by Virtue of a Levari facias on the Lands; Per Cur. 5
Mod. 117; in Case of Britton v. Cole.

3. Outlaw aliens his Estate, Feoffee puts in his Cattle; they are sub-
Ject to a Seizure for the King, the Feoffee having the Estate in the same
Utlawry.

by Holt Ch J.

Plight and Condition as the Feoffor had it; and tho' the Feoffment be good, yet it destroys not the King's Title; Per Holt Ch. J. in delivering

4. The Goods of the Person outlaw'd are not the Issue leviable by the
Levati; for those are the King's without Inquisition; and that makes out
the Difference between Chattels Real and Personal, the one being leviable
by Levati, the other not. Cumb. 469. Britton v. Cole.

5. In Case of a H. Ft. no Goods shall be taken on the Land, but the
Goods of the Debtor only; for that Writ gives the Sheriff Authority to le-
vfy only De bonis & chattels of the Owner, and therefore differs from a
Lev. fa. which gives Authority to levy De Exitibus terrae. Cumb. 470.


(X) Proces of Outlawry; awarded by whom.

1. A Man was indicted of Death before the Coroners, and in the Roll of
the Coroners; and upon this he was outlaw'd upon the Roll of the
Coroners before whom he was indicted. Quere if the Coroner may award
Proces of Outlawry. Br. Utlagary, pl. 38. cites 27 Aif. 47.

2. The Opinion of all the Court of Common Pleas was, that if one be
Outlaw'd before the Justices of Alias, or Justices of Peace, upon an In-
dictment of Felony, that they may award a Capias Utlagaturum. And fo
was the Opinion of Periam Chief Baron, and all the Court of the Ex-
chequer, as to the Justices of Peace; For they that have Power to award
Proces of Outlawry, have also Power to award a Capias Utlagaturum, as
incident to their Authority and Jurisdiction. See the Statute of the 34
H. 8. cap. 14. for Certificate of a short Transcript of every Attainer,
Conviction, or Outlawry of Felony, by the Clerks of the Alias, Clerks
of the Peace &c. into the King's Bench, on Penalty of 40 s. &c. And
note well, that such Transcript is by the said Act made to be of as great
Force as the Record itself, but cites Lambert in his Justice of Peace, fol.
563. contra, and 1 Ed. 6. cap. 1. that Justices of Peace, in Case of Pro-
fanation of the Sacrament, shall award a Capias Utlagaturum throughout

(Y) Proces of Outlawry. Upon what Return it shall
issue.

1. T H E Sheriff return'd upon a Capias quad mandavi Ballivo &c.
who answer'd Quad copii Corpus &c. and had not the Prisoner at
the Day. And Deferre was awarded to the Sheriff against the Bailiff, and
he return'd Nihil, and thereupon issued Capias infinite, but not Exigent;
For this does not lie in this Case at the Common Law, and the Statute
does not give it. Br. Exigent, pl. 46. cites 3 E. 4. 4.

2. In Cai. Sacc. it was said by some of the Justices, that if a Bi-
shop be sied in one County where he has nothing, and the Sheriff return's
him Nihil where he has Land in the County Palatine of L. or C. where the King's
Writ does not run, upon such Return of Nihil, Proces of Outlawry
shall
shall not issue; for he is a Peer of the Realm, and therefore Exigent shall not issue. Br. Exigent, pl. 47. cites 5 E. 4. 108.

any more than a Bishop of France. Markham Ch. J. said we will be advised.

3. After the Sheriff has return’d a Capias, if he has not the Body at the Day, the Court will not award an Exigent on the Suggestion of an Escape, unless the Sheriff will return one. 2 Hawk. Pl. C. 323. cap. 27. S. 117.

(Utlawry.

(Z) Process and Proceedings.

1. In Case of Felony one Capias only shall be awarded, and no more, and Br. Procefs, then Exigent. Brook makes a Query; for it is said elsewhere, that there shall be one Capias in Murder, and two in Felony. Br. Exigent, pl. 42. cites 22 Aff. 81.

have two Capias’s and Exigent in Felony, and in Treason only one Capias and Exigent.

2. 25 E. 3. Stat. 5. cap. 14. Enacls, That after one is indicted for Felony before the Justices of Oyer and Terminer, the Sheriff shall be commanded to attack his Body by a Capias; and if he returns a Non est inventus, another Capias shall issue, returnable in 3 Weeks, whereby the Sheriff shall be directed to seize his Chattels, and to keep them till the said Return. And if the Sheriff then also return a Non est inventus, and the Indictor cometh not, the Exigent shall be awarded, and the Chattels shall be forfeited. But if he yield himself, or be taken by the Sheriff or other Officer before the Return of the 2d Capias, his Goods and Chattels shall be sold.

where the Prosecution is commenc’d before the Exigent shall go, unless it be after Judgment; in which Case, and in all Cases of Death or High Treason, one Capias is sufficient. But Query as to Appeal of Raip, whether 3 Capias’s are not still necessary, as they were at Common Law, notwithstanding it’s being made Felony by Statute; That it seems doubtful whether 2 Capias’s were not required by the Common Law in all Indictments and Appeals of any other Felony; but that, however, it is certain that they are required in all Indictments of any other Felony by this Statute. 2 Hawk. Pl. C. 323. cap. 27. S. 115. 116.

* It seems to have been the general Opinion that this Statute extends to Appeals as well as Indictments, tho’ it mentions only the latter; but it extends not to any Indictment or Appeal of Death, tho’ it speaks of Felony in general. 2 Hawk. Pl. C. 323. cap. 27. S. 116.

3. In Capias ad Computandum, or ad Satisfaciendum, and in every Capias which issues after Judgment, Exigent shall issue after the first Capias, because it is of a Thing adjudg’d. 40 E. 3. 25. a. pl. 23.

4. In Debt it was agreed, that if it at the Exigent return’d, the Defendant comes by Superfideas upon Mainprize, and the Plaintiff is effuig’d, the Defendant shall have Idem dies without Mainprize; and there, if the Defendant does not come at the Day, the Plaintiff shall only have Disfori’s, and never Exigent again. Br. Procefs, pl. 23. cites 45 E. 3. 10.

5. Allion in one County; a Man may have Latitat in another County, where Capias lies in the Original; but the Exigent shall not issue but only in the County where the Original is brought, and not in the foreign County where the Latitat is awarded; but after Latitat awarded in a foreign County, he may resort to an Exigent in the first County where the Original is brought; and this against the fame Party. Br. Exigent, pl. 19. cites 11 H. 4. 27.

6. 6 H. 6. cap. 1. Enacls, That before any Exigent be awarded against Appeal of Persons indicted of Felony and Treason before the King in his Bench, Writs of Leas and Writs of Mainprize Capias shall be directed as well to the Sheriff of the County in which they lie, as the Sheriff of the County in which the Defendours have their Residences. 4 U
Utlawry.

against J. S. indicted, as to the Sheriff of the County whereof they be nam'd in the Indictments, the sameCapias having 6 Weeks at least before the Return of the same; which Writs return'd, the Justices shall proceed as they have done before; and if any Exigent be awarded, or any Outlawry pronounced against such Person as indicted before the Return of the said Writs, the same shall be void: And this Ordinance shall endure so long as shall please the King. And it seems that Procefs shall issue to Chester, by the general Words of the Statute, which will that in such Case Capias shall issue to the Sheriff of the County where he dwells, and to the Sheriff of the County where the Fact was done. And so it seems the County Palatine to be bound by those several Words Quere. Br. Cinque Ports, pl. 22 cit, 31 H. 6. 11.—Br. Exigent, pl. 71. cit, S. C. That Capia was awarded to the County Palatine, according to this Statute, and was not certified; by which the Plaintiff says 'd Exigent And because the Statute is general, therefore Procefs was granted in the first County, but it does not appear what Procefs; therefore it seems that it shall be 2 Capias in the 1st County, and then Exigent; for the Statute does not restrain it, as it seems, and the Statute speaks of Indictment of Trespass and Felony. Br. Exigent, pl. 71. cit, 31 H. 6. 11.—S. C. Cited 2 Hawk. Pl. C. 505. cap. 27. S. 124. and lays. It seems to have been admitted in this Case, that an Appeal originally commenc'd in B. R. is within the Equity of this, and that an Outlawry thereon is erroneous, if there were no Capias containing the Space of 6 Weeks, directed to the Sheriff of the County whereof the Appellee is nam'd, as this Statute requires; by which it seems implied that such an Appeal is not within the Statute of 8 H. 6. but of 6 H. 6. and that the same is still in Force.

Appeal in the State of S. Before J. B. the said C. in the County of S. Telman alias duls in B. D. of E. and P., according to the Proclamation at the Exigent was not made in the foreign County, according to the Statute, because he is not nam'd in the Premises of the County where the Writ is brought. Br. contra where he is nam'd in the County of S. By Name of J. B. in the County of N. alias duls in B. D. in the County of S. For it appears by the Premises that he is not convenant, nor dwelling in the County where the Writ is brought; for that which is in the Alias duls is not answerable, as to say that he was not of the Pill in the Alias duls the Day of the Writ, nor ever after; but to say that he was not dwelling in the Pill of County in the Premisses the Day of the Writ &c. is a good Plea. Br. Proclamation, pl. 5. cit, 1 E. 4. &. S. P. & S. C. Cited in Mart. 2 Hawk. Pl. C. 505. S. 126. And says. That if a Defendant be nam'd of B. and late of C. there is no Need of any Capias to the Sheriff of the County where C. lies, because it appears that the Defendant is at present convenant at B. But if a Defendant be nam'd of no certain Place at present, but only late of B. and late of C. and late of D. being all of them Counties different from that wherein the Prosecution is commenc'd, a Capias shall go to the Sheriff of every one of those Counties; P. was indicted of Felony before the Justices of Goal-Delivery in the County of S. and outward upon it, and brought Error, because in the Indictment he is supposed to be of London, and the Capias was awarded to the Sheriff of S. whereas by this Statute it ought to be to the Sheriffs of London, in which he inhabited; and for this Cause the Outlawry was revers'd. Cro. Eliz. 179 pl. 10. Patch 52 Eliz. in B. R. Purfell's Case.

Appeal in the S. 3. If any Exigent be awarded in such Indictment or Appeal against the County of D. Form a foresaid, or any Outlawry pronounced, they shall be void, and the Appellee was dwelling at Chester the Day of the Writ return'd, and Procefs continued till he was outward. Per Choke, the Statute of 8 H. 6. cap. 10. wills, that in Indictments of Felony, Trespass, Trepass, or Appeal found in another County than where the Defendant dwells before Exigent awarded, Capias shall issue to the Sheriff where he dwells; and no such Capias issued in this Case, by which, because he came the same Term that the Exigent was return'd, therefore he pray'd that the Outlawry be revers'd, and could not, but was put to his Writ of Error. Br. Udallery, pl. 20. cit, 19 H. 6. 1. — Fitch. Tit. Error, pl. 26. cit, S. C.
Utlagary.

Se of Imprisonment; and yet it is agreed that otherwise it is in C. B. For this is in B. R. and yet the Statute says that for Default of the Capias, the Exigent shall be void. Br. Utlagary, pl. 20. cites 19 H. 6:

1. * This is to be expounded by the Common Law, viz. that it shall be void by Writ of Error. Pl. C. 157. b. in Cafe of Browning v. Belton. — 5 Rep. 19. b. in Lincoln-College Cafe. Arg. S. P. —- Hob. 166. in Cafe of Wilmot in v. Puleften &c. Hobart Ch. J. says, that this is well expounded to be void by Writ of Error. —— 371. Hawkins says that this Point seems to be agreed. — 2 Hawk. Pl. C. 306. cap. 27. S. 127. —— S. P. Arg. Mar. 54. pl. 159. that where a Statute makes a Thing void, it shall be void according to the Words of the Statute, unless there shall be Inconvenience or Prejudice to him for whom the Statute was made, and that upon this Statute, the Utlagary is not void before Error brought.


S. 5. This Ordinance shall not extend to Indictments or Appeals taken within the County of Chester.

S. 6. Provided that if any of the Lieges be appealed or indicted of Felony or Treason, and at the Time of the Felony or Treason suppos'd, he was conver'tant in the County whereof the Indictment or Appeal makes Mention, the like Process be made against such indicted Person, or appealed, as both been y'd before.

8. 10 H. 6. cap. 6 Enacts, That if any such Indictments taken before Justices of Peace, or any other, shall be removed before the King in his Bench, or elsewhere, by Certiorari or otherwise, then before any Exigent awarded, after the first Writ of Capias return'd, another Capias shall be awarded, directed to the Sheriff of the County whereof that be is indicted or appeal'd is suppos'd to be conver'tant, returnable before the King in his Bench, at a Day containing 3 Months or 4 from the Date of the last Writ of Capias, according to the Manner that the Justices of Peace and other in the said Statute 8 H. 6. cap. 10. ought to have done: And if any such Exigent be awarded upon such Indictment or Appeal, after such removing against the Form aforesaid, or any Utlagary thereupon pronounc'd, the same shall be void.

9. Where a Man is taken upon Capias Utlagary, and Pleadeth, and after makes Default, another Capias ad Satisfaciendum shall issue, and he shall lose the Advantage of the Matters pleaded before. Br. Proceses, pl. 69. cites 22 H. 6. 16.

10. If the first Day of the Exigent be pafs'd, the Sheriff cannot any more proclaim it, tho' the Day of the County be the next Day. Br. Proceses, pl. 176. cites 31 H. 6. 13.

11. In Debt 3 Exigents were sued successively, and each were discharge'd by several Superfedeas's out of Chancery, in Delay of the Plaintiff; by which, at the Plaintiff's Request, special Exigent was awarded, reciting that he should not be allowed any Superfedeas of the Chancery; and it was said that this is the Course of C. B. Br. Exigent, pl. 48. cites 7 E. 4. 9.

12. 19 H. 7. cap. 9. Enacts, That like Process shall be tried in Actions upon the Cape in the King's Bench and Common Place, as in Actions of Trespass or Debt.

13. 6 H. 8. cap. 4. s. 1. Enacts, That where an Exigent shall be awarded D. was out, at the Suit of the King, or any other Person, in any Action Personal, against any Person call'd of any Shire, or City being a Shire, or late of any such Shire or City wherein such Exigent shall be awarded, and also in every Writ of Exigent in any Personal Action directed into London or Middlesex, the Defendant being call'd late of London or Middlesex, and at the Time of the Exigent awarded not dwelling in London or Middlesex, the Justices where the Exigent shall not be directed into London or Middlesex, shall award a Writ of Proclamation to the Sheriff of the County where it appears by the same Action the Defendant is or lately was dwelling, if the King's Writ run there; otherwise, to the next Shire adjoining to such County where the King's Writ runneth not.

And where the Exigent shall be directed into London or Middlesex, and the Defendant call'd late of London or Middlesex, and at the Time of the Exigent awarded shall not have his Dwelling in London or Middlesex, then the Writ of
Utter's, and pleads that the Time of the Writ purchased, he was dwelling at C. in County Middlesex, at which County no Proclamation was awarded, and pray'd that the Outlawry be reversed; and the Justices, upon Pernial of this Statute, said that Issue ought to be taken between D. and the Queen, and tried; for this Case is not remedied by this Statute. And 56 pl. 90. Patch. 4 Eliz. Digg's Case. Bendl. 122. pl. 185. S. C. in almost the same Words. D. 215. h. pl. 44. says, it seems he shall well have the Plea; for the Alias dicitus is not any Parcel of his Sur-name, nor intended Part of his Name, and therefore no Proclamation ought to have issued to the Sheriff of K. as it should do if it had been expressly named in the Writ, of N. in the County of K. or late of N. in the County of K. For then a Proclamation must necessarily issue. Besides where one is issue in Com. K. and is call'd of D. or major de D. in Gen. E. and the Truth is, that neither at the Purchase of the Original, nor at the Day of the Exigent, he was comminant nor confinable there, but in Gen. S. and no Writ of Proclamation is awarded thither, but only into E. yet the Outlawry in K. is good enough by this Statute, because the Proclamation issued to the County of which he was call'd &c. and if it be false, then he may avoid the Outlawry by the Statute 1 H. 5. of Additions. But in this Case it seems he may well avoid the Outlawry, tho' he was call'd nuper de London, if he had removed his Habitation into another County at the Time of the Exigent awarded. And to it is of Original Procesfs in Middlesex, viz. Nuper de Villa Welthm. or de Welthm. But not so of other Counties.

S. 2. And such Writ of Proclamation shall have the same Return as a Writ of Exigent, and be delivered of Record to the Sheriff or Deputy of the County into which such Writ of Proclamation is awarded, who shall execute the same, and make true Returns thereof, on Pain of such Amendment to the King as the Justices, before whom returnable, shall sit. And the Officer, in whose Office such Exigent is taken, shall make out such Writs of Proclamation as shall be awarded, and take no more for making and entering the same of Record but Six-pence.

† The Statute is to be understood that the Outlawry must be avoided by Plea; per le Ch. J. Gibb. 265. Patch. 4 Geo. 2. B. R. in Case of Cooke v. Champness.

14. In Debt or Trespaus, if the Defendant comes at the Exigent, and has Dies datus &c. and at the Day makes Defaults, Diffres shall issue; and if he be return'd Nibil, 3 Capias's shall issue, and Exigent. Quod nota; for Dies datus is always before the Count, and Imparlance after the Count. Br. Procesfs, pl. 1. cites 19 H. 8. 6.

15. 23 H. 8. cap. 14. Enacts, That like Procesfs shall be had in every Writ of Annuity and Covenant, as in Action of Debt.

16. A Ca. Su. issued, and was return'd Non est inventus. Upon a Stat-}

17. The Hugings in London, in which Judgment of Outlawry was given, was held 2 Weeks after the last Hugings; whereas the Hugings are usually holden but every 3 Weeks. The Sheriffs doubted if they might return the Party outlaw’d, without Danger of an Action on the Cafe. The whole Court held that they might. And Dyer the Ch. J. said, that there is a Record in the Reign of R. 2, by which it appears, that in London they might hold their Hugings every Week, if they pleased. 2 Leon. 14. pl. 23. Mich. 19 & 20 Eliz. C. B. Anon.

18. 31 Eliz. cap. 3. 3. 31. Enacts, That in every Personal Action wherein a Writ of Exigent shall be awarded, a Writ of Proclamation shall be awarded out of the same Court, with the same Writ and Return as the said Writ of Exigent shall have, directed, and delivered of Record, to the Sheriff of the County where the Defendant, at the Time of the Exigent awarded, is dwelling; which Writ of Proclamation shall contain the Effect of the same Action. And the Sheriff, to whom such Writ of Proclamation is directed, shall make 3 Proclamations, viz. one in the open County-Court, one other at the General Quarterly Sessions of the Peace, where the Defendant at the Time of the Exigent awarded shall be dwelling, and the other one Month at least before the Quinto Exactus, by virtue of the Exigent, at or near the most usual Door of the Church or Chapel of the Town or Parish where the Defendant dwells at the Time of the Exigent awarded; and if he dwell out of a Parish, then in the Parish next adjoining to the Defendant’s Dwelling, upon a Sunday immediately after Divine Service. And all Outlawries, where Writs of Proclamation are not awarded and return’d according to this Statute, shall be void; and the Officers making out such Writs of Exigent and Proclamation, shall have such Fees as are limited by 6 H. 8, and the Sheriff for making Proclamation at the Church Door, shall have 12d. must be first recorded of that Term in which the Exigent issues; and this is allow’d because there is a Day given him by the Writ to come in; and his Neglect of not appearing is so very penal, that they give him Leave at any Time to appear, before the Outlawry pronounced and return’d. And the Service of his being proclaimed at the County-Courts is, that he may surrender himself; and if he does this, he shall not be obliged; to put in Bail, because he never was in Custody. G. Hist. of C. B. 15, 16. cap. 2.

19. There be 2 Kinds of Appearance before the Quinto Exactus to avoid the Outlawry, viz. an Appearance in Deed, that is, to render himself &c. and the other is by an Appearance in Law, that is, by purchasing a Superfedeas out of the Court where the Record is, which is an Appearance of Record; and therefore tho’ it be not deliver’d to the Sheriff before the Quinto Exactus, yet it shall avoid the Outlawry. Co. Litt. 128. b.

20. If upon the Writ of Exigent in a Personal Action the Party hath been required to appear 6 several County-Court Days in the open County-Court, and once in the open Sessions, and once at the Church-Door where he both dwells, or did lately dwell, and he appears not, Judgment is to be given by the Coroners of the County-Court that he shall be outlaw’d, quali extra Legem politus. And thereupon there is to issue forth against him the Writ of Capias Utilatam. Shep. Abr. Tit. Utilawry.

21. 4 & 5 W. & M. 22. Enacts, That upon issuing an Exigent out of any of His Majesty’s Courts against any Person for any Criminal Matter, before Judgment or Conviction, there shall also issue a Writ of Proclamation, bearing the same Writ and Return, to the Sheriff of the County, City, or Town Corporate where the Person in the Record of the said Proceedings is mentioned to be resident, according to the Statute of 31 Eliz. 3. which Writ of Proclamation shall be deliver’d to the said Sheriff 3 Months before the Return of the same.

22. Where one intends to sue any Person to Outlawry, who is not easily to be taken, and has not sufficient Eittate in the County whereby to be summoned &c. he usually lays his Action in London, otherwise the Outlawry
lawry will scarce be perfected in 3 Terms; for there must be 15 Days or more between the Tefe and Return of each Writ of Capias, Alias and Pluries. The Return of the first Writ is the Tefe of the 2d, and so on; and there must be 5 County-Days between the Tefe and Return of the Exigent. But the Haffings in London happening oftener than the County-Days, greater Expedition may be made there, which is the Reason that Actions are generally brought in London, when the Plaintiff designs to proceed by way of Outlawry. Instruct. Cler. 356, 357. Tit. Outlaries.

23. The Proces of Outlawry being to put the Defendant out of the King's Protection, and by which he forfeited all his Goods, and was imprision'd, and lost the Profits of his Lands, there was great Care taken that no Person should be outlaw'd without sufficient Notice, and great Conmiunity to the Proces of the Court; and therefore not only 3 Capias's were issued before there could be Proces of Outlawry, but likewise there were 3 Officers concern'd in that Proces, that it might not be made in the King's Court behind the Party's Back. The first Office is the Chancellor, from whence the Original issued; the second the Philazer, who made the Capias, Alias & Pluries; and the Exigenters, who made out the Exigent. G. Hist. of C. B. 12, 13. cap. 2.

24. Before Outlawry was pronounced the Defendant was to be quit of his Goods, Lands, Debts and Choises in Actions. G. Hist. of C. B. 13. cap. 2. cites Lutw. 330, 331.

25. After Judgment you may upon a Capias ad Satisfaciendum, without Alias or Pluries, have an Exigent, and thereupon outlaw the Defendant, because he having been already in Court before Judgment, and knowing Cognizance of the Debt, be ought to pay the Debt on the first issuing of the Capias, otherwise it is a Contumacy in not performing the Judgment of the Court, for which Disobedience he is put out of the King's Protection. G. Hist. of C. B. 14. cap. 2.

26. A Motion to reverse an Outlawry at the Plaintiff's Cost, for that the Defendant was outlaw'd in a foreign County. On shewing Cause, it appear'd the Plaintiff had good Reason to proceed to Outlawry, the Defendant being a Clergyman, and never appearing but on a Sunday, and altho' he was outlaw'd in a different County from that where he dwelt, yet the Outlawry was in the County where the Action was laid to arise. The Court gave their Opinions Seriatim, and against the Opinion of the Ch. Justice, discharged the Rule to shew Cause, for that they held the Outlawry, tho' not in the County where the Defendant dwelt, yet where the Cause of Action was laid to arise, to be regular, and that it was not necessary to shew an Attempt to arrest the Defendant. Rep. of Prat. in C. B. 78, Mich. 6 Geo. 2. Norton v. Gilbert.

(A. a) Proces.
(A. a) Proces and Proceedings; where there are several Defendants.

1. IN Appeal against three, if it appears in the Writ that the one is Principal, and the other Accesary, there the Exigent shall not issue against the Accessary till the Principal be outlaw'd. Br. Exigent, pl. 44. Writ, then 'tis not Error. Its Exigent should issue against all together; Per Knivet. J. Ibid.

2. Pluries Capias in Debt is return'd against three, and Exigent issues against two, and Pluries Capias again the third; if the one appears at the Exigent, and no Exigent is return'd, yet be shall answer, because the Defendants are Executors, but he shall be discharged of the Mainpriz, because the Exigent shall be adjudged as null, inasmuch as the Proces issued illy. Br. Exigent, pl. 20. cites 12 H. 4. 17, 18.

3. Exigent was awarded against 4, and one was return'd outlaw'd, and Superfideas by the other 3, and 2 of them appear'd, and the 3d made Default; Per Newton, the Plaintiff cannot declare against them who appear, but Exigent de novo shall issue against him who made Default, and the other two shall have Idem dies; and so it was. Br. Proces, pl. 68. cites 21 H. 6. 50.

4. And per Brown, if be against whom Exigent issues appears at the Day, and the others make Default, Diffires shall be awarded against them, and upon this Proces of Outlawry; for in Plea personal, after Appearance, the Proces is Diffires, and so infinite. And therefore Brooke says, it seems that this is common Proces of Outlawry; but says that this is a Mistake; for Proces of Outlawry does not lie after Appearance but before. And adds, Nihil, if the Infinite Diffires be not intended, where he is insufficient to the Diffires, and if the Proces of Outlawry upon Diffires be not intended where he is return'd Nihil upon the Diffires. Br. Proces, pl. 68. cites 21 H. 6. 50.

5. In Debt against 3 Heirs in Gavelkind upon the Obligation of their Ancelor, the one being within Age, they were outlaw'd; the of full Age purchased a Charter [of Pardon]; and upon a Scire Facias the Plaintiff counted against them, and in the Simul-cum against the 3d. The Court accordingly, and held that the Parol should not demur for the Nonage of the 3d, because by the Outlawry the Original is determined against him, and it is not void against the 3d because an Infant, but voidable by Error. And if at full Age of the 3d the Plaintiff would sue a Restitum, it must be only against the other 2, who appear'd; for the 3d was out of Court, and never appear'd as a Defendant in this Suit. D. 239. pl. 39. Trin. 7. Eliz. Hawtrive v. Auger.

6. If there are several Appelles, and some appear and others make Default, and those that appear plead a Plea in Abatement of the Writ, or any such Plea in Bar as goes to the Whole, the Suit shall be continued against those that made Default by Capias only, and no Exigent shall issue till such Plea or Pleas be determined. 2 Hawk. Pl. C. 304. cap. 27. S. 118.

(B. a)
(B. 3) Proces and Proceedings. Against a Feme who has a Baron.

1. Debt against Baron and Feme, at the Existent they purchased Superfedeas, and at the Day the Baron appeared, and the Feme made Default, by which it flowed Existent de novo against the Feme, and the Baron took Indemnity by Mainprise. Br. Existent, pl. 7, cites 9 H. 6, 8.
2. In Debt, the Baron was outlaw'd and the Feme waived. The Wife came into Court in Ward by Process, and produced the Queen's Pardon. The Court held that she shall be discharged of the Imprisonment, but that the Pardon ought not to be allowed, because without her Baron she cannot sue a Scire Facias against the Plaintiff to make him declare upon the Original, without her Baron; and the Pardon has a Condition in Law, viz. Is qua quod est. In Curia, which she cannot do without her Baron.

Cro. J. 445, pl. 26. Mich. 15 Jac. B. R. Anon. It was alleged, that the Court had been in an Information of Recusancy against Baron and Feme, that the Baron appearing had been compelled to find Bail for himself and his Feme; but it was answered, that it was in the discretion of the Court, and the reason thereof may be, because the Baron is to put in Bail when she appears, and the debts only upon him; but this reason will not serve where the Feme only is arrested, as the principal case was.

Litt. 18 S. C. accordingly, that no Superfedeas shall be allowed, but the Appearance of the Feme shall be entered; and cites D. 271. b. Hutt. 86.

Anon seems to be S. C., but nothing is mentioned as to the Wife's appearing by Attorney; but as to the Baron, the same was

3. An Existent was awarded against Philpot and his Wife, and divers others, upon an Indictment of Recusancy. The Husband appeared upon the Existent, and confirmed himself according to Law; but the Wife made Default and did not appear. The Husband prayed to be bail'd De Die in Diem, until the Appearance of his Wife; for the Default of the Wife ought not to prejudice the Husband. And the Practice and Utage of C. B. is, where Processes of Outlawry inures against Baron and Feme, and the Baron appears, he shall have Day by Bail, until the Appearance of his Feme. But the Court said, that it was in the discretion of the Court, when he came in upon the Existent, whether he should be set to Bail. And this Court ruled not to let the Baron to Bail, but to continue him in Prison for the Contempt of his Feme, until the Feme come in, wherefore the Bail was refused. Cro. E. 370. pl. 9. Hill. 37. Eliz. B. R. Philpot's Cafe.

4. For a Debt due by the Wife before Marriage, the Husband was returned outlaw'd, and the Wife waived, but before the Return of the Existent an Attorney procured for the Wife a Superfedeas, affirming that she had appeared by him as her Attorney. It was moved that this Appearance should be received; and all the Court conceive'd, that if upon the Existent the Sheriff had return'd Reddidiire, or upon Pluries capias had return'd Capi corpus for the Wife, then her Appearance should be entered, but not by Attorney, as it is here, and the Existent should issue only against the Husband, and Indemnity should be given to the Wife. But when the Husband upon the Existent is return'd Outlaw'd, then it shall be entered Alas faux jur for the Wife, for the Process is determined; and if he will purchase his Pardon, he shall not have Allowance thereupon in a Scire facias, unless he appears for himself and his Wife; but if for the Husband, the Sheriff should return Capi corpus upon a Pluries capias, and a Non ex inventa for the Wife, yet an Existent shall issue against both, because it is intendeable the Husband might bring in his Wife; but if upon the Existent the Sheriff return'd Reddidiire for the Husband and for the Wife, and she is waived, the Husband shall go Sine die. But in this Case, because the Existent was return'd against both, to be outlaw'd, the Superfedeas, supposing the Appearance

In this Case, because the Existent was return'd against both, to be outlaw'd, the Superfedeas, supposing the Appearance
Utlawry.

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ance of the Wife, is meerly idle and void. Whereupon it was disallow'd,
and the Exigent appointed to be filed against both. Cro. C. 58. 59. pl. 2.
Hill. 2 Car. in C. B. Smith v. Atha.

Superfudeas was ever granted for the Wife in such a Case.

5. A Female Covert was sued as a Female sole, her Husband being beyond
Sea, and not known to be alive, and she was outlaw'd; and then her Hus-
band came again, and brought a Writ of Error for the Reversal thereof
in his own Name, and the Name of his Female; and it was laid to be
questionable, he not being Party to the Suit. Hutt. 86. Hill. 2 Car.
Anon. cites 18 E. 4. 4.

(C. a) Of the Capias Utlagatum.

THE Sheriff on a Capias Utlagatum may justify to break the House
and take the Body, and seize his Goods for the Queen; for this rate the
Proces is in Law at the Suit of the Queen, but not where the Proces is File Com-
at the Suit of a Subject. 4 Le. 41. pl. 111. Mich. 19 Eliz. C. B. Kemp
v. Windsor.

ford. Goldsb. 79. pl. 14. Hill. 30 Eliz. Hare v. Curson. —— See Tit. House (B) and Sheriff (C)

2. The Course of the Court is, if one be outlaw'd after Judgment in
Debt, if he brings Error, and doth not align his Errors, to award a Ct.
Utlag, which is an Execution for the Party; and if he comes to align
Errors, Comititur, and then to find Bail Body for Body, for the Out-
lawry, and to satisfy the Party for the Execution; so no other Execution

3. A Capias Utlagatum was pleaded, and Exception was taken be-
cause it was not alleged that it was sued forth in Term-time. Sed non allo-
catur; For Per Cur. This being a judicial Writ, it shall be intended to be
sued forth in Term-time, when there is no Reason to the contrary; for by
the Course of the Court it ought so to be. Lucw. 329. 333. Patch. 4

4. One was outlaw'd in Middlesex. A Capias Utlagatum may be sued
out against him into any other County without a Testatum. Vent. 33. in a
Note there. Trin. 21 Car. 2. B. R.

5. If one obtain a Judgment against a Person, and he absconds sometimes
in one County, and sometimes in another, Execution cannot be had against
him in several Counties at one Time; but if he be sued to an Outlawry
after Judgment, the Plaintiff may sue out as many Writs of Capias Utlag-
atum into the several Counties of England and Wales general or spe-
cial, as he thinks fit; and the Defendant cannot be discharged without
making Satisfaction to the Plaintiff, or Pardon of the Outlawry, or re-
verting the fame for Error. 3 R. S. L. 168.

6. The Court held, that no Capias Utlagatum can be sued out after the
Death of the Defendant. Note, in this Case the Writ was tested after

1. A count against A. of L. Clerk; Process continued till the Exigent issue d returnable immediately; the Sheriff returned Quod adeo tarde venit, that there were but 3 Hulings in London ubi &c. post adventum brevis. And one came, and said that he is A. of L. Clerk, and pray'd that the Plaintiff count against him. Skip, said that he who proffer'd himself was not Clerk the Day of the Writ purchase'd, and also the Defendant is A. Son of W. of the County of S. and he who appears is A. Son of B. of the County of N. and pray'd Exigent allocato Hulingo, by which Confection be who appear'd was quit; and the Court awarded Exigent de novo to the Sheriff of London, and that they shall not take him who appear'd and entred in the Rolls the Diversity of the Names declar'd by the Plaintiff. Birton pray'd Allocato Hulingo; for as yet there is not any mean Huling held in L. Per Wilby, of the mean Hulings we cannot be a certain'd, by which fume new Exigent. And another such Matter was in B. R. the same Term, and such Order ut supra. And to fee if any the same County or Huling be held meane between the 4. Exalius, or other Delay upon the first Exigent, the Plaintiff shall not have new Allocato Com. vel Hulingo. Br. Exigent, pl. 24. cites 21 E. 3. 35.

2. In Appeal the Defendant render'd himself pending the Exigent, and after he seap'd out of the Marshalleas; and it was question'd what Process shall be now awarded; and by all the Justices Exigent de novo shall issue. Br. Process, pl. 97. cites 26 Afl. 51.

3. In Trespa's Exigent issue'd, and one of the Name of the Defendant came, and pray'd Superfides, and had it, and at the Day of the Exigent return'd came the Plaintiff, and said that he is not the same Person who is Defendant, and pray'd new Exigent allocatis Com. and could not have it, but Exigent de novo; for it was his Folly that he had not put a Difference before. Br. Exigent, pl. 22. cites 38 E. 3. 1.

4. Where Trespa's is fine Die by Protection at the Exigent, and after the Plaintiff comes back with Repeal, he shall not have Exigent de novo, but Pone per Vadios dicat alias. Br. Process, pl. 83. cites 39 E. 3. 4.

5. Trespa's against Baron and Feme; Process continued to the Exigent, and the Baron appear'd and the Feme not; and because in the Exigent the Feme was not named by Name of Couverture, but by her proper Name only, the Exigent was discontinued, and the Baron awarded to anwer, and Exigent de novo against the Feme, & Idem dies to the Baron. Br. Exigent, pl. 34. cites 39 E. 3. 18.

6. Exigent issue d against a Man in Sanctuary, and Proclamation is made at the Door of the Sanctuary 3 Times &c. the Plaintiff shall not have Allocatis Septimannis, but Exigent de novo with new Proclamations, where the first Exigent is not fully serv'd. Br. Exigent, pl. 56. cites 11 H. 4. 40.

(E. a) Exi-
(E. a) Exigent *Superfedeas.*

1. In Debt at the Exigent the Defendant bad *Superfedeas,* and did not Br. *Utral._
   keep his Day, by which it is ss Exigent de novo; and the Defendant gary, pl. 65.
   had another *Superfedeas* out of Chancery, and at the Day the Defendant was re-
   turn'd outlaw'd, notwithstanding the *Superfedeas*; and thereupon it was award-
   ed that the Outlawry was good; for if he does not keep his Day upon the *Superfedeas*
   *Superfedeas* first sued, he shall have no other after, and also the Super-
   8. cites 7 H. 4. 5. 

2. Outlawry was revers'd by Reason of the *Superfedeas,* which bore Date
   a little Time before the Outlawry pronounced, and was show'd to the Court
   seat'd; so that it was never thrown to the Sheriff, nor deliver'd to him, as

3. If Exigent be awarded for a Fine against him who is condemn'd, and
   the Party appears gratis before the Return, and tenders Pledges of the Fine,
   he shall find his Pledges, and shall have *Superfedeas.* Br. *Superfedeas,* pl.
   3. cites 34 H. 6. 43. in a Note of the Reporters. But Brooke makes a
   Quare how he may be known for the same Perfon.

4. Special Exigent was awarded in Debt in C. B. and enter'd that no Br. Exigent,
   *Superfedeas* of the Chancery should be, because 3 Exigents before had
   been disappointed by *Superfedeas* of the Chancery. Br. *Superfedeas,* pl.
   31. cites 7 E. 4. 9.

(F. a) Pleadings. Outlawry. *How it may or ought to be pleaded or set forth.*

1. In Writ of Account by two, it was held that if the one be outlaw'd
   of Felony it suffices for the Defendant to plead it, without showing
   where, before whom, and for what Felony. Theloul's Dig. of Writs, Lib.
   1. cap. 15. S. 5. cites Trin. 9 E. 3. 463.

2. He who pleads Record of Outlawry upon Indictment, shall not say
   that Process continued till he was outlaw'd; but shall plead every Capias,
   and all the Record in certain. Quod nota bene. Br. Pleadings, pl. 143.
   cites 11 H. 6. 15.

3. In Precipe quod reddat it was said, that when a Man pleads Out-
   lawry in the Demandant in the same Court, he who pleads it may commence
   at the Exigent if he will; for if it be erroneous, yet it is good till it be
   reversed. Br. Pleadings, pl. 112. cites 21 E. 4. 54.

4. Outlawries must be pleaded all at one Time, or otherwise com-
   pell'd to answer. Toth. 239. cites Mich. or Hill. 5 Car. Whitney v.
   Strachey.

5. Cafe
The Defendant was outlaw'd. Before Declaration against B. it was enter'd on the Roll thus, viz. Et sequens est quad A. is outlaw'd; and then declared, and had Judgment against B. The Court held that this was not a sufficient Averment of the Outlawry, and therefore Judgment was arrested. Sid. 173. pl. 4. Hill. 15 & 16 Car. 2. B. R. Gye v. Goddard.

6. In Assumpsit the Defendant pleaded Outlawry of the Plaintiff in Bar, and concluded his Plea with Hoc paratus est Verificare; whereas it should have been Prout patet per Recordum, which was held to be ill, and Judgment was given for the Plaintiff. 3 Lev. 29. Mich. 33 Car. 2. C. B. Hage [alias, Haye] v. Skinner.

The Defendant pleaded 10 Outlawries in Disability of the Plaintiff's Action, and pray'd Judgment if any Answer ought to be made while they remain'd unrevered. The Plaintiff demurr'd for Duplicity. The Court said there was a Difference between a Plea of an Outlawry in Disability, and other Pleas in Abatement; and that this Plea was ill for Duplicity, because the Plaintiff is disabled as well by one Outlawry as by all the other 9, to which several Answers are required. And afterwards Judgment was given, that the Defendant should answer over for Duplicity. Carth. 8, 9. Trin. 3 Jac. 2. B. R. Trevelian v. Seecomb.

It ought to be set forth, that the Plaintiff did not appear upon the Exigent, and upon that Waviata fiuit: but to say in Exigendo posta fuit de Debita Jus quis forma, is too general. Arg. 2 Vent. 282. Hill. 2 & 3 W. & M. in C. B. Webb v. Moore, cites Fizth. Account, 91. Traverse, 91. Stamf. 143. And the Court doubted, and order'd to search Precedents. Et adjournatur.

The Declaration was in Trinity-Term. The Defendant impard'd to Mich. Term, and in the Long Vacation the Plaintiff was outlaw'd; and then in Mich. Term the Defendant pleaded this Outlawry in Bar; but did not say that it was Puis darrein Continuance. The Plaintiff demurr'd. Holt Ch. J. held the Plea good enough. The Court order'd it to stand over till next Term, because the Action being just, the Plaintiff may in the mean time reverse the Outlawry. 5 Mod. 11. Mich. 6 W. & M. Green v. Moor.

When you plead Outlawry in Abatement, and you put your Plea in the Office, you must shew a Capias, or some such Matter, as may make the Outlawry appear, and not conclude only prout patet per Recordum, as you do when you plead it in Bar, and have time to bring in the Record; per Holt. 12 Mod. 132. Trin. 9 W. 3. Anon.

(G. a) Plead-

1. If Defendant, who has nothing in the Tenancy, pleads Outlawry in the Plaintiff to his Person, he shall fbee the Record immediately; for it is a Dilatory. Contra if the Tenant pleads it in Bar. Br. Nonability, pl. 48, cites 19 & 20. 28 E. 3. 50.

2. If an Outlawry be pleaded in Bar, and it be denied, the Party shall in Court for a Day to bring it in. Co. Litt. 128. b. Goods fold and deliver'd, the Defendant pleaded Outlawry in the Plaintiff, and concluded his Plea in Bar; but did not plead the Outlawry sub pede Sigilli. The Court refused to set aside the Plea, because the Outlawry was pleaded in Bar. 2 Barnard. rep. in B. R. 226. Trin. 6 Geo. 2. Huft's Case.

3. A. recover'd in Debt against B.—A. brought a Scire Facias. B. pleaded that A. was outlaw'd. If in this Case, the Money being in Court, the King's Sergeant prays to have it for the King, he ought to shew the Outlawry sub pede Sigilli, and the Party ought to confefs that he is the Party. Noy 143. Anon.

4. If one pleads Outlawry, he ought to plead it sub pede Sigilli, S. P. Arg. otherwise the Plaintiff may refute it; but if he accepts the Plea, he shall not afterwards demur for that Cause; for it is well enough if he allows it. Per Holt Ch. J. Salk. 217. Patch. 4 W. & M. in B. R. in Case of Farrer v. Miller, S. C. reter v. Miller.

5. Where the Record of the Outlawry is in the same Court, it need not be Co. Litt. pleaded sub pede Sigilli; but otherwise where it is pleaded in another Court. Resolved per Cur. Lutw. 40. Hill. 11 W. 3. Draycot v. Curton. As this is a dilatory Plea, when it is pleaded in another Court than where the Outlawry issued, the Defendant must bring it in immediately; for this being in Delay, if the Court should give time, and it should not be brought in, then the Delay of Justice would be from the Court; and since there is a way of having it immediately, by producing it under the Great Seal, no time shall be given to bring it sub pede Sigilli; but otherwise when it is in the same Court, for then the Record is already in Court. G. Hist. of C. B. 165. cap. 17.——5 New Abr. 762, 765. Tit. Outlawry, S. P. in the very same Words.

6. In pleading Outlawry in Disability in another Court, the ancient S. New Abr. Way was to have the Record of the Outlawry itself sub pede Sigilli by Certiorari and Mitimus; but this being very expensive, it is now sufficient to plead the Capias Utragensum under the Seal of the Court from whence it issu'd; for the issu'ng of the Execution could not be without the Judgment, and therefore such Execution is a Proof to the Court that there is such a Judgment, which is a Proof that the Defendant's Plea of Matter of Record is prov'd by Matter of Record, and therefore appears to the Court not to be mere dilatory; and therefore, on shewing such Execution, if the Plaintiff will plead Null tiel Record, the Court will give the Defendant a Day to bring it in. G. Hist. of C. B. 165. cap. 17.
(H. a) In what Causes the Plea of Outlawry shall be in Bar, or in Abatement; and to what.

1. Note per Moile in a Cafe of Estoppel, that Outlawry in Action Personal goes but to the Person, but Outlawry in Felony goes to the Action. Br. Utlagary, pl. 61. cites 33 H. 6. 19.

2. Outlawry is a good Plea in Bar in Debt upon an Obligation; or by the Outlawry in the Plaintiff, the Debt by Specialty is forfeited in the King. Br. Utlagary, pl. 54. cites 16 E. 4. 4.

and that as to Trespass or Debt upon Contract the Outlawry is only in Abatement.

* See (B. 2) pl. 6. and the Notes there, that this Point of Debt by Contract is since held contra.

S. P. Because the Thing is forfeited, and the Plaintiff has no Right to recover. G. Hilt. of C. B. 162. cap. 17.

S. P. G. 4. If the Ground or Cause of the Action be forfeited by the Outlawry, then may the Outlawry be pleaded in Bar of the Action, as in an Action of Debt, Duty, &c. Co. Litt. 128. b. (y).

S. P. G. 5. But in real Actions, or in Personal, where Damages be uncertain (as in Trespass of Battery of Goods, of breaking his Close, and the like) and are not forfeited by the Outlawry, there Outlawry must be pleaded in Disability of the Person. Co. Litt. 128. b. (y).

S. C. cited 2 Lutw. 1713, in the Cafe of Clithb. 3 S. 2, Hill. 12 W. 3. Arg. 3d. The first that the Action founded only in Damages, yet the Plaintiff had Judgment, because the Plea was an entire Plea in Bar to the whole Cafe of Action. And in this Case the Court laid, that as to the Cafe of the Quantum meritit the Foundation of this Action was a Duty, tho' to be recovered by way of Damages.

7. Cause was brought by an Executor for Monies received by the Defendant to the Use of the Teller. The Defendant pleaded in Abatement that the Teller was outlaw'd in a Plea of Debt. Upon Demurrer Treby Ch. J. was of Opinion that the Debt was forfeited to the King, and vested in him; and that the Disability was gone by the Death of Teller, yet the
the Debt remains in the King, and an Action for the Money may be
brought by the Attorney General by way of Information; and therefore
was of Opinion that the Plea ought to be concluded in Bar, and not in
Abatement; And that as to Things executed, as Debts &c. the Outlaw-
ry remains, but as to Things Executory, the Outlawry after the
Party's Death is gone. But Jo. Powell J. contra; and said it was in
Election of the Party to plead it either in Abatement or in Bar. 2 Lutw.

8. In Covenant: upon a Lease for Years, in which was a Covenant to pay
40 l. a Year Rent, and also to repair, and not to do any Waste, the Breach
was assigned on all 3. The Defendant pleaded an Outlawry sub pede Sigil-
li of the same Court, in Bar to the whole. Upon Denuimter it was ob-
jected, that the Outlawry was pleaded in Bar to the whole Declaration,
which is ill; for the Damages to be recover'd for want of Repairs are
not forfeited by the Outlawry, because these are entirely uncertain. But
it was answer'd, that the Rent was forfeited to the King by the Outlaw-
ry, and therefore might well be pleaded in Bar of the Action. But ad-
judged for the Plaintiff, because the Plea was an entire Plea in Bar to the
whole Cause of Action; and as to the Damages for want of Repairs, those
are not forfeitable by the Outlawry any more than Damages for a Battery
or other Treips and to the Plea being intire, and ill in Part is bad in the
whole. It is true, before Importance it might have been pleaded in Abatement
of all the Writ, or in Bar to the Rent, (because that is a certain Duty) and
in Abatement as to the Repairs. 2 Lutw. 1510. 1513. Hill. 12 W. 3.
Clerk v. Scroggs.

9. Outlawry may be pleaded in Abatement of the Plaintiff's Writ,
for till this is rever'd, or the King has granted his Charter of Pardon,
he is out of the Protection of the Law, because he would not be amenable and
attendant to it, and ought not to have any Privilege from it. G. Hift. of
C. B. 159. cap. 17.

10. Outlawry for Felony may be pleaded in Bar to all Actions concerning
Lands and Tenements, as well as Goods and Chattels, for all his Lands
are forfeited by the Felony. G. Hift of C. B. 162. cap. 17.

(I. a) Pleadings. At what Time.

1. It seems that in Plea of Land if the Demandant is outlaw'd of Tre-
lands, and the Tenant has lost the Time of the Pleading, and if the Tenant
the Demandant has Judgment to recover Seisin, the Land shall be seised
into the Hands of the King. Thelaw's Dig. of Writs, Lib. i. cap. 15.

then would have pleaded Outlawry in the Plaintiff, and alleg'd the Record in certain;
but it being
after the last Continuance, the Plea was disallowed. 14 H. 4. 15. a. pl. 6.
A Man may plead Outlawry Fuit daretin Continuance; for it is upon the Prerogative that the Debt is
forfeited to the King, and by Virtue of the Prerogative Nullum tempus occurrit Repi; and therefore
he may plead it, this a Continuance has happen'd after the Outlawry. G. Hift of C. B. 8. cap. 9.

2. Attaint by 2; upon Issue passed against them, one of the Petit Jury
pleaded Outlawry in one of the Plaintiff's before the Date of the Affi'd, and it
was held that he could not; for it is Dilatory; and the Tenant shall not
have the Plea, because he did not plead it in the Affi'd, but admitted both
of the Plaintiff's to be able. Br. Nonabilitie, pl. 27. cites 2 H. 7. 7.
Utlawry.

3. In Case of Debt or Trepass de Bouis aforpertatim, Outlawry may well be pleaded in Bar after Imparlance; for this Debt and Goods belong to the King. But it is otherwise in Trepass of Battery, and Claudio Fratio; for it is uncertain what Damages, if any, shall be recover'd. Jenk. 130. pl. 64.

4. In Replevin, there was Judgment by Default, and a Writ of Enquiry of Damages, upon the Return of which Writ, the Defendant pleaded that the Plaintiff was outlawed at the Time of the Action brought. Adjudg'd, that now he had no Day to plead this Plea, because it was after Judgment in the same Action. Bendl. 206. pl. 242. Patch. 14 Eliz. Puttenham v. Morris.

5. A recover'd in Debt against B.—A. brought a Scire Facias. B. pleads that A. is outlaw'd &c. That is a good Plea, if he be outlaw'd after the Plea in Bar pleaded in the Action of Debt. But otherwise 'tis, if he be outlaw'd before; for then B. might have pleaded that in Bar in the first Action. Noy 143. Anon.


Br. Utlawry, pl. 52. cites S. C.—Outlawry in Durham or Chester shall not serve in Bank; for they have only a private Jurisdiction, which extends only in their Precinct; per Brian J. which Littleton J. agreed; but the Serjeants held * contra, and that it shall serve here. Per Littleton, A Man outlaw'd in ± Bank shall be by this disabled here; for they have their Authority by Parliament, Tempore Edw. 3. but Chester and Durham are by Prescription. Br. Non-ability, pl. 33. cites 12 E. 4. 15.

Outlawry in a County or Palatine cannot be pleaded in any of the Courts of Westminster; for he is only outlaw'd of his Law within that Jurisdiction, and it shall not extend to disable a Man in another County where they have no Power; for the County Palatine being a Royal Jurisdiction within Bounds, the Losing the Privileges of Law within that Jurisdiction can be no Disadvantage to him in another County; and if he does not live within the Palatine Jurisdiction, he is not obliged to attend there. G. Hil. of C. B 161, 162. cap. 17.

* This Plea, after the Words (but the Serjeants held,) is not agreeable to the Year-Book, where the Words are, “But the Serjeants held, that one outlaw'd in Lancaster shall be disabled here;” and then gives the Reason mention'd in the Plea in Brookes. But all the Editions of Brooke have these Words, viz. (contra,) and that it shall serve here. Littleton, A Man outlaw'd in ± Bank shall be disabled here; for &c.) which cannot be right. See 12 E. 4. 16. a. pl. 18.—G. Hil. of C. B 162. cap. 17. is according to the Year-Book.—(The Word (Bank) seems misprinted for (Lank.) as an Abbreviation of Lancaster.)

(L. a) Pleadings. Where Strangers Goods are taken.

If the Castle of a Stranger be seised, by virtue of a Levari Facias, on the Lands of the Outlaw, and the Outlaw had made a Lease of such Lands before the Exigent return'd, the Party must plead that the Lease was made before the Outlawry; per Cur. 5 Mod. 117. Mich. 7 W. 3.
by Holt Ch. J. in delivering the Judgment of the Court, in Cafe of Britton v. Cole.

afterwards allow’d in the Exchequer, he cannot have an Action of Trespas; for if it be not found, he must go into the Exchequer by way of Montrans de Droit, and plead it there; for he shall not justify the King’s Title in an Action. 12 Mod. 177. S. C.—Comb. 470. S. C. accordingly.—Carth. 442.

2. If the Owner of the Soil is outlaw’d, and the Cattle of a Commoner are taken as Iffues, he must plead his Title in the Exchequer, unless his Right of Common is found by Inquisition on the Outlawry. Carth. 442.

in Cafe of Britton v. Cole.

3. Where the Plaintiff in Outlawry would justify the taking the Cattle of a Stranger levant and couchant on the Land, by virtue of a Levari in Action of Trespas brought against him, he ought to begin with the Outlawry, and set forth all the Proceedings; and not to begin short with to shew the the Proceedings of Levari only. Arg. And per Holt Ch. J. All Strangers Outlawry who justify under Proces of Execution (except Officers) ought to set forth the Judgment; and so must the Plaintiff, if he justifies. Carth. 443. Hill. 9 W. 3. B. R. Britton v. Cole.

that being omitted, the Plea was ill.

(M. a) Pleadings. By Officers. In Justification.

1. In Trespas for taking the Plaintiff’s Cattle, Defendants justified by a Levari Facias on an Outlawry. It was held that pleading only the Writ of Levari Facias, and the Execution thereof, is sufficient to justify the Officer, but not a Stranger, (as the Plaintiff in the Outlawry) who commands or requests the Bailiff to do Execution; for he ought to set forth the Record of the Outlawry &c. Cumb. 471. Hill. 10 W. 3. B. R. Britton v. Cole.

(N. a) Pleadings. Outlawry. To whose Suit it shall be a Bar.

1. In Debt against Executors, it is a good Plea that the Declarator was Br. Utalaw’d, and died outlaw’d; for they are charged of the Goods to r, pl. 49. the King in this Case; so to say that he was outlaw’d of Felony &c. per cites S. C. Littleton, Young, and Pigot. But per Jenney, It is only argumentative that they have nothing. Br. Datte, pl. 158. cites 3 E. 4. 5.


5 A (O. a) Re-
Replication to Pleas of Outlawry.

1. Trepa's by J. S. of D. The Defendant said, that at another Time A brought Trepa's against the Plaintiff by Name of J. S. of S. in the County of N. Yoman, and Proceed thereof continued till be was outlaw'd. Judgment if he shall be answer'd. The Plaintiff said, that the Day of the Writ purchased, and all Times after, and at the Time of the Outlawry pronounced, he was dwelling at D. abique hoc that he was dwelling at S. And it was held a good Plea; for if the Plaintiff was not then dwelling at S. he cannot be intended the same Person who is outlaw'd. Br. Non-ability, pl. 32. cites to E. 4. 12.

* All the Edisons are (Vers) but according to the Year-Book it should be (Per.)

2. Debt * against [by] J. S. The Defendant pleaded Outlawry in him, and stew'd Record by Name of J. S. of S. The Plaintiff said, that at the Time of the Suit taken, in which the Outlawry was had, he was dwelling at D. abique hoc that he was dwelling at S. &c. at the Time of the Suit in which the Outlawry was, or ever after. And by the Opinion of the Court this was a good Plea, and that he shall not be put to Writ of Error. Per Rede, True it is; for now he leaves the Outlawry good against J. S. of S. But he shall not pay + No such Vill as S. without suing Writ of Error; for this disaffirms the Outlawry; nor shall he say that there is another Perfon of the same Name, but shall be put to Writ of Error. Br. Utlagary, pl. 29. cites 21 H. 7. 18.

3. In an Action popular &c. the Defendant pleaded, that the Plaintiff was outlaw'd, and demanded Judgment if he should be answer'd. The Plaintiff replied that he had rever'd the Outlawry by Error. And Judgment that the Defendant should answer over. And 30. pl. 71. Patch. 6 Eliz. Palmer's Café.

4. But if in Debt upon Bond the Defendant had pleaded an Outlawry, and the Plaintiff had reply'd a Pardon, the Writ shall abate. But in a popular Action, if a Pardon be pleas'd, quære; because a Moirey is given to him who will sue for it, and when once the Suit is begun, then it becomes the Plaintiff's own Suit; which if it be his proper Suit to all Respectts, it is like a Debt on a Bond. And 30. pl. 71. Palmer's Café.

5. In Debt on a Contref of the Defendant, after Importance, pleaded Outlawry in Bar. The Plaintiff reply'd Nullia Record. The Defendant did not bring the Record in at the Day. Judgment abolscule shall be given, and not a Repondens Outier. But per Berkley J. The Plaintiff might pray, if he would that the Defendant answer over; for it is Delay on-
(P. a) Pleadings in Avoidance of Outlawry; As No such

Vill &c. or, Dwelling at &c.

1. W. of D. Butcher, came by Capias Utlagatum and said, that the Day of the Writ &c. he was dwelling at S. and was Husbandman, and never appear'd in Person, nor by Attorney; absque hoc that he was dwelling at D. or was Butcher; and the other aver'd the contrary, being 6. 16, warn'd by Scire Facias, viz. the Plaintiff. And it was held ill Illue; for where the Plaintiff aver'd that he appear'd by P. W. his Attorney, per Padlon, if he shall have this Illue, be ought to shew that it was another Person that made P. W. his Attorney, and give Name to him, absque hoc that he is the same Person who made the Attorney. By which the Court demanded the Defendant, and he appear'd, and the Court awarded him to replead; and it was said that if he had not now appear'd, other Ca. Sa. should be awarded, and he should never have Advantage of these Matters &c. Quere Caufam. And note that this Person was outlaw'd upon a Ca. Sa. upon Condemnation after Plea by Attorney found against him. Br. Utlagery, pl. 25. cites 22 H. 6. 16.

2. If a Man outlaw'd by Name of J. S. of D. comes in by Return of the Sheriff upon Writ or Precept, he may say that there are in the same County two D's, viz. Over D. and Nether D. absque hoc, that there is in the same County any D. without Addition, or any Place or Hamlet known by this Name. Br. Utlagary, pl. 26. (bis) cites 22 H. 6. 23.

3. But if he comes in * Gratis, he shall not have the Plea, nor shall the * A Capias Utlagatam in Debt if fund against B. by the Name of B. of London, which was return'd Non secutor. At the Day of Return E. came in Gratia in proper Per-

son, and would have pleaded that he was commorant at G. in the County of G. at the Day of the Writ purchase'd, and always after paying the said Writ, and not at London &c. It seems he shall not have the Plea; For he is not grieved by the Outlawry, and coming in Gratias, and not in Ward of the Sheriff; Non confutat Curiae, that he is the same Person as was outlaw'd; and here the Plaintiff at whose Suit the Outlawry was, is out of Court. And at length the Court held the Plea not receivable, unless he comes in in Ward by Return of Capias Corpus. D. 192. b. pl. 25. Mich. 2 & E. Eliz. Milne v. Brown.

4. A Man was outlaw'd by Name of J. S. late of D. who said that the Day of the Writ purchase'd, he was dwelling at S. and no Plea unless he says absque hoc, that he was dwelling at D. Br. Utlagary, pl. 48. cites 2 E. 4. 1.

5. In B. R. a Man was outlaw'd upon Capias pro fine, because he was Mainpernor of W. N. by the Name of R. B. of D. in the Country of M. Gent. and the Outlawry was accordingly; and a Man was taken by Capias Utlagatum at the Bar, who said that the Day of the Outlawry pronounced, he was dwelling at M. in the County of E. absque hoc, that he was ever -Man-
Utlagary; and per Cur. he shall not have this Traverfe, because he did not deny but that he was the fame Person; but he may traverse thus, viz. to say Ut supra, abique hoc, that he was ever dwelling at D. in the County of M. or that he was Gent. and not Yeoman, or that there are two of the fame Name in the fame Vill, and that the one is Gent. and the other Yeoman, and that R. B. Yeoman was Mainpernour, abique hoc, that He was Mainpernour &c. Br. Utlagary, pl. 58. cites 21 E. 4. 78. 79.

6. A Man was taken in Westminster-Hall, because he was outlawed in Action of Account by Name of J. B. of F. in the County of S. who said that he was dwelling at C. in the County of D. the Day of the Writ purchased, and always after, and not at F. And a good Plea, per rot. Cur. For he cannot be intended the fame Person; by which the other shall aver, that he was dwelling at F. proot &c. tempore &c. Br. Utlagary, pl. 73. cites to H. 6. 4.

7. Upon an Outlawry in Debt, the Defendant in the original Writ was named A. B. de C. in Con. Denbigh; he came in by Capius Corpus, and said that he was dwelling at D. the Day of the Writ purchased, and not at C. The Opinion of the Court was that he should say, that he was not dwelling at C. the Day of the Writ ifieu'd forth, nor at any Time afterwards. For if it comes to C. after the Writ purchased, the Writ is good enough.

Moor. 72. pl. 189. Trin. 6 Eliz. 3. Anon.

(Q. a) Pleadings in Avoidance of Outlawry; As Misnomer, or Wrong Addition.

One Jo. B. Brewer, was outlaw'd, and he came in by Capius Utlagatum, and said that he was a Yeoman the Day of the Original Writ purchased, and not Brewer; upon which Issue was taken. Theolau's Dig. of Writs, lib. 11. cap. 4. S. 19. cites Mich. 1 E. 4. 23. H. 6. 45. 12 H. 6. 8.

One John Den de M. in such a County, Butcher, was outlaw'd, and one Jo. Den de M. in the same County came by Capius Utlagatum, and said that there is in the same Vill one Jo. Den Butcher, against whom the Suit was, and that he is Jo. Den Husbandman, and not Butcher &c. And so that he is not the same Person; and it was held a good Plea to be dismissed, he adjoin'd to his Plea, that he never appear'd to this Suit. Theolau's Dig. of Writs, Lib. 11. cap. 4. S. 12. cites Hill. 19 H. 6. 58. 20 H. 6.
Utlawry.

H. 6. 20. And to agrees Mich. 22 H. 6. 18. and see Hill. 21 E. 4. 94. accordingly.

3. J. S. Knight came by Capias Utlagatum, and said that he was not con

verfant nor dwelling at D. &c. the Day of the Writ purchafed nor ever after, and the contra was maintaine'd for the King and he put to Mainprie, and one N. firmware that he was outlaw'd at another's Suit, and prayed that he may remain in Prifon, the Defendant said that, No such Record, and the Verdict was, that there was such Exigent returned served, but was not enter'd, and the Clerk enter'd it now, and well; and the Exigent is record

ed, that it be not enter'd in the Roll; quod nona; and the Defendant

demanded over of the Record, and had it; and because he came in by Capias Utlagatum, by Name of J. S. Knight, and by the Utlawry he is

named J. S. Esq; and he alleged that he was Knight 20 Years past, and for this Variance, and because he had no Day in Court by the other Exigent now alleged, therefore he went without Day by Award, without trying whether he was the same Person or not. Br. Utlagary, pl. 32. cites 38 H. 6. 1.

6. Where a Man appears, and says, that whereas Utlawry is pleaded against him as a Mainprie by Name of J. S. of L. Gent. he at the Time of the Mainprie, and always after was J. S. Yeoman, abique hoc, that he was the same Person who was Mainprie, and does not traverse that he was not Gent. inasmuch as he appears, he is stopped by his Mainprie; but contra where he is outlaw'd upon the Original &c. or he does not appear, there he shall traverse Utlagary, that he was Yeoman and not Gent. Br. Utlagary, pl. 51. cites 10 E. 4. 16. Br. Traverse the plea, the

Plaintiff said that he was Gent, and not Yeoman, and the Illue received; for now it seems that he is not the same Person. —Br. Utlagary, pl. 51. cites S. C.

7. Trepses against two who were outlaw'd, and were taken by Capias Utlagatum, and the one said, that where he is outlaw'd by Name of J. Stocke, his Name is and was the Day of the Writ purchafed J. Stockes, and not J. Stocke, and pray'd Scire facias against the Plaintiff; and had it; who came, and said that he is known by the one Name and by the other; and he was let to Mainprie. Br. Utlagary, pl. 53. cites 14 E. 4. 6.

(R. a) Pleading other Pleas than No such Vill &c. Misnafomer &c.

1. T was admitted that where a Man is outlaw'd he may say, Quod S. P. Ibid. ipse tam languidus sitio tempore utlagario, that he cannot appear proper periculum mortis. Br. Utlagary, pl. 75. cites 4 H. 5.

2. Where Utlawry is pleaded in the Plaintiff in Debt, he shall not Br. Identi

fies that there are two of his Name, the one elder and the other younger, and the eldest is outlaw'd, and this Plaintiff is youngest, but shall be put to his Identificate Nominis; for dilatory; contra upon Plea in Bar. Br. Utlagary, pl. 55. cites 21 E. 4. 15. tot. Cur. Ibid. pl. 56. cites 21 E. 4. 54. —Br. Identificate Nominis, pl. 8. cites S. C.

3. A Man outlaw'd of Felony, as Accessary, said that before the Outlawry Thecall's the Principal was dead, and pray'd Writ to the Sheriff to restore him to his Dign. of

S. a) Outlawry. The Effect thereof.

1. The Disability by Outlawry abates not the Writ, but disenables the Plaintiff, until he obtains a Charter of Pardon. Co. Litt. 128. b. (x)


3. If one at Common Law had Judgment in Debt, and after the Judgment he had outlaw'd the Defendant, the Plaintiff was at the End of his Suit as to any Process to be sued by himself; for he could not have Sci. fa. nor any other Process upon the Judgment, but was put to his new Original; and tho' before the 25 E. 3. Capias lay not in Debt, nor was the Body liable to Execution for Debt, yet if Defendant be taken by Cap. Utlag. at the King's Suit, no Laches being in the Party in continuing his Process, he shall be in Execution for the Plaintiff, if he will; for as the King is intitled to the Goods, Chattels, and Profits of the Lands &c. it is reasonable that if the Defendant be taken at the King's Suit, and the King has Benefit by the Party's Suit, the Party shall have Benefit at the King's Suit. Resolved 5 Rep. 53 a. Hill. 46 Eliz. B. R. Gannon's Cafe.

4. When the Party is outlaw'd on an Original and mesne Process before Judgment, if he be after taken by Capias Utlagatim, the Party cannot declare against him, but he ought to have a new Action of Debt. Cro. E. 706. pl. 28. Mich. 41 & 42 Eliz. C. B. in Cafe of Leighton v. Gannon.

5. The Party at whose Suit a Person is outlaw'd, has an Interest by the Outlawry, as well as the King. Sic dictum fuit. Sti. 348. in Cafe of Ellis v. Pippin.


7. Outlawry on a Bond upon mesne Process before Judgment, does not alter the Nature of the Debt, nor create a Lien upon the Land. But where there is an Outlawry, and a Seisure thereupon, the Debt attaches upon the Land, and shall be prefer'd to a Judgment, tho' prior to the Outlawry. But it is the Seisure that gives the Preference. 1 Salk. 80. Trin. 1714. in Canc. Erby v. Erby.

Utlawry.

(T. a) Difcharg'd by Pardon.

1. 5 E. 3. 12. Exacts, That where the Plaintiff recovers Damages, and at the Common Law the Defendant is thereupon outlaw'd at the King's Suit, no Pardon shall be granted, except the Chancellor be certified that the Plaintiff is satisfied his Damages.

**'outlaw'd the Plaintiff had been put to a new Original.** Br. Dett, pl. 128. — One outlaw'd upon a Ca. Sa. at the Suit of Executors, was in Prison in the Fleet. One of the Executors releazed him all Affidavit and Executions. Whereupon he prayed a Sci. fa. against the Executors, to answer the Deced. The Justices were in Doubt if he should have Sci. fa. held, or his Charter of Pardon first, and then Sci. fa. At length Sci. fa. was granted by Advice of the Justices, by reason of these Words of the Statute: and if upon the Return of the Sci. fa. they cannot deny the Deced, then it is prov'd that Grec is made upon this Recovery; and thereafter he shall have his Charter of Pardon. Pitzh. Tit. Scire facias, pl. 150. cites H. 13 H. 4. — And ibid. Tit. Charter, pl. 28. cites 13 H. 4. That if one be outlaw'd upon a Capias ad satisfacendum &c. he shall not have Charter of Pardon till the Chancellor be certified that he has made Grec &c.

And where one is outlaw'd by Process before Appearance, no Pardon shall *If a Man be granted, except the Chancellor be certified that the Person outlaw'd hath *yielded himself to Prison before the Justices of the Place from whence the Exigent issued; that is to say, if from the King's Bench, then shall yield brings Sci. fa. there; and if from the Common Bench, then shall yield himself of Error, by there; And if from the Justices of Oyer and Terminer, whether they fit, be, or which the Record is removed, and bring Sci. fa., the Plaintiff may now declare in B. R. notwithstanding the Statute of 5 E. 5. 12]; that he shall render himself to the Prison of the Court where the Exigent Issued; Per Fairfax, quod non negatur. Br. Error, pl. 155; cites 1 H. 7. 12.

And the Justices before whom they shall so yield them, shall cause the Party *In Trespass Plaintiff to be warn'd to appear before them at a certain Day; at which Day the Defendant may be outlaw'd, and the Plaintiff appear, then shall they *plead upon the first original Writ as tho' no Outlawry had been; but if he come not, the Plaintiff outlaw'd Pardon shall be deliver'd by Virtue of his Charter. And note of Pardon and Sci. facias against the Plaintiff, who appear'd and counted against him, and the Defendant alleged Discontinuance of Process. Quare if he shall have Advantage thereof; for the Statute is that he shall plead upon the Original, as in such Outlawry was. And per Skip. if the meane Process be discontinued, the Original is discontinued. And per Greene, if the Defendant will have Advantage thereof, he ought to have Write of Error, as the Common Law; but when he files Charter of Pardon by Sci. facias, he affirms the Process good, and shall answer as if he had appeared upon the Original. Quere. Br. Uttagatur, pl. 27; cites 24 E. 3. 42.

If a Man be outlaw'd, and (for Charter of Pardon, and has Sci. facias against the Party, in this Case the Plaintiff ought to declare against him, because by the Charter the Original is determined. Br. Nonfuit, pl. 29; cites 21 H. 6. 52. — Br. Count, pl. 37; cites S. C. For this Statute wills, that they plead upon the Original, which cannot be without Count. Contra where he is outlaw'd, and upon Capias Uttagatur comes and pleads Mifprison, and has Sci. facias against the Plaintiff, who comes and maintains the Original; there the Plaintiff shall not count; for the Original is determined by the Outlawry, but in the first Cause it is revoked, and there he shall recover or shall be barr'd, and in the other he shall not recover, but the Defendant shall be awarded to the Fleet. Notadiverfament indo, quia bona.

2. Theloa's Dig. of Writs, lib. 1. cap. 15. S. 3. says, it seems the Br. Utta-

Opinion of the Book of Mich. 13 E. 3. Utlawry 49. is, That Outlawry gary, pl. 56.
at the Suit of the Party in Oyer and Terminer de Usure rapta, & abunda a cun. 17 Aff. cites 15 Aff. Bous viti, is only as an Outlawry in Trespass, and that after Charter of Affidavit in Pardon had of such Outlawry, such Peron outlaw'd shall maintain Ad-
sile upon such Title before &c. But if the Outlawry had been of Felony, the Trespass was he
he could not have Aff'ise without thewsg Title of later Time after the Oultlawy, notwithstanding his Charter of Pardon.

3. In Appeal of Death by one outlaw'd of Trespafs, the Defendant pass'd quit without being arraign'd at the Suit of the King. Theloal's Dig. of Writs, lib. i. cap. 15. S. 7. cites Mich. 18 E. 3. 35. Utlr. 47.

4. One outlaw'd of Trespafs may, after Charter of Pardon purchas'd, have Action for False Imprisonment, [tho'] made before the Oultlawy. But it was said that he shall not have * Action of Debt, nor of Goods carried away before &c. because Action of them is given to the King. Theloal's Dig. of Writs, lib. i. cap. 15. S. 8. cites it as adjug'd H. 20 E. 3. 45. & 29 Aff. 63.

5. In Suit of Execution out of a Recognizance in Chancery, Execution was awarded, and the Land of the Defendant put in Execution; upon which the Defendant brought Writ of Error, against which it was pleaded that he was outlaw'd in Trespafs, and he swore his Charter of Pardon, and that he had sued Scire Facias according to the Statute &c. where it was said that his Action was determin'd and extinct by the Oultlawy. But because he was to discharge his Frankentenement by the said Writ of Error, and that the King shou'd not have Advantage by this Suit, it was adjudg'd that he shou'd well have this Suit by Writ of Error &c. Theloal's Dig. of Writs, lib. i. cap. 15. S. 7. cites Pach. 21 E. 3. 17 & 29 Aff. 47.

6. One outlaw'd of Trespafs at the Suit of the Party, shall not be answer'd after his Charter of Pardon had, if it does not allege that he has sued Scire Facias against the Plaintiff according to the Statute, notwithstanding that the Exception be taken by a Stranger to the first Suit. Theloal's Dig. of Writs, lib. i. cap. 15. S. 4. cites Pach. 21 E. 3. 55. Non-ability 6 & 8. and Pach. 20 E. 3. Charter 19. The Opinion of Thorpe was that the Oultlaw need not to allege that he had sued the Scire Facias, because by his Charter he is restored to the Law. Theloal's Dig. of Writs, Lib. 1. cap. 15. S. 4. cites Mich. 44 E. 3. 27.

7. Three were outlaw'd in Trespafs. They got a Charter of Pardon, and sued Scire Facias against the Plaintiff. The Writ was return'd tardy, and the Plaintiff in Trespafs came, and counted against 2, notwithstanding the Writ was not return'd, and he had Capias' Trealagatum against the 3d who did not come, and [Capias] against his Masipernors; and his Char'ter lost its Force, notwithstanding the Writ was not serv'd, because he found Masipris' to be de Die in Diem. Fitzh. Tit. Responder, pl. 85. cites Pach. 27 E. 3. 77. [Pach. 27 E. 3. 1. u. pl. 3.]

8. In Attend upon Verdict in Aff'ise, if Oultlawy be alleged in the Plain-tiff for the Damages in the same Aff'ise, and he brings his Charter of Pardon, he shall be answer'd before Grie made to the Defendant of the Damages recover'd in the first Action. Theloal's Dig. of Writs, Lib. 1. cap. 15. S. 28. cites 30 Aff. 20.

9. In Deb't the Defendant was outlaw'd, and sued Charter of Pardon, and Scire Facias returnable at such a Day, but the same was not return'd. The Plaintiff in the Action came at the Day, and pray'd that the Defendant be demand'd. But Thorpe denied it, unless the Plaintiff came in by Proces. To which it was said for the Plaintiff, that he had Day by the Roll, and that at this Rate the Defendant might delay him for ever. But
But Thorpe said he was at no Mischief, and that if he would aid himself, he ought to file the same Writ by which he was warned; and so he did. Patch.

39 E. 3. 7. b.

10. If a Man be disabled by Outlawry pleaded in a Real Action, and he S. P. Br. brings Pardon bearing Date pending the Writ and after the Plea pleaded, ut, says the T. of Parlia. and yet this is good, and the Tenant shall answer; and yet the Demandant S. C. was once disabled pending the Writ. Quod nota. Br. Nonabilitie, pl. 6. cites 44 E. 3. 27.

11. One outlaw'd purchased a Charter, and shew'd that the Plaintiff was ready at the Bar, and pray'd that he count against him without filing Scire Facias; but because the Plaintiff had no Day in Court, it was commanded the Defendant to sue Sci. Fa. against the Plaintiff &c. Fitzh. Tit. Reponder, pl. 39. cites Trin. 46 E. 3. 15.

12. If a Man is outlaw'd in Debt, and the Defendant purchases Charter and the of Pardon, and Scire Facias against the Plaintiff, and he makes Default, this is peremptory, and the Defendant shall go quit. Br. Default, pl. 87. cites 22 H. 6. 7.

Defendant, does not maintain his Writ. Ibid.

13. He who is convicted, outlaw'd, or by any lawful manner is attainted of Felony, shall not have any Action, Real or Personal, in any manner before the Charter of Pardon obtain'd. But after the Charter obtain'd, he may have Action upon Right, Title, or other Cause commenced or accrued after the Charter had; and not before. Thelot's Dig. of Wits, Lib. i. cap. 15. S. 24. says this appears by the Books there before noted.

14. One outlaw'd after Judgment in Debt came gratis and render'd himself to Bank, where he was condemn'd, and was committed to the Fleet, (as he ought, tho' it be not usual to do) and then sued a Certiorari to the Ch. J. of C. B. to remove the Tourn of the Record of the Outlawry into Chancery, and to certify his Render, and being in Prison, which was done; but without saying whether the Plaintiff was satisfied or not; and thereupon he had his Pardon, Its quod fict velius in Curia &c. where it but says that should be, Its quod satisfacserat Querenti. And upon 2 Scire Facias the Statute says against the Plaintiff, and 2 Nibils return'd, the Pardon was allow'd, and the Outlawry discharged; whereas he had not, in Truth, satisfied the Plaintiff. D. 172. a. pl. 10. Mich. 1 & 2 Eliz. Anon.

only where Outlawry is upon Process before Appearance; and in this Case no Charter shall be granted, till it appears to the Chancellor by Certificate &c. that the Outlaw has render'd himself to Prison in the Court where the Exigent issued; and he shall not be deliver'd till the Party be warn'd, and the Warning vinds'd, and to make the Plaintiff to plead upon the Original, if he will &c. And notwithstanding those Words, 2 Nibils in Scire Facias have always controverted a Scire Faci. But he says it appears by Fitzh. Tit. Charter, cap. ultimo, vis. 13 H. 4. that after Condemnation in Debt, if the Defendant be outlaw'd, he shall not have Charter till the Chancellor be satisfied. And the Form of Pardon of Outlawry after Judgment is, That the Plaintiff is satisfied, or that per deb't Processus coram Justiciar consequent habe' consider, exitat, quod idem defendens verius dictum quere rentem irret omissus &c. and no Charter of Its quod fict velius &c. For this Clause is In Pardon of Outlawry before Judgment, or where he is in Case to make Answer to the Plaintiff.

Richardson Ch. J. acquainted the Court, that a Certiorari came to him out of Chancery to certify the Tourn of a Record of Outlawry, to get a Charter of Pardon; that the Clerk of the Outlawries infring'd it, and indeed that the Party reddidit se to Prisjon, (the Outlawry being before Judgment) whereas he really never did appear, nor render'd himself; that the Party, at whole Suit, complained thereof to him, who upon examining the Clerk and Prothonotaries found, that upon all Outlawries the Clerks enter'd upon the Roll of courts, That the Outlaw reddidit se, and are always certified, &c. &c. and this Court was allow'd by the Court. But to satisfy the Statute of 5 E. 3.; and for the benefit of the Party who files, they ordered that no Scire Facia shall be upon such Pardon till the Party, who files the Pardon, has appeared to the Party's Action. And this Order was commanded to be observed, and enter'd in every Office of the Court; and
Outlawry.

the Reason of the Entry and Course quoted reddited in, where he had not, is for the Ease of the Subject, because it would be great Inconvenience to Subjects in the remote Parts of the Kingdom, being outlaw'd, cannot have Pardon thereof, without making personal Appearance in Court. D. 172. a. Marg. pl. 11. cites 5 Car. C. B. Molineux's Cafe.

15. In Debt it was agreed, that if A. be outlaw'd in Debt, and obtains a Release of the Party of that Debt, and after by Act of Parliament all Outlawries are pardon'd. When the Party is satisfied, then the Outlawry is discharged; for the Release is a Satisfaction in Law. Noy 5. Albany v. Manny.

16. In a Suit by Husband and Wife, the Defendant pleaded Outlawry of the Husband in Bar; and upon Demurrer it was inquired, that the Outlawry, so far as the Crown was concern'd, was pardon'd by the General Pardon. But per Cur. The Plaintiff ought to have replied, and shown that he was not a Person excepted. Hard. 60. pl. 1. Trin. 1656. in the Exchequer. Swan & Ux'v. Porter.

17. Outlawry cannot be discharged on an Act of Obligation, till the Party has brought his Scire Facias on the Act of Parliament; per Cur. See Ellis v. Pippin.


(U. a.) Disability of whom, and How far, as to Actions.

1. Outlawry alleged before the Coroners, and not return'd, shall not disable the Plaintiff in Affire. Thelot's Digest of Writs, Lib. 1. cap. 15. S. 20. cites 28 Aff. 4. 9.

Thelot's Digest of Writs, Lib. 1. cap. 15. S. 18. says,

30 Aff. 20.

It seems that the Opinion of the Book of Pach. H. 4. fol. 40. is, That in Writ of Error to reverse Outlawry, it is no Plea to say that the Plaintiff is outlaw'd in another Suit or Action, and so disabled to sue this Writ of Error; for otherwise it will follow that he shall be infinitely delay'd.—Br. Utalagry, pl. 6. cites 7 H. 4. 59. S. C.—S.P. 'Tho' there are 20 Outlawries against him. Br. Nonability, pl. 12. cites 8 C.—S. P. 2 Le. 211. pl. 245. in Moulton's Case, cites 7 H. 4. 105.—And G. Hall. of C. B. 159. cap. 17. says, That when one brings a Writ of Error to reverse an Outlawry, Outlawry in that Suit, nor at any Stranger's, shall not disable him; for if he were outlaw'd at several Men's Suits, and one should be a Bar to another, he could never reverse any of them. The Outlawry itself is no Objection, for that would be Exception ejusdem rei cuius petitor Diflibutio: Nor is another Outlawry pleaded in Bar to such Writ of Error, for then 2 erroneous Outlawries would be irreverable; and therefore that is Tantamount to Exception ejusdem rei cuius petitor Diflibutio. So if there be an Attaint brought on a Verdict, Outlawry grounded on that Verdict shall not be pleaded in Bar, for the Reason above.—3 New Ab. 762. Br. Utalagry, S. P. in the same Words.


by all the Justices.—S. P. Because the Suit is en auter Droit, viz. in the Right of the Tefator, and not in his own Right. Co. Litt. 128. a.—S. P. And also because the Person whom he represents has the Privilege of the Law; and not suing for himself, where he has the Advantage of another, where that is no Objection to his Representation, it is no Objection but he should be answered. G. Hall. of C. B. 159. cap. 17.


by all the Justices.—S. P. Because the Suit is en auter Droit, viz. in the Right of the Tefator, and not in his own Right. Co. Litt. 128. a.—S. P. And also because the Person whom he represents has the Privilege of the Law; and not suing for himself, where he has the Advantage of another, where that is no Objection to his Representation, it is no Objection but he should be answered. G. Hall. of C. B. 159. cap. 17.

4. It
(W. a) Disability as to Actions. How far the Disability of one shall disable another.

1. In Writ of Account by two, it was held that if one is outlaw'd of Felony, the other shall not be answer'd. Theolo's Dig. of Writs, lib. 1. cap. 15. S. 5. cites Trin. 9 E. 3. 461.

2. Outlawry in Trespasses in one of the Demandants in Preceipio quod reddat, is a Disability of both during this Outlawry; but where one of the Demandants is outlaw’d of Felony the Tenant shall answer to the other who shall sue alone; for this is a Severance in Law. Theolo's Dig. of Writs &c. lib. 1. cap. 15. S. 2. cites H. 33 E. 3. Utlawry 5. and Trin. 30 E. 3. 7.
3. Monstraverunt shall not abate by the Outlawry of one of the Plaintiffs. Theoloal's Dig. of Writs, lib. 1. cap. 15. S. 23. cites Mich. 1 H. 5. 14.

4. It was held that in Personal Action brought by two, Outlawry in the one is a Bar to both. Theoloal's Dig. of Writs, lib. 1. cap. 15. S. 15. cites 14 H. 6. 14.

5. Debt by two Executors; Outlawry was alleged in Disability of the one; Judgment if he shall be answered, and because he is not to recover to his own Use but to the Use of the Testator, therefore the Defendant was answered to answer; quod nota. Br. Nonability, pl. 20. cites 19 H. 6. 14.


7. Baron and Feme shall not have Action, if the Feme is waived. Theoloal's Dig. of Writs, Lib. 1. cap. 15. S. 21. cites Hill. 21 H. 6. 30. 31. and Trin. 8. fol. 2. Utlawry 17.

The Defendant pleaded Outlawry. But per Cur. the Plea is ill to allege Outlawry in the Husband, when he and his Wife sue as Administrators. Hardr. 60. pl. 1. Trin. 1656. in the Exchequer. Swan & Ux' v. Porter.

8. It was held, that a Mayor and Commonalty shall have Action, notwithstanding that the Mayor be outlaw'd. Theoloal's Dig. of Writs, Lib. 1. cap. 15. S. 17. cites Trin. 12 E. 4. 10.

9. Judgment in Ejectment against 6 Defendants, who brought a Writ of Error. The Defendant in Error pleads an Outlawry against one of them; and upon Demurrer it was held by 3, contra Haughton. That because this Suit is only by way of Discharge, wherein he shall recover nothing, but only to be restored to what they had lost, and being informed to join, because that Plaintiff was Defendant in the former Action. They agreed it was no good Plea, and awarded that he should answer to the Error. Cro. J. 616. pl. 1. Trin. 10 Jac. B. R. Bythall v. Harris.

10. If 2 Tenants in Common are of a Royalty for Years, and one of them is outlaw'd; yet the other, upon the Matter, may have Debt for the Moiety; per Twidde J. Sid. 49. pl. 11. Mich. 13 Car. 2. B. R. in Cafe of Cole v. Banbury.


cap 25. S. 32. says that one outlaw'd in a personal Action, (so long as the Outlawry continues in Force) cannot bring any Appeal whatsoever.

2. A Man
Utlawry.

2. A Man condemned upon a Recognizance, where he pleaded sufficient Bar by Defeasance, bearing Date before the Recognizance, and deliver'd after, bought thereof Error; and in the Writ of Error the Defendant, who had Execution, pleaded Outlawry in Trespass in Disability of the Plaintiff; and because the Plaintiff in this Suit is not to re-have any thing but a Discharge of the Recognizance, therefore it was awarded no Plea, and they proceeded to reverse the first Judgment; for the Party was pardon'd of the Outlawry after, and the King cannot have this Suit by the Outlawry, which goes to have Discharge, as he may have Debt upon an Obligation which is to recover Debt. Quod non iibidem. Br. Nonabil.

3. It was held, that if Tenant by Statute-Merchant be outlaw'd in Trespass, he shall be bair'd in Afsive. Thelou's Dig. of Writs, Lib. 1. cap. 15. S. 11. cites Mich. 11 H. 6. 7.

4. If the Demandant in a Cofitivit be outlaw'd in a personal Action, this Outlawry may be pleaded in Bar of the Action, because the Arrearages are due to the King. 2 Inf. 298.

5. In Audita Querela to avoid a Statute for Usury, the Defendant S. C. cited pleaded an Outlawry in Bar. It was objected upon Demurrer, that it is Tom. 191. Jac. B. R. in

not pleadable in this Suit, which is only by way of Discharge, and not to recover any thing. And the Lt. Ch. J. held accordingly; for one Cofitivit outlaw'd cannot sue in any Court, unless to reverse his own Outlawry; Bethel v. and where the Action is Ad Lucrandum, there ought to be Ability in the Party, to Perfon; and that it is all one to gain by way of Discharge, as by way of Perquisition. And Judgment that Plaintiff take nothing by his Writ. Cro. J. 425. Pach. 15 Jac. B. R. Griffith v. Middleton.

J. Dodderidge and Chamberlain J. contra. Houghton J. held that it would be very misconceive upon an Outlawry in Cafe of Error, Attain, or Audita Querela, which are only by way of Discharge, if it should be any bar, this Writ being only a Commiss. Cro. J. 616. Trin. 19 Jac. B. R. in Cafe of Bythall & al' v. Harris.

One [Unitat with] Debt, and taken upon the Capias, and committed to the Fleet; and the Warden of the Fleet permits him to go at large voluntarily, and after the Executor of the Plaintiff in Debt takes him in Execution again upon a new Writ; and upon this taking he brought an Audita Querela, and showed this Matter. To which Outlawry in the Plaintiff (in Audita Querela) was pleaded; upon which Plea he demurred. And per tot. Car. after several Arguments at Bar, it was releiv'd that Outlawry was a good Plea in Disability of the Plaintiff in this Cafe, because this Writ is not directly for recovering the Outlawry (as Error) but is founded upon a Fort. [viz.] upon the Escape, and not upon the Record. And for Authority in this Point, the Ch. J. cited 6 El. 4. 9 b 10 s. Sid. 45. Mich. 12 Car. 2. C. B. Jaffon v. Kete. Note, That Bridgeham Ch. J. well observ'd, that Audita Querela does not lie for other Reasons than because when any Prisoner is taken here, he is brought to the Bar, and it is demanded of him what he can justify by he should not be committed to the Fleet; at which Time the Plaintiff here ought to have pleaded this Matter before; and therefore he shall not have this Writ, for one shall never have Audita Querela for any Matter which he might have pleaded before. Sid. 43. Trin. 15 Car. 2. C. B. Jaffon v. Kete.

In Audita Querela the Plaintiff declared that he and one P. were bound to D. the Fesator to pay 100 l. That in an Action brought against him he was outlaw'd; That afterwards D. brought another Action against P. upon the same Bond, and had Judgment; and that P. was taken by a Cap. Sc. and disfear'd by D.'s Con- fessor; and so prays to be reliev'd against this Judgment and Outlawry. The Defendant protesteth that the Debtor was not satisfied, pleads the Outlawry in Disability. And upon Demurrer the Court agreed that if the Judgment had been erroneous, and Error brought, the Outlawry, which is only a Superestructure on it, would fall by Consequence; but an Audita Querela middles not with the Judgment, but admits it good; but only upon some equitable Matter arising thereupon, prays that no Execution may be made upon it; and the Plaintiff has no Remedy here but to sue out his Charter of Pardon. Mod. 254. pl. 13. Mich. 28 Car. 2. C. B. Higden v. Whichurch.

6. It was agreed by all, That in Error or Attain Outlawry in the Plaintiff is no Plea in Disability; and they said that there is no Difference where the Outlawry was at the Suit of the Defendant, and where at the Suit of a Stranger; for Non admissituir ejusdem rei exceptio cuiuspetit ditinifuito. Sid. 43. Mich. 12 Car. 2. C. B. Jaffon v. Kete.

7. In an Information qui tam &c. the Defendant pleaded Outlawry of the Informer in Disability. Upon a Demurrer it was insisted that the Plea was not good, because the King is interested qui tam &c. and S. C. by therefore
Utlawry.

therefore if the Informer dies, the Attorney General may proceed. Sed per Cur. Tho' the King is interested, yet the Informer only is Plaintiff, and intitled to the Benefit; and tho' he was disabled by the Outlawry to sue for himself, yet he might sue for the King; and therefore the Plea was adjudged good. 2 Mod. 267. Mich. 29 Cur. 2. C. B. Atkins v. Bayles.

Carth. 199. The King v. Rowe, S. C.


9. A Parker outlaw'd cannot bring a Writ of Affide. Show. 288. per Cur. in Cafe of the King v. the Mayor of Bristol.

(Y. a) Disability. As to other Matters than Actions.

1. One outlaw'd in a Personal Action (as some say) cannot be an Approver, because by his Outlawry he is out of the Law, and his Accusation shall not be of such Credit as to put any Person upon his Trial 2 Hawk. Pl. C. 205. cap. 24. S. 4. cites in Marg. Br. Appeal, pl. 57. and Fitzh. Corone, 175.


3. Outlaws in Debt, Trespasses or the like may be Heirs. Co. Litt. 8. a. (f).

4. The Wife of one outlaw'd in Felony or Trespasses shall be indefatigable. Co. Litt. 31. a.

5. One outlaw'd may be Attorney to deliver Seisin. Co. Litt. 32. a.

6. A Man outlaw'd is capable of taking a Leafe from the Queen as Former to her, by Reason of the Render of the Rent, which makes him capable. Mo. 237. pl. 371. Pasch. 29 Eliz. in the Exchequer, Knowles v. Powell.

7. If a Man paus'd Goods and after is outlaw'd, he cannot redeem them during this his Outlawry; Per Williams J. Bulst. 29. Trin. 8 Jac. in Cafe of Ruelife v. Davis.

8. Peron's outlaw'd are disabled to be Jurors! See Tit. Trial (H. d. 4)

9. In what Cases an outlaw'd Person may be a Witness. See Tit. Evidence.

(Z. a) Charged in Custodia. In what Cases one outlaw'd for Crimes may be.

1. A Man was outlaw'd of Felony, and taken by Capias utlagatum, and detained in B. R. and divers Bills were brought against him in Custod! Maiorifica, and the Court would not suffer it; for his Body, Lands and Goods are to the King, and therefore the Plaintiff cannot have the Effect of his Suit against the one before the Outlawry; but if he obtains Pardon, the Plaintiff shall be answer'd. Br. Utlagary, pl. 26. cites 4 E. 4. 8. 9.
(A. b) Creditors of Outlaw. How far favour'd, or affected.

1. AND was purchased of Tenant for Life, who was outlaw'd and absconded, but the Purchas'd was set aside in Favour of Creditors, it being made at an Undervalue, and pending a Prosecution at Law against the Outlaw by the Creditors, and with Notice thereof, and the Purchase being also a Trustee in the Marriage Settlement. Vern. 465. pl. 445. Trin. 1637.

2. Upon an English Bill in the Exchequer the Barons pray'd the Opinion of the Judges of C. B. the Case was H. was a Bankrupt, and long after was outlaw'd; the King made a Lease of the Profits of his Lands, and granted his Charters; afterwards a Commission of Bankruptcy was taken out. Resolved, that the Creditors are not hurt by the Outlawry, it being his own Act and by his own Default, and the voluntary permitting himself to be outlaw'd shall not prejudice them. And also that the Affirmation of the King's Lease, having paid 37 l. for it is a Purchasor within the 21 Jac. cap. 19. not to be impeach'd by the Commission, which was quire'd 5 Years after the Bankruptcy. 1 Salk. 168. 169. p. 2. Hill. p. W. & M. in C. B. Pain. v. Teap & al'.

(B. b) Reversed. What must be done in Order to get an Outlawry reversed.

1. 31 Eliz. F Nafts, That before Allowance of a Writ of Error, or reverse the Defendant was in Proclamation according to this Statute, the Defendant in the Original Action for Judgment, shall put in Bail to appear and answer the Plaintiff, and also to satisfy the these, and Condemnation, if the Plaintiff shall begin his Suit before the End of 2 Terms proceed a next after the Allowance of the said Writ, or avoiding the Outlawry. Pardon and the Opinion was, Whether he should put in Bail. And it was agreed by the Court, that he should put in Bail; for that the the Statue of Stat. 1. cap. 12. goes only to a Charter of Pardon, not to the Reversal; yet by the Equity of that Statute, he must put in Bail. For it is that he stand right in Court, which is, that he appear, and put in Bail. After the the Life of the Court has been otherwise, yet, perhaps, in some Cases, the Plaintiff never required Bail. Cites New Entries, Title Pardon, pl. 1. So if an Outlawry be reversed by 31 Eliz. for Want of Proclamation, the Defendant puts in Bail at the Common Law. H. 146. Mich. 5 Car. C. B. Hide's. Case.

The Plaintiff in Error may proceed in Order to reverse an Outlawry against him without entering an Appearance to the Original Action; but he must appear to the Original Affirm before the Outlawry shall be reversed. 2 Barnard Rep. in B. R. 236. Trin. 2 Geo. 2. Martin v. Murfield.

It was said by the Court that upon or before the Allowance of any Writ of Error, or reversing any Outlawry, the Defendant must still enter into a Recognizance with Condition to satisfy the Condemnation Money, according to the Statute 31 Eliz. cap. 5. S. 5. Rep. of Pract. in C. B. 29. Mich. 12 Geo. 1. Anon.

2. The Court will not reverse an Outlawry, the both the Parties consent to it, viz. The Party outlaw'd, and the Party at whose Suit he is outlaw'd, except there be Error assigned in the Outlawry. L. P. R. tit. Outlawry, cites Mich. 22 Car. B. R. For Matters of Record are not to be destroy'd without sufficient Cause; and the Outlawry concerns the King as well as the Parties.

3. 4
3. 4 & 5 W. & M. cap. 18. Enables Persons to reverse Outlawry without Bail, unless where Special Bail shall be ordered by the Court.

4. A. Bail Bond was given on a Capias Utlagatim according to the new Statute, and Defendant had put in Special Bail in the Country before the Outlawry reversed, which Northey urged was regular. For by the new Statute, he must give Bail at the Return of the Writ, which must be before the Outlawry reversed, otherwise it is impracticable. Holt, said he did not understand the new Statute very well, but said the first Original is determined by the Outlawry, which must therefore be reversed before the Defendant can be heard, and he would not now determine, whether Special Bail might or not be given in the Country after the Reversal of the Outlawry. Cumb. 345. Mich. 7 W. 3. B. R. Wilfon v. Crablington.

5. A Foreigner that never was in England was outlawed in an Action of several Promises for Goods sold and delivered; and upon a Special Cap. Utlag. a Ship and other Effects belonging to the Foreigner, were seized as forfeited. Per. Cur. This Outlawry shall not be vacated on Affidavits of his never having been in England. But Defendant may bring a Writ of Error; which was he compelled to do, and thereupon to put in Bail, to the Action, according to the new Statute. And then Plaintiff confirmed to the Reversal of the Outlawry. Carth. 459. Mich. 10 W. 3. B. R. Matthews v. Erbo.

6. In Error to reverse Outlawry for Error in Law, Bail need not be given to the original Action, as it must be for Want of Proclamations. 12 Mod. 545. Trin. 13 W. 3. Wilbraham v. Doley.

7. Note Per Holt, Special Bail to reverse an Outlawry, must be simply to answer the Condemnation, but other Special Bail is to answer Condemnation, or render his Body; and it was agreed if the Party were taken up upon the Cap. Utlag. he must give Bail to reverse the Outlawry; and they further said the Sheriff was fitable for leaving such Errors in Outlawries. 12 Mod. 545. 546. Trin. 13 W. 3. Anon.

8. He who reverses an Outlawry by Motion, must have an Attorney of Record present to undertake an Appearance to a new Original. He must also put in Special Bail, if the Debt or Damage amount to 20 l. or above. 3 R. S. L. 165. 166.

9. An Outlawry after Judgment cannot be reversed till the Plaintiff hath acknowledged Satisfaction on Record, or the Defendant hath brought the Money into Court. 3 R. S. L. 166.

10. If the Party outlaw'd comes in gratis upon the Return of the Exigent, Alias or Plurites, he may be admitted by Motion to reverse the Outlawry for any other Cause but want of Proclamations, without putting in Bail. If he comes in by Capi Corpus, then he shall not be admitted to reverse the Outlawry without appearing in Person, as in such Case he was obliged to do at Common Law, or putting in Bail with the Sheriff for his Appearance upon the Return of the Capi Corpus, and for doing what the Court shall order. Appearing by Attorney is an Indulgence by 4 & 5 W. & M. and the Bail is to be Special or Common in this Case, as in other
other Cases, 2 Salk. 496. pl. 7. Pach. 4 Ann. B. R. in Case of Sim- 
mons v. Bingoe and Cook.

after he is returned Outlaw'd upon a Quare clausum frexit, as the usual Course is, paying Coffi. 3 R. 
& L. 168.

11. Two were outlaw'd. One of them mov'd that upon filing common 
Bail, he might have Leave to reverse the Outlawry. Per Cur. The Writ of 
Error to reverse it, must be brought in the Name of both the Defendants ; 
and if one only appears, the other may be summoned and sever'd, and then it 
may be reversed as to him who appears only; but before it can be reversed 
for Want of Proclamations, he must give Bail to appear and answer the 
Action. 2 Salk. 496. pl. 7. Pach. 7 Ann. B. R. Symmons v. Bingoe 
and Cook.

12. The Party outlaw'd cannot have his Outlawry reversed without 
first giving Security to appear to a new Original. Arg. and admitted Per 
Cur. Gibb. 265. 266. Pach. 4 Geo. 2. B. R. in Case of Cook v. Champ-
nefs.

13. Error was assign'd to reverse an Outlawry; and the Court held 
the same good, but at present would not reverse it, because the Defendant 
had not given sufficient Notice of his Bail to the original Action, the Notice 
being given but last Night, whereas the Court laid there ought to have 
been one whole Day from the Time of giving Notice; and therefore or-
dered this Matter to stand over till To-morrow, that the other Side 
might have an Opportunity of inquiring into the Circumstances of the 
Bail. The next Day the Defendant's Bail justified themselves, and upon 
that the Outlawry was reversed. 2 Barnard. Rep. B. R. 298. 299. Trin. 

14. If Defendant comes in on the Capias Ulagatum, where there is any 
Debt mentioned in the Original, there he must put in Bail to the Debt, be- 
cause being in Custody, he shall not be discharg'd without Caution; but 
where there is no Debt mention'd, his Caution cannot be adjudg'd, there 
being no Quantum of the Plaintiff's Demand on the Record, and fo they 
take common Bail only; but if he comes in before the Exigent is returnable, 
there he shall give no Bail, tho' the Original specifies the Deb't. G. Hill. 
of C. B. 16. cap. 2.

(C b) What must be done in Person, or may be done by 
Attorney as to Reversal.

1. It was agreed, that if a Man be outlaw'd where a Capias is wanting, 
he may reverse this Outlawry by Attorney to answer to the Plain-
tiff, as if he had appeared to the Original or first Capias. Quod nota 
benefit, for it was said that the Process after this is all discontinued. Br. 
Omission, pl. 6. cites 3 H. 4. 5.

2. Where Matter of Bail is pleaded in Avoidance of an Outlawry, it s.c. cited, 
ought to be pleaded in Person; but a Matter of Record may be by At-
orney. Per Manwood J. And Ford Prothonotary said it was so agreed 
in Sir Thomas Chamberlain's Cafe, 7 Eliz. And so it was agreed in the principal Cafe. 4 Le. 22. pl. 71. Mich. 18 Eliz. C. B. Taylor's Cafe. 
the Record, it may be assign'd per Atornement. But no Opinion was given in the principal Cafe. Carth. 7. Trin. 3 Jac B. R. Chorley v. Hallwood.
3. In Error to reverse an Outlawry against Husband and Wife, it was held that they must alignde the Errors in Person; and because the Husband could not bring in the Female, it was held that they could not alignde Error; for he cannot alignde it without her. And so it was ruled; and the Course of the Court is fo. Cro. E. 611. pl. 17. Pach. 40 Eliz. B. R. Wade & Uxor v. Smith.

Cro. J. 616. pl. 2. S. C. says the Court con-
ferred upon him to do it by Attorney, but at
Length resolved it

4. Sir William Read was outlaw'd upon an Indictment for not repairing a Bridge; and being at least 80 Years of Age, living in Desolation, and of a great Estate, and this Outlawry had against him without his Privy, it was moved that he might pursue his Writ of Error to reverse it by Attorney; To which the Court inclined, but afterwards he was brought in a Horse-litter through the Hall to the Bar, and his Writ of Error allow'd, and the Outlawry thereupon revers'd. Palm. 194. Trid. 19 Jac. B. R. Sir William Read's Cafe.

5. R. was outlaw'd in Trepass, and died. His Executors prayed that they might prosecute a Writ of Error by Attorney. Twifden and Rainsford inclin'd that Executors could not have Error, but that if they might, they ought first to appear in Person; But afterwards, when the Court was full, it was agreed that having once appear'd in Person, all the Residue of the Proceedings may be by Attorney; and because the Writ of Error here was flown forth under Seal, they allow'd it by Attorney, and left the Parties against whom it was brought to demur &c. 2 Kebr. 507. pl. 83. Pach. 21 Car. 2. B. R. Newman's Cafe.

6. The Court refused to reverse Outlawry on Writ of Error, in Indictment of Perjury, without Presence of the Party, being a criminal Cause; but in civil Actions, on Affidavit of Sicknels, they may reverse it in Absence. 2 Kebr. 829. pl. 5. Mich. 23 Car. 2. B. R. The King v. Johnson.

7. 4 & 5 W. & M. cap. 18. Enacts, That no Person who shall be outlaw'd in the Court of King's Bench for any Matter, Cause, or Thing (Treason and Felony excepted) shall be compel'd to appear in Person to reverse such Outlawry, but may appear by Attorney, and reverse the same without Bail, unless where Special Bail shall be ordered by the said Court. And if any Person outlaw'd in the said Court (other than for Tresfon or Felony) shall be arrested upon a Capias Ulagatum, it shall be lawful for the Sheriff in all Cases where Special Bail is not required by the said Court, to take an Attorney's Engagement under his Hand, to appear for the Defendant, and reverse the Outlawry; and where Special Bail is required by the said Court, the Sheriff shall take Security by Bond, with one or more Sureties, in double the Sum for which Special Bail is required, and no more, for his Appearance by Attorney, and to perform such Things as shall be required by the said Court; and afterwards shall discharge the said Defendant from the Arrest.

And if any Person outlaw'd and arrested by a Capias Ulagatum, shall not be able within the Return of the Writ to give Security as aforesaid, but is committed to Goal for Default thereof, then whenever such Prisoner shall find Security for his Appearance by Attorney at some Return in the Term next following, to reverse the said Outlawry &c. it shall be lawful for the Sheriff, after such Security taken, to discharge the said Prisoner.

(D. b)
(D. b) Revers'd, in what Cases. At the Plaintiff's own Charge.

1. A Motion was upon an Affidavit, that Plaintiff in the Action, being an Attorney of this Court, had sued the Defendant to an Outlawry in London, tho' they both liv'd in the same Town, and the Defendant never absconded, but was constantly at Market every Market-day. Upon the Plaintiff's appearing on a Rule for that Purpose, all this Matter was found true upon Examination, and he was order'd to reverse the Outlawry at his own Charge, and to pay the Defendant the Costs of this Complaint, as the Matter should tax, and to accept of the Defendant's Appearance upon common Bail. 2 Jo. 211. Trin. 34 Car. 2. B. R. Seabrooke and How-kin, alias, Howkins v. Seabrooke.

2. It was mov'd in C. B. that the Plaintiff might reverse an Outlawry as his own Charge, upon Affidavit that the Defendant was actually in the Fleet in Execution for the Plaintiff in another Suit, and he knew it; and it was granted, because the Plaintiff should have brought him to the Bar by Habeas Corpus, and there have charg'd him with a new Declaration. 2 Salk. 495. pl. 3. Pach. 8 W. 3. C. B. Adlame v. Colebatch.

3. A Motion was that the Plaintiff should reverse an Outlawry at his own Expence, upon Affidavit that the Defendant being visible, and daily to be arrested, or serv'd with Proces, and living in London, was outlaw'd there: The Motion was, after great Debate, denied; but the Court said if the Defendant had been outlaw'd in another County, they would have order'd the Plaintiff to reverse the Outlawry, and pay Costs. Sed quære; for the Writ of Proclamation, which by the Statute 31 Eliz. cap. 3. must be awarded to the Sheriff of the County where the Defendant dwelt at the Time of the Exigent, was intended to remedy any Surprize of this Sort upon the Defendant. Several Cases in B. R. were cited, where Perssons being outlaw'd, tho' in the same County, yet it appearing that they were visible, and easy to be arrested or serv'd with Proces, the Plaintiffs were order'd to pay Costs, and reverse the Outlawry at their own Expence. Rep. of Praft. in C. B. 61. Mich. 4 Geo. 2. Hayes v. Longbotham.

4. It was mov'd, that the Plaintiff might reverse an Outlawry at his own Expence, upon Affidavits that the Defendant, at the Time he was outlaw'd, and long before and after, was abroad in Parts bey- yond the Seas. Denied, per Cur. because this is Error, and not proper to be consider'd as an Irregularity. Barnes's Notes in C. B. 224. Mich. 7 Geo. 2. North v. Chambers.
(E. b) Revers'd in what Cases, by reversing the Judgment &c. on which &c.

So if the first Judgment be revers'd, the Execution, viz. the Outlawry, be revers'd by Attaint, the Outlawry upon it is gone, and no Effoppel for any to plead after. Br. Ibid.

2. By Audita Querela sued upon a Release after Outlawry upon Capias ad Satisfectionum, the Outlawry by this is not revers'd, but shall stand. Br. Error, pl. 193. cites 6 E. 4. 9. 10.

3. If the principal Record [of a Judgment in Debt obtained by the Plaintiff] be revers'd, the Outlawry which is grounded upon it, shall be revers'd also. Godb. 119. pl. 138. Hill 29 Eliz. B. R. Warren's Cafe.

(F. b) Reversal. By whom it may be. Executor, Heir &c.

Executors brought a Writ of Error of an Outlawry pronounced against their Testator in his Life-time, and for diverse Errors it was reversed at their Suit. Br. Executors, pl. 55. cites 11 H. 4. 65.

2. A. seised in Fee of the Manor of S. had Issue B. who was indicted of Felony, and afterwards outlaw'd thereupon. A died seised. B. entered as Heir, and devised it to C. in Fee and died. C. conveyed the Manor to D. who brought a Writ of Error to reverse the Outlawry of B. The Question was, whether D. the Feoffee of C. the Devisee, might have a Writ of Error in this Case. The Case was argued, and Dodering J. said, that to say where a Feoffee shall have a Writ of Error, is a large Field; If this Feoffee brings Error and reverses the Judgment, he must restore the Heir in Blood; And asked, who can have a Writ of Error to restore Blood, but he who is privy in Blood, and that is the Heir. The Case was adjourn'd. Godb. 376. pl. 465. Pauch. 3 Car. B. R. Brooker's Cafe.
Utlavry.

3. R. was outlaw'd for Felony. Afterwards a General Pardon came out which pardoned Outlawry and Felony. If the Outlaw had died, the Heir might revive it. Freem. Rep. 369. pl. 476. Trin. 1674. The King v. Richards.

(G. b) Revers'd by Writ of Error, or by Plea. In what Cases.

1. Where one is in Prison at the Time of the Outlawry, notwithstanding it was agreed standing it is apparent by Record, yet he ought to sue Writ of Error. Theoloal's Dig. of Writs, lib. ii. cap. 4. S. 3. cites Hill. 18 E. 3. Vileinage 47.

by saying that at the Time of the Outlawry he was in Prison, without suing Writ of Error. Ibid. S. 16. cites 35 H. 6. 45.—S. P. Fact. Tuc Error, pl. 23. cites 15 H. 6.—But Theoloal's Dig. of Writs, lib. ii. cap. 4. S. 3. citation is Moch. 3 H. 5. Utlavry 11. Contrah that where one is in Prison at the Time of the Outlawry, he may avoid it by Plea without Writ of Error. Per Hark.—S. P. of one outlaw'd of Felony. Ibid. S. 20. cites Danby, 7 H. 6. 27.—But where one outlaw'd of Felony was brought to the Bar, and it was demanded what he had to say why he should not be put to Death, who said that at the Time of the Outlawry he was impeached at B. &c. and it was held that he shall not have it for Answr.; but in favore Vitae the Court gave him Redemp. to sue Writ of Error. Br. Utlavry, pl. 57. cites 21 E. 4. 75.—See pl. 15.


In B. R. one had filed Superfedeas, but after the Day of the Exigent he was returned Outlaw'd, and after he came into Court, and brought 2 Superfedeas in his Parte sealed, and a Writ of Error also, which was dated before the Outlawry pronounced upon which the Outlawry was annul'd. Theoloal's Dig. of Writs, lib. ii. cap. 4. S. 7. cites Mich. 8 H. 4. 7.

Where a Man is outlaw'd notwithstanding he has a Superfedeas, and appears and pleads in C. B. the Outlawry shall be reversed by the same Court, tho' it be in another Term. But contra if it be in another Term, and the Defendant does not appear and plead, there is put to his Writ of Error; by 5 Justices. But by Acue, There is no Diversity; for he is put to his Writ of Error in the one Cafe and the other. Br. Error, pl. 9.—cites 57 H. 6. 17.—Per Mollie, By the Appearance of the Defendant the Outlawry is discharged, and because by the Pleading the Original yet gows; therefore we may aid the Defendant; for the Original is pending. Contra per Divers, and that the Defendant is put to his Writ of Error, and 'tis now in another Term; but if it was in the same Term, this Court may amend it; but as here the Outlawry is good, notwithstanding the Superfedeas, and it is the Folly of the Defendant that he did not show it to the Sheriff before the Outlawry. Per Acue, This Court may aid the Matter, by Reafon of the Appearance of the Defendant, and otherwise not; but shall be put to his Writ of Error. Br. Utlavry, pl. 28. cites 57 H. 6. 17.—And if the Defendant appears, and no Exigent is returned, and the Defendant pleads, and after Exigent is returned, we may reverse it; and to here. Ibid.—But Per Mollie, where the Defendant pleads, and has Superfedeas before, there we cannot write to certify the Exigent; for it shall be void. Ibid.—Per Danby, if Superfedeas comes to the Sheriff after 4 Exadsus, and after the Sheriff demands him at another County, and outlaws him, this shall be revers'd in this Court of C. B. and to here; and if the Party shows the Superfedeas, and prays Remedy, it shall be amended. Ibid.—One was return'd outlaw'd upon an Exigent, and yet he had purchas'd a Superfedeas of Record; he did not come at the Day of the Return of the said Exigent, but in another Term after he came, and pleased this Matter; and thereupon the Outlawry was revers'd without suing a Writ of Error. And. 56. pl. 95. Hill. 4 Eliz. Anon. and says such Record was Mich 6 H. 8. Rot. 243. In Bank, by one John Sews.

One was outlaw'd in Debt, where a Superfedeas of Record was deliver'd to the Sheriff before the awarding of the Exigent; it was held that the Party should avoid the same by Plea. Ibid. 2 Eliz. 22. pl. 71. Mich. 18 Eliz. C. B. Taylor's Cafe. 4 Eliz. 168. pl. 289. S. C. in the same Words. Ibid. 29. pl. 537. Mich. 19 Eliz. S. C. in the same Words.

5 F. 3. A.
3. A Man is outlawed at the Suit of the Party, which Party sued by Attorney who had no Warrant; this is Error, and shall be reversed by Writ of Error, and not by Plea; for he may have Warrant in the Chancery, which cannot appear of Record in Bank. Br. Utlagy, pl. 11. cites 11 H. 4. 34.

4. If the Exigent bears Peace before the 4th Day of the Plurisy Capsias, this may be reversed in Bank by Plea upon the View of the Records without Writ of Error. Br. Utlagy, pl. 11. cites 11 H. 4. 34.

5. An Infant outlaw'd, and he who was not within the 4 Seas at the Time of the Outlawry, may avoid it by Plea without Writ of Error; Per Hank. Thelosals Dig. of Writs, lib. 11. cap. 4. S. 6. cites Mich. 3 H. 5. Utlagy 11.

6. It was held per Cur. except Babington, That one is outlawed, and it appears of Record that there were but two Capias's awarded, if he comes the same Term that the Exigent is return'd, the Outlawry shall be annul'd without Writ of Error. Thelosals Dig. of Writs, lib. 11. cap. 4. S. 10. cites H. 8 H. 6. 38 and 11 H. 6. 67. 33 H. 6. 45. and 37 H. 6. 19. but cites Mich. 5 E. 4. 116. contra.

7. If one be indicted and outlaw'd in one County, and is supposed by the Indictment to be abiding in another County, and no Capias issue into the County where he is abiding, the Outlawry shall be annul'd without Writ of Error. Thelosal's Dig. of Writs, lib. 11. cap. 4. S. 11. cites Trin. 11 H. 6. 67. 19. but cites 39 H. 6. contra, and that the Words of the Statute of 8 H. 6. cap. 10. shall be fo intended.

8. But in B. R. in Appeal, one supposed to be dwelling at Chefler and outlaw'd, was not admitted to say that no Capias issued against him in the County of Cheler, and for to avoid the Outlawry without Writ of Error. Thelosal's Dig. of Writs, lib. 11. cap. 4. S. 11. cites Mich. 19 H. 6. 2.

9. He who is outlawed by Name of F. Prior of C. in the County of K. shall not say that there is no such Prior in the County of K. but may say that he is F. Prior of C. in the County of S. absit loco, that he is Prior of C. in the County of K. Br. Error, pl. 106. cites 19 H. 6. 1. [39 H. 6. 1. b. pl. 2.]

10. One was return'd Quoiant extraxis, who came, and said that he had render'd himself in the Hall before the fifth County, and this Render was found in the Roll, by which the Plaintiff was put to Count against him, and he was not put to Writ of Error. Thelosal's Dig. of Writs, lib. 11. cap. 4. S. 13. Mich. 21 H. 6. Utlarije 36.

11. Who comes in by Capias Utlagatum, may say that there are two Dales, and none without Addition &c. to avoid the Outlawry without Writ of Error. Thelosal's Dig. of Writs, lib. 11. cap. 4. S. 14. cites Mich. 22 H. 6. 26.

12. Note,
Utlawry.

12. Note, per Athton and Moyle J. that he who comes in upon Outlawry at the Day of the Return of the Writ, shall reverse it by Plea in Matters apparent, as Supersedeas, Omission of Process &c. Br. Utlagary, pl. 2. cites 33 H. 6. r. 45. S. P. Ibid. 4. R. 43.- S. P. So for other Matter apparent in the Record; And yet in some Cases some hold that in another Term the Defendant is driven to his Writ of Error. Co. Litt. 239. b.

13. Contra of Matter in Factual as Death, Misnouer, Imprisonment, at the Time of the Outlawry &c. For of these he is put to his Writ of Error; but otherwise it is in * B. R. as it is said there. Br. Utlagary, pl. 2. cites 33 H. 6. r. 45.

14. It was agreed by Athton and Moyle, that a Man cannot avoid an Outlawry by saying, that at the Time of the Outlawry he was in the Service of the King, or that the Plaintiff was then dead &c. without Writ of Error. Theolois's Dig. of Writs, Lib. 11. cap. 4. S. 16. cites 33 H. 6. 45.


16. The Original was against Jo. E. nuper de C. in Com. H. Gent. a Debitus Jo. E. nuper de Porchois Sancti Clementis extra Barram Gent. and the Exigent was Jo. E. nuper de Porchois Sancti Clementis extra Barram Gent. a Debitus Jo. E. nuper de C. in Com. H. Gent. for which preposterous Variance it was held that the Outlawry should be reversed without Writ of Error. Theolois's Dig. of Writs, lib. 11. cap. 4. S. 24. cites Mich. 38 H. 6. 3.

17. In the Return of the Sheriff, it appear'd that the 5th County was held Monday the 14th Day of October, where there was not any such Monday 14th of October, by which the Outlawry was reversed by Prior, without any Writ of Error. Theolois's Dig. of Writs, lib. 11. cap. 4. S. 25. cites 39 H. 6. Error 41.

18. It was agreed per Cur. That a Man shall not have any Plea upon Captis Utlagatn, which shall avoid clearly the Outlawry against all Persons; and therefore where Parcel of the Addition given by the Statute of 1 H. 5. is omitted, the Party is put to his Writ of Error. Theolois's Dig. of Writs, Lib. 11. cap. 4. S. 18. cites Mich. *39 H. 6. 1. and 12 H. 6. 8. and says this Case was agreed by the Court.

19. Certiorari issued to the Coroners of the County &c. to certify if any for if a Outlawry was against T. C. and to certify what, when, and how; and Matter of Outlawry was certified, and this was sent into C. B. by Mitimus, which was that the said T. C. at the 5th County of &c. held at such
Outlawry.

such a Place in the County aforesaid, was demanded in Action upon the Statute of 3 H. 6 in C.B. by A. B. and he did not appear, by which it was awarded that he should be outlaw'd, and Capias Utlagary was awarded; and after came Jenney, and said that the Outlawry is not good; for it does not appear when the 4th County was held, nor in what Action the Outlawry was pronounced, nor that Exigent was awarded; therefore it shall be intended that no Exigent was awarded, and pray'd Superfedeas, because Erronice emanavit. And by the Joint Opinion, it shall be taken the left for the King, and that Exigent was awarded, and that the 4 Countries were held, and be demanded at them, and that it was upon a certain Original; and if it was otherwise, yet it is good till it be reversed by Error; for it cannot be otherwise refreß'd than by Writ of Error. Br. Utlagary, pl. 45. cites 5 E. 4. 116.

20. If a Man by Exigent be demanded twice in the Time of one King, and three times in the Time of another King, and thereupon outlaw'd, this is reversible by Writ of Error, because the Writ was abated in Fact by the Death of the King; but not by Plea. Theloal's Dig. of Writs, Lib. 11. cap. 4. S. 26. cites Mich. 7 H. 7. 5.

21. Note that if a Man be outlaw'd in B. R. without Original, this may be reversed there the same Term, and contro in another Term; for there the Party is put to his Writ of Error, for the Outlawry is not void. Br. Utlagary, pl. 78. cites 11 H. 7. 4.

22. An Indictment for Murder was found against E. and an Exigent awarded, but he died; so that he was not convicted or attainted. His Executors brought a Writ of Error to reverse the Award of the Exigent, because the King being intituled by Matter of Record, the Exigent must be avoided by Matter of as high a Nature; and since the Words of the General Writ of Error are (Si Judicium inde redditum fit) which it was not in this Case, they shall have Special Writ reciting all the Special Matter, as by the Precedent appears. 5 Rep. Tr. a. in Foxley's Cafe, cites 18 H. 7. B. R. Eaton's Cafe.

23. If a Man is return'd outlaw'd, and it does not appear that it was per Judicium Coronat' the Defendant shall avoid it by way of Plea, without Writ of Error; and yet in London the Recorder gives the Judgment upon the Outlawry by Cuttom, and the Coroner often is not present. Br. Utlagary, pl. 31. cites 21 H. 7. 33.

24. An Outlawry in B. R. cannot be reversed by Plea, but ought to be by Writ of Error. It was so held by the Judges; and the Clerks said that so was the Course always. Cro. E. 274. pl. 2. Hill. 34 Eliz. B. R. in Marsh's Cafe.

25. When one is maliciously and vexationously outlaw'd in priuate, who appears daily, and may be taken, we usually reverse the Outlawry upon Motion; per Wythens. Comb. 19. Pash. 2 Jac. 2. B. R. Anon.

26. Exceptions were taken to an Outlawry of Baron and Feme; 1st, because the Wife cannot be outlaw'd, but waived. 2dly, because it was Comitavit
Utlawry.

Comparant for Companerunt. It was doubted whether this Outlawry might be set aside by way of Exceptons on a Motion. The Clerks of the Court affirmed that the Course of the Court in the same Term it might, but not in another, without a Writ of Error. The Court bailed him; but said he must appear in Person next Term, and so align his Errors.


27. R. was outlaw'd for Felony before the General Pardon, which pardon'd both the Outlawry and the Felony. The Lord enter'd upon his Lands for an Ejezec, (it seems it was before the Pardon) so that he was fain to bring a Writ of Error to reverse the Outlawry, that he might be restored to his Lands. Freem. Rep. 369. pl. 476. Trin. 1674. The King v. Richards.

28. In Dower etc. The Tenant pleaded in Abatement, that in such a Term be sued the Demandant, per nonum de jane Draycote tun inuper de L. in Con. D. and the not appearing, she was waived &c. unde petit judicium etc. The Demandant replied, that Die impteratinis brevis Originalis, upon which the Outlawry was had, she was commorant at S. in Oxfordshire, and traversed that she was commorant then at L. aforesaid. And upon a Demurrer to this Replication it was infil't for the Tenant, that tho' the Outlawry might for this Reason be erroneous, yet it was not void, nor voidable, but by Writ of Error, or by Averment upon the Outlawry Roll by the Party, who ought to come in in Custody, and not by the Plea of the Party in this Collateral Action. And the Court held the Replication not good, and that the Matter of it was not pleadable in this Collateral Action, and that the Outlawry shall be in Force till reverfed in a proper Manner. Lutw. 59. Hill. 11 W. 3. Draycote v. Curlon.

(H. b) Reversed. In respect of Appearance or Supercedas.

1. A Veror in Appeal was put in Exigent by Default of the Party who render'd himself, and made Fine, and it was not involv'd; and after the Exigent was return'd outlaw'd, and the Defendant brought Supersedeas fail'd, and Writ of Error to annul the Outlawry, and the Seal was broken, and bare Date in the same Term in which he was outlaw'd, but it was before the Outlawry pronounced, and the Writ knew not, and the Seal in Part of the Point well known, and therefore the Outlawry was reverfed, and he restored, and so it seems the Supersedeas was never deliver'd to the Sheriff. Br. Error, pl. 40. cites 8 H. 4. 7.

2. If a Man be outlaw'd where he has Supersedeas, it is Error. Br. S P. where the Outlawry was the 20 of July, and the Supersedeas bore Date the 15 July, and pray'd that the Outlawry be annul'd, and the Plaintiff being demanded, and making Default, the Court awarded that he take nothing by his Writ, and Defendant had Restoration of his Goods. Br. Utlawry, pl 4 cites : H. 4. 7.

In such Case he shall answer, and the Outlawry shall be held as null. Br. Utlawry, pl. 14. cites 12 H. 4. 18. Per Hanke.——S. P. Br. Utlawry, pl. 21. cites 19 H. 6. 44.

3. In Trespass it was in a manner agreed, that where Exigent Suits, and the Defendant files Supersedeas, and does not deliver it to the Sheriff, and he is outlaw'd alter, yet this shall not grieve him, by reason of the Supersedeas. Br. Utlawry, pl. 15. cites 14 H. 4. 27.

5 G 4. Error
4. Error was axiUncl'd, that where 2 Capias's ad Safisfacendam issued against 7. S. and upon this 2 Exigents, and the Defendant was outlaw'd, notwithstanding Superfedeas of Record, and the Sheriff return'd that the Superfedeas was deliver'd to him before the 5th County; and also it was alleged by Matter in Part, that the Superfedeas was deliver'd to the Sheriff before the 5th County; and for this Cause the Outlawry was revers'd. Quod not.

Br. Error, pl. 155. cites 3 E. 4. 5.

5. The Sheriff return'd upon the Exigent before the 5th County, that the Defendant had deliver'd him a Superfedeas; and thereupon a Certiorari issued to the Coroners, who return'd that the Defendant had not appear'd, nor produc'd any Superfedeas, but was outlaw'd; yet the Superfedeas being of Record, the Justices held the Outlawry void. Mo. 73. pl. 199. Trin. 6 Eliz. Anon.

6. Plaintiff having commenc'd a Proceeding to Outlawry against Defendant, Defendant gave Notice to Plaintiff that he had appear'd, and obtained a Superfedeas to the Exigent. Plaintiff return'd &c. to the Compter, and no Superfedeas being allow'd there, Defendant was return'd Outlaw'd, who moved to set aside the Outlawry. On shewing Cause Defendant alleged he had entred an Appearance with the Exigent; but that appeared to be unnecessary, and a Novel Impolloction by the Exigent, whose Appearance-book is two Years old only. The Court held that the Superfedeas is in itself an Appearance, if delivered to the Sheriff before the Return of the Exigent; but that not having been done in this Case, Defendant is regularly outlaw'd. Barnes's Notes in C. B. 224. 225. Mich. 11 Geo. 2. Peach v. Wadland.


1. Port. said that an Outlawry was revers'd lately, because it was Dockwra, instead of Dockaware. Br. Variance, pl. 90. cites 21 H. 6. 7.

2. A Man was nam'd A. in the Original, and B. in the Exigent; wherefore, by Opinion of the Court, it is Error, because there was not any Original which warranted the Exigent against B. Brook says it seems to him that this was in the Name of Baptism, and not in the Sirname; and therefore clear Matter. Br. Error, pl. 172. cites 16 E. 4. 9.

3. In the Original the Person outlaw'd was named Lancelot, and in the Exigent Lancelot. The Outlawry was revers'd. Cro. E. 50. Mich. 28 & 26 Eliz. B. R. Lancelot v. Johns.

4. In Trespass by G. against S. the original Writ, and all the judicial Process thereupon, are directed Vice-Com. Wigorn. and in the Felicer's Roll in the Margin, it is Hereford; and in the Body of the Roll it is Er prædict. G. obtulit &c. la quarto Die post. Et vicecomes modo mandat quod prædict. S. non est inventus &c. Ido præceptum est Vicecom' &c. and at the Capias return'd, it is enter'd in the Roll as before, viz. Hereford; whereas the Capias is directed Vicecom' Wigorn' as it ought to be. Day was given to maintain the Outlawry, and a Recordarum of what Estate the Roll was in then, for Doubt of Amendment by Rasure &c. was made at the Prayer of the Defendant's Counsel. 2 Le. 120. pl. 166. Hill. 30 Eliz. C. B. Grove v. Sparte.

5. Error to reverse an Outlawry in Trespass. 11. The Plaintiff in the Original was named Barnes, and in the Exigent, Barnns; so an (c) for (a) Gawdy held it no Error, because it was in the Name of the Plaintiff.
(K. b) Revers'd for what. Wrong Abbreviation.

1. O ne outlaw’d moved to reverse the Outlawry upon these Exceptions. 1st. Instead of Proximius, there is used Px. for an Abbreviation of it, without any Dots. 2dly, Instead of Infra fcr. the Abbreviation of Infra scriptam, there is used Infra fcr. And for these Exceptions it was quash’d. S. C. says the Exigent was Gargrave Gargrave de Kindly instead of Kindly. S. C. says the Exigent was Gargrave de Kindly instead of Kindly.

2. W. was outlaw’d in an Action of Trepass. It was moved to reverse the Outlawry, because in the Exigent it was Utile; being put for an Abbreviation of Utile. And upon this Exception it was revers’d. See the Statute of 4 Geo. 2, cap. 26, and 6 Geo. 2, cap. 14, as to Abbreviations.

(L. b) Revers’d for what. False Latin.

1. E rror to reverse an Outlawry. The Error assign’d was, because the Capias was Esse Edmundo Anderson, so as T. was wanting; for the Tolle is the Warrant of the Writ, and so it is of judicial Writs; and therefore the Outlawry was revers’d. Cro. Eliz. 592, pl. 31. Mich. 39 & 40 Eliz. C. B. Grondy v. Isham.

2. E rror to reverse an Outlawry in Debt after Judgment. The first Error assign’d was, because the Writ of Exigent being directed to the Sheriffs of the City of Lincoln, the Writ is Quod Capias corpus ejus; whereas they being 2 Sheriffs, the Writ ought to have been Capiatis & Habebatis. Sed non allocauir; for they both be but one Officer to the Court; and altho’ in the End of the Writ it is Ira quod Habebatis ibi hoc breve, yet there is no Repugnancy; for it is good both Ways. Cro. J. 576, pl. 4. Trin. 18 Jac. B. R. Gargrave v. Markham. S. C. and

3. Another Error assign’d was, because the Writ mentions Quas res S. P. superrari versus eam, where it ought to have been eam: And it was held that this was sufficient Caule to reverse the Outlawry. Cro. J. 576. 577. pl. 4. Trin. 18 Jac. B. R. Gargrave v. Markham.
4. And another Error affirm'd was, that it was *Infra nominata*, instead of *Infra nominata*, [an N. for an M.] and therefore it was revers'd. *Palm. 122. S. C.*

5. And another Error was *Wamata for Wacata*; and therefore it was revers'd. Ibid. *S. C.*

6. An Outlawry was revers'd, because the Writ was *Precipimus tibi*, where it should be *Precipimus vobis*, it being to the Sheriffs of London. *Het. 93. Paich. 4 Car. C. B. Anon.*

7. One was outlaw'd after Judgment in Debt; Exception was taken, that the Writ to the Sheriff was *Precipimus vobis*, instead of *Precipimus vobis*, and the Year of the Lord is in Figures. Roll Ch. J. said, If the Word be *Precippimus*, then there is no *Command to the Sheriff*, for that Word signifies nothing; therefore let the Outlawry be revers'd, and Judgment affirmed. *Scy. 334. Trin. 1652. Griffith v. Thomas.*

8. Outlawry for *Trefpaps* was revers'd, because it was *Utelegatus eff for Utelegatus*. *Lev. 164. Paich. 17 Car. 2. B. R. The King v. Worms.*


1. In Trefpa's, it was agreed that if a Man be outlaw'd where a *Capias* is wanting, he shall reverse the Outlawry by this Omission of Process, *Br. Omision, pl. 6. cit. 3 H. 4. 5.*

2. Want of Warrant of Attorney of the Plaintiff in a Suit in which the Defendant is outlaw'd is Error. *Br. Error, pl. 48. cites 11 H. 4. 34.*

3. Where the *Exigent* bears *Tefe* before the 4th Day of the Pluries *Capias* it is Error. *Br. Error, pl. 48. cites 11 H. 4. 34.*

4. Trefpaps against two, the one cause by *Diff'res* and pleaded *Not Guilty*, and was found Guilty, and the other is outlaw'd upon *Exigent* where no *Pluries Capias* is return'd; this was held Error by Radlur. *Br. Error, pl. 54. cites 9 H. 5. 9.*

5. Debt against two who were outlaw'd, and brought Writ of Error, because the *Premisses of the Original* was *Precipe both quod Reddant 40 l. by joint Precipe*, and all the Reit was *Precipe* the *one quod reddat 20 l.* and *Precipe* the other *quod reddat 20 l.* and therefore the Outlawry was reversed. *Br. Error, pl. 67. cites 7 H. 6. 27.*

6. A Man was inditled of *Trefpaps* by the Name of J. N. of D. &c. of Trefpaps done *Die Jesus proximo psst diem Pentecoste*; and it was assigned for Error that the *Day is not certain, for all the Week is Pentecost.* Er non allocatur; for the Day of Pentecost is the Lord's Day only; by which he said that in the County are *D. magna, and D. parvis, ubique hoc that there is any D. in the same County without Addition;* Prift. And the Opinion of the Court was, that it should be reversed. It seems that the Party was outlaw'd upon the Indictment; for such Exception of the Vill is not good; if a Man appears and pleads, and be condemned, he cannot assign it for Error after, as it seems; for of Matter in Fact, if he appears he ought to plead it. Contrary where he is outlaw'd, or loses by Default. Note
7. In Debr the Exigent was return'd Off. Finit. and the Defendant return'd outlaw'd at the 5th County held the 11th Day of July, where the first Day of the Return was the 10th Day of July, and so Outlawry after the first Day pass'd and before the 3d Day, at which it is us'd to certify the Return; and yet ill, and therefore the Outlawry was reversed for this Default. Br. Jours, pl. 84, cites 31 H. 6. 6.
8. Capias was return'd Non est inventus without more, and no Name of the Sheriff put to the Writ, and upon this the Defendant was outlaw'd, and therefore, per Cur. it is Error, and shall be reversed. Br. Error, pl. 2. cites 26 H. 8. 3.
9. In the Writ of Exigent no Place was mention'd where the Sheriff was S. C. cited to have the Body, so that he cannot know into what Court to bring the Body. And upon this being affign'd for Error a Judgment was reversed. Cro. E. 104. pl. 11. Trin. 30 Eliz. B. R. Caesar v. Stone.

That a Capias issued out of C. B. in this Form, viz. Ita quad habes Corpus ejus Coram Justitiariis, omitting (quo Writnonaifteritum) and this was reversed for Error.

10. Judgment was given in Debt against A. and B. and a Ca. Sa. issued against A only, and he was outlaw'd, and afterwards brought Error to reverse the Outlawry; and because it ought to have been awarded against both, the Court reversed the Outlawry. Cro. E. 648. pl. 3. Hill. 41 Eliz. B. R. Beverly v. Beverly.

11. Judgment in Debt for 80 l. the Sheriff levied 20 l. part by Ff. fa. on the Goods of the Defendant, and return'd the same on Record, but non Contit by the Record, whether the Plaintiff had received it, or no; afterwards the Plaintiff sued for a Ca. Sa. for the whole 80 l. upon which the Defendant was outlaw'd; but it was reversed by a Writ of Error, because it appear'd on the Record, that the Execution was already made for 20 l. part of the 80 l. so that the Ca. Sa. should have been but for the 60 l. Goldsb. 148. pl. 70. Hill. 43 Eliz. Anon.

12. One outlaw'd for not repairing a Bridge, was named in the Indictment and Exigent W. R. Miles de Comitatu Middlesex, whereas it should have been de (such a Place) in Comitatu Middlesex, and so allege some Place certain within the County; and for that Caufe the Outlawry was revers'd. Cro. J. 616. pl. 2. Trin. 19 Jac. B. R. Sir William Read's Cafe.

13. Error was affign'd to reverse an Outlawry, for that the Exigent was return'd on the same Day it bears Date, which ought not to be; and for this Caufe it was revers'd. Cro. J. 665. pl. 10. Hill. 20 Jac. B. R. Archer v. Dalbie.

because the Party has all the Day to come in upon the Exigent, and render himself; and the Outlawry was revers'd by Agreement of all the Justices.

14. An Outlawry for High Treason was revers'd, upon the Exception that it did not appear where the first Court was held. 12 Mod. 542. Trin. 13 W. 3. The King v. Yates.

15. The Error affign'd to reverse an Outlawry was, because in the Secundo Exrtl. it does not appear where the County Court was held; and for that Reason it was revers'd. 11 Mod. 173. pl. 15. East. 7 Ann. in B. R. The Queen v. Cope.

5 H (N. b) Re-
(N. b) Revers'd for what. Error in the Proclamations.


1. A New Outlawry was revers'd, because the Writ of Proclamation did not mention to what Sheriff the Defendant should render himself. D. 206. a. pl. 10. Mich. 3 & 4 Eliz. in Café of Belly v. Alger, says such Precedent was shewn in H. 8th's Time.

2. A Proclamation was directed to the Sheriff against J. H. and the Writ was returned null Die ad Comitatum meum tentum in the Shireball &c. Proclamationem feci, ac eodem Die ad Generalem Sessioinem &c. Proclamationem feci &c. This was pleaded in Reversal of the Outlawry, because the Proclamations were made at one Day, whereas the Writ was (tribus separatis Diebus &c.) And the Sheriff was amerced 40 s. for his ill Return. Goldsb. 111. pl. 17. Mich. 30 & 31 Eliz. Anon.

Error, because those Words (Facti' tribus separatis Diebus, unde uma Proclamatione &c.) were omitted by the Negligence of the Exigent, so that the Writ did not bear any Sense according to the Intent of the Statute of H. 6.—Béndl. 88. pl. 137. Hill. 3 Eliz. S. C. the Pleadings, and Outlawry revers'd.

3. Error assign'd was, because there was not any Proclamation in the County where he inhabited: Sed non allocutur; for it is not necessary in an Exigent after Judgment, when he once appeared, but upon the first Proceedings only. Cro. J. 576. 577. pl. 4. Trin. 8 Jac. in B. R. Lady Gargrave v. Gersefe Markham.

(O. b) Revers'd for what. In general.

1. 5 E. 3. cap. 13. E Naïts, That none shall avoid an Outlawry by the Sheriff's untruly certifying Impressment.

2. Outlawry was revers'd, because the Defendant was outlaw'd upon Indictment after Charter of Pardon granted to him by the King; and therefore the Outlawry upon Indictment revers'd. Quod nota. Br. Utlagary, pl. 16. cites 9 H. 5. 14. 15.

3. Judgment in Outlawry was Ideo per Judicium A. B. and C. Armiger, but omits Coronator', and also the Words Comitatis prædicti, the Court held clearly that both were Error. Palm. 43. Mich. 17 Jac. B. R. Anon.

4. An Outlawry was revers'd, because the Time when the Court was said to be held was in Figures. 2 Keb. 128. pl. 83. Mich. 18 Car. 2. B. R. The King v. Tufton.

5. Error was assign'd of an Outlawry, that it was Per Judicium Coronatorum, and doth not say Domini Regis: Sed non allocutur. 2dly. It was 40. exad. ad Com. meum apud Westminster, and doth not say ad Com. meum Middlesex; which Per Cur. is Error. 2 Keb. 157. pl. 43. Hill. 18 & 19 Car. 2. B. R. The King v. Abrahamall.

6. On a Motion to set aside an Outlawry, the Court held that the Defendant's own Affidavit of his being a visible Person, without a like Affidavit.
(P. b) Reversal against one. In what Cases another shall take Advantage thereof, and How.

1. Our were outlawed in Trespass, and the Existent was not returned, and one came and bad Writ to certify the Outlawry, and bad it certified, and had Charter of Pardon and Scire facias against the Plaintiff; and the Sheriff return'd him dead, and he went quit, by which the others came after with Pardon, and went quit by this Return of Death, without Scire facias against the Plaintiff. Quod nota; but this Case is not in the printed Book. Br. Utahawks, pl. 66. cites 7 H. 4. 30. and 9 H. 4. 1.

3. 7. 2. Affid by 2 against 2, who were outlaw'd upon Capias pro Fine, and Existent upon it, where the Diificuin was found with Force; and one Defendant brought Error, because Dificession with Force was pardoned by Parliament; and it was not inquired whether the Dificesion was after the Pardon, or not, therefore Error, and the Party Plaintiff warn'd, & nil dicit; and therefore the Outlawry was revers'd; and after the other Defendant brought other Writ of Error upon the same Error, and the Outlawry was revers'd without warning the Plaintiff; for he is stope'd by the Nihil dicit against the first, because it is of one and the same Dificesion; and also the Outlawry is but the Suit of the King; Quod nota. Br. Eitoppel, pl. 57. cites 7 H. 4. 40.

3. It was adjudg'd, that where 3 are outlaw'd in the same Suit jointly, if the Outlawry be reversed for Matter apparent at the Suit of any of them, the others shall take Advantage of this Reversal. Thefoc's dig. of Writs, Lib. 1. cap. 15. S. 21. cites Hill. 21 H. 6. fol. 30 & 31. and T. 8. fol. 2. Utahawks 17.

4. Debits against 2 by several Precipites, naming them of D. and they were outlaw'd, and the one was taken, and pleaded that No such Vill, and had Scire Pacias against the Plaintiff, who said that there is such a Vill, and found against the Plaintiff, and Defendant went quit. And after the other Defendant was taken, and pleaded the same Plea, and had Scire Pacias against the Plaintiff, who made Default, by which the Defendant would have had Advantage of the first Record. Per Prior, The King shall not be concluded by the first Verdict; for the King was not Party to it; nor this Defendant shall not have Advantage of it, for he is a Stranger. And Lateon accorded; for by them the Plaintiff may reverse the first Record by Attaint, and therefore it is not Reason that the other Defendant, who was not Party, shall have Advantage of this Record. Br. Eitoppel, pl. 223. cites 33 H. 6. 51, 52.

(Q. b)
(Q. b) Proceedings and Pleadings after the Outlawry reversed. How.

1. He who is in the Fleet upon Capias Utлагаum, at the Suit of J. N. shall remain there till he has found Mainprize upon other Outlawry at the Suit of W. N. if he prays it, notwithstanding he has Charter of Pardon. Br. Utlagyary, pl. 17, cites 38 E. 3. 21.

2. In Debt, if the Defendant is outlaw’d, and afterwards purchases Charter of Pardon, and Scire Facias against the Plaintiff, and pleads with the Plaintiff to the Action, he shall not be received afterwards to show that Pro-outlaw’d, and cease was discontinued, for that there were only 2 Capias’s before the Exigent per Opinionem. Theelo’s Dig. of Writs, Lib. 14. cap. 11. S. 2. cites Hill, 3 H. 4. 10.

3. He that reverses an Outlawry of Felony shall plead to the Felony, and shall not go quit by the Reversal of the Outlawry; for the Indictment remains good, notwithstanding the Reversal. Br. Corone, pl. 27. 18 E. 4. 93. That he shall be arraigned upon the Indictment.——Ibid. pl. 143. cites; H. 7. 5. S. P.——Br. Utlagyary, pl. 44. cites S. C.——He shall answer to the Felony, because it is the Suit of the King. Br. Respender, pl. 53. cites S. C.——Cra. J. 464. pl. 12. Hill. 15 Jac. B. R. Carter’s Case, S. P.——2 Hawk. Pl. C. 452. cap. 39. 8. 17. fas it is agreed, That after an Outlawry of Treason or Felony reversed, the Party shall be put to plead to the Indictment, for that still remains good.

4. A Man was outlaw’d notwithstanding a Superedes which he had before Outlawry pronounced, and came in Person, and prayed that the Outlawry be reversed, and so it was. Quod nota. And upon this the Plaintiff declared, and the Defendant impard’d. And so fee, that upon the Reversal of the Outlawry the Original remains good, and the Parties shall proceed. Br. Utlagyary, pl. 74. cites 30 H. 6. 3.

5. If a Man be outlaw’d in Debt or Trespass at the Suit of the Party, and he reverses the Outlawry, he shall not be compell’d to answer. Br. Respender, pl. 53. cites 7 H. 7. 5.

6. 21 Jac. 1. cap. 16. Enaets, That in all such Actions as are directed by this Act to be brought within certain Times therein limited, if the Defendant be outlaw’d in the Suit, and after reverses the Outlawry, the Plaintiff, his Heirs, Executors, or Administrators may commence a new Action within a Year after such Outlawry so reversed, and not after.

7. Action
Utlawry.

7. Action was laid, and Outlawry was in London. Upon Reversal the Plaintiff may declare in any other County, be the Action local or transitory. 3 Lev. 245. Mich. 1 Jac. 2. C. B. Whitwick v. Hovenden.

8. If one be outlaw'd by Process in an Information, and comes in and S. P. by Holt reverses the Outlawry, he must plead Infantror to the Information. 1 Salk. 371. pl. 12. Mich. 7 W. 3. The King v. Hill.

S. C. which was an Outlawry in an Information for sending Children beyond Sea, to be bred Papists.

9. H. was outlaw'd in two Actions, one of 10 l. and the other of 40 s. Ibid. says, and upon Reversal of the Outlawry, the Court took Special Bail for the first, and an Appearance for the other, upon 4 & 5 W. & M. cap. 18. 2 Salk. 496. pl. 6. Mich. 10 W. 3. B. R. Anon.

10. If Outlawry be pleaded either in Bar or Abatement, and the Plain-\( \text{t} \)f replies Non tili Record, and the Defendant has a Day given him to bring in the Record, and in the Interim the Plaintiff removes the Record by the very Identical Writ of Error, and reverses the Outlawry, tho' the Defendant fails to bringing in the Record, yet this shall not be fatal and peremptory on him; for in the first Case, he shall have Liberty to plead a new Bar; and in the second, the Judgment shall be only Repondas Ouffter, because his Plea was a true Plea at the Time of pleading it, and the Plaintiff was actually disabled from suing, not having then his Liberam Legem. G. Hift. of C. B. 162, 163. cap. 17.

(R. b) Pleadings in Support of the Outlawry, in Advantage of the King, and his Interest.

1. W. of S. was taken by Capias Utulagatam at the Suit of H. who said that the Day of the Writ purchased he was dwelling at D. and not at S. and pray'd Scire Facias against H. and had it, and the Sheriff return'd him dead; by which it was maintain'd for the King, that he was conversant at S. pront &c. and yet Scire Facias was awarded against the Executor of the said H. And the Prothonotary said, that it is the first Scire Facias that ever was awarded in this Case; For per Brian Clerk, if the Party Plaintiff had been to the Plea supra, and it had been found for the Defendant, the King had been concluded; and the same Law of the Plaintiff, by his Intendment, if he pleads against the King; and in this Case the Plaintiff shall not be non-suited for the Advantage of the King; and that if the Plea supra had been tried upon the Original, nothing should be but to abate the Writ; Per Brown, But here, after Outlawry upon such Plea, they shall recover all, or shall be bải'd. And P. 15 E. 3. the Defendant was outlaw'd, and came by Capia-\( \text{s} \)s Utulagatam, and pleaded Mifnofter of himself, and the Plaintiff maintain'd it, and nothing was done upon the Conclusance, because it was in the Disadvantage of the King. Br. Utlagary, pl. 23. cites 21 H. 6. 21.

he was dwelling at S. and the Justices said that if he had purchased Charter of Pardon, an had Scire Facias, which was return'd Nil, and the Alias filler, the Charter should have been allow'd. But in the first Case, if the Plaintiff was present, and would confess the Exception that he was not of S. yet the Traverfe should be accepted for the King.— Br. Charters de Pardon, pl. 20. cites 22 H. 6. 7.


51
2. Capias Utlagarym against J. N. of Hale, who came and said that
there is Hale, alias Hales, and Borrowdale and Dovehale, and that he was
dwelling at Dovehale, antique bos that he was dwelling at Hale aforesaid, and
the Plaintiff maintained his Writ. And the King's Sargent would have
demurr'd for the King, because the Defendant did not traverse that there is
no Hale, only in the same County. And per Laikon, The King has nothing
to do to demurr; for he is not intituled but by the Suit of the Party. And
when the Party is content, the King has nothing to do; as in Decies
tantum by W. M. the Defendant pleaded an Ill Bar, and the Plaintiff
replied, and would not demurr; the King cannot demurr; for he is intituled
only by the Party. And the Reporter agreed the Decies tantum;
for the King is not intituled before Judgment, but is intituled immedi-
ately by the Judgment upon the Outlawry, therefore by him the King
may demurr. But Laikon granted, that if the Plaintiff will make Default,
and confess, there the King may speak in it; but contra where the Party does
his Duty; for in the one Case there may be Covin, and in the other not.
Br. Utlagary, pl. 33. cites 38 H. 6. 1.

(S. b) Scire Facias. Necessary in what Cases. And Pro-
cedings and Pleadings thereupon.

Br. Scire Fa-
cias, pl. 157.

1. A Man outlaw'd of Felony said, that he was imprison'd at the Time
of the Outlawry, and it was aver'd contra for the King, by
which Scire Facias suffused to the Lords Mediate and Immediate, who came
and aver'd the Impressionment to be by Covin, and the others contra, and
Venire Facias suffused, and the Jury did not come, by which Process was con-
tinued thus, viz. Jaceat inter W. de T. & J. Def. quia sequitur pro Domino rege
pouiter in respeétu; making no mention of the Lords; and the Inquest
was taken between W. T. & J. of F. quia sequitur &c. and one J. Attorney of the
one of the Lords; and it was found that he was imprison'd by Covin, and
the Lords alleged Discontinuance of Process, and by Judgment was awarded to
commence at the first Venire Facias, where this first issued out of the Court,
because the Lords were now Parties. Br. Utlagary, pl. 40. cites 38
Aff. 17.

2. In Scire facias upon Charter of Pardon upon Outlawry, the Defendant
cannot allege Discontinuance nor Miscontinuance of Process upon the Outlaw-
y, in reverTING thereof; for the Statute is, that they shall plead upon the
Original, so that they shall not meddle with any Process. Br. Discon-
tinuance de Process, pl. 35. cites 3 H. 4. 10.

3. Where a Writ of Error is of the Outlawry only, it is the Suit of the
King only, and therefore the Party shall not be warned; but where the
Writ of Error is of the Outlawry and of the Judgment, the Party shall be

4. Four were outlaw'd in Trespass and the Exigent was not return'd, and
one came and had Writ to certify the Outlawry; and had it certified, and had
Charter of Pardon, and Scire facias against the Plaintiff; and there was a
return'd him dead, and he went quit, by which the others came after with Pardon, and went quit by this Return of Death, without Scire facias
against the Plaintiff; Quod nota. Br. Utlagary, pl. 66 cites 7 H. 4. 50.
in the Written Book.

Br. Error,
pl. 44. cites
S. C.

5. Scire facias upon a Writ of Error to reverse Outlawry, the Sheriff
return'd him, who recover'd, dead, and the Outlawry was reversed without

Br. Scire fa-
cias, pl. 68.

6. A Man was outlaw'd of Felony, and alleged that he was in the
King's Service at Burdeux at the Time of the Outlawry pronounced, and
had
Utlawry.

had Writ to the Mayor of B. to certify it, who certified accordingly; cites S. C.—by which he pray'd to be arraigned, and could not, till * Scire facias * Outlawry against the Lords mediate and immediate, which was return'd that he had no Lord mediate nor immediate, and after he was arraign'd of the for Felony, and pleaded Not Guilty. Br. Utlagy, pl. 10. cites 9 H. Scire facias against the Lords mediate and immediate is return'd, whether the Party has Lands or not; Quod not; And it was return'd that there were no Lords; for he had not any Land. Br. Utlagy, pl. 44. cites - H. 7. 6. — Br. S. Scire facias, pl. 165. cites S. C. — S. P. Arg. Le. 526. in Marsh's Case — S. P. Where the Outlawry was for Murder; Per Holt Ch. J. who said that he had Outlawries revered without such Scire facias, but that it was a dangerous Courte; for tho' the Lords mediate and immediate, when they are summoned by such Scire facias, could not plead in Nulle et errantem, nor bar the Reversal of the Judgment, yet they may plead Rex victoribus leviter, or by the arrest of the Outlawry, in Bar of Retitution; but since they the Lords cannot maintain the Judgment, such Scire facias seemeth rather of Caution then of Necessity; Per Holt Ch. J. 12 Mod. 545. Trin. 15 W. 3. the King v. Young.—S. P. by Holt Ch. J. Comb. 372. Trin. S. W. 3. B. R. the King v. Taylor, who brought a Writ of Error to reverse an Outlawry of Murder committed 18 Years ago; and assign'd for Error that the County Court was not held for the County; and notwithstanding the Fact was so long ago, the Court refused to bawl him in the mean Time.

7. One was outlaw'd of Felony, and the Party reversed it by Writ A. was out of Error, and it was furnis'd, that he had neither Land nor Tenement, and the Attorney General confess'd it, by which he was disinn'd without free Indictments for Fe- Scire facias to be awarded to the Lords mediate and immediate. Br. Scire facias, pl. 194. cites 4 E. 4. 9. Scire facias, pl. 194. cites 4 E. 4. 9.

Error. Holt Ch. J. said, if he hath no Lands, and it is suggested on the Bail that he hath none, in such Case the Attorney General may confess Error without a Scire facias to the Lords mediate and immediate, to shew Caution why he should not have Retitution; but if there are Lands, then there must be such a Scire facias. 2 Salk. 495. pl. 5. Hill. 8 W. 5. B. R. Arthur's Case. — Ld. Raym. Rep. 154. S. C. accordingly.

Where one came to reverse an Outlawry in a Cafe of Murder, upon Confession of the Attorney General that he had no Lands or Tenements, which Confession recited, that it so appear'd to him on Affidavit; the Outlawry was reversed, and Error was maintain'd; and the Court was not held in Pro Court without any Scire facias to the Lords mediate and immediate; and he was sent Prisoner to the Old Bailey. 12 Mod. 668. Hill. 15 W. 3. the King v. Bishop — The Confession must be on Record. Per Holt Ch. J. 12 Mod. 545. Trin. 15 W. 3. the King v. Young.

8. He who was outlaw'd by Name of C. Falter, where he says that his Br. Mihoof. Name is C. Walter, and is taken by Capias Utlagyatum shall go by Main- per, and shall have Scire facias to try his Name. Br. Scire facias, pl. 2. Br. Utlagy pl. 1. cites S. C. cites 27 H. 8. 11. Thelaw's Dig. of Writs, lib. 11. cap. 4. S. 5 cites S. C. — So in Troppat against J. Stokes, who was outlaw'd at the Suit of the Plaintiff, and taken by Cap. Utlagy, and said that his Name is, and was J. Stokes and not J. Stokes, and had Scire facias against the Plaintiff, who came and said, that he was known by the one Name and by the other; And so to issue. Br. Scire facias, pl. 186. cites 4 E. 4. 16.

9. A Man was taken by Capias Utlagyatum in Felony by Name of J. S., Br. Scire fa- Gent. who said that his Name is Yeoman and not Gent. and so is not this Cias. pl. 164. Perso who is outlaw'd, and had the Plea; and because it was in Appeal, Scire facias was awarded against the Appellant, if he had any thing to say against this Plea, and the Defendant was let to Bail. Br. Utlagy, pl. 42. cites 5 H. 7. 16. 10. A. held Land of the Queen, and was outlaw'd for Murder. The 2 Hawk. Pl.C. 462. Queen seized the Land and gave it to B. and his Heirs. A. brought Error Queen, and reversed the Outlawry. Upon Reference to the 2 Ch. Julices, they 19 say, the were of Opinion that A. might enter upon B. for there is not any Record S. P. has been ad- now of the Atcaineer to inform the Party to sue by Petition, but the Re- cord is utterly defeated; and cites 4 H. 7. 11. 12. and 8 H. 4. 21. And in the Cafe Manwood and Peryam, agreed with this; for tho' an Office were found, of Treasur- ke and Felony.
Utlawry.

He shall not be put to his Seire facias to repeal the Patent before he enters. And. 185. pl. 223. Anon.

11. The Court was moved that an Outlawry might be discharged, because it is now pardoned by the Act of Oblivion; for notwithstanding it were not pardoned if it were an Outlawry after Judgment, except the Monies due, for which the Party is outlaw’d, be paid to the Party, as the Book of 6 H. 7. f. 21. is, yet Outlawries before Judgment are pardon’d; and besides the Parties here did submit to an Arbitrement touching the Matters in Difference between them, and an Award is made. But the Court answered, That the Outlawry cannot be discharged until the Party have brought his Seire facias upon the Act. Sir. 348. Mich. 1652. Ellis v. Pipin.

A. had been outlaw’d for High Treson, and obtained from the Crown a Writ of Error to reverse this Outlawry; and the Attorney General had Orders to confess in Court the Error assigned which was an Error in Falz, viz. That he was outlaw’d by a wrong Addition; which the Attorney did accordingly. The Court was therefore pray’d, that the Outlawry might be reversed. But Parker Ch. J. was of Opinion, that tho’ in Outlawry for Treson there is no Need of Warning the Lords of whom the Lands are held by a Seire facias before the Outlawry be reversed, as must be done in Case of Felony, because in Treson the Forfeiture is to the Crown; yet he saw no Reason to distinguish between Outlawry for Felony and Outlawry for Treson; for in Case of Treson, where the Forfeiture is to the Crown, the Crown may grant these Lands to others, who ought to be heard, what they can say for them selves before they lose their Lands. He thought therefore there should have been a Seire facias to the Tereants; and grounded himself pretty much on a Case in H. 4. where there was a Seire facias to the Tereants; and tho’ this was an Outlawry for Felony, yet the King’s being made immediate Lord, made it all one as if it had been an Outlawry for Treson; and the Entry in Case of Felony, as may be seen in Coke’s Entries 318. mentions the doing out of a Seire facias, as a Thing of absolute Necessity, without which the Judge could not reverse the Outlawry. But on searching into Precedents, it was found, that in Fact in Outlawry for Treson there used to be no Seire facias; and the Precedents being so, and it being a Supposition not of Necessity, that the Crown should grant these Lands and then quit the Patentees by suffering a Writ of Error to be brought, the Outlawry was reversed. 10 Mod. 159. Mich. 12. Ann. B. R. the Queen v. Stafford.

13. If one be sued to Outlawry after Judgment, there needs no Seire facias to renew the Judgment after the Year and Day, because being outlaw’d you may have Execution on his Effects at any Time on Behalf of the King; and there is no Occasion to give a legal Notice to him, who is out of the King’s Protection. G. Hist. of C. B. 14. 15. cap. 2.


1. The Opinion of the Court was that one outlaw’d of Trespass shall, not, after Charter had, have Action of Account of Receipt after the Outlawry. Thelot’s Dig. of Writs, lib. 1. cap. 15. S. 9. Patch. 28 E. 3. 92, and 93.

2. If a Man is outlaw’d, and the King gives his Goods, and after the King pardons and restores him to his Goods, he shall not have Restitution of the Goods, which the King gave Mefnie between the Pardon and the Restitution. Br. Restitution, pl. 18. cites 29 Aff. 34.

3. A
Utlawry.

3. A Man outlaw'd where he has Superfedeas bearing Date before the Outlawry, shall have Restitution of his Goods. Br. Restitution, pl. 2. cites * 7 H. 4. 1.

and the Seal of the Superfedeas was broke, and the Date was before the Outlawry pronounced; and because the Writing and Seal was known, and the Print of the Seal well known, he was restored, and the Outlawry annul'd. Br. Restitution, pl. 27; cites S. H. 4. 7.

* Br. Utulagary, pl. 5. cites S. C.

4. The Property of the Chattles of one outlaw'd shall be in the King by the Outlawry, and he shall not have Restitution of these Goods by his Charter of Pardon, but shall be only restored to the Law; Per Rickhill. But there, because the King Covert when the was outlaw'd with her Baron, who is now dead, the had Writ of Restitution of her own Goods. Theloa's Dig. of Writs, lib. 1. cap. 15. S. 12. cites Mich. 7 H. 4. 76.

5. A Man outlaw'd of Felony revers'd it by Error, and had Seire facias against the Lords mediate and immediate, and against the Tertinants, and was restored per Judicium. Br. Restitution, pl. 29. cites 1 H. 4. 53.

6. In Appeal, if the Defendant upon Exigent is returned Capias Corpus where it could be Exigis facias, he appears and pleads Not guilty, and is acquitted, there, by the Reporter, tho' he shall not recover Damages, because the Original was good, notwithstanding the Return was ill, yet he shall have his Goods, because it is Error. Quære how; for it seems he shall not have Writ of Error, because he appear'd and pleaded, and was not outlaw'd. Br. Restitution, pl. 8. cites 9 H. 5. 2.

7. A Man was indicted of the Murder of one T. N. and Capias iss'd, and the King pardoned him all that in him was, and all his Goods and Possessions, and after this he was outlaw'd, and the Outlawry revers'd by Writ of Error; and he prayed Restitution of his Goods, and could not have it, because it did not appear of Record that they were taken, which was contrary to the Opinion of Hank. Br. Restitution, pl. 9. cites 9 H. 5. 15.

8. It was held that a Lord outlaw'd shall not after Charter had, have the Rent which was Arrear before the Outlawry. Theloa's Dig. of Writs, lib. 1. cap. 15. S. 10. cites Hill. 9 H. 6. 57.

9. Where the Accessory is outlaw'd of Felony, the Accessory shall be restored to his Goods after the Death of the Principal; for by the Death of the Principal the Accessory is discharged. Br. Restitution, pl. 13. cites 21 H. 7. 31.

10. After the Reversal of an Outlawry, a Writ of Restitution was awarded to recover the Goods, Court, whereas the Goods were worth 100 l. But the Return was held ill; for the Capias Utlagatam &c. has not a Word of selling the Goods; so that it seems to be without Warrant. D. 223. b. pl. 26. Trin. 5 Eliz. in a Nota of the Reporter, at the End of the Case of Lambert v Proctor. But he adds, viz. Nota these Words in the Writ, viz. "Et ea quae per inquisitionem illam inventa, in manibus nostris capias & habeas custodias, ita quod de vero VALORE & EXISTIBUS servanda nobis respondas." Whence it seem'd to Catlyn, Saunders, and Whiddon, that the Sheriff might sell them, or answer the Value to the King, and retain the Goods himself &c. Ideo quere bene. S.P. accordingly. Per Cor. Obiter in Dr. Draper's Case, S. Rep. 147. a. Patch. 8 Jac. and cites this Case of Proctor as agreeable thereto. — S. P. accordingly, and S. C. cited Per Cor. 5.

Rep. 60. b. Trin. 42 Eliz. in the Exchequer, in Hoce Case. — D. 223. b. Marg. pl. 26. cites a Case Ex libro Magiltri Noy, viz. Patch. 2 R. 2. B. R. Rot. 50. that W. Baker was outlaw'd; whereupon H. Beauchamp produced the King's Writ to the Exchequer to pay the said H. 20 l. of the Goods of the said W. by Gift of the King. Afterwards W. recov'd the Outlawry for Error, and had Judgment for his Goods lost. Whereupon W. impeached the Exchequer for the said 20 l. who produced the said Writ, testifying his Payment thereof to the said H. and that he is discharged thereof; and a Precept issued to the said H. to answer and satisfy the said 20 l. whereupon H. prayed Aid of the King, but Judgment was given that he repay the said Money, and that W. have Execution. 5 K 11. Pend.
Utlawry.

11. Pending a Quare Impedit the Plaintiff is outlaw'd. The King presents by Virtue of the Outlawry; the Presentee is admitted, inducted, and indicted. Upon Reversal of the Outlawry, after Judgment for him in the Quare Impedit, he may have Scire facias to have Execution of the Judgment, and remove the Incumbent. Cro. E. 44. Mich. 27 & 28 Eliz. C. B. Beverly v. Cornwall.


12. The Queen seised in Fee makes Leafe for Years to a Person outlaw'd, and after he was outlaw'd twice more, and before any Seifure or Grant over by the Queen, a general Pardon by Parliament was made, which gives and grants all Goods and Chattels forfeited to them by whom they were forfeited. This was a good Leafe, because the Render of the Rent made him capable as a Farmer; but upon the 2d Outlawry, the Term is secondarily given to the Queen; and the Reversion being in the Queen, the Term feems extinguished in it, and do not restored by the Dasimus in the Pardon. Mo. 237. pl. 371. Pach. 29 Eliz. in the Exchequer, Knowles v. Powell.

But it is otherwise upon a Charter of Par- don, for there he shall not be restored to the Presentment. Br. Forfeiture de Terres, pl. 73. cites 9 H. 6. 57. Per Pa- ton.——Ibid. pl. 104. cites S. C. For Pardon is not Restitution.

13. If Lord of a Manor to which Advowson is appertaining, is outlaw'd, and the King takes the Profits, he shall present, and the Party shall not be restored to this Presentment after Induction, it he reverses the Outlawry. Otherwise it is where the Advowson is in gross. Mo. 269. pl. 421. Mich. 30 & 31 Eliz. in Case of Beverly v. Cornwall.

14. If Advowson comes to the Queen by Forfeiture for Outlawry, and the Church is now void, and the Queen presents, and then the Outlawry is revers'd for Error, yet the Queen shall enjoy the Presentment, because the Presentment comes to the Queen as Profit of the Advowson. Mo. 270. Beverly v. Cornwall.

15. But if a Church be void at the Time of the Outlawry, and the Presentment by this is forfeited as Chattel principally and dinstinct by itself, there, upon Reversal for Error, the Party shall have Restitution of the Presentment. Mo. 270. in Case of Beverly v. Cornwall.

16. Lord of a Manor is outlaw'd, and the King grants Copyholders, the Party shall not defeat them by his Restitution in Error, because they are but Things accessory to the Principal. Mo. 270. in Case of Beverly v. Cornwall.

And. 277. S. C.—


A Lease for Years being the Princi- pal, is to be restored on the Reversal, the Profits received are forfeited and lost. Admitted by the Counsel for the Outlaw. 2 Vern. 513. Peyton v Aylliff.

—By
The Grant of goods of a Peron attainted is still the Outlawy be reversed. Arg. Vern. R. to, in Cale of Podgers v. Phrazer.

18. J. N. and J. S. sued B. to an Outlawy before Judgment. It was 2 Vern. 315. founded by Inquisition that B. had 500 L Stock in the East-India Company. Hill 1693. The King seiz'd the Stock, and granted it to J. N. and J. S. in Satisfaction of their Debts, and that they might sue for it in their own Names. The Court of Exchequer decreed the Stock to be transferr'd to them, and did that and the Company entered the Names in their Books, and put out the Name of B. Afterwards J. S. assign'd his Interest to W. and his Name is enter'd in the Company's Books for his Share. B. reverses the Outlawy. J. N. proceeded in his Action, and got Judgment, but no Execution. The King granted to B. a Re restitution de omniibus, de quibus nos non es feriptum. Then P. another Bond-Creditor, got Judgment against B. and outlaw'd him after Judgment. The King granted this 500 L. to P. as he had before granted to J. N. and J. S. Upon a Bill in the Exchequer by P. the Court decreed, That the Stock was well transferr'd by the Grant to J. N. and J. S. and that it was executed by transferr'g the Stock, and to the King answer'd of it. As to the Cale of Outlawy before or after Judgment, or of the Allignce of the King's Allignce, and the King's immediate Allignce, they made no Difference. And tho' J. N. after Reversal of the first Outlawy, sued and got Judgment against B. yet they held no Difference between the Cale of him and W. but that both should hold the Proportions assign'd at first to J. N. and J. S. 2 Lev. 49. Pach. 24. Car. 2. in the Exchequer-Chamber, Pinfold v. the East-India Company, Northev & al.

19. In Scire Facias to have Restitution after Reversal of the Outlawy, 2 Show. 68. ry, it was intituid that the Leafe made by the King to the Plaintiff of pl. 37. Tria. 21. Car. 2. the Outlawy's Lands, is made to him for Satisfaction of his Debt out of B. R. S. C. the Reiudue of the Profits, after and beyond the Fine and Rent reserv'd, and to the Reiudue beyond is receive'd by him to his own Ufe; and of Borrow therefore after Reversal of the Outlawy, all the Reiudue ought to be re- paid by him. Quod tuit Concessum per Cur. And said that 'tis Part of the Money received was levy'd by Proceeds of the Exchequer, this was in Aid of the Plaintiff, and for his Benefit the Money was levy'd of the Rents, King's Issues, and Profits, and after, in Purulance of the Demife, made, deliver'd to him, which is in Law a Receipt, and Levying out of the Rents foTiional; and by him. Quare Judgment given. 2 Jo. 101. Mich. 29. Car. 2. B. R. Rockley, alias Buckley v. Wilkinson.

Goods shall be transferr'd, and then the Party is set where he was, as if the Outlawy had never been; but the contrary was urg'd to be the Practice of the Exchequer, to which the Court agreed. S. Keble 571. pl. 24. Wilkinson v. Rockley. S. C. says it was objected, that this should be plea'd in the Exchequer upon the Seifire and Extent, which the Court agreed. And that of Profits answer'd into the Exchequer there can be no Restitution against the King, according to 21. H. 7. 8. that of Profits levied, and not answer'd into the Exchequer, there may be Restitution there, but not here in B. R. And per Cur. a Superfideas was award'd as to the Restitution. — S. C. cited 2 Vern. 314. in Cale of Peyton v. Ayliff. — 5 Mod. 49. Trin. 7 W. 2. in the Case of the King R. Cuphby, it was said by Treby Ch. J. in his Argument, That upon Reversal of Attainters, we know there is no Restitution of the Money paid to the King; and the Reason is, because the Barons cannot in such Case controlo the Treasurer. He remember'd, several Years since, there was a Solicitor who brought the Rolls of a forfeited Estate in Dispute into Court, and they order'd the Money to be put into the Hands of the Remembrancer; for they said, if it was once paid into the Treasury, there was no getting it out again. And ibid. 61. per Holt Ch. J. It is true, if a Man be outlaw'd in B. R. and the Party's Goods are plea'd into the King's Hands, and the the Outlawy is reversed, there can be no Restitution. The Reason of this is, for that the Court of B. R. cannot fend a Writ to the Treasurer; and the Court of Exchequer have no Record before them to issue out a Warrant for a Restitution. So if an Attainer be reversed, the mean Profits taken into the Exchequer cannot be recover'd, for the same Reason; and also for that the King cannot be made a Diffeitor, and the Statute gives a Remedy only as to Parliament.—S. P. Skin. 614, 615. per Holt Ch. J. in the Banker's Cafe.

22. A Man had a Debt due to him by Judgment, and was outlaw'd. The Grantee from the Crown acknowledg'd Satisfaction upon the Record of the
the Judgment. Upon Reversal the Acknowledgment was set aside, and
Restitution made. Arg. cited as the Case of Garret and the Earl of
Holland. 2 Vern. 313. in the Case of Peyton v. Ayliff.
21. Equity of Redemption of a Term for Years was restored upon Reversal of
Outlawry for Treasons, (tho' doubted by Counsel Arg. if it was forfeitable
or not, being only of a Term for Years.) 2 Vern. 312. pl. 302. Hill.
1693. Peyton v. Ayliff.
22. The Judgment on the Reversal is to be restored to what was not
answer'd to the King, which in all Cases has been understood of the
profits answer'd to the King, and not as to the principal Thing itself,
tho' feiled into the King's Hands; and he took it to be the name in Case
of a Lease for Years as of a Freehold; per L. K. Sommers. 2 Vern. 315.
Peyton v. Ayliff.
23. A Bill was to be relieved against a Judgment in Ejectment, ob-
tain'd by virtue of a Purchase under a Vindicti Exposits of a Term for
Years, on an Outlawry of the Plaintiff, who intitled that his Title to the
Lands was a Fee, and not a Term for Years; upon which an Injunction
was granted. But the Defendant pleaded the Purchase under the Outlaw-
ry, and it was allow'd, and the Injunction dissolved. G. Equ. R. 154.
12 Geo. 2. in Canc. Robinson v. Haynes.

* See (L. a)

(U. b) Restitution. How granted, or * obtain'd.

1. A Man was outlaw'd, and reversed the Outlawry, and had Writ of
Restitution of his Goods, directed to the Bailiff of Westminster; and
so it seems that Writ of Restitution may go to whomever has the
2. Upon a Motion for a Restitution, after Reversal of an Outlawry,
it was laid by Hale Ch. J. That he must plead the Reversal to the Seifure

(W. b) Grantee of Outlaw. What Interest he has after
Reversal. And who bound by such Grant.

1. **THE Term being outlaw'd for Felony, granted his Term and Inter-
test to the Plaintiff**, who is put out by J. S. and after the Outlaw-
ry is reversed; and the Plaintiff brought Trespass for the Profits taken
between the Outlawry reversed and the Assignment. And the Quelition was,
If the Action did lie; for that during that Time the Queen had the Inter-
test, and the Allignee had no Right. And it was adjudged for the
Plaintiff; for by Reversal it is as if no Outlawry had been, and there is
no Record of it. Cro. E. 270. pl. 13. Hill. 34 Eliz. in Sacc. Ognell's
Cafe.
2. An Outlaw suffers a Common Recovery. This will bar the Estate-
Tail, because of the intended Recompence only, and the Tenant might
have counterpleaded the Vouching such Person, and so it is his Fault.
(X. b) How to get at, or discover the Effects of the See (R.) (S) Outlawy.

1. A sued B. to an Outlawy in Debt on Bond before Judgment, and brought a Bill against C. who was Trustee for B. of an Annuity of 20 l. a Year, devised out of a personal Estate, to subject it to the Plaintiff's Debt. Lord C. Parker, at first, inclin'd that the Bill did not lie; but afterwards was of another Opinion, all the Defendant's Interest, both equitable as well as legal, being forfeited to the Crown; and tho' the Plaintiff was intituled to a Grant thereof from the Crown, which upon Application to the Court of Exchequer he would of course have, yet since this Trust continued in the Crown till taken out, the Plaintiff was directed to get such Grant, and make the Attorney-General a Party, and then to come again. Wms.'s Rep. 445. Trin. 1718. Balch v. Waitall.

2. So where B. owed A. 100 l. and C. owed B. 100 l. on Note. A. out-law'd B. and brought a Bill in Chancery against B. and C. to have this 100 l. paid him. The Matter of the Rolls declared, that A. could have no Title but by Grant under the Exchequer Seal, all B.'s personal Estate being veiled in the Crown by the Outlawry; and put off the Cause, in order that A. might get such Grant, and make the Attorney-General Party. Wms.'s Rep. 446. Trin. 1718. in the Case of Balch v. Waitall, cites it as Patch. 1721. Hayward v. Fry.

(Y. b) Executors or Administrators of Outlawy. Their Power and Interest. And Pleadings by them.

1. In Debt against Executors, they pleaded Outlawry in their Testator. Upon Demurrer Walmley and Owen J. held if no Plea; for one out-law'd may well make a Will and Executors, and they may have Assets to satisfy, over and besides the Goods forfeited, as in Case of Debts due upon Contract; or it might be that he devised Lands to be sold by his Executors, which are sold, the Money is Assets in their Hands. But Beaumond e contra; for the Bar is good to a common Intent, and such kind of Assets shall not be intended, unless shewn. Anderson absitente, Adjornatur. Afterwards for Defect in the Pleading, without Regard to the Matter in Law, it was adjudg'd for the Plaintiff. Cro. E. 575. pl. 21. Trin. 39 Eliz. C. B. Wolley v. Bradwell & Ux' Executors of Manners.

Wms. 58 in the Cafe of Bulloigne v. Gervaise, has a Note at the End, viz. Note well that it was said concerning this Cafe of Manners, that a Writ of Error was brought of that afterwards, and that the Cafe remains till this Day undetermined.

2. Debt upon Bond against B. Administrator of A. B. pleaded in Bar, that A. his Intestate was out-law'd after Judgment, and died, and the Outlawy still in Force. Upon Demurrer it was objected, that this is a Plea S. C. lays only by way of Argument, that he shall not be charged for this Debt, that upon because he has no Assets; and in this Case this Outlawy ought to be given in Evidence upon Riens enter Mains pleaded, and should not be pleaded in the View of the Record in Wolley's Cafe; the
Wages.

ministrator shall be charged if he has any Goods. The Court seem'd to think the Plea not good. Win. 53. Hill. 20 Jac. C. B. Bulloigne v. Gervase.

3. Tho' Choses *en Aflag* are recoverable by Information in the Exchequer, yet if the Executor brings a Receiv Ejectment on a Judgment, he shall recover, and be accountable to the King for it; and the Debtors of the In testing (tho' he was outlaw'd) may pay their Debts to the Admitter, and his Recover's a good Discharge. Hutt. 54. Mich. 20 Jac. in Case of Bullett v. Jervis.

For more of Utlawry in General, see Account, Accessory, Addition, Error, Execution, Plea and Denunciation, and other Proper Titles.

Wages.

(A) Servants Wages recoverable in what Cases, and How, before the Statute of 5 Eliz. And Orders of Justices relating thereto, since that Statute. Good or not.

1. D E B T against a Prior by a Servant retain'd with his Predecessor, in Office of Bailiff of Husbandry, for 40 s. per Ann. which was more than the Statute allow'd, and did Service to the Predecessor to the Use of the House; and held that it lay well, tho' the Wages exceed the Statute, inasmuch as he was retain'd, and the Service came to the Use of the House. Br. Dette, pl. 214. cites 3 E. 4. 21.

2. If a Servant be retained for 40 s. per Ann. and serves, he shall have Debt, but he ought to count that he was in the Service during the Time. Br. Count, pl. 47. cites 37 H. 6. 8.

3. The Statute of 5 Eliz. cap. 4. extends to such as are retained in Husbandry; and therefore other Retainers are left as they were at Common Law, and a Retainer shall be intended according to the Statute, unless the contrary be shew'd by the other Party; so that where the Retainer was for a Year, it shall be intended that the Wages were appointed by the Justices; Per Winch J. And it was also said by the Court, that if the Justices of Peace in this Kind do neglect to set down the Wages, yet a Servant may bring an Action upon his own Contrary, and that he need not prove the Place where he did his Service; for if he did no Service, yet if he did not depart, it is very good. Win. 75. Patch. 22 Jac. C. B. Weaver v. Bait.

4. Justices
4. Justices of Peace made an Order for D. to pay his Coachman the Wages agreed upon between them. It was moved against this Order, that the Statute 5 Eliz. cap. 4. extends not to Coachmen, or other Servants than in Husbandry. And the Court were of the same Opinion, and quah'd the Order. 2 Jo. 47. Paich. 28 Car. 2. B. R. De Vall's Case. Mod. 142. in Cæse of the King v. Gately. —— Only Labourers are not within the Statute; Per Hallow. Comb. 3. Mich. 1 Jac. 2 B. R. Snape v. Dowle.—— Justices of Peace have no Jurisdiction to judge of Wages, unless in Cæse of Husbandmen. 10 Mod. 68. Mich. 10 Ann. B. R. The Queen v. Wooton.—— S. P. 6 Mod. 91. Hill. 2 Ann. B. R. The Queen v. Corbet.

5. Exception to an Order of Sessions upon the Statute for Servant's Wages, viz. That it does not appear that the Servant was hired according to the Statute. Quah'd. Comb. 3. Mich. 1 Jac. 2. B. R. Snape v. Dowle.

6. An Order of 2 Justices for Payment of Wages recited it to be due to a Day-labourer not retained by the Year, according to the 5 Eliz. 4. The Court held clearly the Order to be void, because the Justices of Peace have no Authority as to Servants Wages, unless hired by the Year according to the Statute, and in the Service of Husbandry; and this not appearing in the Order, it was quah'd; for the Statute takes no Notice of other Service; and their Power, as to Wages, is only what they have by the Statute. Carth. 156. Mich. 2 W. & M. in B. R. The King &c. v. Champion.

A Justice of Peace made an Order for the Payment of a Servant's Wages; and upon an Action brought against him, the Plaintiff recovered 30l. Damages. Arg. 5 Mod. 142. in the Case of the King v. Gately, cites it as one Reyeroft's Case.

8. It was moved to quah an Order of Sessions for Servants Wages and Costs of Suit, for Non-payment whereof they committed him to Prison, which it was said they could not do, and that they ought to have indicted him for disobeying their Order; and that the Justices of Peace have no Power to compel Payment of Servant's Wages; And it was ordered to be quah'd, Nih. 5 Mod. 419. Mich. 10 W. 3. The King v. Pope. 5 W. & M. The King and Queen v. Jammer; and that it was there held that the Justices could enforce their Order by Commitment.

9. An Order to pay for Day's works and Labour done, was held well; The Court, for the Court will intend it within their Jurisdiction upon general Words, unless the contrary appears upon the Face of the Order. 1 Salk. 441. in the Case of the Queen v. Gouche, it was cited by Gould J. as the Case of the King v. Dummer.

The Face of the Order, presume Servants to be Servants in Husbandry, and will admit of no collateral Proof to the contrary. 10 Mod. 68. Mich. 10 Ann. B. R. The Queen v. Wooton.

10. An Order of Justices, reciting that 42 s. 4 d. was due from G. to J. S. for Work and Labour in Husbandry, required him to pay the same. It was objected, That it does not appear to be Statute-wages, and their Jurisdiction is of no other. But per Powell and Gould, tho' the Statute gives them a Power only to set the Rate for Wages, and not to order the Payment; and the Courts of Law indulge Remedies for Wages, as appears by its suffering the Admiralty to have Cognizance of Mariner's Wages; and therefore they would intend it such Wages as were within the Statute. And the Order was affirm'd, Holt absente. 1 Salk. 441. pl. 3. Mich. 1 Ann. B. R. The Queen v. Gouche.

11. The Justices of Peace made an Order upon the Defendant, that he should pay B. so much Money for Labour and Work done, without saying fo much as that he was his Servant; and it was quah'd; for Per Cur. This element S. C. might pl. 25. cites S. C.
might be Carpenter's Work &c. 6 Mod. 91. Hill. 2 Ann. B. R. The Queen v. Corbet.

12. Order was for Payment of Wages, reciting that 2 Persons were retained by L. Overseer of the Works in Hampton-Court Gardens, at so much per Diem, and had work'd there so many Days; therefore the Order was, that L. should pay them; Et per Cur. The Statute extends only to Servants in Husbandry, not to Gentlemen's Servants, nor to Journeymen with their Maiters; Had the Order been general, viz. to pay so much to 2 of his Labourers &c. or to 2 of his Servants, the Court should have supposed them Servants in Husbandry, but here is no Room for such an Intendment, since the contrary does not appear. Salk. 442. pl. 5. Trin. 3 Ann. B. R. The Queen v. London.

13. An Order was made by the Justices of Peace, for the Defendant to pay 40 s. for Wages generally; and because it was not said for what Wages, it was moved to quash it; for they can only settle Wages in Husbandry; But Per Cur. we will intend it for such Wages, since the contrary does not appear. Salk. 484, 485. pl. 40. The King v. Gregory.

14. An Order of Sessions was made upon the Maiter, to pay 7 l. Wages to J. S. his Servant in Husbandry. It was objected that J. S. was a Covenant-servant, and that the Statute does not extend to such, tho' in Husbandry. But Powell J. held that the Statute of 5 Eliz. having a favourable Construction, has been extended to Covenant-servants, if in Husbandry. 11 Mod. 266, 267. Hill. 8 Ann. B. R. The Queen v. Cecill.

15. Order for Payment of Servants Wages quashed, because the Evidence for the Order &c. was only the Servant, and he is not good Evidence, being interested. MS Cases, Hill. 3 Ann. B. R. The Queen v. Cecill.

16. A Warrant was granted by a Justice of the Peace upon the Statute of the 5 Eliz. against a Maiter, for not paying a Labourer's Wages, without Proof on Oath that any thing was due. And for this Information was granted against him. And the Court held further, that the Warrant is not to be granted in the first Instance, but after a Summons and Conviction. Trin. 11 Geo. 2. B. R. The King v. Covert.

For more of Wages in general, See Mariner's Wages, Waifer and Servant (N) and other Proper Titles.

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Waife.

(A) Waife. [What shall be said Waife.]

1. If a Thief leaves my Horse or his own Horse in an Inn, for a certain Sum by the Week for his Feed, it is not any Waife. 19. In B. adjudieth.
2. But if he leaves it there without any Agreement for his Mean it is a Waife. P. 1. In. B. adv. 158.

3. This Forfeiture is not like a Stray, where tho' the Lord may seize yet the Party, who is the Owner, may retake them within the Year and on the true Owner cannot seize his own Goods, tho' upon fresh Suit within the Year and Day. H. Hiat. PL. C. 541. cites 8 E. 3. 11. a. Avowry, 151. 3 E. 3. Cor. 152.

4. If a Man be pursu'd as a Felon, and he flies, and waives his own Goods, these are forfeited; Per Cur. as if they had been stolen Goods. Br. Estray, pl. 9. cites 29 E. 3. 29. and M. 37 H. S. accordingly.

5. It seems that a Waife is that which is stole, and Waifs and Catsalia Felonum, are the proper Goods of the Felon; therefore a Man may have the one by the Flight, and not the other as it seems. Br. Estray, pl. 2. cites 44 E. 3. 19.

by the Thief in his Flight. Bona Fugitivorum are the proper Goods of him who flies for Felony. See 4 Rep. 109. b. in Foxley's Café.

6. If Goods are bai'd to J. N. and he suffers them to be stolen from him, and the Waife waives them in the Bailee's Manor, and he takes them as Waifs, this is no Plea; Per Cott. J. Br. Estray, pl. 12. cites 10 H. 6. 22.

after they had been stolen and waived; for in the one Case it is Folly and Negligence in the Bailee, and in the other not. Ibid.

7. Trespas of Goods carried away, the Defendant said that he had Waife in his Manor of D. and that he stole the Goods de quodam ignoto, and brought them into his Manor and there waives them, and be seized them as Goods waives, and the other traversed that they were not stole; Per Laiicon, if they were not waives, yet if they were waives, they are forfeited; For if a Man takes Goods only by Trespass, if they are pursu'd to be taken, and he waives the Goods and flies, now he relieves them, and the Possession is not in any; and then the King, or he who has Waste of the Grant of the King, shall have it. Per Needham, Waife cannot be unles the Goods were stole; and denied the Cafe of the Trespass. And if a Man flies for Felony, and leaves his Houfe and Goods, yet there his Goods are not waives by it; and by pleading of Waste is implied that the Goods were stolen, and by stealing and waiving the Goods are forfeited. Br. Estray, pl. 6. cites 12 E. 4. 5.

8. If a Man waives his own Goods without Offence, and says that he will not have them any longer, this is no Forfeiture, and he may retake them at his Pleasure. Br. Forfeiture de Terres, pl. 112. cites Dole & Stud. Lib. 20. ca. 51. fo. 157.

6. If a Felon steals Goods and carries them into a Manor, and leaves them there in his own or another's House, or in Custody of another, or puts them into the Ground or other Secret Place and then flies, they are not Waste; for a Waste is when a Felon is pursu'd or thinks he is so, and fearing to be apprehended, and having the Goods then in his Possession, flies and waives them. But if be has not the Goods with him when he flies, and is pursu'd, or is in Fear of being apprehended, they are neither waives nor forfeited, but the Owner may take them when he will without any fresh Suit. Resolved 5 Rep. 109. a. Pach. 43 Eliz. B. R. Foxley's Gawdy and Popham and Popham held, that

Pursuit of the Felon need not be alleged. But Popham said it should be alleged that the Felon fled for Fear of being apprehended, and therefore waived them. — — If Felon leaves the Goods elog'd with Intent to fetch them another Time they are not waives. Mo. 572. pl. 783. Per Popham in S. C. 5 M

10. The
10. The Reason why Waifs are given to the King or Lord of the Manor, and
that the Owner shall lose his Property in them, is, because of his
Default in not making fresh Pursuit to apprehend the Felon, and there-
fore the Law hath imposed this Penalty on him, that unless the Felon
upon fresh Suit be attainted at his Suit in Appeal of the same Felony
that he shall lose all the Goods which the Felon waives at the Time of
his Flight; but if the Felon hides them there is no Default in the Party,
it being sufficient for him to make fresh Suit after Notice. 5 Rep. 109.
a. b. Patch, 43 Eliz. B. R. Foxley's Case.
11. Goods of Aliens stolen and waived by the Felon, shall not be said
Waifs by 13 E. 4. Per Doderidge J. 3 Bulst. 19. Hill. 12 Jac. in Case
of Waller v. Hanger.

(B) Waife. Who shall have them.

1. NOTE per Belk. that Waifs do not belong to the Lords of the Hun-
dred, by Reason of the Hundred, but belong to the Lett, and the
King shall have it by Reason of the Lett. Br. Estray, pl. 2. cites 44 E.
3. 19.

2. It was said for Law by the Reporter, That if Goods are stolen, if they
come into a Franchife, the Lord of the Franchise shall have them, if fresh
Suit be not made, and if it be no Franchise the King shall have them, if the
Party does not make fresh Suit; which Franchise seems to be such a one
as has Waife, or Bona & Catalla Felonum Fugitivorum. Br. Forfeiture
de Terres, pl. 110. cites 21 E. 4. 16.

3. And it was granted per tot. Cur. That if a Man steals Goods and
waives them, he who was robbed may seize them 20 Years after, if the
King nor the Lord of the Franchise have not seized them, but if they
are seized, then he who was robbed ought to sue Appeal, and shall have
them if he makes fresh Suit; Quod nota. Br. Forfeiture de Terres, pl.
110. cites 21 E. 4. 16.

4. Note, where Goods are stolen and waived, and seized as Waife by him
who has Waife, by this the Property is changed, and the first Owner
shall not revive them without suing Appeal. But see a late Statue 21
H. 8. cap. 11. That if he gives in Evidence at the Arraignement upon In-
dictment, and the Felon be attainted, he shall have Restitution as if he
had sued Appeal. Br. Estray, pl. 8. cites Dr. & Stud. lib. 2. cap. 3.
and 51.

5. A Lord who has Bona Waviata, shall not have the Goods of Aliens
stolen and waived by Felons; and if waived after the Alien's Death, the
Lord shall not have them, but the Executor of the Alien; Per Doderidge

(C) Plead-
C. Pleadings.

1. The Lord of a Hundred justified for a Waife there, because a Thief had stolen Goods, and Hue and Cry was made, and he ran away and waived the Goods, and he took them claiming as Waife. Br. Elfray, pl. 2. cites 14. E. 3. 19.

2. Trespass of taking a Horse. The Defendant said that it was stole, and waivered, and as Lord of D. where &c. took it as Waife. The Plaintiff said that it was not stole; and a good Issue. So if he had said that it was not waived. Nota. Br. Issues Joines, pl. 68. cites 12. E. 4. 5. the Plaintiff replied. Almighty be that it was stole. And Per Needham, the Waiving ought to be traversed, and not the Stealing. But per Jenney, he may traverse the one or the other, and after it was taken that the Issue was well join'd.

3. In Case for misusing the Plaintiff's Horse, by which the Horse became blind of one Eye &c. and counted that the Horse was stolen by 3 Felons, and that he made fresh Suit, and the Felons were apprehended and attained at his Suit before Windham J. and that the Horse came to the Hands of the Defendant, who misused it as above. The Defendant pleaded, that before that and the Attaindre of the said Felons, they had waived the said Horse within his Manor, in which he had Waife and Elfray &c. The Court held this no Plea, without traversing the Fresh Suit whereof the Plaintiff had declared, the Property of the Plaintiff being thereby preserved; and therefore upon that Misusing an Action well lies; and Judgment for the Plaintiff. 2 Le. 192. pl. 242. Trin. 23 Eliz. C. B. Rook v. Denby.

4. In Trover &c. the Defendant justified as Servant to the Sheriff of Middlefex, for that the Plaintiff had stolen the Goods, and carried them to D. in the County of Middlefex; at which Place the Defendant seized them ut bona vawiatu; and without Argument it was adjudged for the Plaintiff; for he ought to allege a Felony committed &c. and that the Goods were waived by the Felon. Cro. Eliz. 611. pl. 18. Pauch. 40 Eliz. C. B. Davie's Cafe.

5. A. stole B.'s Goods; B. makes Fresh Suit. A. waives the Goods and flies, and before B. comes the Goods are seized as waived, and then B. comes and challenges them. Crooke and Harvey J. held the Goods not forfeited, B. having done his Endeavour, and purfued from Vill to Vill; and that they shall not be said waived, but where it cannot be known to whom the Property is. Hutton and Yelverton said that Goods waived shall be said such as are stolen, and which the Felon, being purfued for Fear of Apprehension, waives and flies; so that by Seifure before the Owner comes, the Property is pretently alter'd out of the Owner in the Lord, notwithstanding the Fresh Suit, unless that Suit was always within View of the Felon. But all agreed that if the Owner comes and challenges the Goods before Seifure, and after the Flight of the Felon the Owner shall have his Goods without Question. Her. 64. 65. Mich. 3 Car. C. B. Dickson's Cafe.

For more of Waife in general, See Fresh Suit, Restitution, (C) and other Proper Titles.

Wales.
Wales.

(A) What Proces's goes into Wales.

1. When the Manor of Bergavenny was demanded, they wrote to the Sheriff of the County of Hereford to summon the Tenant in the Manor in Wales. Br. Cinque Ports, pl. 8. cites 19 H. 6. 12.

2. The Plaintiff had Judgement in Debt in London, and a Writ facias to the Sheriff, who returned Nulla bona, but Tostament fait that he had lands in Denbighshire, and the Plaintiff to the Sheriff of Denbigh, who returned that breve domini regis ren currit in Walliam. Keling Ch. J. on the first Motion held that the Writ lies, the others said nothing, but ordered the Sheriff to make such Return as he would stand to, who stood to this Return. And Twifden doubting whether the Writ lay, adjourned. Lev. 291. Trin. 23 Car. 2. B. R. Draper v. Blandy. — 2 Saund. 193. S. C. that Kelynge Ch. J. inclined strongly that the Writ lies; and that afterwards it was mov'd again before Rainsford and Morton J. who upon hearing the Case argued, made a Rule for a new Writ, and to amerce the Sheriff; but it being mov'd afterwards, when Twifden J. was present, and inclined strongly that such Proces did not run into Wales, the Case was adjourn'd over to the next Term; and the Reporter says that nothing afterwards was done in it. ——Raym. 206. S. C. S. C. says it was afterwards adjourn'd an ill Return, by Twifden, Rainsford and Morton J.

3. If Debt be brought against one in London, and be afterwards removed and inhabited in Wales, a Ca. Sa. may be awarded against him there: And the Register mentions a Record removed from Callace by Certiorari; Per Doderidge I. Cro. J. 434. pl. 1. Trin 16 Jac. B. R. Sir John Carew's Cafe. So where two Writs were Ball in B. R. and Judgment being had against the Principal, a Ca. Sa. inf'd into Wales against the Bail; and the Court said that if the Parties found themselves aggrieved, they might have a Writ of Error. 2 Bull. 34. 35. Mich. 10 Jac. Hall v. Rotheram. ——S. C. cited by Ellis J. 2 Mod. 11. in Cafe of Whitrong v. Blaney.


6. Where an Action of Debt on a Bond was brought in Hertfordshire, and upon Nil debet pleaded the Plaintiff had a Verdict, and Judgment and a Writ of Execution was directed to the Sheriff of Radnor in Wales, who return'd that breve domini regis did not come there, it was clearly agreed by the Court that the Writ was well awarded; and the Sheriff was fined 10 l. for his ill Return. 2 Bull. 156. 157. Mich. 11 Jac. Bede v. Piper.

7. Certiorari was prayed to remove Indictments taken in Wales for Rote, and granted, there being more Diverse Proceeds to that Purpose, as the Clerk of the Crown inform'd the Court. Cro. J. 434. pl. 1. Trin. 16 Jac. B. R. Sir J. Carew's Cafe.

8. But it is objected that the King's Cafe goes to the Reign of Edw. 1. But the Court resolve'd that the Writ should be granted, because it is in the King's Cafe; and by Haughton J. he may sue in what Court he will; and tho' such Writ in such Cafe ought not to be granted in Cafe of a common Perfon, yet that is no Reason but it may be granted in the King's Cafe. ——2 Roll. Rep. 28. 29. S. C. mentions it as an Indictment of Barbery; and that a Certiorari being granted, it stood for Cur. ——Doderidge J. said the Register mentions a Record removal from Callace by Certiorari. Cro. J. 434. in Sir John Carew's Cafe.

9. The
Wales.

7. The common Process of B. R. does not run into Wales, but the Course is to bring it by Original, and so to the Outlawry; Per omnes J. 2 Roll Rep. 141. Hill. 17 Jac. in Case of Froid v. Bertheld.

8. Judgment in Debt was had in the Great Sessions against the Defendant, dwelling in one of those Counties, and afterwards he died intestate. One who dwelt in London, and had nothing in Wales, took out Letters of Administration. It was moved, at a Meeting of all the Judges and Barons, whether any Execution might be in Wales, the Administrator not inhabiting nor having any thing there; and if not, whether the Record might be removed by Certiorari, and sent by Munitimus into B. R. or C. B. to the Intent to have a Sci. fa. to have Lands out of Wales, or Goods in the Administrator’s Hands liable to it there. And all the Justices and Barons conceived that he could not have a Sci. fa. in any Court but where the Judgment was given; and if it should, then all Judgments in inferior Courts might be removed and executed in the Courts at Westminster, which would be very inconvenient to the Subjects to make Lands or Persons liable in other manner than at the Time of the Judgment; and there is no Remedy but to execute such Judgments in their peculiar Jurisdictions. Cro. C. 34. pl. 7. Anon.

Ch. Justice Vaughan, it was held that it would lie. 2 Mod. 10. Hill. 26 & 27 Car. 2. C. B. White; wrong v. Blaney.

9. Concerning Proceeds out of the Courts at Westminster into Wales of late Times, and how anciently, see Vaugh. 395 to 420.

(B) Trials there.

1. ASSISE was brought in the County of Gloucester, of the Land of Gower in Wales; and the Plaintiff recover’d, and well; for when a Man is deforced of Land in a Seigniory in Wales, he shall have his Action in the Court of the Lord there; for Writ of the King does not run into Wales. But if the Lord himself be deforced of his Seigniory in Wales, there he shall sue by Writ in England in the County next adjoining; for none can give him Remedy in Wales. Br. Jurisdiction, pl. 101. cites 18 E. 2. and Fitzth. Affile, 382.

2. An Indictment of Murder was removed out of Wales, and tried in an English County. See 8 Mod. 135. Trin. 9 Geo. 1724. The King v. Althoe.

3. Upon a Motion for a Certiorari to remove an Indictment for Murder out of Wales, the Court said, that where there is a just Reason to induce the Court to believe Partiality will be shewn of either Side, the Indictment shall be removed into an English County. But the Truth of the Matter will be suspected where it is upon the Motion of either the Prisoner or Professor, and in such Case there must be a full and clear Affidavit, to induce the Court to grant a Certiorari. But where it is at the Instance of the Attorney-General, it shall be granted without an Affidavit. And no a Rule to shew Cause was discharged for want of a sufficient Affidavit; but the Professor to have Leave to move it again upon a better. 8 Mod. 146. Trin. 9 Geo. 1724. The King v. Burnaby.

5 N (C) Error
Wales.

(C) Error or Judgment there.

But per

Acluse, Er-

ror in the

County Probate shall be redress'd here. Contra of Error in Wales; for this shall be redress'd in Parliament; per Acluse. Br. Cline Ports, pl. 8. cites 19 H. 6. 12.

Error was

aff'ign'd upon a

judgment in Wales in

Ejectment, That this

Statute ap-

points that

for Lands in

Wales the

Action shall

be by Origin

not, whereas in this

of Cafe it was

by Suit. To which it was answer'd, That this is to be intended in Real Actions in which Lands are

demanded; but this Action is in the Personality. And the Court held, That Judgment was to be af-"


Deed granted to him an Annuity, or annual Rent of 20l. for his Life, by virtue whereof he was feised in

Dominico tuo ut de libero Tenemento for his Life, and for 11 Years Arrears he brought his Action. 

Error was aff'ign'd, that this bill of Annuity is not maintainable; but he urged by the Words of this

Statute to have brought an Original Writ; and this is an Action mixt'd. But received by all the Court; That

an Annuity brought by Bill there, is well brought; for being an Annuity which charges the Person only

that grants, and not granted for him and his Heirs, it is mearely personal; nor is this Grant any real

Thing, or out of any Realty, and therefore cannot be said to be Real or Mixt'd; and a Release of Acts

personal is a Bar in it. The Judgment was affirm'd. Cro. C. 170. pl. 17. Mich. 5 Car. B. R. Bod-"

vell v. Bodvell.—Jo. 214. pl. 5. & C. accordingly.

Error was

brought in

B. R. to re-

veric a judg-

ment in

Ejectment,

for Lands

in Wales,
given before

the Justices

there. And upon Consideration of the Statute of * 28 H. 8 of Wales, and because an Ejectment is a 4 mixt

Action, the Court at first doubted; but at last they adjudged that the Writ of Error would lie in B. R.


adjudged that B. R. had Jurisdiction, and the Judgment was reversed.

* This is misprinted for the 24 and 25 H. 8. cap. 26. par. 115.
† The printed Statutes have the very Word (mixt.)

3. In Error of a Judgment in Wales, in a Quod ci Deforciat, the Error aff'ign'd was becase the Venire Facias had not 15 Days between the Tefe and Return thereof, but the Return was the very next Day after the Tefe. Sed non allocatur; for in Wales their Process is from Day to Day, in one and the same Session. Cro. C. 178. pl. 2. Hill. 5 Car. B. R. Griffith v. Jenkins.

4 A
4. A Quod eiis Deforciants was brought in the Grand Sessions in the County of P. and the Plaintiffs made Protestation sequi brevijs in forma &c. brevis de quad ei deforciant at Common Law, according to the Statute of Rutland, and demanded a Missiugue and Lands in R. que clamant tenere. The Defendants demanded Judgment of the Writ, because it is a Writ founded upon the Statute of W. 2, which provides That he that brings such Writ must mention wherein what Estate he claims in the Tenements demanded, which was not done; and adjudged there, that the Writ should abate. But upon Error brought, it was resloved the Writ was well brought; for it is given by the Statute of Rutland, 12 E. I. and altho' the Stat. of W. 2, gives a Special Writ of Quod ei Deforciant in Special Cases, where Tenant for Life, in Dower, or in Tail, lose their Lands by Recovery by Default; and in such Case the Writs make mention of their Estates, yet this doth not take away the Statute of Rutland, which gives the Quod ei Deforciant; wherefore it was resloved for the Plaintiff in the Writ, and the Judgment was reversed. Cro. C. 444. pl. 15. Hill. 11 Car. B. R. Griffith & Ux v. Lewis & Ux.

5. Error was brought of a Judgment in Quod ei deforciant, in the Grand Sessions of Wales, and align'd that Judgment final was given on a Default after Appearance, when it ought to be a Petit Cape only in all Real Actions on a Default after Appearance, and a Grand Cape on a Default before Appearance; and the Court held this manifest Error. Lev. 105. Trin. 15 Car. B. R. Slaughter v. Tucker.

6. 1 W. & M. Suf. 1. cap. 27. par. 4. which takes away the Court before the President and Council, in the Marches of Wales &c. quat'a. That all Errors in Pleas personal, within the Principality of Wales, shall be redressed by Writ of Error, in the same manner as Errors in Pleas real and mix'd are appointed to be redressed by the 34 & 35 H. 8.

(D) Jurisdiction allow'd or not.


2. G. E. made Oath, That all the Parties are Inhabitants, and dwell- S. P. ibid. within the Marches of Wales; and that the Matter contain'd in the 122. Phelps v. Powel. - Bill is for no Title of Land; therefore the Cause is dimiss'd to the Deter-mination of the said Commissioner. Cary's Rep. 119, 120. 21 & 22. Eliz. Morgan v. Bithell & Evon.


4. Jurisdiction of Wales over-ruled, tho' all the Parties are dwelling within the Jurisdiction of the Marches of Wales, which is no Cause of Demurrer for Title of Lands. Cary's Rep. 127. 129. 22. Eliz. Keyes v. Hill & Ux.

5. Bill.
5. Bill touching a Practice and Misbehaviour used by the Defendant against him, in bringing him up by Subprena at the Suit of one Anthony Hink, whereas the Plaintiff never knew any such Man, and for divers other Misdemeanors used by the Defendant in this Court towards the Plaintiff; the Defendant demurred, for that both Parties dwell within the Jurisdiction of the Marches of Wales, where he supposes the Plaintiff is to seek his Remedy. But overruled, for that Misdemeanors committed in this Court are most meet to be here examined. Cary's Rep. 128. cites 22 Eliz. Griffith v. Penrune.

6. The Plaintiff prays a Prohibition to the Grand Sessions of Wales, for that the Defendant had brought a Bill against him there to discover a Deed concerning his Title, and supposes to be in the Possession of the new Plaintiff; and supposes that he lives out of the Jurisdiction of the Court, and ought not to be sued there; a Prohibition was granted for this being in the Nature of a Chancery Suit, the Process is personal by summons of the Perfon, which they cannot do, he living in another County and out of the Jurisdiction, by that Means you would run a Man to a Contempt, and thereby grant a Sequestration of his Lands, that is no Way under your Authority, or subject to the Obsequance of your Power. Comb. 468. Hill. 10 W. 3. B. R. Tranter v. Duggen.


7. E. had a Mortgage of Lands within the Jurisdiction of the Grand Sessions in Wales. V. pretended that he had purchased the Lands and got Possession by undue Means. E. filed a Bill in the Grand Sessions against T. who lived within the Jurisdiction, and V. who lived in London, where he was served with a Subprena, but he not appearing, E. got a Sequestration, and then V. moved for a Prohibition, which the Court granted, and ordered the Plaintiff to declare on it, and that the Defendant might take Advantage by Plea or Travers; but it seem'd hard in personal Actions, to punish a Man not within the Jurisdiction of the Court; and that it is said in Hutton, that it cannot be done. 8 Mod. 374. Trin. 11 Geo. 1. 1726. Vaughan v. Evans.

For more of Wales in General, see Prohibition (I. a) Trial (N. b. 6) and other Proper Titles.

* Warrantia Chartae.

[A] Of what Thing it lies.

1. It lies of an Advowson. 43 Eliz. 3. 25. 9 Geo. 6. 56. b. where it is granted with Warranty.

--- 1 In Quare Impedita by the Heir in Tain, a Man may plead Warranty of the Ancestor with Assets descended, and
Warrantia Chartæ.

and bar him, and if he has nothing by Defeunt, and Land defends to him after, there he shall have Secre facies to have in Value; Per Finch and Mombray, and not denied; Quod nota. Br. Secre Facies, pl. 29. cites 43 E. 3: 26.


[SECTION]

[Upon what Warranty it lies.]

1. UPON a Release with Warranty, he may have a Warrantia S. P. Per Chartæ. 169. 6. 18. Because he cannot vouch. F. N. B. 154 (1) in Marg. cites 12 H. 7. 2. It lies upon a Release with Warranty contra omnes gentes. Agreed by all the Jutlices. Godb. 151. pl. 197. Patch. 5 Jac. in C. B. Ballet v. Ballet. —— See Voucher (P) pl. 7. 5, 4.

2. If a Man has Cause to vouch another out of the Line in a Writ of Entry within the Degrees, but he cannot vouch, because he cannot vouch out of the Line, he shall have a Warrantia Chartæ. 10 H. 6. 18. b.

3. If the Lord confirms to the Tenant in Fee with Warranty, a S. P. F. N. B. Warrantia Chartæ lies upon this Warranty. 30 C. 3. 13. 154 (1) in Marg cites 12 H. 7. 2. Per Wood and Brian. —— See Tit. Voucher, (P) pl. 8. and the Notes there.

4. A Warrantia Chartæ lies upon a Warranty by Homage Auncell. * Br. Warrantæ. 30 C. 1. 3. b. * 24 C. 3. 34. b. cites S. C. per Skip —— Homage Auncell, implies a Warranty, F. N. B. 154. (F) —— Homage bindeth to Warranty. 2 Inf. 11.

The Law was generally holden in those Days, that Homage being Parcel of the Tenure referred to the Feoffor and his Heirs, imported a Warranty to the Feoffee and his Heirs, and so much is implied by these Words in the Statute de Bigamitis, cap. 6. (see Homage) that is, without any Warranty, by Reason of Homage, but that was ever intended, so long as the Tenure continued by Defeunt in the Blood of the first Purchaser, for if the Tenement were transferred out of his Blood by Purchase, or any other Traduction, in that Case the Tenant should vouch his Feoffor or his Heirs, if he had any Warranty, but not in Respect of the Homage; And that this was the ancient Law appears by Glanville, who says, Si aliquis aliquit donaverit aliquid tenementum pro Servito & Homagio suo, quod potes alius verius ejus donatione, tenebit solum dominus tenentum id ei Warrantizare, vel competens ecaimento ejus rei; fecit eft tenen de eoque de alto telem feptem fumum ficut herediteram fumum, & unde fecurit homogium, quia licet in terram illam amicitat, non tenet dominus ad eodem homogium; and this is signified in the doing of Homage, Homagium eum dominus recteponerit, tune in signum warrantiae acquitiationis & definitionis manus tenentis infra manus fuis tenere debet, dun tenens profer verba homogii. And at this Day it holds in Case of Homage Auncell. 2 Inf. 275, 276.

† But feew the Statute 12 Car. 2 cap. 24.

5. And the Writ shall be Unde Chartæ ssum habet. 30 C. 1. 3. b. S. P. Tho' Charter thereof, and consequently cannot shew any; and therefore in this Case the Words Unde Chartæ habet &c. are not material. F. N. B. 154. (b)

6. If Land be given in Tail with Warranty to him his Heirs and Assigns, and the Donee aliens in Fee, and dies without Issue, this Warranty shall be a Bar in Formedon in Reverter of the Land. Br. Tail and Dones, pl. 7. cites 46 E. 3. 4. Per Wilby.

7. The Writ of Warrantia Chartæ lies properly where a Man doth enfeoff another by Deed, and binds him and his Heirs to Warranty &c. Now if the Defendant be implicated in an Affèse, or in a Writ of Entry in Nature of an Affèse, in which Actions he cannot vouch, then he shall
Warrantia Chartæ.

have that Writ against the Feoffor or his Heir, who made such Warrant.

8. If a Man has a Leave of Lands for Life rendering Rent, or makes a Gift in Tail rendering Rent without Deed, and afterwards the Lessee or Donee is impeached in such Action where he cannot vouch, then he shall have this Writ of Warrantia Chartæ against the Lessee or Donor, or his Heir who has the Reversion: For that Reversion and Rent reserved makes a Warranty in itself by the Statute of Bigamis, cap. ult. altho' he hath not any Deed thereof. F. N. B. 134. (G).

9. If a Man exchanges Lands with another by Deed, if he be impeached he shall have a Writ of Warrantia Chartæ by that Deed of Exchange, altho' there are not Words of Warranty in the Deed. F. N. B. 135. (B).

10. If a Man makes a Feoffment in Fee with Warranty against him and his Heirs, the Feoffor upon such Warranty shall never have Warrantia Chartæ. For when the Warranty is only against him and his Heirs, if he be impeached by a Stranger, he never shall vouch by this Warranty, and the Nature of such Warranty is only to rebut against him and his Heirs, and not to have Recompence in Value; by Dyer, Brown and Walsh. Dal. 48. pl. 8. 5 Eliz. Anon.

Ibid in the New Notes (c) says Vide tur quod sic. Per Thirn, 17 E. 3. 44. but Hill and Shard contra.

The Court held clearly that Warrantia Chartæ does not lie in this Case, unless there are the Words (Deed & concurr) in the Deed. D. 221. pl. 17. Parch. 5 Eliz. Anon. but seems to be S. C. —— F. N. B. 134. (H) in the New Notes there (3) cites S. C.

Declaration was upon the Warranty of Deed by Grantor. In the Deed there was a special Warranty against Feoffor and his Heirs, and against the Heirs and Assigns of the Father of the Feoffor. Resolved that the special Warranty shall not expound and control the Generality. Cro. E. 854. pl. 36. Mich. 43 Eliz. C. B. Sir Hugh Portman v. Sir Gervase Clifton.

11. It was held by the whole Court, That upon a Warranty against Feoffor and his Heirs, or J. S. and his Heirs, or the Grandfather or Great Grandfather of the Feoffor and his Heirs, no Warrantia Chartæ lies, unless that Deed be within the Deed, which implies a general Warranty. Cro. E. 854. pl. 36. Mich. 43 Eliz. C. B. Sir Hugh Portman v. Sir Gervase Clifton.

[C] In what Cases it lies.

1. If the Vouchee at the Summons ad Warrantium scit Plurics be returned Nihil, whereby he may be summoned, where the Vouchee is dead, but the Tenant cannot take this Averment, but it ought to come by the Return of the Sheriff, yet tho' the Tenant cannot vouch the Heir, he shall not have Warrantia Chartæ against him. Where. 17 E. 3. 41. b.

2. If a Man releases to me with Warranty, and I grant to him that I will not vouch him, nor take Advantage of the Warranty against him or his Heirs, unless by Rebutter, unless I am impeached by his Coven; and after I am impeached
pleaded by Formedon by his Covin, Quare it? I shall have Warrantia Chartæ against him; for Formedon is an Action in which a Man may vouch. Br. Warrantia Cartæ, pl. 20. cites 43 E. 3. 20.

3. Where a Man purchaser with Warranty, and the Feoffee knows him to be the Villain of J. N. and this same J. N. inplies the Feoffee, and he vouches his Foilior, who is a Villain, the Demandant may counterplead that he is his Villain, and out him of the Voucher, and there he looses his Voucher, but he shall have Writ of Warrantia Chartæ; see Fincheddon, quod nota. Br. Warrantia Cartæ, pl. 6. cites 48 E. 3. 17.


5. A Man may have Warrantia Chartæ in Precipe quod reddat; As F. N. B. 1. 34. where the Tenant has Release or Confirmation with Warranty, he cannot (1) in Marg. vouch, for Fear that the Demandant has counterpleaded the Possession; and therefore he may have Writ of Warrantia Chartæ, on Request; and Brian Ch. J. was of the same Opinion, & nullus negavit. Br. Warrantia Cartæ, pl. 15. cites 12 H. 7. 2.

6. If a Man looses for Tresus, and covendates to warrant the Land &c. and the Feoffice is aitbeld by Tert, he shall not have Covenant. Contra if it was upon elder Title. Br. Garranties, pl. 1. cites 26 H. 8. 3.

7. In a Precipe the Tenant would, and at the Segnatur sub fue Periculo, the Tenant and Voucher made Default; whereupon the Demandant hath Judgment against the Tenant, and afterwards the Demandant brings a Seire facias against the Tenant to have Execution, in this Case the Tenant may have a Warrantia Chartæ. Co. Litt. 393. 4.

8. Upon Occsity of Services this Writ lies, but that is after Seifin of the Services. F. N. B. 1. 34. (G) in Marg. cites Co. Litt. 384. b. * 21 H. "Br. Warrantia Cartæ, pl. 18. cites 5. C.

[D] Who shall have it.

17. E. 3. 41.


2. For it is a good Counterplea of the Action that he was not Tenant S. P. Br. of the Land the Day of the Writ purchased. 45 E. 2. 2. 18 E. 3. 42. B. Issue thereupon. 3 E. 3. Fitzh. Garrantie of Charters 15. 3. Garantie of Charters 25. Adjudged per Curtiam.

Ch. J. in the Case of Roll b. Desborn, Hob. 21. pl. 37. and cites 24 E. 5. 25; 7 E. 4. 12. and 17 E. 5. 44. and 16 H. 5. Fitzh. Ty. Warranty des Charters 29. But he says it seems to be a Plea but prima facie; for it is allowed also; H. 2. 18. and yet it is concluded that the Voucher may have the Writ when he cannot Vouch, even as 2d or 3d Mefne Lord may have a Writ of Mefne as well as the Tenant in Demesne; and 60. E. 5. Fitzh. Warrantia Chartæ 4. The Defendant pleaded that the Plaintiff was not the Tenant the Day of the Writ, and Issue upon it. But Fitzh. abridging the Case says, that if he had pleaded himself Tenant by Voucher the Day of the Writ purchased, it would have serv'd; and 31 E. 3. Fitz. Warrantia Chartæ 22. In Fine, Burton says, that the Defendant in Warrantia Chartæ shall have a Writ of Warranty of Charters ever, banning the Writ against him; and Reason and Justice requires it, since this Writ is supplementary in Place of Voucher, where that cannot behold; therefore is this Writ as well to be allowed after Alienation, as Voucher is allowed; for Alienation cannot be impugned unto Folly; for as a Man may Vouch, coming in as Voucher, so this Writ, as it is in Nature of a Voucher, is equally to be allowed; and therefore 41 E. 3. 7. if the Tenant by the Cartes grants his Edite with Warranty unto J. S. and comes in as Voucher, he shall have Aid of him in Reversion, as if he were Tenant.
Warrantia Chartæ.

420

nent in Poelfilton; and 4 E. 5. 23 If a Gopartner make a Poelfimitment with Warranty, and comes in as a Vouchee, he shall be able to deaire the Warranty paramount as if he were in Poelfilton.


4. When the said Counterplea is taken, the Plaintiff may maintain his Action by this, that he was Tenant by his Warranty the Day of the Writ purchased. 3 E. 3. Fifth, Warranty of Charters 4.

5. But a Man who is not Tenant of the Land shall not have this Writ before he comes in by Voucher, tho' he has a Warranty. 17 E. 3. 44.

6. If the Tenant of the Land with Warranty be disfieled by a Stranger, he shall not have this Writ within this Differens, because he is not Tenant of the Land during the Differens, and the Writ supposes him Tenant. 11 H. 3. Rot. 3. between Simon de Abendon and Reginald de Meffbury, agreed and adjudged.

7. So if a Stranger takes unjustly Redditum Terra, (that is, as it seems, takes the Possess of the Land, by which is intended a Differens) of the Tenant, he shall not have this Writ; for he may have his Affin, if he will. 11 H. 3. Rot. 3. Adjudged.

8. If there be 3 Jointenants, and the one releases to the rest, they may derail the former Warranty by Voucher, or Warrantia Chartæ; for they be in a 3d Part by the Release. Welf's Symb. S. 197. cites 40 E. 3. 41.

9. If a Man be imploed who is not Tenant of the Land, but Pernor of the Profit, he shall not have a Writ of Warrantia Chartæ, because he can lose nothing. F. N. B. 135. (C)

10. An Affinage shall have a Writ of Warrantia Chartæ. F. N. B. 135. (D)

11. None shall have a Writ of Warrantia Chartæ, but the Tenant. F. N. B. 135. (D) in Marg. cites 7 H. 4. 18. 17 E. 3. and Br. War- Chartæ, 30.

Real, if he be not Tenant, as by Voucher or Warrantia Chartæ. Br. Garranties, pl. 1. cites 26 H. 8. 3. — Contra of Warranty Personal; for if he be oulted &c. he may have Covenant. Ibid.

None shall have it but in Priuity of Estate. Co. Litt. 385. a.

12. If any Lands be given to 2 Brethren in Fee-simple, with a Warranty to the Eldeß and his Heirs, the Eldeß dies without Issue, the Survivor, albeit he be Heir to him, yet shall he not have a Warrantia Chartæ. Co. Litt. 385. a.

Celfy que Ufe may take Advantage of a Warranty annexed to

13. Warburton thought that the Statute 27 H. 8. 8 of Ufes, gave the Benefit of the Warranty to Celfy que Ufe, and that he shall vouch as Affignee, and have Warrantia Chartæ; and that Tenant for Life, created by an Ufe, shall have Benefit for his Time of the Warranty, and may vouch, or have Warrantia Chartæ; but that he must make his Count accordingly.
Warrantia Chartae.

accordingly. Mo. 859. pl. 1180. Trin. 9 Jac. Roll v. Osborn & an Effate. 421

Ux'.

Annex, B. R. Smith v. Tindal.—11 Mod. 102. S. C.

14. Lord by Escheat shall not have the Benefit of a Warranty, because S. P. And. he is in by Title; but if he comes in by way of Effate, he shall, of a 259. in Cafe Warranty that runs with the Effate. And if one comes in in the of Yaxley Per, or in the Post, he shall have the Benefit of the Warranty; per Wil-


of Fhetis, Outlaws, &c. Ibid.

[E] What shall be good Cause to have the Writ.

1. If a Man makes Feoffment of Land with Warranty, and after a Rent in Fee is recover'd against the Feoffee, he may have a Warrantia Chartae to have in Value for the Rent. 30 E. 3. 30. 31. Division.

2. Tenure is no Cause to bind to Warranty, unless it be by Owelty of Services, or Homage Ancestorl. Br. Warrantia Cartae, pl. 13. cites 24 E. 3. 35. Per Skip.

3. If a Man leaves Land for Years with Warranty, and the Leafe is ouf-
ed by one who Right has, he shall have Action of Covenant upon the Warrant.

Contra if he be oufled by him who no Right has; for then he may have Trespasses, or Ejection Firmæ. Otherwise it seems of a Warranty of Franckenement, and he is impaled by him who no Right has, yet he may vouch by this Word Warranty. Br. Garranties, pl. 80. cites 22 H. 6. 52.

[F] At what Time it lies.

1. A Warrantia Chartae lies * before any Impleading, but the * A Man of Writ shall suppose an Impleading. 29 E. 3. 4. b. 30 E. 3. 29. may have a Warrantia Chartae, Quia timent

se implacitari, and recover Pro loco & tempore; but no Execution shall be awarded. Br. Warrantia Cartae, pl. 11. cites 21 H. 6. 41. & 22 H. 6. 22.—Well's Symb. S. 197. cites same Cases; and 24 B. 3. 55. & 12 H. 4. 12. & F. N. B. 154. (K) —— But if be be oufled after, he shall have his Warranty upon the first Recovery. But Brooke says, it seems in this Case that he shall make Request to the Warranties, pending the Affidavit, to administer a Bar; for otherwise he shall not have Execution, as it is said elsewhere. Br. Warrantia Cartae, pl. 11. cites 21 H. 6. 41. & 22 H. 6. 22.—Well's Symb. S. 197. cites same Cases, & 12 H. 4. 12. But cites 48 E. 3. 22. Regiff. Orig. Fol. 158. a. That the Writ of Warrantia Chartae must be sued, hanging the principal Plead, and before Judgement, as of Affidavit, or Entry in the Nature of Affidavit; for then if the Warrantor dies, yet the Writ shall not stay; but his Heir shall be remitted to answer upon the same. —— And Hob. 22. in Cafe of Roll v. Osborne, cites the Register 158. That st Judicium inde reddidit fit, non valet hoc breve. But Hobart Ch. J. SAYS, That this must be well understood; for clearly it may be brought before any principal Plead, and after the Plead take any other, and then by Judgment, or by Discontinuance, and the like. And he is of Opinion, that before Execution it may be brought, if the Party pray'd his Plead in Time; for 'till Execution, he is in of the Estate warranted. But if the Execution be had, then the Warranty falls with the Estate.

S. P. And if the Defendant appears, and says that he is not impaled, he by this Plead confesses the Warranty, and the Plaintiff shall have Judgement to recover his Warranty. F. N. B. 134. (K)

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2. Where
2. Where one was *impleaded in an Action in which he might have vouch'd*, it was agreed by all the Justices, that he may have a Warrantia Chartae, if he did not vouch. *Mo. 839. pl. 1180. Trin. 9 Jac. Roll v. Osborne & Ux*.

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**[G] How it shall be brought.**

1. *If B. be devised of a Manor, and A. releaseth to him with Warrant, B. may have a Warrantia Chartae for Parcel of the Manor only.* 3 Jac. 2 Mor. 3rd's Case. Per Curiam.

2. *And it seems, that if he be after impleading of the other Part of the Manor, he may have other Warrantia Chartae of this also.* Dubitatur 3 Jac. B.

3. *Tenant by his Warrant, if he brings Warrantia Chartae, ought to disclose the special Matter by his Count.* 17 E. 3. 44.

4. *He ought at least to disclose the special Matter by his Plea.* 18 E. 3. 19.

5. *In a Warrantia Chartae, if the Plaintiff competes that the Defendant is bound to warrant certain Land, and a Bailiwick of the Forestry of divers Places, it is good, without declaring in certain of which he is impelled; for if he be bound to Warrant, he ought to warrant the Intercity; but he shall render in Value only [for] what he lost.* 29 E. 3. 4 adjudged.

6. *Warrantia Chartae was brought by W. and T. where Affise was brought against them, in which the Plaintiff recover'd &c., and the Defendant said that W. is dead pending the Writ; Judgment of the Writ; and the other said that the Affise was to T. and to the Heirs of T. and because it ought to be purchases pending the Affise, pray'd that the Defendant answer; For if the Writ abates, and T. brings another, this is not pending the Affise; and after the Writ abated by Award, and the Plaintiff was not amerced for Cause of Death. And per Writ, in this Case the new Writ purchase'd after the Affise is good by Reason of the Death; and so no Default in the Plaintiff, but the last Writ good; quod non negatur.* Br. Warrantia Cartae, pl. 7. cites 48 E. 3. 22.

7. *In Warrantia Chartae, if the Writ comprehends Tenure, the Declaration shall be Unde Chartae juitam habet generally.* Br. Warrantia Cartae, pl. 18. cites 21 H. 6. 8.


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**(G. 2) Brought where.**

A Man may *Warrantia Chartae in the County of S. and upon Nibil return'd, Proceed upon ToStatum et, returnable &c. in the County of D.* and there it was agreed that Warrantia Chartae may be brought in another County than where the Land is. Br. Warrantia Cartae, pl. 21. cites 31 E. 3. 4 and Fitzh. Refunnons 28.

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*be pleasing if the Deed bears Date in a certain Place or County; for then he ought to bring the Writ where the Deed bears Date. But if a Man bring a Writ of Warrantia Chartae, by reason of Homage Aunsefrel &c.*
Warrantia Chartae.

2. A Man may sue a Writ of Warrantia Chartae at the Common Law for a Writ made of Lands in Ancient Demesne. F. N. B. 135. (K) And in the new Notes, says fee 16 E. 3. Cune a Remover 15 Reg. 12. 50 E. 3. 13. And per Shipw., the Tenant shall have Warranty against the Lord in the Lord's own Court.


1. It is a good Counterplea that the Plaintiff is not Tenant of the Land for which the Warranty is demanded, because the Writ supposes that he is Tenant. 11 H. 3 Rot. 3. Simon de Abbendun against Reginald de Messiffury, admitted and adjudged. 15 H. 3. Garrantie of Charters 25. adjudged per Curiam. 18 E. 3. 42. b. Issue thereupon.

2. So it is good Counterplea that the Plaintiff was not Tenant of the Land the Day of the Writ purchased. 45 E. 3. 2. 3 G. 3. Garrantie of Charters 4.

3. It is a good Counterplea, that the Plaintiff might have vouch'd him in the Action in which the Recovery was, and he did not vouch him, nor give Notice of it, shewing that he might have barr'd the Plaintiff in the first Action. Skene Regiam Dactilatem, lib. 1. cap. 22. vers. 1. b.

Plea here to say that the Plaintiff is implac'd in such an Action, wherein he may vouch &c. yet in a Scire facias it is a good Plea to say that he was implac'd in such an Action wherein he might vouch, but did not &c. and so by Reason of his Default he could not have Execution; cites 18 E. 3. 42. Warranty de Charters 8. and cites 9. E. 2. Warranty de Charters 20. accordingly, that it is a good Plea. — S. C. cited by Hobart Ch. J. Hob. 22. in Case of Roll v. Dovorn, as resolved, tho' it was in a Formedon.

4. In Affl, if a Feme sole warrants Land to W. N. and he who has Cause but if the Action married the same Feme, he shall be barr'd by the Warranty of his Tenant who during the Coverture. Brook makes a Quere if the Tenant vouch'd the Demandant and his Feme by a strange Name; and says it seems that he shall rebut. Br. Voucher, pl. 97. cites 13. Atl. 10.

Warranty, and is implied, it seems there that the Warranty is lost for ever. But quere if he may not vouch himself and his Feme by a strange Name. Br. Voucher, pl. 97. cites 15. Atl. 10.


1. If 2 join in Warranty of Charters, and after the one is nonfruitful, the other shall have the Warranty of the Intirety for the Chief of the Warranty. 42 E. 3. 17. b.

2. It upon a Warrantia Chartae a Fine be levied, and after Recoveror loses the Land, yet he shall not have Scire facias to recover in Value, because the Nature of the Writ of Warranty of Charters is destroyed by the Fine levied upon it. 12 H. 4. 12.

(K) Writ
(K) **Writ and Count.** Abatement.

1. **Warrantia Chartæ**; the Writ is *Quod de eo tenet, & unde chartam fiant habit &c.* and yet the Plaintiff may count, and bind the Defendant by *Homage anuworthell*; Per Wilby Justice, quod non negatur. Br. General Brief, pl. 8. cites 24 E. 3. 35.

But he, who recovers pro loco & tempore, shall have in Value after his Loth.

2. It seems that he who will persue by the common *Writ* of **Warrantia Chartæ**, ought to pray the Party to warrant pending the first *Writ* of Affhice, or the like; and also bring his *Writ* pending the said first *Writ*, and before Judgment in it. Br. **Warrantia Cartæ**, pl. 13. cites 24 E. 3. 35.

But Brooke says it is said elsewhere, that in this Case also the Party, when he is impleaded after, ought to pray the Warrantor to warrant &c. Ibid.

3. **Warrantia Chartæ against two**, and he shows Deed of the one, he shall not have the Warranty, per Canditil. But where per Knivet and Thorp J. this goes in Abatement of the Writ, and he may have a new one, and so only dilatory. But *in Precipio* *quod reddat*, if the Tenant vouches two, and shows *Lien* by *Dedi* of the one and of the other in *one Deed*, where *Dedi* is no Warranty but against the Feoffor, and not against his Heir; yet because the Demandant is no more delay'd by the Voucher of two than by the Voucher of the one, and it is peremptory to the Tenant upon Voucher, and if he fails of his *Lien* it is peremptory to him, and he cannot re-vouch, therefore the Voucher is good against the one, and he shall warrant the Whole. Br. **Warrantia Cartæ**, pl. 14. cites 39 E. 3. 26.


5. It seems that in **Warrantia Chartæ against two**, and the one is an *infant* at the *Time* of the *making* of the *Deed*, it shall bind the other. But *Quere if* by this *Writ*, or by another *Writ* against him only. Br. **Warrantia Cartæ**, pl. 14. cites 39 E. 3. 26.

6. If the *Defendant dies pending the Writ* of **Warrantia Chartæ**, the Writ shall not abate; but his *Heir* shall be re-summon'd to answer the Plaintiff. *Quod nota.* Br. **Warrantia Cartæ**, pl. 27. cites the Register.

7. Tho' the *Writ* supposes that he holds of the *Defendant*, yet that is not material whether he holds of him or not. F. N. B. 134. (E)

8. If a Man impleaded brings a **Warrantia Chartæ** against whom he hath a Warranty, and vouches him also in the *Action*; and afterwards pending the *Action*, a *Stranger who hath anticuiter Title* enters upon him, yet that shall not abate his **Warrantia Chartæ** sued out before. *Quod vide* *Hill.* 21 H. 6. F. N. B. 135. (G)


9. *See br.*

**Warrantia Cartæ**, pl. 11. cites 21 H. 6. 41. *Hills v. Clifford, S. C*—And F. N. B. 135. (G) in the new Notes there (f) cites S. C.

10. If

**Hob. 28, 29.**

A Man may sue forth *divers Writs* of Warranty of Charters *against divers Men*; and if he has divers Warranties against them, he shall recover severally against them. *F. N. B. 135. (I)*

12. where one brought a *Suits Facias upon a Fine, as Heir to 2 Parceners*, and the Tenant *pleaded in Bar a Fine levied by the 2 Parceners with Warranty*, and relied upon the Warranty, and the Plea was holden double, and he forced to rely upon the Warranty of the one only
Warrantia Chartae.

10. If a Man has Warrantia Chartae pending, altho' that the Plaintiff in the [first] Action against him, who brought the Warrantia Chartae, was nonsuited in his Action, this shall not bar the Writ of Warrantia Chartae; for he may sue a Writ of Warrantia Chartae, altho' no Action is sued against him for the Land &c. F. N. B. 135. (L)

11. A Warrantia Chartae was brought by A. against B. of 2 Messages Nov. 146. and the Moity of an Acre of Land, unde Chartam habet &c. and declar'd that himself and the Defendant, and one F. were seised in the new Buildings, and of one Piece of Land adjoining &c. in the Tenure &c. containing from East to West 20 Foot by Allot, and from the North to the South 30 Foot; and that the said B. and F. released unto him; and that B. for him and his Heirs, did warrant Tenementa predicta to A. and his Heirs. The Defendant pray'd Oyer of the Deed, and thereby it appear'd that B. and F. and one R. did release to him all their Right in &c. and that B. for him and his Heirs, did warrant Tenementa predicta to A. and his Heirs, and that F. by another Clause for him and his Heirs, did warrant Tenementa predicta to A. and his Heirs. Upon Demurrer it was unanimously agreed by all the Justices, that Upon such a Releas with Warranty, contra omnes gentes, a Writ of Warrantia Chartae lies. 2dly, Altho' every one paffeth his Part only, viz. a 3d Part, yet every one of them warrants the Whole; and because they may do so, and the Words are general without Restraint by themselves, the Law will not restrain them. The Words are, that they do warrant Tenementa predicta, which is all the Premises. 3dly, For the Reason aforesaid, it need not be shew'd how they hold in Jointure. 4thly, That the Writ is good against one only, because the Warranties are severall. But if they had been joint Warrantors, then it ought to have been against all; so against the Survivor, and the Heir of one of them; and if they had both died, against both their Heirs. 5thly, That the Writ was well brought for the Things as they are in Truth, without naming them according to the Deed. 6thly, That if there be New Buildings, of which the Warranty is demanded, which were not at the Time of the Warranty made, and after the Deed is lewn, the Defendant ought not to demur, but to show the Special Matter, and enter into the Warranty for so much as was at the Time of the making of the Deed, and not for the Restaue. See Fitz. Warrantia Chartae, 31. Godb. 151, 152. pl. 197. Pach. 5 Jac. in C. B. Ballet v. Ballet.

12. A Writ and Count in a Warrantia Chartae must have 4 Points complete in them. 1st. He must be Tenant of the Land the Day of the Writ purchased. 2dly. It must be by a Conveyance whereby the Land, whereunto the Warranty is annex'd, must pass; or at least, if Right be and save that released, or Confirmation made with Warranty, he must be Tenant of the 3d Point Land, to whom it is made in Warranty. 3dly. This Writ must be brought for the hanging the principal Plea. 4thly. It must contain the Specialty of the Warranty and Lien. Hob. 21. Roll v. Osborn.

13. If a Man brings a Warrantia Chartae upon a Warranty of Land, and obtains Judgment, he shall use that Judgment after for Rent demanded or recover'd, if the Warranty did extend unto the Rent. 31 E. 3. Fitz. Garr. Chart. 22. And yet upon a Voucher in like Case, it should have been more special; the Reason is apparent, for the Rent is demanded when he vouch'd; but it may be it was not foreknown that Rent would be demanded when the Writ of Warranty of Charters was brought; but if it were, he ought to declare specially, and the rather if he cannot vouch in the principal Plea of the Rent, for there must be a Means to discuss whether the Rent in the Demand was warranted as a Rent suspended when the

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Warranty
Warrantia Chartæ.

Warranty was made, so as the Land was warranted as discharged of Rent. Hob. 22. pl. 37. in Case of Roll v. Osborne.

(L) Plea. What shall be said a good Plea in a Warrantia Chartæ.

1. O NE brought this Writ, Unde chartam suam habet: The Defendant pleaded Non habet Chartam suam, and the Plaintiff confessed the same, and replied it was Charta antecedentis sui. Adjudged for the Defendant. F.N.B. 134. (F) in Marg. cites 12 H. 3. Gar. de Charters 27.

2. If a Man recovers in Writ of Warrantia Chartæ, and the Sheriff puts him in Execution of the Land of a Stranger, and the Stranger brings Affûse and recovers his Land, and after he who recover'd in the first Warrantia Chartæ brings Suit jâd against the first Defendant, he shall not plead this Execution which was against the Stranger; for as it seems it is no Execution, but a Tort of the Sheriff without Warrant. Br. Warrantia Cartæ, pl. 25. cites 30 E. 1.

S. P. F. N. B. 3. If Tenant in Tail aliens with Warranty, and dies, and Affûse defend in Fee, and the Feoffee brings Writ of Warrantia Chartæ against the iffue in Tail, this lies well, notwithstanding that the iffue had Writ of Formedon pending of the same Land; Quod nota bene. Br. Warrantia Cartæ, pl. 30. cites Itinere Northampton, Anno 2 E. 2.

Ibid. 6.—S. P. by Hobart Ch. J. Hob. 22. in Case of Roll v. Osborn, but says he may rebut, and cites 2 E. 3. 6.

4. In Warrantia Chartæ it is no Plea to say, that the Plaintiff lost nothing in the Affûse. Br. Warrantia Cartæ, pl. 29. cites 3 E. 3. and Vet. N. B. Warrantia Cartæ.

5. Writ of Warrantia Chartæ by A. against J. T. of 2 Houses and 100 Acres of Land, and counted that the Defendant infused him with Warranty, and that B. brought Affûse against this Plaintiff, in which he left, and pending the Affûse, and after, be came to him and pray'd him to warrant him &c. and swore thereof Deed. Skip. demanded Judgment of the Writ; for it is Quod de eo tener, et unde cartam fuam habet, and so double lien, viz. by the Tenure, and by the Warranty, et non allocatur. Wilby, said he had seen that upon such Writ Unde cartam fuam habet, the Plaintiff had bound the Defendant by Homage Ancestral, quod nota; and Skip. demanded Oyer of the Deed, and had it; and said that it appeared by the Affûse and by the Date of this Writ, that it is purchased after the Affûse determined; Judgment of the Writ. Per Thorp, a Man shall have Warrantia Chartæ, and recover pro loco & tempore, but shall not make in Value till he has lost, and this shall be as it is said elsewhere Quaestion implacata, but this Writ was not of such Form. And it is said there, that if he does not bring his Writ pending the Affûse, he shall not recover.
recover in Value. Skip. sait, that at the time of the making of the Deed we had nothing in the Tenements, and they did not pass by this Deed, Prift. &c. et adjonatur. Br. Warrantia Cartae, pl. 13. cites 24 E. 3. 35.

6. In Warrantia Cartae it is a good Plea the Demandant had au- Wett's ter'd, pending the Plea, upon the Plaintiff, he then Tenant of the Land, or cites S. C. — that the Plaintiff in this Action had * nothing in the Land * S. P. per first Writ purchased, nor ever after; for the Law will not that a Man Candiif, shall make in Value upon an ill Writ; Per Arderne; to which Newton quod non ne- and Danby agreed. Br. Warrantia Cartae, pl. 12. cites 21 H. 6. 49. Warrantia Cartae, pl. 5. cites 45 E. 3. 2. —Wett’s Symb. S. 197. S. P. cites 45 E. 3. 5. and 3 E. 3. —S. P. Br. Warrantia Cartae, pl. 28. cites 3 E. 3. and Vet. N. B. Warrantia Cartae.

7. In Warrantia Cartae upon Warranty [of] his Ancestor, the De- fendant pleaded Rieux per defent. By the Court, Judgment shall be enter'd for the Plaintiff without Trial, if he will; for the Warranty is con- fided Pro loco & tempore; for the Trial may be long and chargeable. Noy. 149. Thompson v. Jackson.

(M) Judgment. How and what shall be recover'd.

1. A Man shall have Warrantia Cartae and recover Pro loco & tem- pole, but shall not make in Value till he has lost; Per Thorpe; And this shall be as it is said elsewhere, Qvia timet implacitari. Br. War- rantia Cartae, pl. 13. cites 24 E. 3. 35.

2. Warrantia Cartae, the Defendant pleaded that he had nothing by Defendent in Fee the Day of the Writ of Warrantia Cartae brought against him, said, from the same Ancestor who made the Warranty; yet the Plain- tiff recover'd Pro loco & tempore. Br. Warrantia Cartae, pl. 30. cites 33 E. 3. and Vet. N. B. Tit. Warrantia Cartae.

Ifue against him to have Execution, and shall have Execution; quod nota. Ibid.

3. A Question was demanded in Bank, of what Effect Judgment in Warrantia Cartae Pro loco & tempore is, and it was moved that Warranty is only a Covenant, and by this Covenant a Man shall not bind the Land to be deliver'd in Value to whosesoever Hands it comes after by Purchase or otherwise; for this is mischievous, Quod verum est, that it shall not be bound by the Warranty or Covenant real; but otherwise it seems by the Special Judgment above. Br. Warrantia Cartae, pl. 8. cites 2 H. 4. 14.

4. If a Man brings Writ of Warrantia Cartae and recovers Pro loco & tempore, he shall have Execution after of all the Lands and Tenements which the Defendant bad at the Time of the Judgment given. Br. War- rantia Cartae, pl. 10. cites 12 H. 4. 12.

5. A Man may recover Land in Warrantia Cartae. Br. Warrantia Cartae, pl. 25. cites Fitzh. Voucher, 297. But ibid pl. 1. cites 9 H. 6 21. that a Man shall not recover Land, but all in Damages. — But ibid. pl. 31. cites F. N. B. That the Judgment and Recovery in Writ of Warrantia Cartae, is to have Land in Value and Damages, and not all in Da- mages. — But ibid. pl. 4. cites 42 E. 3. 7. And says that the best Opinion was, That where the Plaintiff is delayed and does not lose the Land, he shall recover but only his Warranty and no Damages. — But where he loses the Land he shall recover Damages. Ibid. cites F. N. B.

6. If I recover my Warranty Pro loco & tempore in Warrantia Cartae, and after am implothed in Action in which I cannot Vouch, as in Assilfe or Scire Lachus,
Warren.

Lucius, I ought to make Request to him against whom I recover'd, to administer to me a Plead, and so give Notice to him of the Action which is pending, or otherwise I shall not have Execution; Per Markham, quod Catesby, conceitit Br. Warrantia Cartae, pl. 16. cites 8 E. 4. 11.

But if he lifts the Land after, then he shall have Execution of Land in Value and Damages. Ibid. — And where no Land is to be recover'd in Value, there he shall lose his Warrant as upon Recovery upon Voucher. Ibid.

For more of Warrantia Chartae in general, see Covenant, Voucher, and other proper Titles.

For more of Warrantia Chartae in general, see Covenant, Voucher, and other proper Titles.

* Warren.

[A] [Ancient Grants thereof.]


[5] In the Book called Transcriptum Cartarum Comitis Cornubiæ. Charter 214. H. 3. granted a free Warren to Richard Earl of Cornwall, in all the Denumines of the said County, excepto intra metas Forsetæ, itia quod nullus intret (as the Words are) super hastis facturum nostram decem librarum. (Note the Antiquity of this Seal.)

[B]

1. **N**one can make a Warren without the Licence of the King; for S. P. 2 Inf. he cannot appropriate those Things which are *per se* Nature, 199, and in Nullius Bonis to himself, and to restrain them of their natural Liberty without the King's Licence. **Co. 11. Monopolies 37. b.**

2. **Ne**one can have Conies in his own Land, norfs by Grant from the King, or by *Preference*; if otherwife, he is punishable by Quo Warranto. **Cro. E. 548. pl. 21. Hill. 39 Eliz. C. B. agreed in the Case of Boultton v. Hardy.**


1. **T**he Lord of a Manor adjoining to a Warren of the King, may *prescribe to chase* and take the Conies, if they come into his Demesnes of the Manor. 4 d. 4 4. b.

2. 22 & 23 Car. 2. cap. 25. Par. 4. recites, That diverse Warrens and Grounds not inclosed, are us'd for breeding Conies, and that disseize Persons destroy the Conies, for that the same is not prohibited by former Statutes, which extend only to Warrens or Grounds inclos'd; and enacts, That if any Person shall wrongfully enter into any Warren, or Ground lawfully us'd for breeding or rearing in a keeping of Conies (albeit the same be not inclos'd) and shall chase, take, or kill any Conies, against the Will of the Owner or Occupier, not having lawful Title so to do; and shall be thereof convicted in Manner following, the Parties so offending shall yield to the Party grieved treble Damages and Costs, and suffer Imprisonment 3 Months, and after till they shall find Sureties for their good Abeyance.

Par. 5. Prohibits all Persons, except the Owner, to kill Conies on the Borders of any Warren, or other Grounds lawfully us'd for keeping Conies, under the Penalty of making Recompense to the Owner, and to pay not exceeding 10s. to the Use of the Poor, where e't. and in Default to be committed to the House of Correction, not exceeding a Month.

Proceeding by Conviction; and this Statute of 22 Car. 2. which authorizes that Way of Proceeding, relates not to Warrens inclos'd. But per Car the Conviction is well warranted by the 22 & 23 Car. 2. for whereas the former was a partial, this is an universal Law. (Into any Warren) this satisfies the Premble; and there is a vast DiffERENCE between the Words (not inclos'd) and (the not inclos'd) the former being retributive, but not the latter. And unless this Act extends to Warrens inclos'd, they would be in a worse Case than those not inclos'd; for then an Offence in the latter would be punishable by the short Way of Conviction before Justices, but not the former. **10 Mod. 279. Hill. 1 Geo. B. R. The King v. Wollon.**


1. 27 El. 1. **R**st. Cartarum Pembro. 4. Warrena de Stanes de-warennata & de-afforexitata.

2. If a Man has a Warren in his own Land by Grant of the King, and makes Fee-sheftment of the Land, and retakes an Effate in Fee, the Warren is extinct. **Br. Quo Warranto, pl. 6. cites 6 El. 2. 7.**
3. A Charter for a Warren erected, that none should chase there, without Leave of the Grantee, under the Penalty of 20l. to the King, and 2d. to the Grantee. It was intituled, that he had usurp’d upon the King by using his Warren, which he had not when the Charter was granted; and also that Parcel of the Demesnes of this Manor extend within the King’s Forest, which is excepted in the Grant, and if he has forfeited his Franchise, besides he has suffered several to chase in the Warren without his Leave, and has not sued them at Law, so that the King has no Profit of the Forfeiture of the said 10l. which belongs to him, upon all such as are convicted, and therefore it was pray’d that the Franchise be seised &c. Quod conceivis fuit. Kelw. 141. b. pl. 13. Cales in Itin. in Time of E. 3. The Prior of Athley’s Cafe.

4. If a Man has Warren in his own Land, and alien the Land, the Warren is determin’d; for he has parted with his Right of the Land, discharged of all things, and he himself cannot have it; for he has not referred it, and the Feoffee cannot have it, for he did not grant it to him, but the Land only. Br. Warren, pl. 3. cites 35 H. 6. 55. Per Molie & non negatur the Warren; and do by such Means, after his Grant obtain’d of the King of the Warren, if he makes Feoffment, and reserves the Warren, he has Warren in another’s Land.” Quod nona. Ibid.

5. C. claim’d free Warren in his Park, tho’ it was within the Bounds of the Forest, and made his Claim by Letters Patents of King Charles. Whereupon the Officers of the Forest were directed to inquire, 1st. whether it be impaled. 2dly. whether there be any Satteries into it, so as the King’s Deer may get in thither. 3dly. whether there be any Conies there; and if there be, whether the Park is so inclosed that they cannot get out, for then they will both eat upon the Forest and spoil the Riding. All of these are Conies of Seifte, till they do replevy their Liberties. The Officers found, that the Park was well impaled, and that there were no Satteries, and that there were Conies there, but they could not get out; and so the Claim was allow’d. Et infuper dictum est ei per Curiam, quod Parcum predicitum a modo includat, sita quod Cuniculi non exempt in Foretum periculo incumbente. Jo. 296. 3 Car. In Itinere Windfor, Carye’s Cafe.

(E) By Prescription or Grant. Their Extent and Difference. And Incidents to either.

1. A Man cannot have Warren unless by Grant of the King, or by Prescription. Br. Warren, pl. 1. cites 3 H. 6. 12.

2. And per Marten, he shall not have it by Prescription, unless within his own Land or his own Manor, and not in Manors held of others; for it seems not to be Law. Br. Warren, pl. 1. cites 3 H. 6. 12.

3. ff
Warren. 431

3. If one has a Warren by Charter in all his Manor, he may erect a Lodge, or make Coney-burrows in any Place of the Manor at his Pleasure; but if he claims it by Prescription, he ought to make the Coney-burrows in such Places wherein they have been us'd, and not in others. Cr. J. 155. pl. 5. Paich. 5 Jac. B. R. Leiceter Forrest's Cafe.

4. When a Man claims Warren infra omnes terrae Dominicales, he can—See Tit. not extend this into the Land of Freeholders; for when any one claims Prescription Warren by Charter, he cannot enlarge this beyond the Charter, but ought (G) pl. 4. to take it as it is expressed in the Charter. Otherwise it is where he claims the Warren by Prescription; Per tot. Cur. 2 Bulkf. 254. Mich. 12 Jac. Fowler v. Seagriave.

5. No Warren can be claim'd by Prescription within a Forest without the Help of an Allowance in Eyre, and for want thereof the Party presented was fined 10 s. and the Warren to be destroy'd. Jo. 280. 8 Car. in Itin. Wyndfor Sir Rich. Harrison's Cafe.

(F) Pafles. What Words will pass a Warren.

2. If the Kings grants Warren to a Man and his Heirs without mentioning his Affignee, and the Tenant aliens the Land, the Affignee shall have the Warren; per Thirn. Brooke says, it seems that he intends where he aliens the Land, and grants the Warren expressly; for it seems that Warren does not pass without express Words. Br. Warren, pl. 5. cites 14 H. 4. 6.

2. Where a Man has a Warren in his Land, and demises the Land for Years without expressing the Warren, the Lessee shall not have it during the Term, for he has not reserved it, and the Lessee shall not have it; for it is not granted to him, by the best Opinion; but per Prifon, if the Warren be appertinent to the Manor or Land, it shall well pass by the Demise of it, but if it be in Grofs it shall be in Suspence during the Term. Br. Grants, pl. 144. cites 32 H. 6. 24.

3. If a Man seised of the Manor in which he has Warren, makes Feeffment of the Manor cum pertinentiis, the Warren does not pass; quod natura, a Manor, and the King grants him Warren within the same Manor, if he afterwards enfeoffs the King of the Manor cum Pertinentiis, yet the Feeffment shall have the Warren. Per tot. Cur. D. 50. b. pl. 229. Hill. 28 H. 8. Anon. A Warren in Grofs in a Patentee does not pass by a Bargain and Sale of the Manor; for a Warren is not Parcel or any Member of a Manor, but it may be appertaining, but that is by Prescription. Cro. E. 547. pl. 21. Hill. 59 Eliz. C B agreed in the Cafe of Boulton v. Hardy. — A Warren does not pass by a Feeffment of Land. Arg. Poph. 159. cites 7 Rep. Burr's Cafe. ——— There is a Difference between a Warren used to a Manor Time out of Mind, and a Warren appertaining; for the first pass not by Grant of the Manor cum Pertinentiis, it not being Parcel; but in the other it passes, but not without the Words, cum Pertinentiis. D. 50. b. pl. 229. Marg. cites 8 H. 7. 4.


1. The Common Use of England is to kill Dogs and Cats in all Warrens, as well as any Vermin, which shews that the Law has been always taken to be that they may kill them; Per Popham. J. And adjudg'd accordingly for the killing of a Mastiff Dog there running
running after Conies, alleging that the Dog was divers Times killing Conies there. Cro J. 44. pl. 13. Mich. 2 Jac. B. R. Wadhurst v. Damm.

2. He that had Libera Warrenna may bring Trespafs against any one but the Owner of the Soil for hunting in his Free Warren, because Libera Warrenna was a Liberty to Hunt in one's own or another's Ground exclusive of all others; and this was granted by the King, who is Matter of all Game. Admitted. 2 Salk. 637. pl. 4. Trin. 4 & 5 W. & M. in B. R. in the Cafe of Smith v. Kemp.

(H) Pleadings in Trespafs in Warrens.

1. Trespafs of entering into his Warren and taking his Pheafants and Conies, the Defendant said as to the Pheafant, that he let his Faulcon fly at the Pheafant in his own Land and out of the Warren, and the Pheafant flew into the Warren, and there the Faulcon kill'd it, and he followed his Faulcon, and took it. Judgment. Per Knive, in this Cafe your entering and carrying away of the Pheafant is tortious. Br. Trespafs, pl. 111. cites 38 E. 3. 10.

2. Trespafs for entering into his Warren and Chafing, taking, and carrying away the Hares, Conies, and Partridges, and did not stay where he took them, and the Writ awarded good; for it shall be intended where the Chafing was; Quod nota. Br. Briet, pl. 59. cites 43 E. 3. 13.

3. Trespafs for chafing in his Warren, the Defendant said that he was in in the Land by Defeant from his Father, by which he chafed, as lawfully he might; it is a good Answer per toto. Cur. to put the Plaintiff to shew how he has his Warren; for if it be by Grant of the King it is only in Dominici terris suis, and if he has it by Prescription he ought to shew it; quod Curiae concelebit; by which he said that he chafed in his Warren in his own Lands, Prift, and the others e contra; quod nota; and it seems that this is no good pleading at this Day. Br. Warren, pl. 4. cites 44 E. 3. 12.

4. Trespafs Quae Warrennam suam Vi & Armis intravit & sargavit ibidem, and killing Conies &c. The Defendant said that the Place where &c. is his own Franktenement and Soil, Judgment of the Writ; because he cannot enter into his own Soil Vi & Armis. And by the best Opinion, because the Writ is in Warrennam intravit, and not in Terram intravit, the Writ is good; for it may be the Warren of the Plaintiff and the Soil of the Defendant; Quae; and per Martin, clearly this does not go to all the Writ; by which he answerd't to the reft, and as to chafing, said that the Land where &c. is held of C. P. and not of the Plaintiff; Judgment Si Aetio without shewing how he has Warren there and the Plaintiff shew'd Title by Prescription to have Warren appendant to his Manor of D. in the same County, &c. Br. Warren, pl. 1. cites 3 H. 6. 12.

5. The Writ is Vi & Armis thu't it be another's Franktenement. Br. Warren, pl. 2. cites 34 H. 6. 28.

6. Trespafs Vi & Armis for entrance into his Free Warren and taking his Hares. The Defendant said that the Place is the Franktenement of W. who licenced him to enter and chase, per quod &c. And no Plea; for it may be his Franktenement, and the Warren of the other by which he added to his Plea, aliquote hoc that he had Warren there, and non allocatur, for this amount to Not Guilty, by which he ouied the Traverfe, and added, Judgment it without Title shewn he may claim Warren; Et non allocatur; for it is only Writ of Trespafs, in which he cannot recover his Warren.
Warren but Damages for the Trespass, and is in Patislusion: and therefore a Man shall not be compelled to shew Title; and after, by Rule of Court, nothing was enter'd but Not Guilty, and he shall give his Matter in Evidence. Br. Trespass, p. 34. cites 34 H. 6. 28. 43.

Trespass for chasing in his Warren, and taking and carrying away the Hares and Conies; the Defendant said the Plaintiff had nothing in the Land in which he has Warren, unless jointly with J. N. who is in full Life not named in the Writ; Judgment of the Writ, and no Plea, but the Defendant was compelled to answer by Award, because it may be that he has only a Joint Estate in the Land in which &c. and yet has the Warren alone, as if he has Warren by Prescription, and after purchases the Land to him and another, yet the Warren remains, and is not extinct as Rent or Common shall be, note the Difference. Br. Warren, pl. 3. cites 35 H. 6. 55.

Trespass Quare Warrenam Iuam in D. lrigit & Cuniculos cepit, fugavit &c. The Defendant said that the Plaintiff was seized of three Acres, where &c. in Fee, and leased to N. at Will, who licensed the Defendant to kill the Conies; Judgment it without Title shown &c. Et non allocatur; Per Catesby, this shall be a good Plea in Trespass of a Clofe broken and Conies taken; and per Danby Ch. J. this is true; for the Warren does not pass by the Lease, and a Man may have Warren in his own Land, by which the Defendant said that the Place is three Acres, which was the Frankentenement of J. N. and that be by his Command enter'd and killed the Conies, abque &c. that the Plaintiff has Warren there. And no Plea; for it amounts to Not Guilty. Br. Warren, pl. 6. cites 5 E. 4. 53.

For more of Warren in general, See Forest, Prescription, Waste, (2) pl. 12. &c. and other Proper Titles.

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Waste.


1. If a Bishop cuts and sells the Trees of his Bishoprick, for this Waste, S. C. cited per Cole
   Ch. J. ii
   Rep. 49. a.
   in Leford's Cafe.
   Roll Rep. 86. pl. 34. in Case of Stockman v. Whither, and says it seems to be good Law; for it is the Dowry of the Church, and the King is Patron of the Bishoprick.

2. So if a Parson or Vicar waste the Trees of his Patronage or Ft. Roll Rep. carriage, a Prohibition shall be granted; for it is the Dowry of the Church, S. C. by the
3. So if a Prebendary wafts the Trees of his Prebend, the Patron may have a Prohibition. Between Aekland and Atwill, Prohibition granted by the Ld. Coventry, Ld. Keeper, for the Prebend of Car- ton in Devon.

4. It was holden in this Case, That if a Bishop, Parson, or other Ecclelialtical Person, cuts down Trees upon the Lands, unless it be for Repa- rations of their Ecclesiastical Houses, and do, or fuller to be done, any Dilapidations, that they may be punisht for the same in the Ecclesiasti- cal Court, and a Prohibition will not lie in the Case; and that the fame is a great Cause of Deprivation of them of their Ecclesiastical Livings and Dignities. But yet for such Waists done, they may be also punisht by the Common Law, if the Party will sue there. Godb. 259. pl. 357. Mich. 12 Jac. in B. R. Salisbury Bishop’s Cafe.

5. On a Motion for Prohibition, the Suggestion appear’d to be that the Parson had dug and found Lead-Mines in his Glebe, and had told’t Timber; and it was infin’d that this was Wait, and prohibitable by 35 E. 1. De non proferendum arbores &c. But per Cur. It lies not for Mines; for then Mines in Glebe-Land can never be open’d. Lev. 107. Trin. 15 Car. 2. B. R. Rutland’s (Earl of) Cafe, because otherwife Mines in Glebe can never be open’d.

[B] Against whom it lies. Ecclesiastical Persons. [Or others.]

1. Rex Vicecomitci salutem; Cum ad nos providere pertineat ut Elec- mosina que de patronatu nostrorum prebecessorum, & nostro fuit in statu inebri abique vasto venditione vel destructione inde facta- nda constructa; Tibi præcipimus quod non permittas, quod Abbas de G. &c. fui vatum venditionem vel destructionem faciant de bofciis, domibus [sive] hominibus, pertinentibus ad prioratum, sive Cellam de L. quod est de patronatu nostro & taliter te habere in hac parte ne pro defertu tuo vel ministrorum tuo omitto ad te nos graviter capere debes-amus. Telle Regre 3. E. 1. Rot. Claustarum Pempt. 10. And there after a Writ directed to the Sheriff, quod Sire faciat Abbatii de G. & Priors Cellae sive de L. quod sint coram nobis in Octabris ut super decretibus &c. respondant.

2. Pending a Quare Impedit, if the Incumbent cuts Trees upon the Glebe, and upon the Lands of Coppholders of a Manor, Parcel of the Rectors, a Prohibition lies. Hobart’s Reports, 51. between Pretty and Kent.
3. A Prohibition of Wafe lay against Tenant by the Curtesy, Ten in Dower, and Guardian in Chivalry, at the Common Law, Co. Litt. 53. b. [1]

lib. 2 as to Tenant by the Curtesy and in Dower, and that Damages should be recover'd against them at Common Law.

Tenant in Dower and Guardian were punishable at Common Law by Prohibition, and Attachment thereupon, if they did Wafte. F. N. B. 55. (C)

At the Common Law, if he that had the inheritance did fear (for Example) that Tenant in Dower &c. could do Waft, he might, before any Waft done, have a Prohibition directed to the Sheriff that he shall not permit her to do Wafte. And this was the Remedy that the Law appointed, before the Waft done by the Tenant in Dower, Tenant by the Curtesy, or the Guardian, to prevent the same, and this was an excellent Law. And this Remedy may be used at this Day. After Waft done, there lay an Action of Waft against the Common Law in this Form; Rex Viccom't saltum, si talis fecerit te securum de clamore suo prosequendo, tum pone per avid', & salvos plegios talium mulierem ecc. quod sit coram Judiciaris nostris ecc. oftenius quare fictum vatum, venditionem, & exilium de terris, hominibus, redditibus, bovibus, vel gardinis, que tenet in domum de hereditate tali in tali villa, contra prohibitionem nostram, & habeas ibi nomina plegiorum, & hoc breve, telle ecc. The Writ says contra Prohibitionem nostram, yet the Plaintiff might well maintain his Writ, albeit an Action of Prohibition of Waft had been fored out before; for that the Common Law was a Prohibition of itself; and so says Bracton, speaking of the Waft done by a Guardian; Dominus vatum emendabit sic, quod damna refilluet vatum fecerit ante prohibitionem five post. 2 Inft. 299, 300.

4. But no Prohibition of Wafe lay at Common Law against Tenant, for Life or Years, because they come in by their own Act, and the Lease might have provided that no Wafe should be done. Co. Litt. 53. b. [54. a. 355. b.]

Tenant pro auctore Vic.—But it lies on the Statutes of Marlborough 25. 11 Rep. 81. b.—And Statute of Gloucester 5 gives an Action of Waft against the Lessee for Life or Years. Co. Litt. 54. b.

5. If a Parson is Tenant in Common with another of a Wood, or other S. C. cited Land, and the other Tenant does Waft in the Land or Wood &c. the Par- son shall have a Prohibition. F. N. B. 49. (l)

Cafe; and says that if the other endeavours to do Waft, the Parson for the Preservation of the Timber-Trees shall have a Prohibition against him not to do Waft, because (as the Chief Justice said) if the Parson of a Church will waft the Inheritance of his Church to his own private use, in cutting the Trees, the Patron may have Prohibition against him; for the Parson is seated as in Right of his Church, and his Glebe is the Dower of his Church, and therefore since Prohibition lies against him, it is but reasonable that he shall have the like Remedy against him who holds with him in common. 11 Rep. 49 a. Mich. 12 Jac. in Liford's Cafe.—Roll Rep. 100 p. 44 in Cafe of Stamp v. Clinton, alias Liford, S. C. & S. P. by Coke Ch. J. accordingly.


That after a Judgment in Quare Impedit by the King v. Sacker, and Writ to the Bishop, Sacker continued Poffession, and waited the Vicarage-House, and a Prohibition was granted; and it was said that any one might have this Writ against him, for it is the Writ of the King. 'The Prohibition was Not to do Waft.

7. The Prohibition of Wafe was abrogated, and the Action of Wafe framed upon the Act of Wefm. 2. [cap. 14.] as in the Register appears. 2 Inft. 146.
Waste by the Statutes. Of what Things simply Waste may be.

* Br. Waff, 1. If a Man cuts Ashes it is Waste. Contra * 38 C. 3. 7. b.

pl. " c. C. (But there, and also in the Year-Book, the Ash is mention'd to be of the Value of 4d. only, and whether that may not be the Reason why it was held not to be Waste, may perhaps be a Question; for the same seems not very plainly express'd)

2. Waste may be committed in cutting of Beeches in Buckinghamshire, because there by the Custom of the Country it is the * best Timber. P. 8 Jac. 2. per Coke, said to be adjudged in the Earl of Cumberland's Cafe. Co. Litt. 53.

No. 812.
S. C. accordingly, only instead of Beeches, it is there mention'd as of Birches.
* And are converted to Building. Co. Litt. 53. (r)

3. So Waste may be committed in cutting of Birches in Berkshire, because they are the principal Trees there for the most part. Tr. 11 Jac. 3. Per Coke, if the Tenant destroys, or suffers to be destroyed, a Quick-let Hedge of White-thorne, this is Waste. Co. Litt. 53.

Gro. J. 107.
pl. 52. S. P. by 2 Judges.
Mich. 5 Jac.
B. R. in Cafe of Brook v. Rogers.

4. The Cutting of Trees which are Arida, Mortue, Cavæ, non existentes Maharemium, neither bearing Fruit nor Leaves in Summer, is not Waste. Co. Litt. 53.

5. If the Tenant of the Land builds a new House where there was not any before, and after suffers it to be wasted, Action of Waste lies. Co. Litt. 53.

6. If a Lessee permits Statuuncula, Angille, the Standings ante oitium Mefuagii sui stare & elle dicooperra & irreparata per quod Maharemium Statuuncularum illarum devincit corruptum & ratione inde ruinam minatur, it is Waste. P. 8 Car. 2. R. between Weymouth and his Wife Plaintiffs, and Gilbert and his Wife Defendants, in Writ of Error adjudged, and the Judgment given in Bank affirmed accordingly.

[D] What Act shall be said Waste.

D. 37. Male- 1. If the Tenant converts Arable into Wood, or e Converse, it is verer v. Spink.-39 of ancient Pasture. Ch. Cafe 295.
Rep. 14 Atkins v. Temple.—It is not enough to say it was Pasture Dit. ante, but to make it Waste it ought to be Pasture Time out of Mind. Arg. 2 Show. 8. in Cafe of Gunning v. Gunning.

2. If
2. If a Lessor suffers arable Land to lie fallow, and not manured, so Br. Waite, pl. 10. that the Land grows full of Thorns and other Trees, this is not Waife. S. P. cites but ill Husbandry. 2 D. 6. 10. b. Curia.

3. If Tenant in Dower of a Manor to which Villeins are regardant, manumits the Villeins, this is not any Waife, because it is not any Manumission but against herself; for he in Reversion may seize them after her Death. * 2 D. 6. 11. Curia.

4. But if she had the Villeins, or constrain'd them to do other Services which they did not before, by which they go out of the pl. 5 cites S. C. Seigniory, it is Waife. * 2 D. 6. 11. Time of E. 1. B. R. Miln.

Whether the Villeins departed per Durament of the Seigniory or not.

5. If a Lessor converts a Cloister into a Fulling-mill, it is Waife. * Cro. J. Tr. 5 Jac. B. 22. 1352, pl. 22.

In such Places, where, by the Custom of the Country the Plowing of Meadow is good Husbandry, and for the inclosing orencroaching of the Meadow, there the Plowing of it is not Waife.

v. Greymne—Converting a Brewe-house of 120 l. per Annum into other Houses let for 200 l. a Year, is Waife, because of the Alteration of the Nature of the Thing, and the Evidence. 1 Lev. 309. Hill. 22 & 23 Car. 2. B. R. Cole v. Green—2 Saund. 252. S. C.

6. If an ancient Meadow, which has been Meadow Time out of 46. Treffham Brown, as Brook-Meadow be converted into Arable, it is Waife. H. 8 Jac. B. Trefham and Leamne, Per Curiam.


F. N. B. 59. (N) S. P.—Chancery would not give Way to the Plowing up of ancient Pasture, tho' it was inferred upon that the Nature of the Ground was for Tillage, and had been formerly ponde'd. Chan. Rep. 115. 13 Car. 1. Fermier v. Maund.

7. But if Meadow be sometimes arable, and sometimes Meadow, and sometimes Pasture, there the Plowing of it is not Waife. H. 8 Jac. B. Per Curiam.

8. The Conversion of Meadow into Arable is Waife; for it not only changes the Course of Husbandry but the Proof of his Evidence. Co. (N) S. P.—Litt. 53 b. Hobart's Reports, Case 295. [296.]

Sub-division of Meadow is not Waife, but ill Husbandry, and may be reformed in a Year. Br. Waite, pl. 152. cites 10 H. 7. 2—Converting a Meadow into a Hop-garden, is not Waife; for it is imploy'd to a greater Profit, and it may be Meadow again; Per Windham and Rhodes J but Periam J. said, tho' it be a greater Profit, yet it is also with greater Labour and Charges. 2 Le. 174. pl. 210. Trin 29 Eliz. C. B. Anon.—But converting of a Meadow into an Orchard, is Waife, tho' it be to the greater Profite of the Occupier; Per Periam J. 2 Le. 174. pl. 210. Trin 29 Eliz. C. B. Anon.

10. If a Lessee or his Servants suffer a Wood to be open, by which Beasts enter and eat the Germens, tho' they grow again, yet it is Wafte; for after such Eating they never will be great Trees, but Shrubbs. 11 D. 6 1 b.

11. If the Tenant of a Park suffers the Pale to decay, by which the Deer are dispers'd, it is Wafte. Co. Litt. 53. Hobart's Reports, Case 295.

12. If a Lessee plows the Land stord with Conies, this is not Wafte, unless it be a Warren by Charter or Preemption. P. 40 El. B. between Moyle and Moyle, adjudg'd Per Curiam.

13. So it is of a Warren by Charter or Preemption. See Hop's Reports between Moyle and Moyle 70. Er. 40 El. B. between Moyle and Moyle. Contra 17 C. 3. 7 b. of a Fishery.

14. If the Tenant of a Dove-Houfe, Warren, Park, Vivary, Eftanges, or fish like, takes so many that so much Store is not left as he found at the Time of the Demife, it is Wafte. Co. Litt. 53. Hobart's Reports Case, 295. [296].

15. If a Lessee of Land destroys the Cony-Boroughs in the Land, it not being a Free Warren by Charter or Preemption, it seems it is not Wafte. Er. 9 Car. B. Rot. 1746. Inaction of Wafte, it being assign'd Wafte, and found by Vertue that he had done Wafte therein, yet the Plaintiff releas'd it and took Judgment for the Residue of the Wals found by the Jury.

16. Default of Coverture of a House is Wafte, tho' the Timber be done in standing. 18 C. 3. 15.

17. If a Lessee rafes the House, and builds a new House, if it be not so long and wide as the other, it is Wafte. 22 P. 6. 18 b.
18. If he rebuilds it more large than it was before, it is Waste; for it will be more Charge for Lessor to repair it. Co. Litt. 53.

19. If a Lessor lays down a Wall between a Parlour and a Chamber, by which he makes the Parlour more large, it is Waste, because it cannot be intended for the Benefit of the Lessee, nor is it in the Power of the Lessee to transpole the House. Kell. 13 P. 7, 37. b.

pl. 143. cites 10 H. 7. 2.

20. If a Lessor pulls down a Hall or Parlour and makes a Stable of it, it is Waste. Kell. 13 P. 3, 37. b. 39.

21. If a Lessee pulls down a Garret over-head, and makes it all one and the same Thing, it is Waste. Kell. 13 P. 7, 37. b. by Leible.

22. If a Lessee of Land makes a new House upon the Land where there was not any before, this is not Waste; for it is for the Benefit of the Lessee. Kell. 13 P. 7. 38. b. by Wood. P. 39 Cl. 25. R. in Cecil and Care's Case, by two against one. Contra Co. Litt. 53. It seems, that it is not Waste for a Lessee at the End of a Term to low the Land with Wood, tho' it will not well bear Corn for 7 Years after. Contra D. 8 Jac. B. by Coke and Forster.

23. If the Tenant digs for Gravel, Lime, Brick-Earth hid in the Ground, or such like, it is Waste, not being open at the Time of the Lease. Co. Litt. 53. b.


* Br. Waft, pl. 10. cites S. C.—Digging for Stones, unless in an Ancient Quarry, is Waste, tho' the Lessee fills it up again. Ow. 67. in Cafe of Moile v. Moile.


26. But if a Lessee of Land with Mines of Coals, Iron, and Stone, digs the Coals, Iron, and Stones, so much as is necessary for him to Ute without selling, it is not Waste. 17 C. 37. b. Hobar's Reports. Cafe 293. Admitted [that] where Mines of Coals are granted by express Words, the Lessee may open and dig them, tho' not open'd at the Lease made.

27. If a Lessee digs for Gravel or Clay for Reparation of the House, not being open at the Time of the Lease, it is not Waste no more than the Cutting of Trees for Reparation. Co. Litt. 53. b.

28. If a Lessee digs the Earth and carries it out of the Land, Action of Waste lies. N. 9 Car. between Nowell and Donning, adjudged by admitting it in Court of Error, and only question'd because the Land was effedit Terram and 100 Load Terrae inde provenientis aportavit; It was not proper to call it Land when it was dug, but this adjudg'd good also.


30. If the Tenant digs for Mines of Metal hidden in the Soil, it is Waste. Co. Litt. 53. b.

pl. 143. cites 10 H. 7. 2.

31. But
31. But if the Mine be open at the Time of the Lease, the Lessee may dig and make his Profit of it. Co. Litt. 54. b.
32. If there be one Mine open in the Land, and another Mine not open, and the Owner leaves it to another, with the Mines in it, he may dig in the open Mines, but not in the close Mines; but otherwise it would be if there was not any open Mine there, but all close; for otherwise the Grant would take no Effect. Co. Litt. 54. b.
33. If a Lessee fullers a Sewer or Wall to be not repair’d, by which the Sea surrounds the Meadow, and continues it by Inundation, and Louratur Terra, it is Waste. * 20 H. 8. 1. b. 17 C. 3. 45. Co. Litt. 53. b.

* Br. Waff, pl. 12. cites S. C. but adds a Quarze.

34. So if by such Default the sweet Water does such Damage by Inundation. 20 H. 6. 1. b. Co. Litt. 53. b. Hobart’s Reports, Case 295.
35. So a sortaerti, if arable Land be surrounded by such Default; for the surrounding waishes away the Darte and other SanFraunce from the Land. 20 H. 6. 1. b.

Permitting a House to be ruinous, is Waste. Br. Waff, pl. 149. cites to H. 7. 2. —
Centra if it was ruinous at the Time of the Demise, and [in such Case] the Temeor is not bound to repair it, notwithstanding it falls in his Time. Ibid.


If a Wall be uncover’d, this is no Waste, but of a Wall cover’d with Thatch, and of a Pale of Timber cover’d, this is Waste, which ought to be shewn in the Writ. Br. Waffe, pl. 94. cites 22 H. 6. 24. Per Cur.


42. Tho’ there be no Timber growing upon the Ground, yet the Tenant at his Peril must keep the Houses from wasting. Co. Litt. 53. a. (d)
43. Burning the House by Negligence or Mischance is Waite. Co. Litt. 53.

b. (t)  
44. A leaved a House and Land for Years by Indenture, in which was a Clause, That if Leflee happens to do any Waife, the Lessor may re-enter. The Leflee suffer'd the House to fall for want of covering and repairing. Tho' the Words were (to do any Waife) yet Dyer and Waith, inclined that and says, Leflor might re-enter, because such Waife is punishtable by the Statute of Gloucester, and the Words (any Waife) is general and indifferent to either of the 2 Kinds of Waife, viz. voluntary or negligent &c. Quere. D. 281. b. pl. 21. Hill. 11 Eliz. Anon.

the Statute of Marblebridge, includes as well permissive Waife, which is Waife by Reason of Omition, or not doing, as for want of Reparation, as Waife by Reson of Commission, as to cut down Timber-Trees, or prostrate Houfes, or the like; and the same Word hath the Statute of Gloucester, cap. 5. Que aver fait Waife, and yet is understood as well of paffive as active Waife; for he, that suffers a Houfe to decay, which he ought to repair, doth the Waife; So as this Word, facere, hath not only this Signification in a penal Statute, but in a Condition also.

45. The felling Horn-Beams, Hazels, Willows, Sallows, tho' of forty Years Growth, is no Waife, because these Trees would never be Timber; Per Meade J. Godib. 4. pl. 6. Hill. 23 Eliz. C. B. Anon.

46. Division of a great Meadow into many Parcels by making of Ditches is not Waife; for the Meadows may be the better for it, and it is for the Profit and Eafe of the Occupiers of it. Sic dictum fuire. 2 Le. 174. pl. 210. Trin. 29 Eliz. C. B. Anon.

47. The Breaking a Weare is Waife, and fo of the Banks of a Fish-pond, fo that the Water and Fish run out. Arg. and agreed per Car. Ow. 67. Trin. 41 Eliz. in Cafe of Moyle v. Moyle.

48. If Leflee of a Hop-Yard plows it up and fows Grain there, it is Waife, as it has been adjudged. Owen. 67. in Cafe of Moyle v. Moyle.

49. B. Leflee for Years upon Condition to do no Waife, there was a Fish-Pond on the Lands demifed, stored with Carp's &c. C. a Stranger defroy'd all the Fish B. being on the Land, and thereupon A. enter'd. The Question was, whether this was Waife within the Statute of Gloucester? It was faid, that it was, because Fith are Parcel of the Inheritance; But the Court gave no Opinion. 4 Le. 240. pl. 392. Anon.

50. Leflee for Years, the Trees being excepted, has Liberty to take the Shrods and Loppings for Fireboot; if he cuts any Tree it shall be Waife as well for the Loppings as for the Body of the Tree; by Hubbard, and the whole Court, without Question. Noy. 29. Rich. v. Makepeace.

51. The Law will not allow that to be Waife, which is no Ways prejudicial to the Inheritance; Per Richardfon Ch. J. Het. 35. Mich. 3 Car. C. B. in Cafe of Barret v. Barret.


5 U [E] What

1. O f White Thorns W a i t e may be by cutting down. * 46 C. 3. 17. 9 H. 6. 67. In 7 Quick Thorn, (it seems it is White Thorn.)

2. But it is not W a i t e to cut down Black Thorns simply, unless he cuts a Wood of them in Generality. 46 C. 3. 17. * 9 H. 6. 10. b. (but it does not shew what Thorns they are.)

3. If a Terror cuts down Underwood of Hazel, Willows, Maple or Oak, which is seasonable, it is not W a i t e. 9 H. 11 Jac. V. between Sir John Gage and Smith, per Curiam.

4. If Aashes are seasonable Wood to cut from ten Years to ten Years, it is not W a i t e to cut them down for Houfecoat &c. 7 H. 6. 58.

5. But if the Aashes are gros of the Age of 9 Years, and able for great Timber, it is W a i t e to cut them down. 7 H. 6. 38.

6. If Oaks are seasonable and have been used to be cut always at the Age of twenty Years, it is not W a i t e to cut them down at such Age or under; for in some Countries where there is great Plenty, Oaks of such Age are but seasonable Woods. * 10 H. 6. 6. b.

7. But after the Age of 20 Years Oaks cannot be said to be Wood seasonable; and therefore it shall be W a i t e to cut them down. 11 H. 6. 7. b.

* This is misprinted for (11) H. 6. 1. b.

* Br. W a f t, pl. 72. cites 28. S. C. 

* Br. W a f t, pl. 7. cites 8. C.

F. N. B. 59.

(m) — If usually cut and fold every ten Years, it is no W a i t e, but if he dig them up by the Roots, or suffer the Germs to be bitten with Cattle after they are felled, so as they will not grow again, the fame is a Deftitution of the Inheritance, and Waite lies for it. And moving the Sticks with a W e d Scythe is a malicious Waite; and continual moving, and biting, is Deftitution. Godd. 210. pl. 298. Sir John Gage v. Smith.

* Br. W a f t, pl. 176. cites 4 E. 6.

This must be by a Custom, and such Custom may be alleged in the Waed itself without saying, In talis Villa talis habetur Conventus — F. N. B. 59. (m) in the New Notes there (d) cites 4 H. 6. 1. Rait. Etrr. 69. and see 42 E. 5. 52. 11 H. 6. 5.

* Br. W a f t, pl. 150. cites 1 S. P. cites 11. H. 6. 1. b.


* Br. W a f t, pl. 124. cites 11. S. P. cites 11. H. 6. 1. b. (And it seems that this is misprinted in Roll, and instead of (1 b) should be (1 b).)

* Br. W a f t, pl. 124. cites 11. S. P. cites 11. H. 6. 1. b. (And it seems that this is misprinted in Roll, and instead of (1 b) should be (1 b).) — Some hold that Termor may take Oaks, Aashes &c. at 21 or 27, or 30 Years, if they be seasonable Woods, which is called Silva Cedus. Br. W a f t, pl. 176. cites 4 E. 6. — Br. W a f t, pl. 176. says it was agreed at the Parliament at Sarum, that Constitution lies of Silva Cedus, tho the it does not renew annually; whence it seems that Silva Cedus is not Waite, as appears in the Register. — F. N. B. 69. (M) in the new Notes.
Notes there (d) says, that Oakes cannot be said reasonable Wood, which are past the Age of 20 Years; but by a Cullom in any Place where there is Plenty of Wood (Timber) Oakes under 20 Years may be
reasonable Wood; and that such Cullom may be alleged in the Wood itself, without saying in Tuli Villa, or Hundredo talis habitatur Concluso &c. cites 11 H. 6. 2. 4 H. 6. 1. Raft. Entr. 69. and says, See 39 E. 5. 23. 11 H. 6. 5. —Oaks were left upon the Land for Standish, at the left Felling, according to the Statute, and were of the Growth of 16 or 20 Years. Upon the Felling the Oaks in the Close at the Time when these were left, Tithes were paid for them. All the Court held, that the
sitting those Oaks so left was not Waffe, inasmuch as it was sold for Acre wood. And Lord Coke said, thet it be of the Age of 20 or 24 Years, yet if the Ufe of the Parties be to tell such for reasonable Wood, it shall not be Waffe; and if Tithes are paid for it, it appears that it is not Timber. 2 Brownl. 150. 151. Patch. 10 Jac. C. B. Brook v. Cobb.

8. Waffe may be committed by cutting down of certain Pear-trees.

7 E. 6. 38.

9. So it may be committed in (cutting down) certain Apple-trees. Br. Waft, pl. 59. cites

—ibid. pl. 82. cites 7 H. 6. 38. —Cutting of Apple-trees growing in a Garden, it Waffe; but if they grow (scatterly) in disuse Places of the Land, the cutting them is no Waffe. Br. Waft, pl. 143. cites 10 H. 7. 2. For the Statute is in Terris, Domibus, Boffis & Gardinis. Ibid.——Co. Litt. 53. a. S. P.

10. Waffe may be committed within the Statute in an Orchard, tho' it is not within the Words of the Statute. 44 E. 3. 44.

11. And if the Apple-trees are abated by a great Wind, and fall upon the Crops, and several of the Boughs falls into the Land, and the same Apple-trees bear Fruit 2 Years after, if Leffe grubs them up, it
is Waffe. 44 E. 3. 44 b.

12. So if Leffe suffers the Timber to be uncover'd, and after Retention of the Eftate, if Leffe after abates the Timber of the House, and sells it, it is Waffe. But otherwise it is if it falls after the Eftate without Abatement; so that of Timber uncover'd voluntary Waffe may be [but] not negligent. 45 E. 3. 3. b. 13. If a Houfe be feeble, and the Timber perith'd at the Time of the
Leafe, so that it cannot stand, by which it falls within the Term, it is not Waffe. * 49 E. 3. 1. 7 H. 6. 39. Contra 14 H. 4. 12. 14 H. 4. 12. 1 b


14. If the Potts of the Houfe are standing, and the Remnant fallen, Br. Waft, pl. 157. cites the abating of those Potts is not Waffe; for it is not a Houfe, and Waffe ought to be assigned in a Houfe. 49 Ass. 22.

15. If the great Timber was standing at the Time of the Leafe, and * Orig. is the Rafters fallen, it is not Waffe to suffer it to fall; for he cannot
not cover the House without the Rafters. 49 E. 3. 1. b. 16. If the Timber be decay'd, and the Walls standing at the Time of the Leafe, it is Waffe to suffer the Walls to fall. 49 E. 3. 1. b.

17. If the Houfe be uncover'd at the Time of the Leafe, yet if it falls (Fol. 813.) for want of Covering after the Leafe, it is Waffe. Otherwise if it falls for want of Covering beore. * 7 H. 6. 38. Contra Co. Litt. 53. * Br. Waft, pl. 82. cites

S. C.—But if a Frame was uncover'd in the Life of the Leffe, and the Leffe erases it after Leffe's Death, the Heir shall have Waffe. F. N. B. 60. (Q) Many cites 13 E. 5. 22. —Br. Waft, pl. 117. S. P. cites S. C. but says that M. 2 Ma. 1. it was held a contrary by the Chief J. of a new Frame which never was cover'd.—But it was agreed that if a House be ruinous for Defaults or any Caution at the Time of the Death of the Leffe, and after the Tenant suffers it to be more ruinous, that of this new Ruin the Heir shall have Action of Waffe; for this is a Waffe which continues; for of the Patrimony which came in the Time of the Heir, the Heir shall have Action of Waffe. Contra of that which was in the Life of his Father. Br. Ibid.

18. If a Grange falls before the Leafe, and after the Leafe Leffe makes a new Grange, and does Waffe therein, Action lies for it. 12 H. 4. 5. b.

19.
Waft.

19. If the Lessor during the Lease makes a Cottage upon the Land without Consent of the Lessor, no Wafte can be committed in it. 49 C. 3. 1.

Br. Waft, pl. 54 cites S. C.

[19] If the Baron builds a House upon Land of which he is possessor in Right of his Wife, and dies, if the Wife commits Wafte in it, the Action lies against her. 9 P. 6. 52. For the ought to repair it.


21. If a Guardian abates a House newly built, which was never covered, it is no Wafte. (It seems it is intended that it was erected by the Heir or his Ancestor.) 40 Ant. 22. adjudged.

by Kieret—Br. Waft, pl. 107. cites S. C.

22. If a House be uncovered by sudden Tempest, but the * Timber is standing, if it afterwards falls or perishes for Default of Covering, it is Wafte. 12 H. 4. 6. Co. Litt. 53.

if the (House) be standing.—The Tenant must repair it in convenient Time. Co. Litt. 53. a.

23. But if the whole House be fallen by sudden Wind, it is no Wafte if he does * not make a new House; for the sudden Wind excites the Wafte. 12 H. 4. 6. Co. Litt. 53.

24. If a Leffeer stupef ups an Underwood which is seafonable, it is Wafte. B. 9 Jac. 2. B. 11 Jac. 5. between Sir John Gage and Smith, per Curiam. Co. Litt. 53. Hobart’s Reports, Case 295.

25. If a Leffeer puts Beasts into an Underwood, and they crop the Germens, so that the Roots thereby are Aride & Sice, it is Wafte. B. 9 Jac. 2. between Palms and Page, by 2 against one. B. 11 Jac. 5. between Sir John Gage and Smith, per Curiam.

* Br. Waft, pl. 60. cites S. C. & S. P. per Hull.

Godb. 209. pl. 268 S. C. and S. P. agreed according.


27. If a Man cuts Trees, and after suffers the Germens to be destroyed, this is a double Wafte, and he shall render double Damages.

* Br. Waft, pl. 91. cites 22 H. 6. 15.

F. N. B. 59. (M) S. P.

28. The Destroying of Germens, when Tenant cuts an Underwood, is Wafte; for he ought to preserve them. Co. Litt. 43.


30. Destruction
31. If a House be destroyed by Tempest, and Leafe sells the Timber, it is not Waste; for after the Devastation, of which he is excited by the Tempest, the Timber is become a Chattle, in which no Waste can be committed. 29 S. 3. 33. Curia, as it seems it is so to be intended. 40 Ant. 22.

32. If a Tenant cuts down Fruit-Trees growing in a Garden or Orchard, it is Waste. Co. Litt. 53.

33. But if the Fruit-Trees grow upon any Land which the Tenant holds out of the Garden or Orchard, it is not Waste. Co. Litt. 53.

34. If a House be ruinous at the Time of the Demise, yet if the Lessee pulls it down, it is Waste. Co. Litt. 53.

35. Waste may be of Mills and Vineyards. F. N. B. 55. (G) 36.


37. Where there is a Wood in which nothing grows but Underwood, the Tenant cannot cut all. Contra of Underwood where Oaks, Aices, and other principal Trees grow amongst them; for there he may cut all the Underwood. Br. Waite, pl. 136. cites 4 E. 6.

38. In Trespasses the Question was, whether a Copyholder might stop off the Boughs without a Special Casuall; and it was resolved per Curiam, That by the Common Law he may cut off the Under-boughs, which cannot cause any Waste. But the Amputation of the Top-boughs will cause the Putrefaction of the whole Tree; wherefore it is Waste as well as the Decapitation thereof &c. Cro. E. 361. pl. 21. Mich. 30 & 31 Eliz. C. B. Dawbridge v. Cocks.

39. Waste in cutting down 300 Oaks. The Defendant, as to 200, Mo. 718. pl. pleaded That the Houses let unto him were ruinous &c. and he cut them down to repair those Houses; and as to the Rest, he cut them down, and keeps them to repair about Reparations, Tempore opportuno &c. Upon this the Plaintiff demurred in Law; and by all the Court, without Argument, it was held to be no Plea; for if it should, every Farmer might cut down all the Trees growing upon the Land, when there were not any Necessity of Reparations. Wherefore it was adjudged for the Plaintiff. Cro E. 593. pl. 33. Mich. 39 & 40 Eliz. C. B. Gorges v. Stanfield.
What Act shall be Waste. Of what Thing, Things annex'd to the Franktenement.

Of Posts &c. 1. The Removing of a Post in a House is Waste. 42 C. 3. fixed in the Land, and not to the Walls by Ternor, and taken off within his Term, Waste does not lie; for the House is not impaired by it; per Kingmill J. and Grevul Serj. Quod non negatur. Br. Walf, pl. 104. cites 21 H. 7. 26.—Br. Charlcel, pl. 7. cites S. C.

Br. Walf. 2. So the Removing of a Door. 42 C. 3. 6. Demurrer, to 10 H. 7. pl. 143; cites 5. Co. Litt. 53. 10 H. 7. 2.—In Walf of taking away Doors, the Lessee pleaded that he erected them. The Court took a Difference between outer Doors and inner. Per J. Lessee may take away the inner Doors within the Term, but not the outer Doors. Mo. 17; pl. 315. Mich. 24 Eliz. Cooke’s Cafe, alias, Cook v. Humphrey.


Of a Furnace, Fats &c. fix’d in the Land, and not to the Walls, by Ternor, and taken within the Term, Waste does not lie; for the House is not impaired by it; Per Kingmill J. and Grevul Serj. Quod non negatur. Br. Walf, pl. 104. cites 21 H. 7. 26.—Br. Charlcel, pl. 7. cites S. C.—An Furnace fix’d in Medio Domus is but a Chattle, and removable; but otherwife if fix’d in Wals; Per Walmley, fix’d to have been agreed in Dyer’s Time. Br. E. 27. 4. in Case of Day v. Bisibitch.—D. 272. b. pl. 37. Abergavenny (Ld) v. Plummer.—So of a Dyer’s Faste fix’d to the Walls, adjured not removable on an Attachment. Co. E. 57. 4. pl. 24. Hill. 57. Eliz. C. B. Day v. Bisibitch. — Ow. 10. S. C.

Br. Walf. 5. The Removing of a Bench is Waste. 10 H. 7. 5. pl. 143; cites 10 H. 7. 2.—Tho’ annex’d by the Tenant himself. Co. Litt. 53. a. (c)

Tho’ annex’d by the Tenant himself. Co. Litt. 53. a. (c) — If fix’d to a Wall, it is Waste; per Anderson. Co. E. 27. 4. in Case of Day v. Bisibitch. — Waste annex’d by the Leffor or Leffice is Parcel of the House, and whether by great or little Nails, Screws or Irons, put through the Posts or Walls of the House, is all one; but if by any way whatever it be fix’d to the Posts or Walls of the House, it is Waste for Lessee to remove them, and shall pass by Grant of the House in the same manner as the Glasing and Plateifying. 4 Rep 64. cites It as Revolved, Mich. 41 & 42 Eliz. C. B. by the whole Court, in Case of Warner v. Fleetwood. Kelw. 58. pl. 5. 5. — But per Doderidge J. Wainscot may as well be removed by a Leffice as Aarras Hangings. Roll R. 216. in Bridgman’s Cafe.

Br. Walf. 6. If Wainscot annex’d to the House be taken away, it is Waste. Co. Litt. 53. a. (c) — If fix’d to a Wall, it is Waste; per Anderson. Co. E. 27. 4. in Case of Day v. Bisibitch. — Waste annex’d by the Leffor or Leffice is Parcel of the House, and whether by great or little Nails, Screws or Irons, put through the Posts or Walls of the House, is all one; but if by any way whatever it be fix’d to the Posts or Walls of the House, it is Waste for Lessee to remove them, and shall pass by Grant of the House in the same manner as the Glasing and Plateifying. 4 Rep 64. cites It as Revolved, Mich. 41 & 42 Eliz. C. B. by the whole Court, in Case of Warner v. Fleetwood. Kelw. 58. pl. 5. 5. — But per Doderidge J. Wainscot may as well be removed by a Leffice as Aarras Hangings. Roll R. 216. in Bridgman’s Cafe.

Br. Walf. 7. So the Removing of Benches annex’d to the House is Waste. Co. Litt. 53. a. (c)

Be the Glafs fix’d to the Windows by Nails, or
Verdict upon No Waite done; and adjudged for Plaintiff, and so admitted in Writ of Error upon it in S. R. Hill. 9 Car. Rot. 133, in any other manner, by the Leffer or the Leffe; it cannot be removed by the Leffer; for without the Glass it is not a perfect Houfe. 4 Rep. 63 b. 63 in TITTLENED's CAFE, in a Note of the Reporter, cites it as Resolved. Mich. 41 & 42 Eliz. in C. B. per Curiam, in Case of Warner v. Fleetwood.—S. P. Co. Litt. 53. a.

9. If the Tenant suffers the Groundfells to waife in his Default of De- ference, or removing the Water from off them, or of Dirt or Dung, or other fouling Nuissance, which lies or hangs upon it, the Tenant shall be charged; for if he is bound to keep it in as good Cafe as he took it. Br. Waite, pl. 110. cites 5 E. 4. 89.

Waife shall be allign'd in Domibus pro non Scourando &c. Ow. 43. 28 Eliz. Sticklehorn v. Hatchman.

10. Of Tables dormant &c. fix'd in the Land, and not to the Walls, by Br. Chattles, Termor, and taken off within his Term, Waite does not lie; for the Houfe is not impair'd by it; Per Kingsmill J. and Grevil Serj. Quod non negatur. Br. Waite, pl. 104. cites 21 H. 7. 26.

removed, and if it be, it is Waife; per Anderson Ch. J. Cro. E. 514. pl. 24. in Case of Day v. Bubitch.


12. Beating down a * wooden Wall, or sufferings a brick Wall to fall, is not Waife, unless it be expressly alleged that the Walls were cop'd or cover'd. D. 108 b. pl. 31. Mich. 1 & 2 P. & M. Earl of Bedford v. Smith.


13. If Waife be allign'd in pulling up a Plank-floor and Mangers of a Stable, Plaintiff must shew that the same were fix'd. D. 108. pl. 31. Earl of Bedford v. Smith.

14. If Leffe erects a Partition, he cannot break it down without being liable to an Action of Waite; for he has join'd it to the Franktene- ment; Per Meade J. Mo. 178. in Cooke's Cafe, cites 10 H. 7.

15. Shelves are Parcel of the Houfe, and not to be taken away. And tho' it is not shew'd that the Shelves were fix'd, it ought to be intended and S.P. that they were fix'd; Per Coke Ch. J. 2 Bulltt. 113. Trin. 11 Jac. in accordingly. Cafe of Lady St. John v. Piott.

16. Pavement is a Structure; for they use Lime to finish it; Per Coke Cro. J. 129. Ch. J. 2 Bulltt. 113. in Cafe of Lady St. John v. Piott.

Piot v. Lady St. John, S. C. and held that it is within the Intention of the Covenant for repairing Edifices and Buildings, and it is Quafi the Building.

[Wo] Of
Of what Things Wafte may be for Collateral Respect, and of what not.

1. Wafte lies for Cutting several Loads of Black-thorns and Underwood, in the Generally. 46 C. 3. 17. b. (So the Quantity makes the Wafte.)

2. The Cutting of Willows, Beeches, Birches, Aplees, Maple, or such like, standing in Defence of the Houfe, is Wafte. Co. Litt. 53.

3. If Leifice cuts Houfeboott in a Place where other People have Common, it is Wafte; for it is appurtenant to them, because they cannot grow again. 46 C. 3. 17. b.

4. If Leifice be of a Wood whereof another has Common of Eftowers, and Leifice cuts Thorns or Ballei as Houfeboott, or make other such lawful Cutting, and when they are growing afterwards the Commoner cuts them down, the Leifice shall be punished in Wafte for it. 46 C. 3. 17. b.

5. If great Ashes have used to be cut for feafonable Wood every 10 Years, it is not Wafte to cut them at that Age. 7 D. 6. 38.

6. [So] if Oaks have used to be cut when they are of the Age of 20 Years, as feafonable Wood, they may be cut at that Age, and it shall not be Wafte. But after 20 Years they cannot be cut as feafonable Wood. 11 D. 6. 1. b.

7. Black-thorn may be such Timber in some Places, so that the Cutting of them will be Wafte; for if a Man in Action of Wafte assigns Wafte done in cutting of 6 black Thorns, Eriferens Arboris Haberennales spartis crecentes, and Defendant pleads No Wafte done, and the * Jury find that he cut 6 black Thorns Spartim crecentem exitentem Arboris Haberennales, the Plaintiff shall have Judgement; for they may be Arboris Haberennales in some Places, and now the Jury has found them to be Arboris Haberennales. D. 14 Car, B.K. between Cook and Cook, adjudged Per Curiam in Mote of Error, this being moved for Error. Juratur Trin. 14 Car. Rot. 1446.

8. If a Man grants a Tree to one, and then leaves the Land to another, and Grantee cuts during the Leave, yet no Wafte lies. 11 D. 4. 32. b. (It seems because it is not least.)

9. The Conversion of Trees to Coal for Fewel, when there is sufficient dead Wood, is Wafte. Co. Litt. 53. b.

10. [Cut
Wafte.

10. [Cutting] Hafles is Wafte, where there is no other Wood in this Deifying of Quarter of the Wood. Br. Wafte, pl. 21. cites 40 E. 3. 25. Per Finchden, a Wood of Willows or Hafles, is Wafte; but cutting Hafles and Willows in a Wood of Oaks, is only Underwood, and no Waft. Note the Difference. Br. Wafte, pl. 143. cites 10 H. 7. 2. — So if they grow in diverse Places of the Land, it is no Wafte. Ibid.

11. Cutting of Willows which fiftain a Bank, is Wafte; per Brudnell. Cutting Willows, which grow on the Bank of a River, by which the Bank fell down, and a Medow adjoining was overflow'd, was held by Huburt and Winch (who only were present) to be Wafte. Win. 155. 16. Trin. 9 Jac. Sir George Gribbings's Cafe.

[H] What Act shall be said Wafte. For Collateral Respect.

1. The Lessee of Land, with Mines of Coals, Iron, and Stone in the Land, digs the Mines, and fells the Coals, Iron or Stone, it is Wafte. 17 El. 3. 7. Admitted. 2. But otherwise it is, if he digs for his Neccesaries without felling. 17 El. 3. 7. b. 3. If a Lessee digs Trenches in a Medow to let out the Water, by which the Medow is moderated, it is not Wafte. d. 41 El. 2. R. cited to be adjudged in Altman's Cafe. Hobart's Reports, Cafe 235. by the Name of Altman's Cafe, and by the Opinion of the Court it is no Wafte. —— S. P. Obiter Hob. 254. in Cafe of Dacre v. Askwith; for it is a bettering a Thing in the fame Kind —— S. C. cited Avg. Hon. 103. Pach. 5 Car. in Cafe of Patton v. Utber.

4. No Sale is Wafte, if the firit Act is not Wafte. If Lessee fell and cut Timber-Trees, and fells them, it is Wafte; Non quia Vendebat sed quia Scindebat. Godsb. 28. pl. 37. 27 El. C. B. Anon.

[*] By whom the Act or Thing being done, shall be Wafte. Acts of God.

1. If a House falls by Tempeft, he shall be excused in Action of Wafte. 29 El. 3. 33. Curia. Co. Litt. 53. b. This is (C) in Roll, but he has no Mention in any Divifion preceding. S. P. Br.

Conditions, pl. 40. cites 12 H. 4. 5. —— But if it be uncover'd by Tempeft, and by the Tempeft has sufficient Time to repair it, and does not, the Lesfor may re-enter, but not immediately upon the Tempeft; for it is no Wafte till the Tenant pulls it, or that the Timber be rotted; per Hull; and then it is Wafte. Br. Conditions, pl. 40. cites 12 H. 4. 5. —— If he suffers it is continue unrepaired, so that at first the House is causd down by a Tempeft, it is Wafte. Mo. 62. pl. 175. Trin. 6 Eliz. Anon.

2. So if Apple-Trees are torn up by a great Wind, it is not Wafte. Br. Wafte, if Lessee after cuts them. 44 El. 3. 44. b. + 7 D. 6. 38. Pl. 29. cites S. C. + Br. Wafte, pl. 82. cites S. C.

3. The
Waste.

* Br. Waife, pl. 39, cites S. C.
† Br. Waife, pl. 69, cites S. C.

S. P. 2 Inf. 4. So if a House be abated by Lightning. 18 Pl. 6. 33. b. Co.

593. Litt. 53. b. 5. [But] If a House be burnt by Negligence or Mischance, it is Waste. Co. Litt. 53. b.

Leffee for Years contracted, upon a Penalty of 10 l. to repair the Banks of a River. They were afterwards broken down by a sudden outrageous Flood. Fitzherbert and Shelly held, That he is excused of the Penalty, because it is the Act of God; but he is bound by his Covenant to repair it, which he must do in convenient Time. D. 53 a. pl. 10. 11. Patch. 28 & 29 H. 8. Anon.

In such Case, if Banks on the River are unrepair'd, it is Waste; per all the Justices; because the River is not so violent, but that the Leffee by his Policy and Industry may well enough preserve the Banks, and make the Water to run within its Bounds; but the Violence of the Sea is such, that it cannot be refrain'd by any Policy, and therefore it is no Waste if that by Tempestuousness breaks the Walls, and surrounds the Land. Mo. 69. pl. 187. Trin. 6 Eliz. Griffith's Case.—Dal. 70 pl. 43. S. C.

S. P. 56 Rep. 198 b. (d) in Keighley's Case. But if Leffee suffers a little breach in the Wall to continue, by means whereof the Violence of the Sea afterwards breaks all the Wall, and surrounds the Land, it seems reasonable to Dyer that it was Waste; per Dyer. Mo. 62. pl. 173. Trin. 6 Eliz. Anon.


The Statute 1. If a Stranger commits the Waste, yet an Action of Waste lies against the Leffee; for in a Trespass he shall recover his Damages against the Stranger. 49 Eliz. 3. 26. b. 5 Pl. 4. 2. b. 3 Pl. 6. 17. 18 Eliz. 3. 14. b. Citita.

Farmers shall not do Waste; and yet if they suffer a Stranger to do Waste, they shall be charged with it; for it is presum'd in Law, that the Farmer may with it. It et non oblit, quod oblitare potest, facere videntur. 26 Eliz. The Law doth give to every Man his proper Action, so as none of them be without due Remedy; and therefore in this Case the Leffor shall have an Action of Waste against the Leffee, and the Leffor his Action of Trespass against him that did the Waste; and so the Laws, as Reason requires in the End, shall be upon the wrong Doer; and if the Leffor should not have his Action of Waste, he should be without Remedy. 2 Inf. 145. 146.

And the Leffor cannot, in such Cafe, have a Trespass against the Damage. Br. Waife, pl. 39. cites S. C.

2. So if a Stranger sells Leffee, and commits Waste, Waste lies against Leffee for this; for he shall have his Remedy against the Stranger. 44 Eliz. 3. 27. b.

3. If a Man who has Common of Estovers of Land in Leaves, and he does Waste in cutting such Wood as he ought not, Action of Waste lies against Leffee for it. (For it seems he may have Trespass against Commoner;
Waite.

Commover; for he is but as a mere Stranger for this.) 46 E. 3.

17. b.

4. But if an Abater does Waite, and after the Lord recovers against Br. Waite, him in a Writ of Right of Ward (the Peer being in Ward to him) the pl 31., cites his or her shall not punish the Lord for the late Waite done before the Recovery, tho' it was objected that the Lord ought to have his Damage for this in the Right of the Ward, if he had pray'd it. But the Reason there is, because the Peer may have Treipals against the Abater (which is not Law). 44 E. 3. 27. b. Curia.

5. A Guardian shall not be punish'd in Waite for Waite done by a Stranger. Fizv. Ma. 60. (G). (It seems this is a good Reason of the Case of 44 E. 3. next before).

Guardians and in Chivalry in Sconce, whether en Droit or en Fait, and whether of the Grant of the King or of a Subject, or by Possession without Right, both a Prohibition of Waite and an Action of Waite lies at the Common Law; but none of these Guardians shall be charg'd but for voluntary or permissive Waite, and not for the Waite done by a Stranger. 2 Inf. 393.


7. If all Abbot be Guardian and his Commoigne commits Waite, Action lies against the Abbot. 49 E. 3. 26. b.

8. A Guardian shall not be punish'd for Waite done by a Stranger, because it is so penal to him; for he shall lose the Body and Land and other Damage. Co. Litt. 54.

be but of 20s. Value and it sufficeth not to satisfy for the Waite, then he shall recover Damages of the he Waite, over and above the Loss of the Ward. Co. Litt. 54.a (I).

9. Tenant by the Curracy and Tenant in Dower shall be punish'd for Waite done by a Stranger. Co. Litt. 54 [a].

S. P. For he in the Reversion cannot have any Remedy but against the Tenant, and the Tenant shall have his Remedy against the wrong-Dater, and recover all in Damages against him; for voluntary Waite and permissive Waite is all one to him that hath the Inheritance. But if the Waite be done by the Enemies of the King, the Tenant shall not answer for the Waite done by them, for the Tenant has no Remedy over against them. 2 Inf. 393.

10. If 2 Jointenants of a Ward are, and the one does Waite, both S. P. 2 Inf. shall be punish'd in Action of Waite. Co. Litt. 54 [a].

So of Waite done in other Cases by one. See 2 Inf. 393.

11. An Infant shall be punish'd in Action of Waite for Waite done by a Stranger. Co. Litt. 54 [a].

12. Baron and Feme shall be punish'd in Waite for Waite done by a Stranger. Co. Litt. 54 [a].

Shall answer for the Waite done by a Stranger, and have his Remedy over tho' some have holden the contrary. And so is in Case of a Feme Covert, for the Privilege of Coverture and Infancy in this Case shall not prevail against the Wrong and Diffrerion done to him that has the Inheritance, especially when they have their Remedy over, and the Estate is of their own Purchase or Taking. 2 Inf. 393.

13. If Baron possesse’d of a Lease for Years Right of his Feme, commits Waite, and after the Feme dies, Action of Waite lies against the Baron, because the Law gives the Term to the Baron. Co. Litt. 54.

14. If Thieves burn the House of Tenant for Life without evil keeping of Lefsee for Life's Fire, the Lefsee shall not be punisht for it in an Action of Waite. 2 Inf. 303. cites it as adjudg'd in 9 E. 2.

15. A
15. A Tenant shall be punished for Wafte done by a Stranger. F. N. B. 
60. (G). And the new Edition cites 44 E. 3. 17.

S. P. And the Monk shall not be named, but if the Abbot dies, the Action does not lie against the Successor. Br. Wafte, pl. 55. S. C. — But for Trespass of the Abbot, the Act shall be against the Abbot, and it shall be supposed the Act of the Abbot. Br. Moigne, pl. 19. cites 49 E. 3. 25.


* Br. Wafte, 1.

1. If an Abbot gives Leave to his Leafee for Life without Deed to cut Trees and all, or do other Wafte, yet the Successor may punish this Wafte. Dubitatur. 10 H. 7. 3. But there the Issue is after taken upon the Licence. And * 42 E. 3. 22. b. is that the Successor of an Abbot cannot; but Mention is there of a Deed.

But Fines contra, and that the Licence being executed as here is good; For during the Life the Leafee has no Interest but to stop the Trees or to take Benefit of the Shade of them for his Bealls, and Vatior concordat. Br. Wafte, 143. cites 10 H. 7. 2.

2. And it seems if the Licence had been by Deed, yet the Successor might punish it; for it is not lawful for the Abbot or Prior to do Wafte himself, and by his Licence he cannot discharge his House. 10 H. 7. 3. Contra * 42 E. 3. 22. b.

3. If a Man leaves a Clofe and an Underwood, and between them there is a Quicket Hedge, so that the Bealls put into the Clofe cannot come into the Underwood; if the Leafee cuts and carries away the Quicket Hedge, by which the Bealls put into the Clofe enter into the Underwood, and there crop the Germens, by which the Roots of them become Aride & Sieca, this Act of the Leafee shall exclude the Leafee, so that he is not punishable for this Wafte. 9 Ja. 8. between Paines and Padd. Per Curiam.

4. If Leafee commits Wafte, he shall not have Action of Wafte for it. 5 H. 4. 2. b.

5. For if the Leafee has the Leafe of the Action of Wafte by this Wafte, it will bar his Action of Trespass which he might have against the Leafee. 5 H. 4. 2. b.

6. It seems by 5 H. 4. 2. b. that if Leafee recovers in Trespass against the Leafee, that Leafee may ater have his Action of Wafte against him.

7. If a Man cuts a Tree upon Land in Leafe, by Force of a Grace of the Leafee prior to the Leafe, no Wafte lies against the Leafee for it. 11 H. 4. 32. b. For he had the Right to the Tree.

8. If
Waffe.

8. If a Leafee leaves the Land to the Leffor and a Stranger, no Action of Waffe lies after the 2d Leafe ended against the Leffe, nor Waffe committed during the 2d Leafe. 30 C. 3. 16.

9. So it shall he, tho' the Leffor be within Age at the Time of the 2d Leafe made to him and the other, and he dilagrees at full Age, if he takes the Profits within Age. 30 C. 3. 16.

10. But otherwise it is, if he does not take the Profits. 30 C. 3. 16.

[M] Waffe. Justifiable [or Excusuble as to Trees.]

1. A Leffe may justify the Cutting of Trees for Reparation of the Br. Waffe, Houfes. * 7 D. 6. 38. Dobart's Reports, Case 295. pl. 82. cites S. C.

F. N. B. 59. (K) — — Co. Litt. 54. b. — S. P. By the Common Law. But in such Case the Termor shall pay the Wages and Salary of the Workmen out of his own Money, and not cut Wood to fell to pay the Wages. Agreed. Br. Waffe, pl. 112. cites 5 E. 4. 100. — And if he cuts Trees for Reparations, and suffers the Trees to lie and putrefy, it is Waffe. Br. Waffe, pl. 112. cites 5 E. 4. 100.

2. [But] the Leffe shall not cut Trees to make a new Houfe where there was not any at the Time of the Leafe. 11 D. 4. 32. b. Dobart's Reports, Case 295. Demurrer. 18 C. 3. 54. b.

3. If a Leffe suffers a Houfe to fall for Default of Covering, which is Waffe, he cannot cut Trees to repair the Houfe. 44 C. 3. 44.

Br. Waffe, pl. 59. cites S. C.

Waffe, pl. 67; cites S. C. but says Quere if the Necessity can make Issue.

4. If a Stable falls without Default of the Leffe in the Time of the Leffe, the Leffe may take Trees in the Time of the Heir to make a new Stable, if it be of Necessity. Otherwise not. 11 D. 4. 32. b.

Waffe, pl. 67, cites S. C.


Waffe, pl. 67, cites S. C.

The Time of the Plaintiff (the Heir) and fell in the Time of the Plaintiff, in Default of the Defendant. Br. Waffe, pl. 67, cites S. C.

6. If a Houfe falls by Tempeft, or be burnt by Lightning, or pro- 
scribed by Enemies of the King, or such like, without Default of the Leffe, the Leffe may rebuild it again with the fame Materials that remain, and may cut other Timber upon the Land to rebuild it. Co. Litt. 53. [a]

by sudden Tempeft it be burnt down, Waffe does not lie; Quod nona. But contra if it be by Enemies, traitorous Subjects of the King, Note the Diversity. Br. Waffe, pl. 15. cites 53 H. 6. 1. — Br. Cave- nant, pl. 4. S. P. as to Alien Enemies, cites 49 E. 5. 5. — Br. Waffe, pl. 19. cites S. C.

7. So in the said Case, if the House was ruinous at the Time of the Leafe, and fell within the Term. Co. Litt. 53.

This is not Waffe in the Tenant. Br. Waffe, pl. 150. cites 12 H. 8. 1.

8. [But] If the Tenant suffers the Houses to be wasted, he cannot justify the Felling of Timber to repair it. Co. Litt. 53. b.

F. N. B. 59. (K) S. P. — And in such Case the felling Timber to repair the fame is double Waffe. Co. Litt. 53. b.
9. The Tenant may dig for Gravel or Clay for Repraration of the House, and it is justifiable as well as cutting of Trees. Co. Litt. 53. b.

10. If a House be ruinous at the Time of the Leifice, tho' the Leifice is not bound to repair it, yet he may cut Trees to repair it. Co. Litt.

By the Common Law the Leifice shall have them, tho' the Deed does not express it; but if he takes more than is necessary, he shall be punished in Wafe. Br. Wafe, pl 152. cites 12 H. 8. 1. — S. P. per for. Cur. Tho' the Leafe for Years be without Deed, but they differ'd in Opinion as to Fold-bote. Br. Wafe, pl. 89. cites 21 H. 6. 46. — A Termor may take Wood for them, because they belong to him of common Right. F. N. B. 59. (N.) And ibid. in the New Notes there (i) says, he may take Oaks, Elms, Aft &c. for Repair of the House, and Underwood &c. for Inclosures and Firing; but says, Nota H. 21. cites 6. 46.

Covenant by Leiffer that Leifice shall have House-boor, Hay-boor, and Fire-boor, without committing any Waste, on Pain of forfeiting the Leafe, this is no more than what the Law appoints, and therefore the Covenants vain. Cro. E. 604. pl. 18. Hill. 43 El. B. R. Archdeacon v. Jennor.

If Leiffer justifies in Wafe for cutting Oaks for Fire-boor, he must furnish that there was no Underwood upon the Land; so it seems where he takes Aftes, or other Trees which are Timber. Br. Wafe, pl. 89. cites 21 H. 6. 46 — And by the bell Opinion, and per Newton, Oak and Aft under the Age of 16 Years, may be cut for Fire-boor. Ibid.

Leiffer for Life or Years, by the Common Law, cannot take Fuel but of Baffet and small Wood, and not of Timber-Trees; but if Leiffer in the Leafe grants Fire-boor expressly, then if Leiffer cannot have sufficient Fuel as above &c. he may take great Trees. 5 Le. 16. Mich. 14 El. C. B. Anon.

12. If Leiffer cuts Trees for Repraration, and sells them, and after buys them again, and employs them for Repraration, yet it is Wafe by the Sale. Co. Litt. 53. b.

In an Action of Wafe for cutting of Trees, the Defendant justifies &c. That they were to make a Fence with Pale; and by Hubbard, That it was good, without showing that the Fince was made of Pale &c. and men in Dreey. Nay 25. Jenkins v. Jenkins.

13. If Leiffer cuts Trees, and sells them for Money, and with the Money repairs the House, it is Wafe. Co. Litt. 53. b.

14. The Tenant may take sufficient Wood to repair the Walls, Pales, Fences, Hedges, and Ditches, as he found them; but he cannot make new. Co. Litt. 53. b.

15. Leiffer may cut a Tree, and make thereof an Aile, (that is to say, a Veffel to hold Water) and fix it in the Land to him leas'd, to water the Beasts in the same Land, which is necessary, because the Water is a great way off. 33 Att. 31. Adjudged.

16. If a Surn leaseth Land with General Words of all Mines of Coals, where there is not any Mine of Coals open at the Time of the Demife, and after the Leiffer opens a Mine, he cannot justify the Cutting of Timber-Trees for making of Pungeoons, Cross-Rolls, Rolls, Scoops, and other Utensils in and about the land Mine, without which he could not dig and get the Coals out of the Mine; because when a Grant is made of a Thing, all Things which are incident and directly necessary are implicitly granted also. But this is like to a new Houfe built after the Demife, for the Repraration of which he cannot take Timber upon the Land; and it had been Wafe to open it, if it had
had not been granted by express Words. Hobart's Reports, between Lord Darcy and Askwith, Case 295. Adjudged. The Law had been the same if the Mine was open at the Time of the Demise. Hobart's Reports, Case 295. Per Vob.

17. Tenant for Life may cut Underwoods reasonable to abate at the End of 10 Years; per Wichingan, which was denied; therefore Quare. Br. Waite, pl. 21. cites 40 E. 3. 25.

18. It was agreed, that Tenant for Years may cut Wood; but it was doubted of * Tenant at Will. But it seems there, that as long as Tenant at Will is not countermanded, he may cut reasonable Wood & c. Br. Waite, pl. 114. cites 8 E. 4. 6. 7.


19. Where a Man leaves a Wood which is only Great Trees, the Leffee cannot cut it, but shall have only the Grain. Br. Waite, pl. 126. cites 12 E. 4. 2.

20. Cutting of Dead Wood is not Waite. F. N. B. 59. (M)

21. Cutting Wood to burn, where he has sufficient Hedgewood, is Waite. F. N. B. 59. (M.)

22. Leffee for Years was to take Hedgeboot by Affigment, yet he may take it without Affigment; for the Affirmative does not take away the Power which the Law gives him. D. 19. pl. 115. Trin. 28 H. 8. Anon.

23. If the Leffor is bound in a Bond of 100 l. and the Leffee cuts 20 Oaks, and sells them, and pays the Obligee for his Leffor, yet Waite lies against him for cutting them down, tho' the Money was applied to the Use and Profit of the Leffor. D. 36. b. pl. 38. Trin. 29 H. 8. in Case of Maleverer v. Spinke.

24. As to the cutting Timber-trees for Repairs by Leffee, there is no Difference where the Leffor or the Leffee covenants to repair the Houses; for in either Case it is not Waite, if Leffee cuts them. Mo. 23. pl. 80. D. 198. b. Patch. 3 Eliz. Anon.


25. But there is a Difference where Leffor covenants by another Deed, and where by the same Deed that Leffee shall be dischargeable of Waite; for there it is a good Bar in Waite, because by the Words which are all in the Negative, he had discharged him of Waite. But where Leffor covenants to repair the Houses, it is no Discharge to the Leffee by Implication or Aversion, that there shall not be a Curnity of Actions. But that is where there is an Equality of the Thing to be recovered in both Actions, which is not so here; for in Covenant he shall recover only lingle Damages, but in Waite treble. Mo. 23. pl. 80. Anon.

26. If Leffor excepts the Trees in his Leaf, the Leffee shall not have D. 19. a. pl. Fireboot, Heyboot &c. which he should have otherwise; and the Property of the Trees is in the Leffor himself. 4 Le. 162. pl. 269. in Sir Rd. Lewknor's Cafe. Arg. cites 14 H. 8. 1 & 2. and 23 H. 8. D. 19.

will not lie against the Tenant for cutting Trees, because they are not Parcel of the Things les'd, but that Trespass lies in such Cafe.

27. If a Tenant that has Boots to his House in another Man's Land, cuts Wood for that Intent to take his Boot-wood, and the Owner of the Land takes it away, an Action of Trover and Conversion lies against him by the Tenant of the Land who hath such Boots. Clayt. 49. pl. 69. August 1636. Coram Barkley. Anon.
28. A hath Common of Eftovers in the Wood of B. for Houfeboot, and he cuts down four Trees for that Purpofe to prepare his Boots, and in the working they prove unfit for that Ufe, as for Polts of a Houfe &c. It was held that A. cannot convert this Timber to any other Ufe &c. As to Cooper’s ware &c. neither can he fell and buy another fit Wood with the Money; and he cannot inlarge the Houfe with this Timber, nor board the Sides of the Barn there which had Mud-walls, or the like before. Clayt. 47. pl. 81. August 1636. Coram Barkley, Earl of Pembroke’s Café.

29. Rent granted in Fee, with a Proviso to enter and retain till satisfied of the Profits; the Grantee upon Entry cannot cut Trees or do any Wafte; per 3 Justices. 1 Lev. 171. Trin. 17 Car. 2. B. R. Jemmet v. Cooly.


1. A Crition of Wafte does not lie but upon a Leave made, or againft Tenant by the Carefuly, or Tenant in Dower or Guardian. F. N. B. 58. [b] (I) 59. a.

Brownl. 241. Lathombrooke v. Saunders, S. C., ad judg’d that the Trees were dem’d. And. 153.

2. A Leave was made for Tears &c. Proviso, and it is agreed between the Parties, that it shall be lawful for the Leffor and his Heirs at any Time during the Term, to fell and carry away the Wood and Timber-trees growing on the Lands. Adjudged this was a Covenant only, and not an Exception of the Trees; and therefore Wafte well lies against him. Cro. E. 690. pl. 26. Trin. 41 Eliz. C. B. Lushford v. Sanders.


1. Where Writ of Effrepeiment is awarded, and after the Tenant does Wafte, the Plaintiff or Demandant shall have Seire facias of this Wafte. Br. Seire facias, pl. 118. cites 14 H. 7. 7.

2. And in Affife after Verdifi, if the Tenant does Wafte, the Plaintiff shall have Seire facias of this Wafte. Br. Seire facias, pl. 118. cites 14 H. 7. 7.

3. Contra of Wafte after Verdifi in Formedon; for it is his Folly that he had not sued Writ of Effrepeiment before. Br. Seire facias, pl. 118. cites 14 H. 7. 7.

4. But where a Man brings Seire facias to have Execution of certain Land, and the Plaintiff furnishes that the Tenant has done Wafte, and prays Seire facias.
facias thereof, he shall not have it, but after \textit{Writ of Estrepement} awarded, and was made after, he shall have Scire facias. Quod nota; for \textit{Scire facias} does not lie only upon Sainmife, but upon Matter of Record and Summonse, it lies well; Quod nota. Br. \textit{Scire facias}, pl. 118. cites 14 H. 7. 7.

\begin{center}
(M. 4) In what Cases \textit{Wafle} or \textit{Trespafs} &c. lies.
\end{center}

1. If two Tenants in Common are, and the one does \textit{Wafle}, the other shall not have \textit{Trespafs} but \textit{Wafle} pro indiviso, by expresses Words of the Book. But if the one cuts and carries away the other's Corn, of this \textit{Wafle} pro indiviso does not lie, but \textit{Trespafs} lies by Award. Quod nota. Br. \textit{Wafle}, pl. 122. cites 21 E. 3. 9.

2. If Guardian in Chivalry is, and the Trees upon the Land are abated by a great Wind, and a Stranger carries them away, this is no \textit{Wafle} in the Guardian, and the Heir shall have \textit{Trespafs}; for they belong to the Heir. And in Cafe of a Bailiff the Lord shall have Action as the Heir here, and not the Guardian or Bailiff. And so per Knivet clearly, the Guardian is excus'd of \textit{Wafle} and \textit{Trespafs}, as here. Br. \textit{Wafle}, pl. 107. cites 40 Aff. 22.

3. In \textit{Wafle}, the Tenant said that the \textit{Wafle} was done by great \textit{Trespafs} of Wind; Judgment. And the Plaintiff said that the Tenant had covenanted by his Deed to repair it from time to time, and to leave it so at the End of the Term; Et non allocatur; but the Plea of the Defendent is good; for in such Cafe he shall have Action of Covenant, and not \textit{Wafle}. Br. \textit{Wafle}, pl. 31. cites 43 E. 3. 6.

4. \textit{Wafle} does not lie against \textit{Tenant at Will}; for if he cut Trees \textit{Trespafs} lies; Per \textit{Affeo J.}. Br. \textit{Wafle}, pl. 88. cites 21 H. 6. 38.

5. In Debt it was said Arguedo, that if a Man claims an Infant and his Land as his Ward where he has no Right to him, and does \textit{Wafle}, he shall be charged for it in \textit{Writ of Wafle}; but contra where he claims it to his own Use without Colour of Authority; for there \textit{Trespafs} lies and not \textit{Wafle}. Br. \textit{Wafle}, pl. 135. cites 32 H. 6. 7.

6. If the Tenant covenants to repair such an House and does not doit, Action of \textit{Wafle} lies; quare inde; for it seems that only Action of Covenant lies; for it is a good Plea that it was ruinous at the Time of the Demife, and he may take Trees for it; Per Brooke. Br. \textit{Wafle}, pl. 130. cites 12 H. 8. 1.

7. If a Man have \textit{Common of Eftovers} in the Woods of another, and he who is Tenant and Owner of the Wood cuts down all the Wood, he who ought to have the Eftovers shall not have an Action of \textit{Wafle}, but shall have an Allife of his Eftovers. P. N. B. 58. (1).

8. A. leaves a Manor except Woods and Underwoods, Leffee cuts the Trees, yet an Action of \textit{Wafle} lies not against him; for the Thing in which the \textit{Wafle} was suppos'd to be committed was not demifed &c. and therefore Leffee shall be punish'd as a \textit{Trepasser} and not as a \textit{Par-}

S. P. accord ingly. D 19. pl 109. and

110. in Marg. — But if it be by Proviso, that the Lord may enter and carry away all the Underwoods, \textit{Wafle} lies for cutting by Leffee. D 19. pl. 110. in Marg.

6 A  (N) Of

* Br. Waft, 1. N Action lies of a Waste but to the Value of a Penny; for de
  minimis non Curat Lex. 9 P. 6. 66. b. 42 C. 3. 13. * 14 P.
  Br. Waft, 411.
  pl. 10. S. P.
  cites 9 H. 6. 55. where the Count is Ad damnum of 1 d. But if the Jury
  find the Damage ad Valentiam of 1 d. it is good; Per Babington. Nota Diversity.

* Br. Waft, pl. 123. cites 8 C.—And where after
  Contention
  of Waste the Plaintiff had a Writ of Inquiry of Damages, and it was found
  1 d. Per Curiam, no Judgment shall be entered; and by Anderson, if
  Judgment had been entered, it had been Error; for the Value of
  Waste shall be to 40 d. at the least. No 4. Thore v. Thomas.

* F. N. B.
  60. (C) cites S. C.
  * As where
  the
  Damage was
  found in
  one House to the Value of 20 d. and in another to the Value of 22 d. and in
  another to the Value of 12 d. But otherwise where the Finding is in one or
  two Things only to a small Value. Br. Waft, pl. 70. cites S. C.

Br. Waft, pl. 74. cites S. C.

F. N. B. 60.
  (c) says it
  has been
  adjudg’d
  Waste.
  S. P. 2 Inf.
  306. And
  says, the
  Law ap
  points not
  of what Value the Waste shall be,

[O] What Person shall have Action of Waste; [and
  for Waste done before his own Time.]

Br. Waft, 1. T
  HE Ward may have Action of Waste against Guardian within
  Age. 48 C. 3. 10. b.

He may have Action within Age, by the Statute which says that the Guardian render Damage to the Heir, if the Ward left does not suffice to the Value of the Damage before the Age of the Heir. And also Action of Waste lay for him at full Age by the Common Law. Br. Waft, pl. 68. cites 22 H. 4. 3.—— And the same Law against Tenant in Possession; and in those Cases the Statute shall not be reheard in the Writ; Per Hanke. Ibid.

2. The

3. The Successor Prior of an Hospital shall have Waste for Waste done in Time of Predecessor, because he is not to allege the Waste to be to the Disinheritance, but generally to the Disinheritance of the House and Hospital. * 42 E. 3. 21. b. 22. b. Fitzh. Na. 59. (O) 4. But the Successor of such Person who may make a Testiment, shall have not have Action of Waste for Waste done in Time of his Predecessor. * 2 P. 4. 2. b. Coke's Litt. pl. 58 cites 58. S. C. — 2 P. 4. 2. b.

5. As the Successor of a Bishop shall not have Action for Waste done in Time of his Predecessor. * 2 P. 4. 2. b. Coke's Litt. pl. 58 cites 58. S. C. — 2 P. 4. 2. b.


The same Law of Mayor and Commonalty. Br. Waffe, pl. 58 cites M. 2 H. 4. 2.

9. The Heir shall not have Action of Waste for Waste done in the Time of his Ancestor, because his Predeceutor ought to be that it was to his Disinheritance, which he cannot lay. † 42 E. 3. 22. 45 E. 3. 3. b. Unaltered ‡ 11 H. 4. 32. b. 9 P. 6. 10. b. 11. Co. Litt. 53. b. (e) 53. b. 2 P. 4. 3. b. And there it is said, that there was an Ordinance (now repealed) made 20 C. 1. called William Botsetter, that the Heir should have Action. 38 E. 3. 24. Admitted by Malle.

pl. 41. cites S. C. — ‡ Br. Waffe, pl. 67. cites S. C. — ‡ Br. Waffe, pl. 67. cites S. C. — ‡ Br. Waffe, pl. 67. cites S. C. —

Lands given to two, and the Heirs of one of them; he that has the Fee shall not have an Action of Waste upon the Squire of Gloucester, for that they are Jointenants; but his Heir shall have an Action of Waste against the Tenant for Life. Co. Litt. 53. b. — But this must be intended for Waste done after the Death of his Ancestor, who was the other Jointenant. See Br. Waffe, pl. 55. cites 55 E. 3. 9.

If Leffe does Waffe in the Life of Leffe, the Heir can have no Action of Waste for this, because he cannot recover the treble Damage, so neither can the Executor, because he cannot recover Locum Vacantum, the Inheritance wherein is in the Heir. Wentw. Off. of Ex. 67. — See (E) pl. 17. in the Notes.

10. So Lord by Escheat of a Reversion shall not have Action for Br. Waffe, Waste done before the Escheat. 45 E. 3. 3. b. — See T. Escheat.

11. If the Father dies seized of a Reversion, and then Waffe is committed, and the eldest Son and Heir dies before Action brought, without Issue, the 2d Son shall not punish this Waffe; for it is a good Plea in Action by him, that he had an elder Brother who survived the Father;
Father, after whose Death [No Wafe (was)] done. 9 H. 6. 10. b. 11.

12. The Alieeue shall not have Action of Wafe for Wafe done mean between the Grant of the Reverson and Attornment. 18 H. 6. 23.

13. So the Alieeue shall not punish this Wafe. 18 H. 6. 23.

14. If lesser for Life and his Lesser join in a Lease for Years by Inden- ture, and Lesser for Life dies, the surviving Lesser shall have the Action for Wafe done, and shall count that he did demise alone. Brownl. 238. Trin. 3 Jac. Bedell v. Bedell.


16. Fine levied without Consideration of Use express'd, is to the Use of the Conosor and his Heirs, who may have Action of Wafe after the Fine for Wafe committed before, as well as he could before the Fine; Per Vaughan Ch. J. Vaughan. 43. Hill. 21 b. & 22 Car. 2. in Cale of Dixon v. Harrison, cites Sir Myole Finch's Cale, 6 Rep. 63. b.

[ P ] What Person shall have [Wafe.] In respect of Estate.


3. Reversoner in Tail shall have Action of Wafe. 45 E. 3. 3. b.

4. Lord by Elcheat of a Reverson or Remainder in Fee shall have Action of Wafe. * 45 E. 3. 3. adjudg'd. + 11 H. 4. 10. b. + 3 P. 6. 1.


See (F. 3.) 2. — * Br. Wafe, pl. 60. cites S. C.

5. Tenant in Tail after Possibility shall not have Action of Wafe against Lesser, for in Effect he has but for Life. * 2 P. 4. 20. 22. B. 3 P. 4. 5. b. Co. Litt. 53. b.

6. If 2 Jointenants and to the Heirs of one are, and they Lease for Life, they both shall have Action of Wafe. 46 E. 3. 17.

7. But if 2 Jointenants are, and to the Heirs of one, if he who has for Life does Wafe, the other who has Fee shall not have Wafe against him for Cause of their Joint Purchase. 50 E. 3. 3. b.

8. But his Heirs shall have Action for Wafe done after his Death. 17 E. 3. 36. b. 65. b. 21 E. 3. 33. b. 24 E. 3. 27. b.

S. C. 113. S. P. cites it as cited elsewhere. — He that has the Inheritance shall have no Action of Wafe by the Statue of Gloucester, but...
Waste.

but upon the Statute of W. 2. he shall have an Action of Waste. Co. Litt. 200. b. — S. P. For no other Action of Waste can he have. 2 Inf. 403. — S. P. as to the Statute of Gloucester, because they are Jointenants, but his Heir shall have such Action against Tenant for Life. Co. Litt. 53. b. (a) — Co. Litt. 247. b. S. P.

9. If Lease for Life be to one Remainder to the Baron and Feme and to the Heirs of the Baron, Baron and Feme may joyn in Action of Waste. 17 El. 3. 7. b. 50.

10. A Parchelor shall have Action of Waste, tho' the Statute speaks In Waste of those who are Inheritors, 17 El. 3. 7. b.

Man lived for Years, and within the Term suff't the Terno' and inter'd the Plaintiff; the Terno' rec'ed't, and the Feoffee brought Action of Waste, and the Terno' pleaded No Waste done, and found for the Plaintiff, and he rec'd' by Award; for here needs no Attornment where the Terno' was outfitt'd and Livery made; and the Action was brought as Assignee, and well; for he may suach in Precipe quod reddat, and is Assignee. Br. Waste, pl. 72. cites 5 H. 5. 12.

11. If a Reversion be granted to two and to the Heirs of one of them F. N. B. 59. they shall join in Action of Waste. Co. Litt. 53. b.


13. If two Coparceners are of a Reversion, and Waste is committed, F. N. B. 60. and then one Coparcener dies, yet the Aunt and the Niece shall join in Action of Waste. * Co. Litt. 53. b.


* Treby Ch. 1. much doubted of this Case; for all Books there cited are nothing to the Purpose, except one, viz. br. Waste 41. and he says that this was a strange Case, where one of them could not recover for Part, viz. Damages. Lutw. 821. in Case of Jointcourts v. Weekes.—— Doubted per 3 Jult. 1 Salk. 187. S. C.

14. 13 E. 1. cap. 22. Whereas two or more * do hold Wood, Turf-land, or This Act Fislings, or other such thing * in Common, wherein none knoweth his several Extends not to Coffles, and none of them * do Waste against the Minds of the other, an Action may lie by a Writ of Waste.

14 E. 1. 27. & 34. B. 140. * These Words (do hold) imply a Freethold at least. 2 Inf. 407.

If Woods be letten to two, the one for Life, and the other for Years, they are not within this Statute, in Respect of the said Words (do hold) 2 Inf. 405.

* These Words do include as well Jointenants as Tenants in Common; for both of them hold in Common, and to do old Books and Records term them both; but tho' the Generality of these Words do extend to Coparceners, yet in good Construction they are not within the Purview of this Act, because they were compellable to make Partition; for this Act extends not to them that had Redeme by the Common Law. 2 Inf. 402. — S. P. per Fetherbert and Baldwin in Ch. J. Br. Waste, pl. 4. cites 27. H. 8. 15.

But Brooke says, supre this day; for now Write of Partition is given between Jointenants and Tenants in Common by the Statute of 31. & 32. H. 8.

A Parton of a Church being Tenant in Common with another shall have an Action of Waste upon this Statute. 2 Inf. 403. — F. N. B. 49. (1). S. P. — See (B) pl. 5. — And it is holden, that an Action of Waste upon this Act is maintainable between Jointenants or Tenants in Common for Lives, and yet the Words of the Writ be, Ad exhareradationem. 2 Inf. 402.

* What shall be said Waste or Depradation in a Tenant for Life &c. shall be said Waste within this Act. 2 Inf. 403.

If two Tenants in Common are of a Wood, and the one leaves his Part to the other for Years, and he sells the Trees and does Waste, he shall be punifh'd for the Mocie of the Waste, and the Leffor shall recover the Mocie of the Place waffed; Per Dyer and Welton. No. 71. pl. 194. Trin. 6 Eliz. Anon.

And when it is come unto Judgment, the Defendant shall chuse either to he shall take his Part in a Place certain, by the Sheriff, and by the View, Oath, and form such
Assignment of his Neighbours, sworn and tried for the same Intent, or else he shall grant to take nothing from henceforth in the same Wood, Turf-land, and such other, but as his Partners will take.

Lord Coke says the Defendant (Quere if it should not be (The Party injur'd)) hath at this Day a further Election, either to have an Action of Waifte upon this Act, or a Writ of Partition by the late Statute. (And in the Margin cites 28. (but it seems it should be 51) H. S. cap. 1. and 32 H. S. cap. 32. 2 Inf. 404.

This is not to be taken literally; for it may be that the Place wasted is more than his Portion; and therefore it must be understood of so much as belongs to his Part. 2 Inf. 404.

15. If Baron and Feme make a Leafe, and the Baron dies, and the Feme brings Waifte, this is well, for it affirms the Leafe; for it was not void. And it is no Plea, that the Feme had nothing but in Coparcenary with one A. who is in full Life not named in the Writ &c. Br. Waifte, pl. 94. cites 22 H. 6. 24.

16. Where a Man leaves for Life, and has Issue two Daughters, and dies, and the one takes Baron, and the Tenant grants his Effeate to the Baron and Feme, this is no Surrender; per Vavifor clearly. And if they commit Waifte, the other Sitter shall have Writ of Waifte against them in all their Names, and the Baron and Feme shall be summon'd and sever'd. Br. Waifte, pl. 110. cites 21 H. 7. 40.

17. If he be in Reversion and the Tenant for Life join in a Leafe for Life, and the Tenant does Waifte, both shall join in Writ of Waifte, and the Tenant for Life shall recover the Franktenement, and he in Reversion the Damages. And so from hence it seems, that the Leafe is as well the Leafe of the Tenant for Life as of him in Reversion. Quod nota. Br. Leafe, pl. 2. cites 27 H. 8. 13. Per Fitch. Shelley and Baldwin.

18. Guardian in Sicceage shall not punish Waifte done by a Stranger. F. N. B. 59. (G) and in the new Notes (c) says, fee 46 E. 3. 17. Perk. 113. b. 4 E. 3. 16.

19. Leafe for Life, Remainder in Tail, the Remainder in Fee unto the Leafe for Life; if he commits Waifte, he shall be punifh'd by him in the Remainder in Tail; and yet the Leafe for Life hath the Remainder in Fee, but there is a meane Effeate of Inheritance &c. F. N. B. 60. (B)

20. Grantee by Fine of the Reversion shall not have a Writ of Waifte against the Tenant, before the Tenant attorns; but if a Reversion escheats to the Lord, he shall have Waifte without Attornment. F. N. B. 60. (I) and the new Notes there (c) cites 34 H. 6. 6. 5 H. 7. 19. Nat. Br. 269.

21. Devisee of Reversion in Fee shall have Waifte without Attornment. F. N. B. 60. (I)

22. Two Coparceners are, and one has Issue, and dies, and her Husband is Tenant by the Curtesy, and commits Waifte, his Son shall not have Waifte against him without naming the other Coparcener; but if he bring such
Writ, it shall abate. F. N. B. 60. (R) cites Pach. 2 H. 6. Title 11. b. Dabi-

Waffe.

103. a. pl. 64. is that the *lute sole shall have it. 15 H. 7. 14.—In Waffe by the Heir, it is a good

Pins that the Plaintiff has another Cofarmer in full Life not named, Judgment of the Writ; for the one
cannot have Action without the other. Br. Waffe, pl. 8. cites 9 H. 6. 11.

23. If there are 3 Tenants in Common pro indiviso, and one commits
Waffe, the other 2 ought to join in an Action of Waffe against the 3d.
F. N. B. 60. (S) cites M. 3 E. 2. Waffe.

24. No Person shall have an Action of Waffe, unless he has the imme-
diate State of Inheritance; but sometimes another shall join with him for
Conformity. Co. Litt. 53. b. (d)

or Fee-tail. But a Person or Preliminary shall have a Writ of Waffe upon their Leave; yet some they have
not the Fee-simple in themselves alone. F. N. B. 60. (K) and the new Notes there (a) cites First,
Waffe, 5. Lit. 145. Nat. Br. 56 —S. P. F. N. B. 57. (F) — A * Parson, Vicar, Archdeacon, Pre-
bendary, Country-Priest, and the like, shall have an Action of Waffe. Co. Litt. 531. a.
* S. P. but he cannot have Writ of Right. Br. Waffe, pl. 144. cites 10 H. 7. 5.

25. If I grant the Reversion of my Tenant for Life to another for Life,
now shall not I have an Action of Waffe. But if I release to the Grantee
for Life and his Heirs, now he has the Fee-simple, and shall punish the
Waffe done after. Co. Litt. 273. a. b

26. In some Special Cases an Action of Waffe shall lie, albeit the As if Tenant
Leffor had nothing in the Reversion at the Time of the Waffe done. Co. Litt. for Life
356. a.

Condition, and Waffe is done, and after the Leffor re-enters for the Condition broken, in this Case the Leffor
shall have an Action of Waffe. Co. Litt. 356. a.

So if Leffor for Life be appointed, and Waffe is done, the Leffor re-enters, an Action of Waffe shall be main-
in'd against the Leffor, and so in like Cases; and yet in none of these Cases the Plaintiff in the
Action of Waffe had any thing in the Reversion at the Time of the Waffe made; but these special Cases
have their several and especial Reasons. Co. Litt. 356. a.

27. Leafe for Life, Remainder to Baron and Feme in Special Tail.
Leffe dies Waffe. Feme dies without Ifsue. The Baron cannot have
Waffe by the Statute. But Brown said, If the Remainder be limited
over to the Baron and his Heirs, and the Wife dies after Waffe done, he
thinks the Baron shall have Waffe, because the Tenancy in Tail after Pof-
fession, is drownd'd in the Inheritance. Quod Dyer negatit. Mo. 18.
pl. 64. Mich. 2 Eliz. in an Anonimous Cafe.

28. Leafe for Life. Leffe for Life leaves for Years, and after surrender-
theses to him in Reversion in Fee. He in Reversion shall not have Waffe, be-
cause the Tenant for Life, who surrender'd, could not have Waffe in this
Case; per Popham. Mo. 94. pl. 232. Patch. 12 Eliz. in Cafe of Lord
Treasurer v. Barton.

29. So if Tenant for Life purchased Reversion in Fee, he shall not have
Waffe during his own Life. Mo. 94. pl. 232. Patch. 12 Eliz. in Cafe of
Ld. Treasurer v. Barton.

30. A Leafe was made to A. for Life, the Remainder to B. in Tail, the
Remainder to the right Heirs of B. who bargains and sells all his Estate,
or leaves a Feme, with Proclamations of it to D. A. commits Waffe. It
was held by the Court, That D. shall not punish him in an Action of
Waffe ; for nothing passes to him but during the Life of the Grantor,
viz. As to the Remainder in Tail, in respect of which Estate the Action
of Waffe is only maintainable: For although that the Fee-simple pass-
eth to the Grantee or Confee, yet in respect of that an Action of Waffe
is not maintainable, untill the Estage-Tail be spent. 3 Le. 60. pl. 88.
Hill. 18 Eliz. in C. B. Owen and Sadler's Cafe.

31. A.
31. *A. Tenant for Life* Remainder to *B. in Tail*; *B. bargain'd and sold* to *J. S.* and his Heirs; and levied a *Fine* to the Uses accordingly. *A. commits Waste.* *J. S.* brought *Action,* and declared against him, but *did not for the Fine to be with Proclamations,* for which Reason the Justices thought they ought to intend it to be without Proclamation, and then they say, that the Bargaine is not such a Grantee of the Reversion as may have Waste, notwithstanding that he has the Reversion to him and his Heirs; for his Estate is only for the Life of Tenant in Tail, there being no Discontinuance. Mo. 220. pl. 359. Mich. 27 & 28 Eliz. Owen's Cafe.

32. *A Man's Farmer committed Waste,* and afterwards be in Reversion covenanted to stand seised to the Use of his Wife for Life, and after to the Use of himself and his Heirs; his Wife dies; if he be in his Fee untouched, he shall punish the Waste; if he be in by the Statute, he shall not punish it. Ld. Bacon on the Statute of Uses. 353, 354.


34. *A Man seized in Fee shall not have an Action of Waste* for *Negligent Waste against his Lessee at Will,* but if Lessee at Will to Lessee for Years does such negligent Waste, the Lessee for Years may have an Action against him, because he is answerable over to his Lessee. But not that he, as well as a Tenant in Fee, might secure himself by Covenant. 1 Salk. 19. pl. 9. Patch. 13 W. 3 B.R. Panton v. Ilham.

35. *Tenant in Tail* by Lease and Release, or by Bargain and Sale, or by Covenant to stand seised, conveys to *B. and his Heirs,* the Estate Tail is not in Abeyance but in the Alienees, and not in the Tenant in Tail, and he cannot afterwards bring Waste for Waste done after; Per Holt Ch. J. 2 Salk. 620. Trin. 1 Ann. B. R. in Cafe of Machil v. Clark.

36. If there be *Tenant for Life,* Remainder in *Tail,* and the *Tenant in Tail* releases to the *Tenant for Life all his Right,* this had put the Tail in Abeyance; so that he could not afterwards have maintained an Action of Waste; *but if the Remainder had been in Fee,* and he in Remainder had released all his Right, the Remainder still continues in the Tenant in Fee, and he may have an Action of Waste. And the Reason of the Difference is this, that when the Tenant in Fee releases all his Right, he only confirms the Estate to Tenant for Life, during his Life; and for want of Words of Inheritance, it passes no farther Interest, and therefore he has still a Remainder depending on an Estate for Life, to which an Action of Waste belongs. But Tenant in Tail cannot by the Release of all his Right pass an Estate during the Life of the Releasee, but *only passes an Estate during his own Life,* and therefore having put all his Right out of him he cannot bring an Action relating to such Right. G. Treat. of Ten. 119, 120.

[Q] Against
 WALTE. 465

[Q.] Against whom the Action lies. In Respect of the
Estate of the Lessee.

1. Action of Waste does not lie against Tenant in Tail after Possi-
bility, for the Rightness of the Estate which was once in him
of Inheritance, and also as some lay, because the Estate was not
within the Statute at the Creation. 39 El. 3. 16.

Bowles's Case.—F. N. B. 59. (P) S. P. —— S. P. But such Tenant shall not have the Trees &c. which
he cuts. 4 Rep. 65; Patch. 51 Eliz. B. R. in Her liberals's Case. —— See Tit. Taille after Possibility
(L.) p. 2, and the Notes there.

2. If a Lease for Life be made to a Villein, and the Lord enters, and
and after does Walte, then he comes in on le Poit, yet Action of
[a].

3. Action of Waste lies against an Occupant for Life, because he has
the Estate of the Lessee for Life, and holds in for Life as the Statute
Litt. 44. b. 54. [a].

4. If Lessee for Life be attained of Treason, by which the Lessee is
forfeited to the King, who grants it over to J. S. and he after does
Waste, then he comes in on le Poit, yet Action of Waste lies against
him. H. 12. 3a. B. R. Davie's Case; Per Cooke.

5. An Action of Waste does not lie against Tenant by Statute Mer-
chant, Elegit or Staple, because it is not an Estate for Life or Heirs,
and the Statute mentions those who hold in any Manner for Life of
Litt. 54. Contra Fitzh. Na. 58 b. and there said, that in the Re-
gressor is a Rule against him; quod vide 75. But in the Margin
where it it be maintainable by the Law against him, apud Beilford,
Ann 7.

Elegit, who had cut Trees, to pay the Residue of the Money to answer for the Trees cut, and for the Plaintiff
to keep his Land again; Per Curiam. By the Statute against cutting Trees this is in the Nature of a
Trope, and lies not in Account, nor is he punishable in Waste, but in an Action on the Cafe only.
Waste lies not against Tenant by Elegit, but Writ of Account; Quod nota bene. Br. Walte, pl. 78. cites
21 E. 5. 30.

6. Some Books give the Reason of it to be because the Counter, if such Te-

nant cuts Timber it
may have Sire facias ad Computandum. 3 Mod. 93. Arg. in Case of the Mayor and Commonalty of

7. An Action of Waste lies against a Devisee, and the Writ may
suppose it Ex Legatione; for it is within the Equity of the Statute, 10

Writs, lib. 10. cap. 5. S. 26. cites S. C.

8. No Action of Waste lies against Guardian in Sogage, but an Ac-
count or Trepuents. Co. Litt. 54.

And 2 Inst. 135. says, the Heir within Age shall have an Action of Waste against the Guardian in So-

cage.
9. If a Man disposses the Tenant for Life, and does Waife, Action of Waife lies against the Tenant for Term of Life; for he may have his Remedy over against the Disposer. Br. Waife, pl. 138. cites 23 H. 8.

10. If an Estate of Lands be made to Baron and Feme to hold to them during the Coverture &c., if they do Waife, the Feoffor shall have Writ of Waife against them. Litt. S. 380. 381.

11. If an Estate be made to A. and his Heirs during the Life of B. A. dies, the Heir of A. shall be punished in an Action of Waife. Co. Litt. 54. 4. (s)

12. If a Man make a Lease for Years, and puts out the Leeslee, and makes a Lease for Life, and the Lessee for Years enters upon the Leeslee for Life, and does Waife, the Leeslee for Life shall not be punished therefore. 2 Inft. 303.

13. Lessee for Years makes a Lease of one Moteity to A. and of the other Moteity to B. A. does Waife; the Action shall be against both; for the Waife of the one is the Waife of the other. Brownl. 238. Anon.

[R] Against whom it lies.

1. If Feme Leeslee for Life takes Baron, who does Waife, Action lies against both. 33 B. 6. 31. 17 E. 3. 68. b.

2. And if Feme Leeslee for Life takes Baron, who commits Waife and dies, Action of Waife lies against the Feme for it. Tune E. 1. Fitz. Waife 128.


4. But if she waives the Estate, she shall not be charged. 21 H. 6. 24. b.

5. So upon Lease for Years made to the Baron and Feme, Waife lies against both. 2 H. 4. 19. b.


7. If Feme commits Waife, and takes Baron, the Action shall be brought against both. 49 E. 3. 26.

Quod sequentum valetum, or Quod Uxor, damn sula sua, fecit Valetum. Br. Waife, pl. 55. cites 49 E. 3. 25.

Per Hafles and Kyron.
8. Tenant in Dower takes Baron, who does Waste, and dies, the Feme shall not be punished for this. 15 H. 3. Fitzj. Waste 133.

9. But if Baron and Feme are Joint-lessees for Years, and Baron does Waste, Waste, and dies, Action of Waste lies for this against the Feme. 7 H. 6. 2. b. 

Quod non negatur. Br. Waste, pl. 58. cites M. 2. H. 4. 2. —Br. Waste, pl. 138. cites 23 H. 8. that Waste does not lie against the Feme. But says Quere if this be not the Waste of both; and says, So see where there is Folly in the Feme, and where not. [Quere if this does not mean by her agreeing to the Estate after the Baron’s Death. See pl. 5. supra.]

10. If Baron seised for Life of his Wife in Right of his Wife, does Waste, and after the Feme dies, no Action of Waste lies against the Baron in the Tenure, because he was seised only in Right of his Wife, and the Frankenement in the Feme. Cooke Litt. 54.

C. R. Mich. 15 & 16 Eliz. Clifton’s Case, alias, Southcote v. Clifton, that the Writ does not lie; and the Reporter says, Note Reader, this Judgment given upon Consideration of the Statute of Gloucester, and of Opinions Obiter in 10 H. 6. 11 & 12. by Strange and Cotentyne. 46 E. 3. 25. 46 E. 3. Tit. Waste in Statham.—S. C. cited by Treby Ch. J. Lutw. 6.4 in the Case of Baron and Barkle, and said the Reason is, because it cannot be said that the Baron tenet ex Diminutio, according to the Words of the Statute.

11. But if Baron possidet for Years in Right of the Feme, does Waste, and after Feme dies, Action of Waste lies against the Baron, because the Land gives the Ten to him. Cook Litt. 54 b.


49 E. 3. 25. Per Belknap, pro Leg. Quod non negatur.


15. And in such Case the Action lies, without naming the Bawke who was Abbot at the Time. 49 E. 3. 26.

16. If the King commits the Wardship of the Heir in Ward unto another, and the Committee does Waste, then, upon a Sumnife made thereof in Chancery, the King shall send a Writ unto the Escheator to go to the Land, and lee if Waste be done, and to certify the King thereof in the Chancery. F. N. B. 59. (B)

17. If Escheators do commit Waste in Lands which they have in their Hands in Custody, the Heir within Age, or of full Age, shall have an Action of Waste, and shall recover treble Damages against them, and they shall suffer Imprisonment 2 Years at the least, at the King’s Pleasure. And so if Escheators do commit Waste in other Lands, Cited into the King’s Hands by Inquest of Office. F. N. B. 59. (B) cites Anno 36 E. 3. cap. 13.

18. And Escheators, or other Guardians of Lands, in the Vacation of the Temporalties of Biweekly or Abbies, shall do no Waste &c. F. N. B. 59. (B) cites Anno 14 E. 3. pro Clero, cap. 4 & 5.

19. Lands
against whom. In respect of his Estate.

Le. 291. pl. 1. If Tenant by the Curtesy grants over his Estate, and Grantee commits Wafe, the Action of Wafe ought to be brought against the Tenant by the Curtesy by the Heir, and thereby he shall recover the Land against the Allegiance. Co. Litt. 54. for the Privity, which is between the Heir and the Tenant by the Curtesy.

S. P. 2 Inl. 2. If Tenant in Dower grants over her Estate, and after Grantee commits Wafe, per an Action of Wafe lies against the Tenant in Dower, for the Privity between them. 30 Eliz. 3. 16. b. 38 Eliz. 3. 23. Adjudged.

S. P. 3 Rep. 23 b. in Walker's Cafe.

9 Rep. 142. a. in Bennom's Cafe.—Le. 291. pl. 397. Arg. S. P. — Brownl. 239. Anon. — Br. Wafe, pl. 68. cites 21 H. 4. 18, 19. — It lies against her, and not against the Grantee; for the Grantee cannot be Tenant in Dower; and Confirmation by the Heir to the Tenant in Dower is no Bar to this Action; because it shall not change her Estate. Br. Wafe, pl. 76. cites 38 Eliz. 3. 23.

The Husband left a Feme, and took back an Estate for Life, Remainder to his Son, and died. The Son endorses the Wafe, who affures over her Estate. Adjudged that Wafe lies against her as Tenant in Dower.

F. N. B. 56. (E) in the new Notes there (a) cites 26 Eliz. 3. 76. — See the Note to pl. 1. .

Le. 291. pl. 3. But if Tenant by the Curtesy, or Tenant in Dower, grant over their Estate, and Grantee does Wafe, the Allegiance of the Reversion (be the Assignment made before or after the Wafe done) shall have Action of Wafe against the Allegiance, because the Privity is destroy'd. Co. Litt. 54.

S. P. — S. P. 2 Inl. 297. Arg. S. P. — S. P. 3 Rep. 23 b. in Walker's Cafe. — F. N. B. 56. (E) S. P. For one cannot hold by the Curtesy but of the Heir &c. — He can hold of none but the Heir, and his Heirs by Descent. Co. Litt. 54. 2516. a. — But if Heir of the Baron endows the Feme, and the allegiance over her Estate, Wafe lies for him against the Wife; for the Plaintiff shall not suppose in his Wafe, that he held in Dower of him Ex Allegiance, but only that he held in Dower of his Heritage. F. N. B. 56. (E) in the new Notes there (b) cites 58 Eliz. 3. 23. Adjudged.

If
Waste.

4. *If* Leffe for Life grants over his *Estate* upon Condition, and after Grantee commits Waste, and Grantor enters for the Condition broken, he cannot be charged for the Waste committed by the Grantee. 30 Eliz. 3. 16 b. Contr. Co. Litt. 54.

In Case of Tenant for Years, 2 Infin. 502.—S. P. And the Place wasted shall be recover'd Co. Litt. 54 a (q) —S. P. rep. 12 b. in Saunders's Case, cites 30 Eliz. 3. 16 b. and Fitch. Waste. 26.


6. *If* Leffe for Life or Years assigns over his *Term*, and after takes the Profits, Action of Waste lies against him by the Statute. Co. Litt. 54.

him that takes the Profits; but this is by the Statute of 11 H. 4. cap. 5. For in that Case the Peron of the Profits did not hold the Land. 2 Infin. 502.

If Tenant for Life or Years does Waste, and grants over his Estate, the Wit lies against him who did the Waste, and not against the Grantor. F. N. B. 66 (A) —S. P. if the Waste be done after the Alienation made, then it lies not against the Tenant. F. N. B. 65 (L) but says, tamen Quare.

7. *If* Leffe for Life and for Years after his Death, commits Waste. Br. Waste, and dies, his Executor shall not be charg'd for it. Contr. 46 Eliz. 3. pl. 45 cites S. C.

8. *If* Villein does Waste in the Land to him left, and the Lord enters, the Action does not lie against the Lord for it. 48 Eliz. 3. 19 b. Co. Litt. 54.

9. If 2 Jointtenants do Waste, and after the one enters into Religion, Waste lies against the other alone. 49 Eliz. 3. 5 b.

10. *It does not lie against Tenant at Will.* 48 Eliz. 3. 25.

Br. Waste, pl. 42 cites S. C. that Care lies, but not Waste.—If Tenant at Will to him and his Heirs, according to the Custom, or another Tenant at Will cuts Trees, Action of Waste does not lie, but Trespass; Per Alcoth Juff. which was not denied by the other Judges, nor it is not except'd if he shall have Trespasses &c. &c. Br. Trespass, pl. 147. cites 21 H. 6. 36 —Br. Waste, pl. 85 cites S. C. — Tenant at Will cut down Trees, Leffor brought Trespass &c. &c. against him, and held good, and Judgment accordingly. 4 Le. 167. pl. 221. Trin. 29 Eliz. C. B. Waste v. Somerset. —Goldith. 72. pl. 17. S. C. Accordingly, because otherwise he shall have no Action; for Waste is not maintainable. — Co. Litt. 57 a. S. P. and cites S. C.

It lies not against Tenant at Will for Permissive Waste, either by Common Law or by Statute. Arg. Show. 315. In Case of Cadicip v. Rundle.


It lies against Leffe for a Year, and so from Year to Year. Br. Waste, pl. 52. cites S. C.

12. *It does not lie against Tenant after Possibility.* 11 D. 4. 14 b. See (Q) pl. 12 D. 4. 3 b. 10 D. 6. 1. for the Inheritance which once was in him. 18 Eliz. 3. 32 b.

3. 25. —S. P. Ibid. pl 100. cites 39 Eliz. 3. 16 — Rep. 61. in Herlanden's Case, S. P. cited to have been held accordingly by Whyte Ch. J. and Manwood Ch. B. in a Case refer'd to them between Mole and Fane. S. P. But in lies against his Almigene. 2 Infin. 501.

The Prohibition of Waste lay not against Tenant in Tail after Possibility (whole State was created by Act in Law) because the original Eatee was not punishable of Waste. 2 Infin. 145. —See Tit. Tayle after Possibility (L) pl. 2. and the Notes there.

13. *If* Leffe for Life, Remainder in Tail, Remainder in Fee to F. N. B. 60. the Leffe are, and he does Waste, he in Remainder in Tail shall (B) ——

6 D. have
Waffe.

have Action of Waffe, tho’ he himself has Fec. 42 E. 3. 19. * 50 E. pl. 36. cites S. C. 3. 3. D. Dubitatur. 12 H. 4. 22. D.

† Br. Waffe, pl 60 cites S. C. where the Point seems fully admitted.—See (F. A) pl. 2. in the Notes.

14. If a Man devises Land to 2 in Tail, and after the one Devisee dies without Issue, by which the Reversion in Fee of one Heiress reverts to the Heir of the Donor, but the other Devisee is Tenant for Life of the whole, and after he commes Waffe, Action of Waffe lies against him by the Heir of the Donor for the one Heiress. B. 9 Jac. B. between Manning and Manning, Per Curiam.

No Allen of Waffe lay before the Suit of Gloucester, but against Tenant in Dower and Guardian, and by the Statute Action of Waffe is given against Tenant by the Curtesy Tenant for Term of Life and Tenant for Term of Years. Br. Waffe, pl. 88. cites 21 H. 6. 58. — Lord Coke says a Reason is required, that seeing as well the Estate of the Tenant by the Curtesy, as the Tenant in Dower are created by Act in Law; whereas the Prohibition of Waffe did not he as well against the Tenant by the Curtesy as the Tenant in Dower, at Law, the Common Law says the Reason is this, for that by Laying of Issue the State of Tenant by the Curtesy is originally created, and yet after that he shall do Homage alone in the Right of his Wife, which proves a larger Estate; and seeing at the Creation of his Estate he might do Waffe, the Prohibition of Waffe lay not against him after his Wife’s Decease, but in the Case of Tenant in Dower, she is punishable of Waffe at the first Creation of her Estate. 2 Inf. 145 — But 2 Inf. 299. says that at the Common Law Waffe was punishable in 5 Persons, viz. Tenant in Dower, Tenant by the Curtesy, and the Guardian, but not against Tenant for Life, or Tenant for Years; and the Reason of the Diversity was, for that the Law created their Estates and Interests, and therefore the Law gave against them Remedy; but Tenant for Life and for Years came in by Demise and Lease of the Owner of the Land &c. and therefore he might in his Demise provide against the doing of Waffe by his Leefe; and if he did not, it was his Negligence and Default.

* Neither this Act, nor the Statute of Marbridges, doth create new Kind of Waffe, but give new Remedies for old Waffe, and what is Waffe and what not, must be determined by the Common Law. 2 Inf. 300. 301.

† If 2 are Tenants for Years or for Life, and one of them does Waffe, this is the Waffe of them both as to the Place wastes, notwithstanding the Words of the Act are (him that holds) 2 Inf. 302.

‡ Here Tenant by the Curtesy is named for 2 Causes. 1. For that albeit the common Opinion was, that an Action of Waffe did he against him, yet some doubted of the same in Respect of this Word (tenant) in the Writ, for that the Tenant by the Curtesy did not hold of the Heir, but of the Lord Paramount; and after this Act the Writ of Waffe grounded thereupon both recite this Statute, 2dly. For that greater Penalties were inflicted by this Act than were at the Common Law. 2 Inf. 301.

* A Leefe Or * otherwise for Term of Life, or for Term of Years, or a Woman in for his own Dower.

or for another Man’s Life, is within the Words and Meaning of this Law, and in this Point this Act introduces that which was not in the Common Law. 2 Inf. 301.

Feme Lejee for Life takes Husband, the Husband does Waffe, the Wife dies, the Husband shall not be punished by this Law; for the Words of this Act be (a Man that holds &c. for Life) and the Husband held not for Life; for he was setted but in the Right of his Wife, and the Estate was in his Wife. 2 Inf. 301.

He that hath an Estate for Life by Conveyance at the Common Law, or by Limitation of Life, is a Tenant within this Statute. 2 Inf. 302.

Tenant for Years of a Heiress, is within this Act; and so it is of a Tenant by the Curtesy, or other Tenant for Life of a Heiress &c. 2 Inf. 302.

4 This is to be understood of all the 5 Kinds of Dowers whereof Littleton speaks, viz. Dower at Common Law, Dower by the Custom, Dower ad estitum Ecclesi, Dower ex Assenso Partis, and Dower de la Plais keale; and against all those the Action of Waffe did lie the Common Law. 2 Inf. 303.

If Tenant in Dower be of a Manor, and 1 Copyholder thereof commits Waffe, an Action of Waffe lies against Tenant in Dower. 2 Inf. 303.

16. Where
16. Where Tenants in Common are for Life, the one shall not have Br. Trespass, Trespass of Trees cut against the other, but shall have Waite pro indiv. videlicet, tho' they are only Tenants for Term of Life &c. but the one may have Trespass of Corn cut against the other. Br. Waite, pl. 79. cites 21 E. 3. 29.

17. One Coparcener before Partition makes Feoffment to another, and one of them does Waite in the Trees, Waite lies. 11 Rep. 49. a. in Lidford's Case, cites 29 E. 3. 19.

18. Hn Man takes upon him to be Guardian of the Heir of W. N. where he is not Guardian of Right, and he occupies and receives &c. and cuts Trees, he shall be charg'd in Action of Waite, if he does Waite. Br. Waite, pl. 142. cites 32 H. 6. 7.

19. If one does Waite, and affixes over his Term, yet the Action lies against him to recover the Place wafted. Br. Pleadings, pl. 6. cites 24 H. 8.

20. If Guardian in Chivalry grants over his Estate [to one] who does Ibid. in the Waite, the Waite of Waite shall be brought against the Grantee, and not against the Guardian, and it doth not lie against the Curtey. F. N. B. 56. (A)

E. S. 15. 42 E. 3. 23. 44 E. 5. 21. 48 E. 3. 19. 12 H. 4. 4. — At the Common Law, if the Guardian in Deed had assign'd over his Estate and Interest, the Heir should have had an Action of Waite for Waite done after the Assignment against the Assignee; for he was Guardian in fact, and in within the Rule of the Common Law. 2 Inst. 300.


a Ward does Waite and affixes over, Action of Waite lies against the Assignee.

22. The Heir at full Age shall have an Action of Waite against the King's Committee &c. F. N. B. 59. (E).

23. A Writ of Waite shall be maintainable against one upon a Leafe Co. Litt. 42. made to him until he be promoted to a Benefice, and the Writ shall supple a good tenet at terminus Viz. F. N. B. 60. (N).

24. If the Heir had granted his Reversion expellant upon an Estate in Dower or by the Curtey, the Grantee should not have had an Action of Waite against Tenant in Dower or by the Curtey at the Common Law, for that the Privity was destroy'd; therefore the Grantee in an Action upon the Statute of Gloucester recites the Statute. 2 Inst. 301.

25. Tenant by the Curtey or other Tenant for Life makes a Leafe for Years, he in the Reversion confirms it, Tenant by the Curtey [does Waite and] dies, an Action of Waite lies against the Leefe. 2 Inst. 302.

26. A made a Feoffment in Fee to the Use of himself and his Wife, and to his Heirs, there were Underwoods on the Lands which were usually cut at 21 Years growth; A. suffer'd them to grow 25 Years, and then died; Per tot. Cur. this shall bind the Wife; for where the Law limits a time for Tenant for Life to fell Underwood, if it be not fell'd in that time, it shall not be fell'd by a Tenant for Life afterwards, it shall be Waite. Godb. 45. 5. pl. 6. Hill. 23 Eliz. C. B. Anon.

27. If Tenant in Tail grants all his Estate, his Grantee is dispunishable S. P. Arg. Le. of Waite; so such Grantee's Grantee is also dispunishable; Per Clark J. 291. Anon.

3 Le. 121. pl. 173. Trin. 27 Eliz. B. R. in an Anonimous Cafe.

28. B. Leafe for Years, the Reversion to A. in Fee; B. assign'd all his Tenant for Term and Interest to f. S. referring all Trees growing and being on the Years or for Life assigns over his
Leafe for Years, or Eftate for Life excepfing the Femter Trees, and after Waite is done in felling down the Trees, the Action of Waite is maintainable against the Affignee, for as to the Leitor they are not severed from the Land. 2 Inf. 522. * Cm. E. 15. pl. 16. Forffer v. Spooner and Aford S.C. and the Court divided. —— Le. 48. pl. 17. Lewknor v. Ford, S.C. and the Court divided as to this Point. —— 4 Le. 162. pl. 269. Sir Richard Lewknor’s Cafe S. C. adjournatur —— 4 Le. 224. pl. 362. S. C. adjournatur. —— S. C. cited 5 Rep. 12. b. Trin. 41 Eliz. in Saunders’s Cafe as adjudg’d Pach. 28 Eliz. C. B. that the Action was well maintainable against the Affignee; because the Exception was utterly void.

29. Leffe for Years of Lands bought Trees with Liberty to cut them down within 80 Years. Afterwards the Leffe bought the Inheritance, and devised to his Wife for Life, Remainder to the Plaintiff in Fee, and made his Wife Executrix and died; She cut down the Trees; Adjudg’d, that an Action was maintainable; for tho’ the Trees were once Chattels in the Leffe, yet by purchasing the Inheritance they are again united to the Land. Ow. 49. Pach. 36 Eliz. Anon.

30. If Leffe for 100 Years grants Part of his Term to another and he commits Waite the Action shall be brought against the first Leffe. Brownl. 238. Anon.

31. Leffe for Years makes a Leafe of one Moiety to A. and of the other Moiety to B.—A. does Waite, the Action shall be against both; for the Waite of one is the Waife of the other. Brownl. 238. Anon.

32. Tenant for Life without Impeachment of Waife leaves for Years, or otherwise, and Leffe for Years commits Waite, he in Remainder in Fee shall not have Action of Waife; for this Leafe was derived out of the Eftate for Life privileged, and if Waite lay it should be brought against the Tenant for Life who made the Leafe, and he was dispunishable. Jo. 61. pl. 2. Mich. 22 Jac. C. B. in Cafe of Bray v. Tracy.

33. A Condition in a Leafe was Not to do Waife. It was ruled that this Condition extends to the Affignee without naming him, and that as inhe rent to the Land. Clayt. Rep. 126, 127. pl. 125. March 1647. before Germin J. Ward v. Waddington.

(S. 2) Against whom. Executors &c.

W A S T E lies againft one Executor alone without naming his Companion, if the Waife was done by him alone. D. 90. pl. 6. Marg. cites 3 E. Waite 3.

2. If Terrors does Waife, and makes Executors, and dies, the Action of Waife is lost; for it does not lie against the Executors, but for Waife done by themselves, and not for the Waife of the Testator; for it is as Treffpafs which is an Action personal, which ties with the Person. Br. Waife, pl. 138. cites 23 H. 8.


It was objected in Error, That if the Plaintiff is intirited to this Action, it must be by the Statute of Gloucesters;
**[T]** At what Time it may be brought. Impediments of the Action.

1. If Leave be made for Life, the Remainder for Years. Action of Waste lies against Less for Life, notwithstanding the Remainder for Years; for De Minimus non curat Lec. 46 El. 3, 7. Co. Litt. 54.

2. But if there be Letter for Life, Remainder for Life, Action of Waste does not lie during the Continuance of the Life Remainder. 48 El. 3. 16. Contra * 50 El. 3. 4.

3. So if Letter for Life be, the Remainder for Life, the Remainder in Fee to another, he in Remainder shall not have Action of Waste against the first Letter, during the Continuance of the Remainder for Life. Co. Litt. 54. Contra 27 El. 3. 87. b.

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*This is (B) in Roll. Fol. 829.*
Wafte.

Note to pl. 5. 30. where a
Leafe was made for Years, Remainder for Life, the Remainder in Fee; Leffe for Years does Wafte. The Leffe for Life in Remainder dies. The Remainder in Fee shall have Wafte, for Wafte done during the mean Remainder for Life. Mo. 18. pl. 64. Mich. 2 Eliz. Anon.

Co. Litt. 299
b. S. P. because the
Defendant pleaded that
the Leafe
was to him, his Heirs, and Assigns for Life, and a Year after, and demanded Judgment of the Writ. But
Thorp said, That in this Case the Plaintiff could not have other Writ than what he had, and that
Defendant might have his ESTATE by Procreation; and so he did, and pleased Null Wafte done, Prift; and
the others e contra. Br. Wafte, pl. 101. cites 8. C. — Thoole's Dig. of Writs, Lib. 9. cap. 7. S. 7. cites 8. C.

For he himself has
granted away the
Reversion, in respect
whereof he is to maintain the Action. Co. Litt. 54. a. Ibid. 273. a.

Brownl. 240.
S. P. accordingly. Anon.

5. If a Fene, Leffe for Life, takes Baron, and after Leffer confirms the Estate of the Baron to have for his Life, by which the Baron has a Reversion for Life; yet if Wafte be committed after, the Action lies against Baron and Fene, and this Reversion is not any Impediment. 17 C. 3. 68. b.


7. If a Man leaves for Life, and after grants the Reversion for Years, and after Leffe for Life commits Wafte, no Action of Wafte lies against him for the Reversion for Years. H. 10 Ja. B. between Foyne and Dockward, per Curiam. Co. Litt. 54 [a]

8. But if a Man leaves for Life or Years, and after grants a Leafe to commence after the End of the first Estate, Action lies against the first Leffe, notwithstanding this future Interest. Co. Litt. 54 [a] And the Term shall be saved in this Case.

9. In Wafte by an Abbot against Tenant for Life of the Lease of his Predecessor, it is a good Plea that J. Predecessor of the Plaintiff, and the Covenant by Deed, which he shews, granted the Reversion to W. N. for Term of his Life, to which the first Tenant attorn'd, he being Tenant, which W. N. is yet in full Life; for where there is a mere Remainder, or Reversion for Life, there he who has the Fee shall not have Wafte; for then he shall recover the Land, and defeat the meane Interest, which shall not be suffer'd. Br. Wafte, pl. 111. cites 5 H. 4. 8. 9.

10. If Feoffee of Land upon Condition be, and the Feoffor enters, and does Trespasses, and afterwards the Condition is broken; and the Feoffor enters, yet the Feoffee shall have an Action of Trespafs against the Feoffor, notwithstanding that he hath not the Land wherein the Trespass was done; Cauta patet. Perk. S. 97.

11. Where a Leafe is made to the Husband and Wife for Life or Years, there the Wife shall not be punishe'd after the Death of her Husband for Wafte done by the Husband. F. N. B. 59. (1)

12. If a Man leaves to A. during the Life of B. the Remainder to him during the Life of C. if he commits Wafte, an Action of Wafte shall lie against him. Co. Litt. 299. b.

See if a Leafe be made to A. for his Life, the Remainder to B. if A. does Wafte, an Action of Wafte doth lie against him; and of that Opinion was Sir James Dyer Ch. Julis. of C. B. Patch. 18 Eliz. 2 Inf. 301.

and his Heirs, and the Feme dies after the Waft done, the Baron (as he apprehends) shall have Action for this Waft done in the Life of his Feme, because the Estate of Tenant in Tail after Possibility is drown'd in the Inheritance. But Dyer denied it. *Mo. 18.* pl. 64. *Mich. 2.* Eliz. Anon. in an Anonymous Case.

14. Leafe for covenants with Leafe not to bring Action of Waft during 2 But other Years against him, and after, during the 2 Years, Leafe does Waft where one for the Waft done within the 2 Years; for the Covenant is no Dispeu- Leafe for 2 fation as to the Waft, as it was said, but with his Complaint during the 2 Years. *Mo. 18.* pl. 64. *Mich. 2.* Eliz. Anon. for there he has dispended with the Waft, and not with the Action only. *Mo. 13.* pl. 64. *Mich. 2.* Eliz. Anon.

15. Leafe for Life without Impeachment of Waft, Leafe and Reverlomer Dal. 72. pl. join in a Leafe for Years; Leafe is dispunishable of Waft during the Life 52. S.C. ac- of the Tenant for Life, but after his Death he is punishable; for, as Dyer and Brown said, tho' at first it should be paid to be the Leafe of Tenant for Life, and the Confirmation of him in Reverlotion, yet by such Death it is after'd into another Nature, and shall be paid the Leafe of him in Reverlotion. *Mo. 72.* pl. 196. *Trin. 6.* Eliz. Nudigates's Case.

16. A leased in Fee makes *Lease for Years*, and afterwards conveys the the Cro. J. 688. Reverlotion to the Use of himself for Life without Impeachment of Waft, Re- pl. 4. S.C. mainder in Fee, *Lease* for Years commits Waft; he shall not have the but that that is Privilege to be dispunishable of Waft, but after the Death of him in Re-ervation for Life he shall be punish'd. *Jo. 51.* pl. 2. *Mich. 22.* *Jac. C. B.* Bray v. Tracy.

for Life without Impeachment of Waft to B. Remainder in Tail to C. but says nothing of the Con- veyance subsequent to the Lease for Years. The Court held that the Plaintiff should recover; for tho' in the Life of b. the Termor by his Agent might have committed Waft, and he had not been punishable afterwards, yet when he is dead he that committed the Waft had done it to the Diffusion of him in Remainder, and it is all one as if it had been done after the Death of Tenant for Life. —*W. 79.*

*P. 22.* *Jac. C. B. adjournur.—*Ibid. 86. *Trin. 22.* *Jac. adjudge'd* for the Plaintiff.

* [U] **How it shall be brought.** In what Cases in the *Tenet.*

1. If Lease for Life does Waft, and grants his Estate, yet Action lies against him *in the Tenet.* 40 E. 3. 33. b. 41 E. 3. 23. Br. Waft, pl. 4. — (A a) (B a) (G a)

*The Reason is there given, because it is the Form.* (*But it seems *the Reason is*, because otherwise he shall not recover the Place waited.*)

*Contra 43 E. 3. 16.*


And to it is of meane Alligences, a just Interpretation that he that did the Wrong should suffer the same; and this is the Case: that general Non-tenure is no Plea in an Action of Waft, but special Non tenure may be pleaded as the granting over of his Estate before which No Waft done. *2 Iust. 372.*
In Wafe it is no Plea that the Defendant had nothing in the Land the Day of the Writ purchas'd: For if he does Wafe, and grants his Estate over, yet Wafe lies against him; For the Grantee may say that No Wafe done after the Grant made to him, and the other is at no Mitchief: if he has done no Wafe; For he may say that such a Day he granted over his Estate, before which Grant no Wafe done, Per Finchden clearly, and the Action of Wafe was Quas tenet. And yet Quas tenet is no Plea; For by him Wafe is only Trespass, and by recovering against him the Grantee shall lose the Place wase'd; for the Plaintiff has elder Title than the Grantee. Br. Wafe, pl. 22. cit. 40. E. 3. 53.

Wafe quas tenet; the Defendant said That he had nothing the Day of the Writ purchas'd, no ever after, Judgment of the Writ, and no Plea, for if a Man does Wafe, and grants his Estate over, the Writ shall say that he held as long as the Term continued, and by this the Grantee, who is not Party to the Writ, shall lose the Place wase'd. Br. Wafe, pl. 25. cit. 41. E. 3. 13.

S. P. 2. infra. 2. If a Guardian commits Wafe, and grants his Ward over, the Ward shall have Wafe during the Infancy in the Tener against the first Guardian for the said Wafe. 43 E. 3. 27. b.

3. [And] if the Ward brings it against any during his Nonage, it shall be in the Tener. 43 E. 3. 15. b.

4. If Feme Lejfee for Life grants her Estate over, and after takes Bar- row, the Action shall suppost that tenant. 46 E. 3. 25. b.

5. If Action for Life does Wafe, and after aliens, and lesser en- ters for the Forfeiture, the Writ shall be in the Tenent. 8 H. 6. 10.


7. In Writ of Wafe in the Tener, the Defendant may say that he has surrender'd to the Plaintiff, Judgment of the Writ in the Tener, and yet the surrender goes in Bar. Theolod's Dig. cit Writs, lib. 15. cap. 4. S. 7. cites Mich. 10 H. 7. 11.


But where a Man leaves for Years, and brings Writ quas Tenent of the Wafe &c. and the Writ expired pending the Writ, yet the Writ quas tenet is good, quod Cur. conceit. Br. Wafe, pl. 95. cites 14 H. 8. 10. 11.

9. If a Lease for Life be made upon Condition that if the Lejsee do such an Act, his Estate shall cease, and he does commit such an Act, the Writ shall be brought against the Lejsee in the Tenent, tho' his Estate is ended. Brownl. 239. Anon.

[U. 2] In
[U. 2] In the Tenuit.


[2] 8. But if it be not brought in the Tenuit, yet if there are any Words in the Writ which imply that it is past, it is good, as Quas ei diminit. 43 E. 3. 13. b.


[6] 13. So it shall be in the Tenuit if it be brought after full Age against a Guardian for Waite before Affignment over. 43 E. 3. 15. b. 41 E. 3. 23.


[8] 15. If Feme Leffe for Years does Waite [and] the Term incurs, the takes Baron, the Writ shall be against Baron and Feme, and shall suppose that they tenuir. 46 E. 3. 35. b. (Where this, for it seems it should be that the Feme tenuir dam fola fuit, if that Writ may be added).

[9] 16. If Feme Tenant pur Auter Vie does Waite [and] Cemy que Vie dies, the Femes takes Baron, the Writ shall be that the Feme te mut, 46 E. 3. 25. b.

10. If the Leffe makes a Feoffment, and the Leffer re-enters, the Action S.P. Br. Waite, pl. 25. cites 41 E. 3. 18.

11. If Tenant does Waite, and then surrenders to his Leffer, the Writ S.P. And if shall be in the Tenuit, cites 14 H. 6. 14. as some held, but fays, that others held it should be in the Tenet, whether he be Tenant for Life or Years. F. N. B. 60. (L) in the New Notes there (b).

12. If have an Action of Waite in the Tenuit, for he cannot by his own At after the Form and Nature of his Action from the Tenet to the Tenuit; and he cannot plead, That before such Surrender No Waite was done. 2 Inf. 504.
Waife.


13. A was Leesse for Years and devised his Term to B. and made C. his Executor, and died, C. does Waife, and assents to the Devise. In this Case, tho’ between the Executor and Devisee, this has Relation, and the Devisee is in by the Devilor, yet Action of Waife shall be maintainable against the Executors in the Tenuit. Sic dictum iuit. 5 Rep. 12. b. Trin. 41 Eliz. C. B. in Saunders’s Cafe.


[1] 17. I f a Leffer brings Waife, the Writte shall be Quod fecit Dactum et, in terris which he holds of him. 3 D. 6. 1.

[2] 18. But if he in Remainder brings Action of Waife, the Writte shall not be which he holds of him, because he does not hold of him. 3 D. 6. 1.

Br. Waife, pl. 6. cites S. C.

[3] 19. So if such Remainder echeats, and the Lord brings the Action of Waife, the Writte shall not be which he holds of him. 3 D. 6. 1.

4. If the Father leases for Life and dies, and afterwards his Heir confirms the Estate of the Leesee for his Life, he shall have Action of Waife, quas tenet of his Demife; because the first Leafe is determined by the Confirmation; Per Dyer and Brown. Mo. 72. pl. 196. Trin. 6. Eliz. in Nudigate’s Cafe.

5. If there are two Jointenants of Land limited to them and the Heirs of one, and they join in a Lease for Years, and the Tenant for Life dies, the other shall have Action of Waife of his Demife. Mo 72. pl. 196. Per Dyer and Brown, Trin. 6 Eliz. in Nudigate’s Cafe.

[W] How it shall be brought. Ex Caus Dimissione. [Or otherwise.]

As in Waife. 1. The Writte ought to suppose the Demife by him of whose Lease he is in; As after Discontinuance of an Estate and new Lease made, if Leesse be remitted, the Writte shall suppose him in of the Lease of the Eigne Leffer. 86 E. 3. 20.

Lease is made to Baron and

Feme, and

the Heirs of the Baron, and the Baron discontinues to J. N. in Fee, and J. N. leases to the Baron and Feme for Life, and the Baron dies, the Action of Waife shall not suppose the Feme to be in of the Lease of J. N. because she is remitted, and therefore she may plead this Matter to the Writte; and non negatur. Br. Waife, pl. 46. cites 46 E. 3. 20. — Br. Remitter, pl. 8. cites S. C. — Thelou’s Dig. of Writs, lib. 11. cap. 32. S. 19 cites S. C.

S. P. Brown. 2. If 4 Jointenants lease for Life, and after 3 of them release to the 4th, the 4th shall have Action of Waife, and shall suppose that the Defendant holds of his Lease; (for after the Release 9. is in by the 1st Propor.) * 46 E. 3. 17. *

Br. Brief, pl. 50. cites S. C. and

Says that he and the others leased, and therefore He leased. — Br. Waife, pl. 44. cites S. C. and 45 E. 3. 10 — Thelou’s
Theodor's Dig. of Writs, Lib. ii. Cap. 52. S. 18. cites S. C. —— Br. Jointenants, pl. 76. cites S. C.

3. If 2 Coparceners lease for Life, and after the one dies without issue, the other shall have Action of Waste, supposing that he holds of her Demise. 46 E. 3. 17. (Not here this, for she has a Moiety as H. and to her Sisiter.)

H. 6. 4. —— So if the Lease had been for Years. F. N. B. 56. (C) in the new Notes there (b) cites 46 E. 3. 17. 54 H. 6. 29 a. Per Prior. —— But if Waite be brought, supposing that A. and B. leased to the Defendant for Life, Remainder to the Plaintiff, it seems a good Plea That A. leased it sole, abique be that A. and B. leased it. Ibid. cites 6 H. 4. 5.

4. The Wit may suppose that Defendant holds for Life by Fine levied between one J. Deforcanent and the Defendant and her Baron, and to the Heirs of the Baron, whose Heir the Plaintiff is, without supposing that Defendant holds of the Leafe of any. 17 E. 3. 36. b.

5. If a Man devised to another, at the Common Law, for Life Land, the Devisor's deviseable; if the Heir brought Action of Waite, the Withe should be Ex Legatone. 10 H. 6. 8. b.

S. C. —— The Wit Ex Legatone was held good, tho' the Statute mentions Ex Dimifione. Br. Waite, pl. 132. cites S. C. —— Hunt. 110. Cook v. Cook, S. P. but the Words there are Ex (Divisioue) instead of Ex (Legatone.) —— Cro. C. 551, pl. 5. S. C. but S. P. does not appear.

6. If a Man leaves to one for Life, and after grants the Reversion to another for Life, the Remainder in Fee to a 3d, and Leasee attorns; after Death of the Leaffe, if the Reversioner for Life enters, and Remainder-man in Fee brings Waite against him, He shall suppose him in of a Leafe, tho' the Grant was of a Reversion. 17 E. 3. 7. b.

7. So if I leave for Life, the Remainder to another for Life, the Remainder to another in Fee, if he in Remainder in Fee brings Waite against him in Remainder for Life, after Death of the Leafe, the Withe shall suppose that he holds of my Leafe. 17 E. 3. 7. b.

8. In Waite against Leafe for Life, of the Leafe of the Plaintiff, the Tenant pleaded that the Plaintiff granted by Fine the Reversion of the same Tenements to the Tenant, which after the Death of one C. to him ought to return for his Life, and so the Withe ought to be Quae tenent ratioue Concessiuncis, and not Dimifiones. But the Withe was awarded good; for one shall not have Withe Ratione Concessiuncis, but where he who brings the Withe has the Reversion by the Grant of another. Theodors Dig. Lib. ii. Cap. 52. S. 8. cites Patch. 4 E. 3. 132.

9. If the Father makes a Lease to the Feme for Life, and dies, and the Son confirms it to her and her Husband for their Lives, yet Waite lies. Quod tenent ad Terminium of their Lives, Ex Dimifione of the Son. F. N. B. 57. (C) in the new Notes there (a) cites 56 E. 3. 9. and 16 E. 3. 68. b.

10. A Feme, after the Death of her Baron, brought Waite on a Leafe made by her and her Baron during the Coverture; and the Withe was adjudged good. Theodors Dig. Lib. ii. Cap. 52. S. 21. cites Mich. 22 H. 6. 28.

11. In Waite by an Abbot against Tenant for Life, of the Leafe of his Predecessor, the Tenant pleaded that the Predecessor and his Covert leafe to him for Life, and shew'd the Deed seal'd with the Covent- Seal, abique hoc that the Predecessor alone leafe &c. Judgment of the Withe. And held
Waste.

held no Plea; for it might be intended the same Lease. Theloa's Dig. Lib. 11. Cap. 52. S. 23. cites Trin. 5 E. 4. 43.

Dal. 2. pl. 52. S. C. by Dyer and Browne accordingly.-
Mo. 72. pl. 156. Nudigates Case, S. C. accordantly.-

12. J. S. Leafe for Life, the Reverfion to A. A. and J. S. join'd in a Leafe for Years to W. R. f. S. died. W. R. committed Waste. A. brought Action of Waste, supposing it to be Ex Dimifione propre, without showing the Special Matter in the Count. The Defendant traversed the De- wife of the Plaintiff. Dyer and Brown held the Writ and Count good enough, and the Plea not good; for this during the Life of J. S. it was only the Confirmation of A. yet by the Death of J. S. it is become in Law the Demife of A. But Wheel and Walit e contra. D. 234. b. Newdigate v. Haffings.

If Leafe for Life and Hr
Leafe join in a Leafe for Years by Indenture, and Leafe for Life dies, the foregoing Leafe shall have the Action for Waste done, and shall count that he did demife alone. Brownl. 235. a. pl. 18. Mich. 6 & 7 Eliz. Newdigate v. Haffings.

2 And. 151. pl. 55. Anon. but seems to be S. C. It was agreed that the Writ and Count were both ill; for the Ufe accurred by him that was and is Ten- nant, and not by the Vouchee, and therefore the Writ and Declaration in this Point ought to have agreed. And in this Case, if the Writ had been general, (as it was at the Common Law, and as this Writ is) and the Declaration had been Special upon the Case, it had been good; tho' it is not properly demided according to the Writ, and tho' the Estate of the Feme is not made by the Party, but by the Statute of 27. H. 8. of Ufe.

13. In Waste against D. and his Wife, the Writ was general, that she held Ex Dimifione of G. her former Husband, and the Declaration was special, (viz.) That G. infefid'd several, in order to make them Tenants to the Precipe, that a Common Recovery might be had against them, wherein they should vouch G. who should vouch the common Vouchee, and this was to be to the Ufe of G. for Life, and after of the Wife for Life, Remainder to G.'s Right Heirs. Upon Nul Waste pleaded, the Plaintiff had a Verdict. It was moved that this Writ did not warrant the Declaration; For the Writ ought to be special, or to have suppoled the Demife of the Feoffees; For as this Case is, the Land and Ufe are in the Feoffees till the Recover- very, which is a Limitation of the Ufe, and not by the Vou- chee; and it being G.'s own Feoffment, (wherein the Feme cannot take by immediate Conveyance from her Baron) it ought always to suppoled the Gift and Demife from the Feoffees. Cro. E. 722. pl. 52. Mich. 41 & 42 Eliz. C. B. Greenfield v. Dennis & Ux'.

14. If Tenant in Tail in Remainder brings an Action of Waste against Tenant for Life, the Writ may be, Which he holds of the Tenant in Tail, altho' they hold of him in the Reverfion in Fee. Brownl. 239. Anon. says it was adjudged Pat. 1 Jac. that the Writ was good.

[X] How it shall be brought. Ex Affignatione.

As where Wafe was brought

1. THe Writ may be Er Affignatione, as the Cafe lies. 10 H. 6. 8. b.

against Tenant for Term of Years, Ex Location of his Aeeessor, it was awarded good, tho' the Statute speaks of Ex Dimifione only; and the Writ lies Ex Affignatione also: Quod nota. Br Wafe, pl. 152. cites S. C.

2. If a Man leafes, and grants over the Reverfion, the Grantee in Waste shall suppoled that he holds Ex Affignatione of the Grantor.

46 C. 3. 17.

But Remain- der-man shall never have it Ex Affignatione, but it shall be Quas mot Ex Hereditate ejus. Ibid.

3. If
3. If a Reversion be to 2, and the Heirs of one, and he who has Fee leaves to the other, it he brings Waite he ought to lay Such action ex Affignatione. 46 E. 3. 17.

4. If the Affignation of a Reversion who comes in by the Statute of Uses, Cro. C. 48, brings Action of Waite against a Lissee, he need not to name himself. Ance; but in his Count he may shew the special Matter, tho' the Form of the Register be to name himself Affignatione &c. at the Common Law, because he comes in by an Act in Law. Hill. 10 Car. 8. B. R. between Stonehouse and Corbet, adjourn'd Per Curiam in Writ of Error upon a Judgment in Bank, and then laid Per Curiam to be the common Course since the Statute of Uses. Intracut Hill. 9 Car. Rot. 129.

5. Where a Man leaves for Life, and after makes Livery to another in Fee by Assent of the Tenant, the Poeeoffe shall have Waite ex Affignatione Reversione, without shewing Deed; for this Matter amounts to a Grant of Reversion without Attornment. Br. Waite, pl. 47. cites 46 E. 3. 25.

6. A Man leas'd Land devisable for Term of Life, and after devises the Reversion by his Testament, and died, and the Devisee brought Writ of Waite ex Affignatione, and no Exception taken; for it is as a Grant. Br. Waite, pl. 121. cites 34 H. 6. 5. 6.

7. If after the Husband's Death the Heir infoje's a Stranger in Fee, who assigns Dower to the Wife, and the commits Waite, the Writ shall mention that she held in Dower of the Gift of her Husband by the Affignation of a Stranger of whom the aforesaid Feme held in Dower of the Affignation which the Heir of the Husband hath made to the said Stranger ad Exheredationem of him who bringeth the Writ. F. N. B. 55. (G)

8. If a Feme holds in Dower of the King, who has the Reversion, and the King grants the Reversion in Fee to a Stranger, and afterwards the Feme commits Waite, the Grantee shall have Waite, and the Writ shall mention how she holds of the King, and that she, who held in Dower of the Stranger of the King's Grant, hath committed Waite &c. F. N. B. 55. (G)

9. An Abbot made a Leafe for Years to commence 5 Years after, and before the Commencement be granted the Land to K. H. B. who granted it to J. S. and before the Term commenc'd J. S. infoje'd A. B. The Term commenc'd, and the Leefe enter'd and did Waite. A. B. brings Waite, supposing by the Writ that the Tenant held ad Terminum annum de Praefato A. B. ex Affignatione J. S. of whom the said Defendant held for the same Term ex Affignatione Domini Regis H. S. of whom the said Defendant held for the same Term ex Affignatione quam Abbas legit eidem Regi H. 8. And held good (tho' there was no Tenure by the Leefe of the Abbot or the King, or his Patente, because the Alienations &c. were made before the Commencement of the Term;) For there is no other cites 5 H. 5. Form in the Register. D. 206. b. pl. 11. Mich. 3 & 4 Eliz. Darrel v. 12. Wyburn.

10. A. and B. are Partners in Fee; A. leaves her Part to C. and B. leaves her Part to D. and then both Leaves come to E. Afterwards A. conveys the Inheritance to B. E. does Waite. B. declares ex Affignatione, and also ex Dimission. Judgment was given in C. B. for the Plaintiff, and affirm'd in Error. Ow. 11. Mich. 33 & 34 Eliz. B. R. Wardrobe's Case.

11. It seems that Writ of Waite shall never be ex Affignatione, but where the Reversion is granted. See Hutt. 110. in Case of Cook v. Cook.
(X. 2) How it shall be brought. *Ex Hereditate.*

And yet he may have a Writ, making Mention of the Recovery; but such Writ shall suppose that the tenant held his Heritage; and it seems good as well as in Case of a Feoffor, or where the Differences of the Husband assigns Dower. 

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1. The Baron leaves a Fine, and takes back an Estate for Life, Remainder to his Son in Tail, and dies. The Son endows his Mother, who assigns over her Estate. The Son brings Waft against her as Tenant in Dower, and adjudged that it lies. But it seems that he shall have a general Writ, supposing that she held in Dower of his Heritage. F. N. B. 55. (E) in the new Notes there (a) cites 26 E. 3. 76.

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2. A feudal of a Manor made a Lease thereof to J. S. and his Feme for the Life of the Feme, Remainder to the right Heirs of the Baron, and after the Baron made Feoffment to the Use of himself and Wife for their Lives, the Remainder to his right Heirs, and dies. The Feme holds in, and does Waft in a Park Parcel of the Manor. The Question was, whether the Writ of Waft shall suppose that the held ex diminution A. or of the Baron. And the Court was of Opinion that the Writ shall be general (that is to say) that she holds *ex Hereditate of the Heir,* who is the Plaintiff, without paying *ex Diminution of any;* For she is not in by the Feoffor nor by the Feoffees, but by the Statute of Uses; and therefore it seems the Writ shall be *ex Hereditate.* Dal. 100. pl. 32. 15 Eliz. Vavasor's Case.

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3. The Feoffee shall say that the Tenant in Dower holds *ex Hereditate.* Per Dyer. Dal. 100. pl. 32. cites 6 E. 3.

4. Where the Estate is made and created by the Law, the Writ shall say that he holds *ex Hereditate.* Per Harper. Dal. 100. pl. 32.

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Fol. 532. [Y] How it shall be brought. *Fecit vaftum.* *In the Singular Number.*

Br. Waft, pl. 55. cites S. C.

1. If Feme commits Waft, and takes Baron, the Writ may suppose *Quod fecerant vaftum.* 49 E. 3. 26.

M. A Feme had a Lease of Land for Life, and took A. to Baron, who did Waft. A Writ was brought, supposing that the Baron fecerat Vastum, which was objected to, because being charg'd in Right of his Feme, it ought to have been FECERANT VAFTUM; for so is the Form in the Register, and in N. Br. and to this Opinion the Court agreed. Cro. E. 356. pl. 15. Mich. 36 & 37 Eliz. C. B. Sacheverel v. Bagnall.

Br. Waft, pl. 55. S. P. cites S. C.

2. So it may be in such Cases, that the Feme only did the Waft. 49 E. 3. 26.

3. If Baron and Feme Leases for Life do Waft, the Writ shall be Quod fecerant Vastum, so as it is as well the Waft of the Withe as of the Husband. 2 Inst. 303.

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[Z] How it shall be brought.  [To the] Disinheritance.  See (F. 2).
[Of whom].

1. If it be brought by Baron and Feme, upon Lease of the Feme, for S. P. Br. Wafe before Coverture, it shall be to the Disinheritance of the Wafe, pl. 27. cites 42 E. 3. 18.

2. [So] in Writ brought by Baron and Feme upon Lease by Feme Br. Wafe, for her own Life before Coverture, thus may suppose the Disinheritance pl. 27. cites to the Feme; for she has Reversion and shall enter for Fortescue, 42 E. 3. 18.

3. [So] If Baron and Feme bring Writ of Wafe for the Inheritance of the Feme, the Writ ought to be to the Disinheritance of the Baron and Feme, the Writ shall abate. 8 B. 6. 9. adjudged.

4. [So] If a remainder is erected to the Baron and Feme in Right of Exception the Feme, and they bring Wafe afterwards, the Writ shall be to the Disinheritance of the Feme. 3 B. 6. 2.

Usorem (the Demandants) reverti debent tanquam Efaceta fun, whereas it should be (as it was infinted) ad Usorem reverti debent tanquam Efaceta of the Feme; because the Inheritance was her's and the Baron had nothing but in Right of his Feme; sed non allocatur. And thereupon the Defendant pleaded another Plea. Br. Wafe, pl. 6. cites 3 H 6. 1.

5. In Wafe by two where the one has only for Life and the other has the Fee, the Writ shall be ad Exharedationem of him that has the Fee. Theloał's Dig. of Writs, lib. 10. cap. 23. S. 2. cites Patch. 18 E. 2. Briel 835.

6. In Wafe by Baron and Feme upon Lease made by them both, the Writ was ad Exharedationem of the Feme; and held good. Theloał's Dig. lib. 10. cap. 26. S. 2. cites Mich. 5 E. 3. 213.

7. In Wafe by Baron and Feme ad Exharedationem of them both, it shall not be intended their joint Purchase till it be specially shown. Theloał's Dig. Cap. 26. 99. lib. 10. cap. 9. 8. 10. cites Mich. 10 E. 3. 536.

8. In Wafe by Baron and Feme, and a third Person on a De-mise made by them three, the Writ was ad Exharedationem of all three; and adjudged good. Theloał's Dig. lib. 10. cap. 23. S. 24. cites Mich. 14 E. 3. 213. Briel 282.

9. Aunt and Niece shall have Wafe jointly for Wafe done after the Death of the other Sister; and for Wafe done before the Aunt may count of Wafe done to her own Defense only, and all in one Writ. See Kelw. 105. b. pl. 17. Cafus incerti temporis, cites 45 E. 3. 3. pl. 11. Wafe, and 35 H. 6. 23. Per Fortescue; and 11 H. 4. 16.


[Z. 2] Brought
Brought by Spiritual Corporation.

See (B. 3)

[A. a] How it may be brought.

1. "The Estate be executed by the Statute of Uses, yet there may be a general Writ and special Count." Hobart's Reports

2. If the Writ mentions that A. being seised of the Land since 27 H. 8. infers it to Uses &c. and derives under it, tho' the Writ does not mention that the Feoffment was to B. in Fee, yet as much as the Use has been to make the Writs so ever since the Statute, it is to be allowed, tho' it was not in Fee to B., but an Estate for Life of B. in Fee, it will pass. Hobart's Reports 115. between Skeate and Oxenbridge. But the Declaration upon it ought to allege the Feoffment to be in Fee.

3. In Wafte against Feme on a Lease made to herself for Life, she pleads that the Lease was made to her and her Baron for their 2 Lives, and that after the Baron's Death no Wafte was done, and she did not plead to the Writ, but it was said the Writ had been better if the Lease had been supposed to the Baron and Feme. Theodos' Dig. lib. 11. cap. 52. S. 7. cites Mich. 3 E. 3. 109.

4. Wafte by the Feoffess in Use against the Lease for Years of Cefly que Use; and it lies well, Per Cur. tho' no Form of Writ be thereof given in the Register or in the Statute. But quere the Form of this Writ; for it was cum W. & N. fuerunt Seilici ad usum C. and did not pay of what Estate; and therefore ill in this by several. Br. Wafte, pl. 2. cites 36 H. 8. 6.

5. In a Writ of Wafte, if the Premisses of the Writ recite 'Quod non lecer alieni locutum, the End of the Writ it is said that the Defendant hath done Wafte in Lands, Houses, Woods, Gardens, and Exile of Men; so as there is more in the End.
End of the Writ than is in the Premisses, yet the Writ is good; And so if
less be in the End of the Writ than is recited in the Premisses, yet the
Writ is good; As if it be recited Quod cum Provisum sit, quod non li-
ceat aliqui facere Valutum &c. in Terris, Domibus, Bocis, & Gardinis; &c.
and in the End it is recited Quod Deiend' fecit Valutum in Terris only, or
in Bocis only, or in Domibus only, yet the Writ is good. F. N. B.
56. (1)

6. Note, that the Action of Wafte against the Guardian is general, Fe-
cit valutum &c. de Terris &c. quas habet vel habuit in C手続きa de ha-
reditate predicit' which Writ doth extend as well to the Guardian in So-
cage as in Chivalry. 2 Inf. 305.

7. If Lease be made to Husband and Wife for Life, and for 20 Years after
their Death, the Wife dies and Wafle is committed, the Wife shall not
be named in the Writ nor the Term after her Death. Brownl. 238.

Trin. 8 Jac. in Case of Bedell v. Bedell.

8. A Man after the Statute of 27 H. 8. makes a 'Poffmient in Fee to the
Use of himself for Term of his Life, and after his Deceale to the Use of J. &c.
S. and his Heirs. The Poffees does Wafle, and J. S. brought his Action of
Wafle. And now if his Writ shall be general or special was demurr'd in Patch. 5 E.
Judgment. And Hutton and the other Justices were clearly of Opinion
that the Plaintiff ought to have a special Writ; and so it was adjudged
afterwards. Het. 79. Hill. 3 Car. C. B. Poflam's Cafe.

Terrel. —-

D. 93. b. pl.

23. 26. 27. Mich. 1 Mar. S. C. by the Name of Titerr b. Titter; and because the Writ original
which W. R. and W. S. were feided of the Land &c. to the Use of J. T. Father of the said J. T.
(he Plaintiff in the Action) and A. his Wife, and of the Heirs of J. the Father, without shewing in the
Writ what Estate the Poffees were feied of, but afterwards in the Allignment it was shown, Certain,
In Dominico tuo ut de Feodo; And also because it was not alleged How the Use of the particular Estate com-
med, neither in the original Writ nor in the Allignment of the Wafle; And also in aligning the
Wafle, he alleg'd the Statute of 27 H. 8. for the Execution of the Estate, and shew'd the Death of J. the
Father, and the Swearing of the said A. and the Defeat of the Reversion to him at Son and Heir, by which the
said A. held to her for Term of her Life, the Reversion to him, without saying 'Pellant vel pertinent.' And
afterwards Judgment was revers'd for the said Errors.

(A. a. 2) Abatement of the Writ.

1. In Wafle against 3, one of the Defendants died after Writ of Inqu.
ry awarded, by which the Writ abated. Theloal's Dig. lib. 12. cap.

2. In Wafle against Baron and Feme upon Lease to both, the Baron plead-
that the Lease was made to him alone &c. and the Feme by Attorney
pleaded that he bad nothing &c. and because the Plaintiff did not deny
the Lease to the Plaintiff alone, the Writ was abated. Theloal's Dig.
lib. 11. cap. 52. S. 12. cites Patch. 6 E. 3. 250.

3. In Wafle against Tenant for Life on the Lease of W. the Plaintiff,
the so against
Tenant pleaded that W. and A. his Wife had to him &c. and held a good
Lease for Years, where the Action was brought by the Son
of W. and the Defendant pleaded that A is yet living &c. Judgment if &c. and held a good Plea. The-
looal's Dig. lib. 11. cap. 52. S. 28. cites Hill. 15 E. 3. 2. Wafle 116.

4. In Writ of Wafle in 3 Vills, No such Vill as to one of the Vills abates
the whole Writ; Adjudg'd. Theloal's Dig. lib. 11. cap. 11. S. 6. cites
Patch. 17 E. 3. 51. and so agreed Trin. 2 H. 6. 11.

6 H
5. In
5. In Waffe against Tenant in Dover, supposing that he held a Manor in Dover, the Defendant pleaded that he held a Parcel of this Manor in Frank-marriage &c. and not in Dover; judgment of the Writ, and held a good Plea in Abatement of all. Theolois's Dig. lib. 16. cap. 10. S. 8. cites Mich. 18 E. 3. 32.

6. The Writ was against 2 of Land, which they held for their Lives of the Lease of A. made to them and one G. Ancestor of the Plaintiff, & to the Heirs of G. &c. The Tenants pleaded that the Lease (which they shew'd) was made to them 2 only for their Lives, the Remainder to C. and his Heirs; Judgment of the Writ, and held a good Plea. Theolois's Dig. lib. 11. cap. 52. S. 17. cites Trin. 24 E. 3. 21.

7. Waite of a Lease to the Defendant and the Plaintiff, & to the Heirs of the Plaintiff, where it was to the Defendant for Life, the Remainder to the Plaintiff in Fee, and therefore the Writ was abated; And per Mombray, where Lease is made to several, and to the Heirs of the one, he shall not have Writ of Waite. Br. Waite, pl. 97. cites 24 E. 3. 27.

8. Waite against Executors, and in the Perchase it was, That the same Executor did Waffe not naming his proper Name, and yet the Writ awarded good, and the Defendant pleaded to the Writ because it is not declared in the Writ, that the Executor held of any Lease; and yet the Writ good, because the Plaintiff contended that he was leased to the Testator, and the Executor represents the Estate of the Testator, and yet because it was brought against the Defendant as Executor of the Leafe where he was Executor of the Executor of the Leafe, therefore upon this Exception the Writ was abated; quod nota. Br. Waite, pl. 75. cites 38 E. 3. 17.

9. In Waite by him in Remainder he ought to shew Deed of Remainder, and so he did; and the Deed was J. de T. and the Writ was J. & T. and Exception taken for the Variance, & non allocatur; for it is not like to Debt upon Obligation. Br. Waite, pl. 28. cites 42 E. 3. 19.

10. Waite was brought by J. Archdeacon of D. of the Leafe of his Predecessor, the Proceeds issued to the Sheriff to enquire of Waffe return'd, the Original was, that the Defendant did Waffe in Tenements which J. S. Predecessor of the Plaintiff leased to the Defendant at esheredationem ipsius Archibdicat, where he does not determine if the Waite was in the Time of the Predecessor or in the Time of the Plaintiff, and the Writ of Inquiry of the Waite was Quod Vere facias coram te 12 &c. qui nec quæremus nulla affirmat. attingant, and did not syr animam quæremus nec Defend's nulla affirmat. attingat, and therefore ill; For in this Writ the Sheriff is Judge and Officer, and the Party may challenge and have Attaint; for which Default, and because it is not expressed in the Original nor in the Verdict, if the Waffe was in the Time of the Predecessor, or in the Time of the Plaintiff, therefore Mention was made in the Roll of these Matters by special Entry, and another Writ awarded to inquire of the Damages and these Matters specially put in the Writ; quod nota. Br. Waite, pl. 58. cites M. 2 H. 4. 2.

11. Waite shall be brought in Vill or Hamlet &c. or the Writ shall abate as it seems there; And yet per Hank. if the Place where &c. be a Manor or such a Place, the Writ is well brought; and after they were at Ilfe if it was a Vill or not; and Hank. said, now the Waite shall be tried by this Inquest; quod conceditur per Thinning Ch. J. Br. Waite pl. 61. cites 7 H. 4. 8.

12. In Waite the Writ supposed that the Plaintiff had the Reversion of the Assignment of J. who had it of the Assignment of W. and shew'd Fine of the first Assignment and Deed of the second Assignment to himself. Til. said, the Fine proves that J. had the Reversion of the Assignment of W. and R. and the Writ supposes it to be by W. only; Judgment of the Writ, and therefore the Writ was abated, notwithstanding the Plaintiff had aver'd that R. had nothing in the Reversion, but W. only; For as his Grantor shall be etopp'd, so he shall be etopp'd. And a Stranger to the Fine pleaded it to the Writ by Reason of the fleas of the Plaintiff. Br. Waite, pl. 64. cites 11 H. 4. 41.

13. In
13. In Wafe, the Plaintiff count'd in Aves and Ithorn, and the
Defendant pleaded it to the Count because the Ithorns are not Wafe; and
there it was argued, that it goes to the Writ; and it seems that there
is no other Judgment upon Plea to the Count, but quod queres nihil
capit per Breve, and therefore see that for Fault in the Count the Writ

14. The Defendant demanded Judgment of the Writ because it is
brought of Wafe in A. and B. and said that B. is a Hamlet of A. and not a
Vill by it self, and this goes to all the Writs, Pet Babbiton, Martin, and
Fulton; and Issue was taken if it was a Vill by it self or not. Br. Wafe
pl. 9 cites 9 H. 6. 42.

15. Where Wafe is brought of Wafe in a House and in breaking of a
Br. Brief, pl. wall, where it does not lie of the House, yet the Writ shall not abate in all;

16. Wafe against a Feme of a Demise to her so long as she shall live sole, S. P. The-
and therefore the Writ ill; per Cur. For it shall be for Term of Life and
D. 37 Lib'r's Dig. of the Declaration shall be special. Br. Wafe, pl. 102. cites 37 H. 6. 26.

The loaf's Dig. of Writs, lib. 9. cap. 7. S. S. cites 37 H. 6. 29.

17. Writ of Wafe against Tenant Pur aiter Vie, does not abate by the
Death of Cellty que Vie. Theloal's Dig. lib. 12. cap. 10. S. 9. cites Hill.
9 E. 4. 53.

18. If Wafe be brought by Baron and Feme in Remainder in especial
Tail, and hanging the Writ the Feme dies without Issue, the Writ shall
abate, because every Kind of Action of Wafe must be ad Exhaereditio-

19. An Action of Wafe is brought against the Lessee for Years, or
against Tenant Pur term d'auter Vie, and hanging the Action the Term
expires, or Cellty que Vie dies, yet the Writ shall not abate, for that an
Action of Wafe lies only for the Damages in those Cales, which he
shall recover in that Action then depending. 2. Inf. 304.

[B. a] The Count. [And where General or Special, tho' the Writ is General.] 

1. If Wafe be brought for such Trees whereof the cutting of every
It was a
particular Tree will be Wafe, there the Count shall be that he
cut to many Trees, so that Damages may be more certainly taxed. 46
E. 3. 17. as White Thorns. 11 H. 6. 1.

Things, he shall shew the Value of each Thing by it self. Br. Wafe, pl. 9. cites 9 H. 6. 42.

2. But where the Action is brought for such Trees whereof the cut-
ting of every Particular is not Wafe, but the Wafe confidents in the
Multitude, there * he shall not count of so many Trees, but of so many
Loads, as of so many Loads of Black Thorns. 46 E. 3. 17. ad
judged.

3. If Wafe be brought for Wafe in Germens, he shall not count in
permitting the Wood to be uninclosed, so that the Beasts have eat the
Germens
Sermons, but he shall count generally that he has destroy'd the
Sermons. 11 P. 6. 1.

4. So if a Stranger comes upon the Land, and does Wafe, the
Count shall not be in permitting the Stranger &c. but generally,
11 P. 6. 1.

5. A Man may have Action of Wafe, and Count upon divers Leaves.
F. N. B. 60. (F) cites M. 44 E. 3. 17. See 34 H. 8. 12.

6. Wafe quod tenuit ad Terminum Annorum, and counted of a
Lease for Term of Life to the Tenant, and hath a Year over, by which the
Defendant pleaded this to the Writ, because it is not Ad Terminum Anno-
rum; and yet well; for there is no other Writ but for Term of Life or
Years, and therefore he shall have General Writ and Special Count. Br.
Wafe, pl. 48. cites 46 E. 3. 31.

7. Battery of Villeins, or constraining them to do more Services than they
ought, per quod recusantum, is Wafe; and the Writ was Vaftum in Ho-
mimbus, and counted of Villeins as above, and good; for the Writ
shall be general, and the Count special, and so good, notwithstanding
that it was not Exilium de Hominibus. Quod nota. And it was brought
in 4 Vills, and the Defendant said that no fuch Vill as the one &c. And
per Marten. This goes to all the Writ, without answering to the Wafe
in the rat. Br. Wafe, pl. 5. cites 2 H. 6. 10. 11.

8. Writ of Wafe is Quod secit Vaftum, and yet he may count of several
Wafes. Br. General Brief, pl. 9. cites 4 H. 6. 11.

9. In Wafe the Writ shall be Ad Terminum Annorum, and shall count
for one Year, or for half a Year. Br. General Brief, pl. 6. cites 8
Wafes. H. 6. 34.

S. P. Ibid.
pl. 11. cites 9. In Wafe the Writ shall be Ad Terminum Annorum, and shall count
for Years, Lib. 1. Cap.

10. If Lease is made to a Fene as long as he shall live sole, or to a Man
as long as he shall behave himself well, and the Tenant does Wafe, the
Writ shall be general, Quas fese ad terminum Vitas, and there Declaration

11. Waft, and assign'd Wafe in a Kitchen in permitting it to fall, by rea-
son that he did not lay Stones under the Walls of the Kitchen, viz. the
Groundsels. The Defendant demanded Judgment of the Count; for it is
not Wafe; for the Tenant is not bound to more than to keep it in such
Cafe as he took it. And the Declaration is, That the Ill came after the
Leafe by Sufferance of the Tenant; and it was held that it goes only to
the Action for this Part, and the Writ is good for the rest, (for the Plaintiff
assign'd other Waftes also) by which the Defendant pass'd over, and

12. In Wafe, if the Plaintiff counts of a Sale, he need not swore to
whom he sold. Br. Wafe, pl. 112. cites 5 E. 4. 100.

13. Wafe by the Priores of C. in a Manfion, and a good Affignment;
For the Statute speaks of Donibus, and a Manfion is a House, and it was
in Exheredationem Prioresfie de C. and did not fay prelitt; and yet good; for
it shall be intended the Plaintiff, and if he brings it as Parfon Imparfa-
nee, the Priores shall be named accordingly. Br. Wafe, pl. 144. cites
10 H. 7. 5.

14. In
Waste.

14. In Waste he may declare upon a Lease for a Year, and so from Year to Year, as long as both Parties please, and count that he held for 10 Years; per Brudnell and Pollard. But Brooke and Fitzherbert contra, and that it is only a Lease at Will. Quere. Br. General Brief, pl. 20. cites 14 H. 8. 10.


16. If preyates of Lands be made to the Husband and Wife, to have and to hold to them during the Coverture, if they shall do Waste, the Feoffor shall have a Writ of Waste against them, supposing by his Writ Quod tenet ad terminum Vite &c. But in his Count he shall declare how and in what manner the Lease was made. Litt. S. 380. and S. 381.

17. A Lease was made to endure from such a Feoff unto such a Feoff, the Writ shall suppose Quod tenet ad terminum Annorum in that Cafe, and by the Count the Special Matter shall be shew'd. F. N. B. 60. (N.)

18. If the Grantor of the Reversion brings Allion of Waste against Allegiance of Tenant by the Curtesy, the Plaintiff must rehearse the Statute. Co. Litr. 316. a.

19. In Waste &c. the Writ was, That the Defendant committed Waste in S. P. Brown. the Land, and in the Declaration be assign'd the Waste in felling Trees. It 259. Anon. was held that this would not maintain the Writ; but if he had assign'd the Waste in digging Clay, Chalk, or Stones, or the like, this is Waste in the Land. Mo. 73. pl. 200. Trin. 6 Eliz. Anon.

20. In Waste the Plaintiff declared of a Demise of a Moiety of the Manor of Woolverton, and of a Moiety of the Wood call'd Woolverton-Wood, and other Lands, and assign'd the Waste in cutting down Oaks in a certain Wood call'd Woolverton-Wood, Parcel of the Premisses, which it could not be and says the be; For this Wood could not be Parcel of the Manor of Woolverton, Plaintiff and of the other Lands demised with the Manor; and for this and for other Causes the Count was held insufficient by the whole Court. 3 Leon. 9. pl. 23. 7 Eliz. C. B. Tindal v. Cobb.

21. In Waste the Plaintiff declared, That Seinitus suit of the Land, and leg'd it to the Defendant for Years, who committed Waste ad Exhgeries etiue of the Plaintiff. Upon Nul Waste pleaded, Judgment was given in the Plaintiff. It was assign'd for Error, that the Declaration was mere, and that Seinitus suit was assign'd, but if he had assign'd the Waste in Bl. Acre, Parcel of the Manor, in cutting Trees there, tho' his Writ be of a Demise of a Moiety, yet the Assignment will be good; but Damages shall be given according to a Half-part of the Trees, and not of more by this Writ. It seems if he will bring a new Action upon the Statue of W. 2. cap. 22. when 2 or 3 &c. he shall recover treble Damages for the other Half-part of the Trees.

22. In Error to reverse a Judgment in Waste, the Exception was, Ow. 11. that the Plaintiff had assign'd the Waste in a House; and by his Title it appear'd that he had only 2 Parts of the Reversion of the said House. Sed non accordingly.
accelvat: For tho' he has but 2 Parts, yet he shall punish the Defendant for Waste done in that which was held of the Plaintiff; and the Message being intire, he cannot assign the Waste otherwise, and his Count was according to his Title. Cro. E. 290. pl. 10. Hill. 34 & 35 Eliz: B. R. Warrilord v. Haddock.

23. Lands were given to A. and B. and the Heirs of their 2 Bodies. A. died without Issue, and the Remainder of the half reverted to the Donor. He brought Waste against B. of Houses and Lands to him demised; and agreed that the Writ was good. But it was questioned if the Count shall be general, or of a Half only, notwithstanding that both were Tenants in Common of the Reversion. 2 Brownl. 133. Mich. 9 Jac. C. B. Mallet v. Mallet.

24. In Waste the Plaintiff counted that the Defendant pleased up his Land, which was pasturable, & fic fictum Vesta. After Verdict for the Plaintiff it was moved in Arrest of Judgment, That the Plaintiff in his Declaration does not so much as allege a Waste done, but leaves it absolutely uncertain; and that the Verdict does not help it; For that only says that the Defendant did it Modo & Forma prout in Narratione. Now the Ploughing of Pature may or may not be Waste, and to make it such it ought to have been fo Time out of Mind; and it is not enough to say that it was Pature-Ground Diu ane. Jones j. said, That Arable and Pature-Ground are convertible, and what is the one this Year, may be the other the next, and the Law does not so much distinguish; and therefore Judgment was stay'd. 2 Show. 8. pl. 4. Pasch. 30 Car. 2. B. R. Gunning v. Gunning.

25. The Declaration was that the Defendant, who was Leilec, did fell the Trees &c. And this was held not good, without saying that he cut them down &c. Clayt. Rep. 126. pl. 225. March 1647, Ward v. Waddington.

See (N. a)
-(O. a)

(B. a. 2) Process and Proceedings.

* If the De- 1. 13 E. 1. Nacts, That of all manner of Waste done, to the Damage of fendant be return'd Nil &c. to as peradventure he was never sum- mon'd, nor any other Writ served, whereby he might have Notice, yet a Writ of Inquiry of Waste shall be awarded by this Branch; for here it is not specified that Illius should be return'd &c. but generally, and by the Writ, the Waste shall be inquir'd of by the Oath of 12 Men, where the Defendant, or any for him, may attend if he will, and the Jurors may find against the Plaintiff. 2 Inst. 389.

If the Defendant appears upon the Diffref, and pleads, and after makes Default, the Plaintiff shall not by this Branch have a Writ to inquire of the Waste, because it is out of the Words and Provers of this Act. 2 Inst. 390.

* Here are three Things to be observed, 1st. That the Sheriff ought to go in proper Person; for that tho' in Rei veritate he is no Judge, yet this Writ is in Nature of a Commission unto him, and he is in loco Judicis, and therefore he ought to go in propriis Personis. 2dly, Where some have holden that the Sheriff may inquire upon this Writ, by the Oath of 16 or 8 Persons, it appears that there ought not to be under 12; for the Words of this Branch are Assumptis fecum 12. Yet this is but an Impeachment of Office; for it is taken Sans mife des parties; that is, without any Illus: John'd. 3dly, The Sheriff must go At houm.
Waffe.

2. Waite against two by the Bishop ad Exheredationem Ecclesie, and Process continued till the Grand Daire's returned, and the one came, and the other made Default, and he who appeared was compelled to answer alone; For the Process is determined against the other. Br. Waite pl. 99. cites 39 Eliz. 3. 15.

3. If the Jushe be taken out of the Point of the Writ, as upon Confirmation, Relajfe, or the like, there needs not the View, or Claim of the View in Venire facias; For the Waite is not denied, but where Bar is pleaded so in Affice Per Pigr, quod non negatur. Br. Waite, pl. 111. View of the Place wattled ed, nor to inquire of that but of Damages. D. 204. Marg. cites it Judge's Hill. 55 Eliz. Anon.—But by Anderson and Walmfley, if the Jushe be join'd upon such collateral Point, as whether he entered as Executor or as Legatee, yet the Jurors ought to have the View for the giving of Damages; So if the Waite be confessed or found by Verdict, but otherwise if it be adjudge'd upon Demurrer; but Glanvill contra. D. 204. Marg. pl. 1. cites Parch. 41 Eliz. C. B. Letchford v. Sanders. —2 And. 135 pl. 80. S. C. — Cro E. 690. pl. 26. S. C. — Poph. 194. S. C. — Brownl. 241. Lashbrook v. Sanders, S. C. (but in neither of the last mention'd Books does the S. P. appear.)

4. In an Action of Waite the Jurors shall have a View of the Place, it was said a Waited &c. as an Incident to the Action of Waite; for in the Action at greed by the whole Court, if the Jury be sworn that they knew the Place, it is sufficient, altho' they be not sworn that they saw it, and altho' that the Place waited be forced to the Jury by the Plaintiff's Servants, yet if it be by the Commandement of the Sheriff, it is as sufficient as if the same had been shewed unto them by the Sheriff himself. Godb. 209. pl. 298. Mich. 11 Jac in C. B. Gage v. Smith.

5. In an Action of Waite there shall be Summons and Severance; for the Writ is at Exheredationem, and the Action of Waite is a Plea real. 2 Init. 306.

6. Tho' the View in Action of Waite was not return'd on the Process on which the Jurors appear'd, and were sworn, and tried the Jushe; yet it was resolved to be good enough, because, altho' the Jurors ought to have the View, yet it was not necessary for the Officer to return it, but the Court on the Trial ought to examine the Matter, whether the Jurors have had the View or not; For on the Trial six Jurors at last ought to have had the View, or else the Jury shall not be taken, cites 9 H. 6. 95. b. And in 24 E. 3. 26. a Day of Continuance was given, Eo quod the Jurors had not the View, & interim videant &c. And in an Affice the View of the Jurors is requisite; but it is never return'd; For perhaps neither the Sheriff nor the Officer knows, whether the Jurors have had the View or not. For the Words of the Writ are, Et interim videant &c. and not, Et interim habeni fac. vijum. So that the Jurors may view the Place waited when the Officer is not present, and therefore the Officer is not obliged to return the View, but it ought to be examined on the Trial and
and the Party may make his Challenge to the Jurors for that Cause if six of them at the least have not had the View; and if the Officer had return’d that they had the View, yet if it appear’d on the Trial by Examination, that they had not had the View, the Return would be to no Purpose, nor conclude any of the Parties, Plaintiff, or Defendant. 2 Saund. 254, 255. Mich. 22 Car. 2. Greene v. Cole.
7. 4 & 5 Ann. cap. 16. S. 8. Enacts, that in any Actions in any of her Majesty’s Courts at Westminster, where it shall appear to the Court that it will be necessary that the Jurors should have the View of the Place in Question, the Courts may order special Writs of Distraint or Habeas Corpus, by which the Sheriff or other Officer shall be commanded to have 6 out of the first 12 of the Jurors, or some greater Number, at the Place in Question, some convenient Time before the Trial, who shall have the Matters in Question seton to them by two Persons in the Writ named, to be appointed by the Court.

(B. a. 3) Pleadings.

1. In Wafte against Tenant for Years of the Lease of the Plaintiff himself, the Defendant pleaded that the Plaintiff’s not habited in Tenements, but jointly with his Wife in Tail &c. and held a good Plea. Theloe’s Dig. lib. 11. cap. 44. S. 6. cites 4 E. 3. 11 Darby, Brief 747.
2. In Wafte against Baron and Feme on a Lease to them both made by the Plaintiff’s Father, the Tenants pleaded that the Plaintiff’s Father never passed to them Modo & Forma &c. and held a good Plea. Theloe’s Dig. lib. 11. cap. 52. S. 25. cites Parch. 6 E. 3. 260.
3. In Wafte against Tenant in Deve, the Plaintiff made to her by the Heir to hold without impeachment of Wafte, and aver’d that he had Assents by Defect, and the Opinion was that it is no Plea; for the Statutes of Gloucester speaks of Warranty with Assents to bar the Tail, and not of Grant with Assents. Br. Wafte, pl. 76. cites 38 E. 3. 23.
4. It was agreed that the Heir shall not have Action of Wafte of Wafte in the Time of his Father, but in his own Time, and Ilffe taken accordingly. Br. Wafte, pl. 76. cites 38 E. 3. 23.
5. In Wafte by him in Remainder, he ought to sue for Deed of Remainder, and fo he did. Br. Wafte, pl. 28. cites 42 E. 3. 19.
6. In Wafte the Plaintiff counted upon a Lease for Years by him made to the Defendant, and that he did Wafte; and the Defendant was not suffered to say that he did not lease for Term of Years, but that he did not lease Modo & Forma &c. For if he leaves for Life or in Fee, the Defendant may plead it, and traverse the Count &c. Br. Negativa &c. pl. 7. cites 43 E. 3. 13.
7. Wafte against A. of Tenements which he held of the Lease of E. who held them for Term of Life of the Leafe of his Father. The Defendant said that he had nothing in the Tenements the Day of the Writ purchas’d, nor ever after, but E. was and is Tenant; Judgment of the Writ, & non allocatur, by which he said that E. was Tenant the Day of the Writ purchas’d, albeit he that he ever any thing had of the Leafe of E. which was held a good Plea, and the other maintain’d his Writ; Quod nota, and yet
yet Non-tenure is no Plea in Wafte, but it seems that this amounts to, That E. Non dimittit modo & forma. Br. Wafte, pl. 35. cites 44 E. 3. 6.

8. Wafte to Part; the Defendant pleaded that the Tenants died in the last Possession, and he could not yet find new Tenants, and as to a Grange that the Plaintiff by Indenture is bound to deliver Timber to him for Reparation in such a Wood, and did not; Judgment &c. and there it is held, that if it be upon the Land less'd he may take it, notwithstanding the Indenture, and therefore this is no Bar; by which he said that there was no Timber upon the Land less'd, and that the Wood out of which &c. is not in his Lease; by which the Plaintiff replied that he offer'd Timber, and the Plaintiff would not take it unless he could have more, which he had no Need of, Prizt, and the others contra. Br. Wafte, pl. 36. cites 44 E. 3. 21.

9. In Wafte, the Tenant said that as to the Wood it is excepted in the Deed of Lease, and so Non dimittit pas; but he answered to the Remainder; and the Plaintiff said that he less'd the Wood by another Lease, and the others contra. Br. Wafte, pl. 38. cites 44 E. 3. 34. 35.

10. Where the Tenant justifies the Abatement of so many Trees for Reparations, the other may say that he abated so many more before; Per Cur. Br. Wafte, pl. 38. cites 44 E. 3. 34. 35.

11. Wafte against Tenant for Term of Life of his Lease, who said that the Plaintiff had nothing in Reversion; and admitted for Plea, without an

Wafte by the
Heir against
his Father,
upon a Grant
to the Father
and Mother,
and to the Heirs of the Mother; the Tenant said that he discontinued to R. in the Life of the Term, alleging that the Plaintiff anything had in the Reversion the Day of the Writ purchas'd, or after, and held double; by which he said at above, and so in Reversion &c. and then well; And Per Martin and others, Nothing in Reversion only is a good Plea there. Contrariwise the Plaintiff claims of his own Lease, or of the Lease of his Ancestor; but it is a good Plea in Haste ex Affirmation, upon Grant of Reversion to the Plaintiff. Note the Divinity. Br. Wafte, pl. 85. cites 8 H. 6. 13. — S. P. Br. Double, pl. 42. cites 8 H. 6. 13.

And in Wafte against Tenant by the Curtesy, it is a good Plea that he discontinued in Fee to R. in the Life of the Term, and after R. held to his Life, facing the Reversion, and so Nothing in Reversion the Day of the Writ purchas'd &c. Br. Wafte, pl. 85. cites 8 H. 6. 15. — And where the Plaintiff claims of his own Lease, or of his Ancestors, the Tenant may say Quod non dimittit, and prove how the Heir has granted the Reversion to another to whom he attended, after which Attendance No Wafte there. Br. Wafte, pl. 85. cites 8 H. 6. 15.

Rent en le Reversion is a good Plea in Wafte, Per Bequaund. And Walmley took a Divinity when the Writ was brought by the first Leffer himsef, and when it is brought by the Grantor of a Reversion; in the one Case it is good, but not in the other; and cited 5 H. 5. 12. Br. Wafte 72. and 46 E. 3. 20. Br. Wafte 115. And note, if they warrant that Difference, the Reason is because of the Contract and Pri

12. Upon Recovery in Wafte by Default, and Writ of Inquiry of Wafte Br. Scire qui-
and the Plaintiff said Execution by Scire facias; and the Defendant said that the Day of the Writ purchas'd he was Villein to F. N. and held in Vil-

that it is no Plea; for it is a special Non-tenure, which is no Plea in Wafte nor in Scire facias &c. Br. Wafte, pl. 51. cites 48 E. 3. 18.

13. Quod Juris clamiat; the Tenant plea'd how the Grantor less'd to him by Indenture for 40 Years, and granted to him to repair the House within the first Year, and facing to him the Advantage of the Inden-
ture, if the House after falls in his Default, Ready to attone, and the Attorn-
ent taken accordingly, and the saving enter'd of Record; and this seems to be a Bar in Wafte. Br. Wafte, pl. 53. cites 48 E. 3.

14. Wafte
It is a good Plea in
Waffe, that the
House was
ruinous
at the Time of
the De-
mise, and
therefore fell.
Br. Waffe,
pl. 130
cites 12 H. 8. 1.

14. Waffe against Tenant for Life, and assigned the Waffe in a Grange, Hall, and Grange; and as to the Grange and Hall the Defendant said that they were seble, and the Timber perished at the Time of the Demise, so that they could not stand, by which they fell; and to the Grange that the Plaintiff made it after the Lease without Glee of the Defendant; Judgment his Actio, and admitted for a good Plea; and it is no Replication for the Plaintiff to say that the Defendant by his Deed had covenanted to repair the House in as good Plague as they were at the Time of the Demise; for of this lies Coven-

nant; for it requires but single Damages, and of Waffe lies treble Da-

mages; quod nota. Br. Waffe, pl. 54. cites 49 E. 3. 1.

S. P. For per
Hull, the
Entry is all
the Matter;
For the
Tempelis
not Waffe,
unless the
Defendant
permits the
Timber to rot after the Tempest. Br. Double Plea, pl. 50. cites S. C.

15. Waffe against Tenant for Years of the Lease of his Heir of Waffe in a Hall, Kitchen, Stable, and Oaks; and as to the Hall the Defendant said, that the Ancestor held it in his Life-time to S. P. who pulled it down after the Death of his Heir; and as to the Stable, that the Timbre was putrid in the Life of the Ancestor, which fell in the Time of the Ancestor; and as to the Oaks, that he cut them for the Stable, and made a new Stable of them, and as to the rest No Waffe done; And as to the Sale of the Hall the whole Court was against the Plaintiff except Hank; And per Hill, if the Ancestor was Tenant in Tail, the Sale or Gift was colourable to be avoided, but of Fee-

Simple not; and it is not said Precisely that the Heir in Tail shall avoid it. Br. Waffe, pl. 67. cites 11 H. 4. 32.

16. In Waffe the Defendants said, as to the Grange that the Moity was decayed before the Lease, and the other Moity was uncovered by Tempella, and before the Defendant could repair it the Plaintiff entered and was failed the Day of the Writ purchased; Judgment his Actio; and per Hank, the last Plea is double, the Tempella and the Entry; but Hull contra. Br. Waffe, pl. 69. cites 12 H. 4. 5.

17. Where a Lease is upon Condition, that if the Tenant suffers Waffe be by entered, there he cannot enter for uncovering by Tempella, unless he says, that the Lease had sufficient Time after to repair it, and did not; Per Hull, clearly. Br. Waffe, pl. 69. cites 12 H. 4. 5.

18. The Plaintiff alleged Waffe in Exile of a Villein, the Defendant demanded Judgment of the Writ, because he did not enter in what Place he exiled him, &c. non allocatur; For it is no Plea Quod non existit, or Quod non succidit Arboris, but shall say, No Waffe done Proitur &c. Br. Waffe, pl. 9. cites 6 H. 6. 42

19. The Defendant pleaded to the Writ because the Waffe is brought in, and he said that there are two A's and none without Addition; and no Plea per Cur. For the Plaintiff shall recover Per Vision Juratorum; quod nota. Br. Waffe, pl. 9. cites 9 H. 9. 42.

20. Waffe, that he permitted a House to be uncover'd, by which the Tim-

ber became rotten and corrupt. Markham said, the Day of the Writ pur-
chased the House was sufficiently repair'd; and the best Opinion was, that it is no Plea; for it is in a manner double, the one that if the Waffe was done that it is amended, and the other that there never was Waffe. But if he had said that after the Waffe it was sufficiently repair'd, before the Writ purchased, it seems to be a good Plea. Br. Waffe, pl. 86. cites 19 H. 6. 66.

21. Waffe against Tenant in Dover in Land in D. Quas tent ex heredi-
ditate of the Plaintiff. The Defendant said, that N. Father of the Plain-

riff, whose Heir &c. infoff'd W. in Fee, abique hoc that she held in Dover ex Hereditate of this Plaintiff; and then well, by reason of the Travers.
Quere if Ricas in Reversion had not been a good Plea. Br. Travers per &c. pl. 363. cites 20 H. 6. 19.

22. Waffe against J. W. Complain, and counted that he leased for Term of Life by Deed. The other said that there is in the same Vill a College, called the Hospital of Mary Magdalen, of which College the Tenements where &c. are Parcel, which of ancient Time has been founded of a Master, Brothers and Sisters; and that the Plaintiff and all his Ancestors, and all those whose Estate he has in the Manor of D. have used, Time out of Mind, when the Master dies, to put in another Master without Presentation to the Ordinary, and the Hospital voided by the Death of B. and the Plaintiff by the Deed &c. gave and granted the said Hospital to the Defendant Habend for Term of his Life, and was put in peaceable Possession, Judgment to Aetio. And the said Opinion of the Court was, that it is no Plea; for he does not answer to the Lease of the Plaintiff, for this Matter is only a Presentation, and he has no Livery of Seilin as upon a Leafe, nor the Fee or Frankentenement, or Reversion, is not or ever was in him who made the Collation, but relit in the Houfe. Quod nota. By which the Defendant said as above, absolute hoc that the Plaintiff leased for Term of Life, proet &c. Br. Waffe, pl. 87. cites 21 H. 6. 2.

23. Waffe in 10 Alises. The Defendant said that the Plaintiff gave, to R. C. and commanded the Defendant to cut and deliver them in the said R. C. by which he did so, Judgment to Aetio. The Plaintiff said that he did not cut by his Command. Per Newton &alton, This is Negative pregnant, by which he said that he did not command him. Quod nota. Br. Negativa &c. pl. 21. cites 21 H. 6. 4.

24. Where a Leafe is by Deed without Impeachment of Waffe, or by Grant to be discharge'd of Waffe, all by one and the same Deed, the Tenant may rebut, and plead in Bar it, and shall not be drove to his Writ of Covenant; per Paton, quod Fulthorp & Aetio j. concessit. Brooke makes a Quere if he shall be drove to Writ of Covenant, if it be granted by another Deed. Br. Waffe, pl. 89. cites 21 H. 6. 46.

25. Where the Defendant justifies the Waffe for cutting of Alises for Fire-logs, he ought to furnish that there was no Underwoods upon the Land &c. And the same Law seems to be where he takes Beeches or other Trees which are Tumbo by the best Opinion of the Court. Br. Waffe; pl. 89. cites 21 H. 6. 46.

26. Waffe in a Wood, and also in a Wood, by which he cut the Trees and sold them &c. The Defendant as to the House said that No Waffe done, and for Trees cut to the Trees that the House was ruinous in Groundels at the Time of the Demise, by which he cut for Reparations, and put the Trees in the Groundels. And for Cur. This is a good Plea where the Plaintiff counts generally of cutting of Trees without more. But where he counts of Sale, as here; for there be shall answer to the Sale, by which Catesby justified as above, absolute hoc that be sold them, and good Reason; for the Writ of Waffe is Quod non iucet aliqui vaustum, venditionem fei destructio in terris, Domibus, Boeefi &c. Br. Waffe, pl. 112. cites 5 E. 4. 100. In Waffe, and bequests upon the Repairs of the Houfe, yet the Tort which is supposed in the Sale is not answer'd; per Montague. And Knightley feem'd to be of the same Opinion, and he ought to conclude that it is the same Waffe. D. 55. b. 56. a. pl. 55. 34. Trin. 29 H. S. in Cave of Mulherer v. Spine.— D. 90. b. pl. 8. Mich. 1 Mar. in Cave of Mervin v. Lyds.

27. Ne vendas pas is no Plea, but shall justify as in the Plea above, absolute hoc that he sold, or shall lay No Waffe done generally. Br. Waffe, pl. 112. cites 5 E. 4. 100. Per Choke J.

23. In
28. In Trepas it was agreed, that Tenant for Years may cut Wood, but it was doubted of Tenant at Will. But it seems that as long as Tenant at Will is not countermanded, he may cut feaonable Wood &c. Littleton said then he ought to say that they have used such Sutton in the Country to cut Underwoods; for otherwise the justification is not good. Quere inde. Br. Wale, pl. 114. cites 8 E. 4. 6. 7.

The Leffor was sefted in Fees, but in his Lease did not except the Gravel, and so his Command during the Lease is no good. An Appeal to the Lease, this Gravel is Part of the Inheritance, and he cannot grant his Inheritance by Parol only without Deed. See the Year-book.

Ibid. says

30. In Wale the Defendant pleaded Accord, that he should repair the flood-gates of the Mill, which he has done, and no Plea; for in Action Personal or Mixt, the Accord is no Plea; and this by Judgment. Br. Accord &c. pl. 13. cites 11 H. 7. 13.

31. Wale was assign'd in Bofis, viz. in Succedendo 2? Vendendo decem Quercus &c. where in Truth the Defendant had only lopp'd and fized them; and it seems he may well plead No Wale done, and give this special Matter in Evidence. D. 92. pl. 16. Mich. 1 Mar. Anon.

32. Wale was assign'd in pulling down Unam Murum ligneum, and in permitting a Brick-wall to fall down, and in Erumpendo &c. Disfrabendo the Planks and Mangers in a Stable, without saying that they were fix'd to the brickwall, and rose; and therefore it was held not to be Wale, and the name as to the Walls, it not being expressly alleg'd that they were cop'd or cover'd. D. 108. pl. 31. Mich. 1 & 2 P. & M. The Earl of Bedford v. Smith.

33. W. brought Wale against the Defendant Tenant for Life, by Reason of a Remainder to him limited by Use, and assign'd the Wale in Proferendo Horreum. The Defendant pleaded in Bar, that the great Timber of the said Barn, at the Time of the Death of her Husband, was so rotten &c. that it could not be repair'd; this was taken to be a good Plea, and Issue taken upon the Matter. Mo. 54. pl. 158. Patch. 3 Eliz. Ward & Uxor v. Dettenham.

34. Wale was assign'd in breaking down a Copper of Lead fixed to the Ground by the Leffe for Years; The Defendant pleaded in Bar, that the Copper was devis'd to him by the Termor, and that he took it with the Affint of the Executor, and carried it away; The Plaintiff travers'd the Devil, upon which they were at Issue. This Issue was held a Jeofail, but there being other Issues, a new Venire facias illisfed as to them. The Reporter.
37. The Plaintiff made a Leaf for Years to A. and before the Explication thereof, be made another Leaf of the same Lands to B. the Defendant to begin presently, and then brought Action of Waive against him for Waive done during the first Leaf. The Court said, that in such Cafe it would not be fate for him to plead No Waive done, for it will be found against him. And it he should plead the Special Matter as aforesaid, (viz.) That the first Leaf was in Being at the Time of the Waive done, after the Explication whereof no Waive was done; this would be good if the 2d Leaf was not by Indenture, otherwife he will be eftopped by the Indenture, and then the Waive will charge him. And it Defendant pleads the Special Matter, the Plaintiff by his Replication may eftop him to plead any other Beginning of the Term than the Letter of the Indenture purports, and it will be no Departure, because it strengthens the Declaration. 3 Le. 203. pl. 256. Trin. 30 Eliz. C. B. Thorpe v. Wingfield.


39. Waive for cutting down 300 Oakes; the Defendant pleaded as to 200 of them, that the Houses leafed were ruinus &c. and that he cut them down to repair the Houses, and as to the Residue, that it fell'd and keeps them to employ about the Reparations Tempore Opportuno. And all the Court, without Argument, held it no Plea; for it it should be good, every Farmer might cut down all the Trees on his Farm, when there was no Manner of Occasion to repair. Cro. Eliz. 593. pl. 33. Mich. 39 & 40 Eliz. C. B. George v. Stanfield.
40. If two bring an Action of Wafte, the Release of one is a good Bar against the other; and so resolved by the whole Court. Co. Litt. 355. b. cites 9 H. 5. 15.

41. Note, where Hedge-boot or Pale-boot are granted to be taken reasonably, and where certain Loads or Trees are granted annually for that Purpose, here it is not necessary to shew that the Fence is in Decay. And note, that for Fireboot it is not necessary at the Time of the Cutting, to shew the Necessity. And so for Reparation; for it is Reason and good Husbandry to cut them in some convenient Time before Hand. And note the Difference, because that, which is allowed certainly at some Years, may not be sufficient. Noy 23. Jenkins v. Jenkins.


1. If a Leesee for Life of a Prior of a Hospital does Wafte, and the Prior releases it, yet the Succeeder may bring Action; For the Predecessor by his Release could not disinherit the House. 42 E. 3. 22.

2. But if Leesee makes Agreement with the Predecessor, the Succeeder (shall not punish it. 42 E. 3. 22. (It seems then that it ought to be assured that the Thing agreed for comes to the Use of the House.

3. The Release of an Abbot or Prior shall bar the Succeeder of the Action. 2 H. 4. 3.

4. Wafte by 2 against J. N. He pleaded Release of the one, and demanded Judgment. And the Opinion of the Court was, that he shall be barr’d; and this seems to be intended that he shall be barr’d against both; For the Damages are principal, and yet contra in Allife. Br. Waite, pl. 73. cites 9 H. 5. 15.

[D. a] Who may dispense with it.

1. If Tenant for Life be, Remainder or Reversion in Tail, and he in Reversion or Remainder grants to the Leesee that he shall not be impeach’d of Wafte, and dies, and then it is committed, the Issue may have Action of Wafte for it notwithstanding the Grant by his Predecessor, because he cannot prejudice his Issue. 38 E. 2. 23.

* [E. a]
* [E. a] What shall be a good Bar. Act of the* This is
(H) in Roll. Lejee.

1. If Lessee commits Waffe, and pending an Action of Waffe for
it, repairs the Waffe, yet this is not any Bar of the Action. 36

2. Rebuilding shall excuse the Waffe. Br. Waite, pl. 29. cites 42 E. 3. If a Man
pulls down a House, and
rebuids one as good before Action of Waffe brought, this is good, and Action does not lie. Br. Waite, pl.
112. cites 5 E. 4. 100. Bar in Debt on a Bond to maintain, sustain, and repair, if he takes down and
rebuids before the Action brought, this is no Plea. 2 Le. 189. pl. 287. Mich. 52 Eliz. B. R. Wood v. Avery.—Sav. 96. pl. 177. S. C. accordingly.

[F. a] Bars of Action of Waite. By All in Law.

1. If Lease be made to B. for Life and 20 Years after, and B. does * Br. Waite,
Waite, and dies, it seems his Executor shall not be charged, because it is a personal Action, which dies cum Persona. Contras 46
E. 3. 31. done in the Time of the Testator, the Executor shall not be charged.—Co. Litt. 53. b. (g) S. P.

2. If Leesee for Life be, the Remainder in Special Tail to Baron and Co Litt. 53.
Feme, if the Lessee commits Waite, and after Baron becomes Tenant — The the
after Possibility, by Death of the Feme without Issue, he shall not
punish this Waite, because now he having only for Life, cannot count Issue die
to his Disinherite. 50 E. 3. 4.

Waffe, the Action is determin'd. Br. Waite, pl. 14. cites 28 H. 6. 12.—Waffe was brought against Tenant for Life, the Remainder to Baron and Fee in Tail, the Remainder in Fee to the Tenant for Life, and said that paying the Writ the Feme of the Plaintiff died without Issue, or that the Issue died without Issue pending the Writ, there the Writ of Waite is determin'd; for now the Plaintiff cannot be disinherited; for now he is only Tenant in Tail after Possibility of Issue; and also now the Fee simple is in the Tenant. Br. Waite, pl. 60. cites T. 2 H. 4. 22. —And such a Case 19 H. 4. 5. The Opinion was, that it did not lie; for now it is not to his Disinherite. Ibid.—But Ibid. pl. 59. cites 37 H. 6. 37. that it was doubted.

3. If a Feme, Lessee for Life, takes Baron, who commits Waite, and
after the Feme dies, the Action of Waite is determin'd; for the Bar-
on cannot be charged in the Feme nor Tenant, because he never had
any Estate but in Right of his Feme, and the Feme [was] the Lessee.
† Co. 5. Clifton 75. b. Resolved. 93 37 Cl. B. Sackwell against accordingly.
† E. 5. 36. Cro. E. 356. pl. 9. S. C.
† Co. 5. 3 Clifton 75. b. Resolved. 93 37 Cl. B. Sackwell against accordingly.
† E. 5. 36. Cro. E. 356. pl. 9. S. C.
† E. 5. 36. Cro. E. 356. pl. 9. S. C.
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† E. 5. 36. Cro. E. 356. pl. 9. S. C.
† E. 5. 36. Cro. E. 356. pl. 9. S. C.
Waste.

4. If a Man brings Action of Waste, and dies before any Recovery, his Heir shall not have Action for the same Waste, because the Damages do not belong to him. *Cataa 20. E. 1. Liber Parliamenti, 23. b. Vizualy 9 & Parliament upon Debate, and there commanded to the Justices hereunto to do accordingly in such Cases.

That if Waste be committed, and he in the Reversion dies, that the Action of Waste fails, for that the Heir cannot recover Damages for the Waste done in the Life of the Ancestor, and the Waste was not done to the Disinheritance of the Heir; and yet the Law extends the Action of Waste favourably, as much as with Convenience may be, left Waste, which is harmful to the Commonwealth, should remain unpunish'd. 2 Inf. 393.

* All the Editions are (Anceffors) but the Year-book is (Heirs.)

5. Waste against Tenant for Life of the Lease of his Ancestor, the Tenant pleads Release of his Ancestor of all his Right for him and his * Heirs to the Tenant for his Life; so that he nor his * Heirs any Right may challenge, claim, nor Demand during the Life of the Tenant; and the Court Opinion was, that it is no Plea; for yet the Tenant has but for Term of Life only, and if he aliens, he in Reversion may enter, and by Release nothing can pass but that which is in Action, or is in Life at the Time, and this Waste was done after. But contra of Grant; for if the Lessor grants that the Tenant shall not be impeach'd of Waste, or may do Waste, this is good. Note the Diversity. Br. Waste, pl. 36. cites 42 E. 3. 23, 24.

6. Where a Man leases for Years, and brings Writ quas Tenet of the Waste &c. and the Term expires pending the Writ, yet the Writ quas Tenet is good. Quod Curia concettit. Br. Waste, pl. 95. cites 14 H. 8. 10. 11.

7. If one makes a Lease pro auter Vie, and the Lessor does Waste, and then Coffyx que Vie dies, an Action of Waste lies for Damages only, because the other is determin'd by Act in Law. Co. Litt. 285. a.

8. When the Reversion is devolved, the Lessor cannot have an Action of Waste, because the Writ is That the Lessor did Waste ad Exercitationem of the Lessor, and that Inheritance must continue at the Time of the Action brought. Co. Litt. 356. a.

9. A feised of Land in Fee, acknowledges a Statute-Merchant, and infefteth B. who lets the same for Life. The Land is extended upon the Statute. B. brings an Action of Waste against the Lessor. He may plead this Execution &c. before which Execution no Waste done; for the Possession of the Land is lawfully taken from him by Course of Law, which he could not withstand; and if he should be punish'd for Waste, he should have no Remedy over. 2 Inf. 393.

10. In Trepass, Plaintiff is an Inheritorix and Defendant her Leesee for Years, the Action is for cutting down Trees being excepted in the Lease; but on Evidence it appear'd that some of them were cut in the Life of the Plaintiff's late Husband. Per Holt Ch. J. The Plaintiff's Husband having issue, was intituled to be Tenant by the Curtesy, and therefore, for what were cut down in his Time, he being Tenant for Life, the Action does not lie; but if he had had no Child the Action would survive to the Wife. Cumb. 453. Trin. 9 W. 3. B. R. Park v. Field.

* [G. a]
By what means the Action may be discharged. This is (H) in Roll.

When the Act of the Party; to wit, The Lessor.

If Lessor does Wafe by cutting of Trees, and Lessor carries them away, (admitting the Carrying-away tortious; for there it is held that he may have Trepass for them against the Lessor) yet this is not any Barre in Bat of the Action; but he shall be put to his Trepass. 44 E. 3. 44. b.

Lessor was guilty of by the Abatement. Br. Wafe, pl 59. cites S. C.

If Lessor for Years does Wafe, and after Lessor enters upon him by Tort, he shall not have Action of Wafe against him during his own Seisin, before Re-entry by the Lessor. 8 H. 6. 10. Because the Action ought to be in the Tenant.

Br. Wafe, pl 54. cites S. C. P. N. B. 60. (L) in the new Notes there (b) says the Action is suspended, and cites S. C.

If Lessor for Life upon Condition does Wafe, and Lessor after enters for Condition broken, yet he may have Action of Wafe against

Litt, 45 E. 3. 9, Demurrer.

If Lessor for Life does Wafe, and after aliens in Fee, and Lessor enters for Fortiference, yet he shall have Wafe against Lessor, for permanent adventure if he had not entered he should be disinherited. 45 E. 3. 9. b. 14 H. 8. 14. 8 H. 6. 10. [It seems in that Case he may have his Action in the Tenet, then it is clear that it lies.]

and have Action of Wafe after his Entry of Wafe done before the Alienation. [In that Case the Action was brought in the Tenure.]

5. The same Law is if Lessor enters for Fortiference, upon Alienation by Lessor, Br. Wafe, pl 54. cites S. C.

6. [To say] that he surrender'd, is a good Bar of Action {accrued}

before the Surrender. 46 E. 3. 31. (As it seems will prove this) 19 H. 6. 66. Quere 14 H. 6. 14.

Surrender to the Plaintiff before the 1st purchase'd; to which the Plaintiiff agreed, absoive he that he had any thing the Day of the West purchase'd, or after. And per June Ch f This is no Plea; for he does not demand the Land, but is to dissipole the Wafe. Per Patton, The Plea is to the Action; but per June, it is no Bar to the Action, viz. a Surrender. Quere if it be a Bar. Br. Wafe, pl 105. cites 14 H. 6. 4.


* Orig. is (Come semble voilt eftre proven)

If Tenant in Dower leafes for her Life to him in Reversion with. So if the In Age, who never took the Profits, but at full Age disagrees to the Leafe, he may have Action of Wafe for Wafe in the mean Time.

30 E. 3. 16.

Rent on Condition of Re-entry for Nonpayment of Rent. F. N. B. 55. (E) in the new Notes (a) cites 30 E. 5. 16. and 38 E. 3. 25. 29.

6 M
8. If after Waffe done the Lessor grants over the Reversion in Fee, and retakes it, yet he shall not have Action for the said Waffe. Co. Litt. 53. b.

9. So also if the Waffe done the Lessor grants over the Reversion, and retakes it to him and his Pemne, and to his Heirs, yet he shall not have Action for the said Waffe, because the Estate, which was provy to the Waffe committed, is altered. Co. Litt. 53. b.

10. If a Man leaves a House, and grants further to Lessor, that he may make his best Profit of it; this Grant shall not be any Bar to Action of Waffe for abating of the House; for the Grant shall be intended that he shall make his best Profit according to the Law, without Curt and Disinheritance to the Lessor. Dubitatur. 17. 3. 7.

11. So if the Lessor be of a Wood, with Grant to make his best Profit of it, he cannot cut and sell. 17. 3. 7. b. Dubitatur.

12. But if a Man leaves Land, and grant further to the Lessor that he shall make his best Profit of the Mines of Stones, Coal, and Iron open in the Land; this Grant shall be a good Bar in an Action of Waffe for digging of Coals, Stone, and Iron, and Seling; for the most Profit of them is to sell, and he shall have little other Profit. 17. 3. 7. b.

13. If a Man leaves Land to another Sine Impedimento vasti, it shall be a good Bar in an Action of Waffe; for those Words (Sine Impedimento Vasti) amount to as much as without Impediment of Waffe. P. 7. 3a. b. between Sir Francis Leake and Earle adjudged.

14. So if a Man leaves the Manor of D. and all Lands and Tenements &c. Parcel of the said Manor, to have the aforesaid Manor, Lands, Woods &c. as Houseboot and Hayboot, Sine Impedimento Vasti for Years; this shall be a good Bar in Action of Waffe; for the Words (Sine Impedimento Vasti) relate to all the Thing demised, and the expending of Housboote &c. is Surplus, and void. P. 7. 3a. b. between Sir Francis Leake and Earle adjudged.

15. In Action of Waffe against Tenant in Dower, it is a good Bar that the Baron, who was the Ancestor of the Plaintiff, alien'd to B. who allign'd to her her Dower, and so the Reversion is in him, and not to the Plaintiff. 39. 3. 33.

16. The Lessor cannot give Trees during the Tenant's Lease. But if he grants them to a Stranger, and commands the Tenant to cut and deliver them, who does it, this shall excuse him in an Action of Waffe; and yet the Tenant was not bound by the Law to obey and execute this Command. Br. Done &c. pl. 13. cites 21. H. 6. 46.

If the Heir granted away the Reversion and the Tenant's property, the Action shall be at the Common Law. 2. Inf. 326.
18. If Tenant for Life is, the Remainder over in Tail, and he in Remainder releaseth to the Tenant all his Right, this is a good Bar against the Register in Writ of Waste; and yet Fee nor Fee-Tail does not pass. Br. Waste, pl. 145. cites 13 H. 7. 10.

his Right, yet he shall have an Action of Waste.—So if Leesee for Life does Waste and grants over his Estate, and Leesee releaseth to the Grantee; in an Action of Waste against the Leesee, he shall plead the Releas, and yet he has nothing in the Land. Co. Litt. 269. b.—And so in Waste shall Tenant in Dower, or by the Curtesy in the like Case, and the Vouchee and the Tenant in a Præcept after a Peachment made, and so in a Contrary Formam Collationis. Co. Litt. 269. b.

19. Leesee for Years in Bar of Waste pleaded Accord executed; and See (B a.) Held a good Plea. Mo. 6. cites 6. E. 6.


21. If Leesee for Life or Years does Waste, and then the Leesee releaseth all Actions Real, he shall not have Action of Waste in the Perfectiony only; And if he releaseth all Actions personal, he shall not have Action of Waste in the Realty only. Co. Litt. 285. a.

22. An Estate referred without Impeachment of Waste coming to a Leesee, he would have it in the like Manner, but was refrain'd in Chancery. Toth. 147. cites Jan. 11 Jac. Marquis of Winchester v. Buhon.


1. 52 H. 3. cap. *Naftis, That *Farmers, during their Terms, shall not This Act make Waste, Sale, nor Exile of Honour, Woods, and Men, provided the Remedy for Waste done by Leesee for Life or Leesee for Years, and it is the first Statute that gave Remedy in those Cases; for the Rule of the Register is, that there are five Manner of Writs of Waste, viz. two at the Common Law, as for Waste done by Tenant in Dower, or by the Guardian; and three by Statute or Special Law, as against Tenant for Life, Tenant for Years, and Tenant by the Curtesy. 2 Inf. 145.

This Statute is a Penal Law, and yet because it is a Remedial Law, it has been interpreted by Equity. Arg. 10 Mod. 281. in Cafe of Hammond v. Webb.

Here *Farmari do comprehend all such as hold by Leaft for Life or Lives, or for Years, by Deed or without Deed, Large he habere dictio Firmarius ad terminum Vite, & ad terminum annumor. 2 Inf. 145. cites Flara lib. 5. cap. 34.—It has been resolved that it should extend to Strangers. Arg. 10 Mod. 281. in Cafe of Hammond v. Webb.

Albeit the Register says Sciendo. that per Statutum de Marlebridge, cap. 25. data ficta quedam Prohibito vallis verusses tenentem annumor, which is true; yet the Statute extends to Farmers for life also, but this Act extended to Tenant by the Curtesy, for he is not a Farmer, but if a Leafe be made for Life or Years, he is a Farmer, the no Rent be referred. 2 Inf. 145.

* By these Words they are prohibited to suffer Waste, fee (K.)—It has been resolved that this Act extends to Waste omittedo, tho' the Word is, faciant, which literally imports Active Waste. Arg. 10 Mod. 281. in Cafe of Hammond v. Webb.

Nor of any * Thing belonging to the Tenements that they have to Farm, * Honour, Woods and Men, were before particularly named, and these Words do comprehend Lands and Meadows belonging to the Farm. 2 Inf. 146.

Also these general Words have a further Signification, and therefore if there had been a Farmer for Life, or Years of a Manor, and a Tenancy bad escheated, this Tenancy so escheated did belong to the Tenements that he held in Farm, and therefore this extended to it, and the Leesee shall have a Writ generally and suppoft a Leafe made of the Lands escheated by the Leesee, and maintain it by the Special Matter. 2 Inf. 146.

* Unles
This Grant Unles they have special Licence by Writing of Covenant, making Mention that they may do it, for all Waftes tends to the Disinheriture of the Leffor, and therefore no Man can claim to be dispunishable of Waife without Deed. 2 Inf. 146.

This Special Grant is intended to be Absque Impetitione Vafi, without Impeachment of Waife. 2 Inf. 146.

And this Which Thing if they do, and thereof be convif, they shall yield full Damage, and shall be punished by Americanit grievously.

2. Fine was levied to S. for Life, the Remainder to K, for Life, Remainder to the right Heirs of this same S. there S. may grant to K. to hold without Impeachment of Waife ; and this shall bind the Heirs of S. and yet S. had nothing but for Life at the Time of the Gift in Poifession, but he had Fee in Remainder. Br. Waife, pl. 98. cites 24 E. 3. 70.

3. If a Man leaves for 29 Years without Impeachment of Waife, and after within the Term, confirms his Estate for Term of Life, he shall be impeach'd of Waife within the Term ; for now he is in of another Estate, and the greater Estate shall determine the les, which is the Term. Br. Waife, pl. 71. cites 5 H. 5. 9. Per Aicham.

It gives the Tenant only a bare Power, without an Interest ; Per Holt. Ch. J. 1 Salk. 569. Poole's Cafe.

4. If a Leave is made to A. for the Life of B. without Impeachment of Waife, the Remainder to him for Term of his own Life, now he is punishable of Waife, for the first Estate is gone and drown'd ; And so it is of a Confirmation. D. 10 b. pl. 37. Trin. 23 H. 8. in Cafe of the Abbot of Bury v. Bokenham.

5. By Force of the Clause Absque Impetitione Vafi (that is without any Challenge or Impeachment of Waife) the Leave may cut down the Trees, and convert them to his own Life. Co. Litt. 222. a.

6. But otherwise it is if the Words were without Impeachment by any Action of Waife, for then the Discharge extends but to the Action, and not to the Trees themselves, and in that Cafe the Leffor shall have them. Co. Litt. 222. a.

7. A Leave was made to A. and B. during their Lives, & aliter eosorum dieruius viventis, without Impeachment of Waife, durante Vita ipsum. A. died ; and the Question was, whether B. the Survivor should be punishable for Waife; for some conceived the Limitation of the Estate to be more liberal or extensive than the Liberty, the one being Durante Vita ipsum, and the other Durante Vita alterius eosorum viventis, but it was agreed per rot. Cur. that the Liberty runs with the Estate, and should endure as long. 3 Leon. 151. pl. 202. Hill. 29 Eliz. C. B. Rolle's Cafe.

And. 151. pl. 199. Anon. but seems to be S. C. The Leave was to A. and B. for their Lives, Absque Impetitione Vafi during the Lives of the said Leffors, naming them. A. died. Waife was brought against B. All the Judges agreed that the Action did not lie, and that it shall hold the Land without Impeachment of Waife, and it shall go according to the Interest which survives and entitle the Nature thereof ; and it is the Intent of the Grant, and the Words by a reafonable Construction agree therewith.

S. 11
9. Tenant for Life without Impeachment of Waite, cut down Trees. Ld.C. Not-Refolv'd that the said Clade did not give the Tenant for Life a greater In-
tereft in the Trees than if she had only a Demife of the Land, but it is only
ferv'd to exempt her from being liable in Action of Waite, or recovering
Damages for the Pooey waited. 4 Rep. 63. Patch. 31 Eliz. B. R. Her-
Iaken's Cafe.

10. It gives such a Privilege, that tho' no Waite is done, as that the
Hoife is blown down by Tempel, yet he shall have the Timber which was
Farel of the Hoife, and all Timber Trees blown down by the Wind; for formerly was
when they are fever'd from the Inheritance, either by the Act of the
Party, or by the Law, and become Chattels, the intire Property of whom
them is in him who hath this Privilege by Virtue of thefe Words, with out
Impeachment of Waite. 11 Rep. 83. b. 84. Refolv'd. Lewis
Bowles's Cafe.

that this did only create an Iniquity to the Tenant for Life, altho' it was the express Provision of the
Party, and cited 4 Co. 65. But that afterwards in Lewis Bowles's Cafe, 11 Co. 80. the Opinion was
that these Words did eft a Right and Interesse in the Tenant for Life, and did give him Liberty
to sell and take the Trees to his own Life; for there is an express Provision of the Party; but in the
Cafe of Tenant in Tail after Possibility of Life extingu'd, that is the Provision of the Law only; and
therefore in some Cases forther cit ille quantum Legis, yet that shall not be to incur the
Impeachment of Waite.

or otherwife. Letiice for Years committs Wall. He in Remainder is
Fee shall not have Action of Wall; for this Leafe was deriv'd out of the
Estate for Life privilege'd, and if Wall lies it shall be brought against the
Tenant for Life who made the Leafe, and he was disimputable. Re-

12. This Privilege continues no longer than the Estate to which it is an-
nex'd; So that if Tenant for Life with such Privilege, grants his Estate,
referring the Trees, it is not good; But if he grants for 3 Lives, by
Virtue of a Power, referring the Trees; this is good, because he has a
Possibility of Reverter after the 3 Lives. But it Tenant in Tail after Possibility,
grants his Estate, referring the Trees, it is void; but if he
Leafe for Life, referring the Trees, it is good, Per Jones J. Lat. 270.
in Cafe of Sacheverell v. Dale.

13. The Intent of such Privilege is only in order to cut down Timber and
v. Lord Bernard.

14. The Clause of Without Impeachment of Waite, never was ex-
tended to allow the Deblution of the Thing itself, but only to excuse for 127. S. C. &
Permanency Waite; and therefore such Clause would not give Leave to fell
and cut down Trees ornamental, or sheltering of an House, much les to de-
stroy or demolish the Houfe. Ch. Prec. 454. Hill. 1716. in Lord Ber-
nard's Cafe.
(G. a. 3) Waite. **Triable where.**

**Action of Waite upon the Statute does not lie in Ancient Demesne, and if it was brought at Common Law Ancient Demesne is a good Plea; for those are not bound by the Statute.** Br. Waite, pl. 81. cites 7 H. 6. 35. Per Marten, Action of Waite does not lie there upon the Statute, but by their Usage; and therefore if the Usage is till the Action is ill.—2 Infl. 306. says it does not lie there upon the Statute of Gloucester, because that Court falls of the Incidents to an Action of Waite, viz. to award a Writ to the Sheriff to inquire of the Waite &c.—S. P. But Waite lies there by Writ of Right, and shall have Protests at the Common Law, viz. Distress infinite. Quere inde, unless by Custome and Time out of Mind. Br. Waite, pl. 141. cites 25 H. 6. 55.

1. **If Tenant by the Curenty does Waite, and grants over his Estate; in Action of Waite for the Franktenement shall be recovered.** 12 D. 4. 4.

2. **The same Law is of Tenant in Dower.** 12 D. 4. 14.

3. **If Lefsee for Life does Waite, and grants over his Estate, yet in a Writ of Waite against him the Franktenement shall be recovered.** 12 D. 4. 4.

4. **So if Lefsee for Years does Waite, and grants over his Estate, in Action against him the Land shall be recovered.** 12 D. 4. 4.

5. **If an Action of Waite be brought against a Lefsee for Years, and it appears to the Court that the Term is expired pending the Writ, the Plaintiff shall recover Damages only, and not the Land.** Dib. 9 Car. B.R. between Newsell and Dunming, adjudged in Writ of Error upon a Judgment in Bank, and the Judgment there to given affirm'd accordingly. 1ntatrue Scosth. 8 Car. Rot. 271.

6. **Upon the Construction of the Statute of Gloucester; some Question has been made, Whether in this mixt Action the Place wafted is the Principal, or the Damages; and in divers Respects the one is more principal than the other; for in respect of the Antiquity against Tenant in Dower, and the Tenant by the Curenty, the Damages are the principal, and therefore they shall be sometimes prefer'd, viz. The Plaintiff to have Execution of the Damages before the Place waited. But in respect of the Quality, the Reality is ever prefer'd before the Personalty, and therefore in Waite, if the Defendant contes the Action, the Plaintiff may have Judgment of the Land, and releafe his Damages, which proves the Reality.**
Waste.

ty to be the Principal: for omne majus dignum trahit ad se minus. 2 Inst. 307.

[I. a] Judgment. What Thing shall be recover'd. * This is (K) in Roll. See (L. 2)

[The Place wafted.]

1. If Trees growing sparsim in a Cloze are cut, in an Action of Waste Brown, 243. all the Cloze shall be recover'd. 99. Inst. 36. between Cage S. P. Anon. and Smith. per Curiam. Co. Litt. 54.

2. If Waft be done in diverse Rooms in a House, the Rooms * Hall be recover'd in Action of Waste, and not all the House. Co. * Fol. 836.

3. But] If Waste be done in a House sparsim throughout the S. P. tho' all House, all the House shall be recover'd. Co. Litt. 54.

4. If Waste be done in the Hall of the House, yet all the House In ancient shall not be recover'd, tho' some hay that the House has its Denomina- nation from the Hall. Co. Litt. 54.

were wafted, the whole House should be recover'd; for that, in those Days, the Hall was the Place of greatfull Retort and Life, inasmuch as the whole House was called by the Name of the Hall, as Dale-Hall, &c. but the Purview of the Statute of Gloucester b, that he shall lose that Thing that he hath wafted.

2 Inst. 503, 504.

Now, Attorney-General in Mr. Atkins's Reading, held that the 15 E. 5. Tit. Waft, 8. That inWafle of the Hall all the House shall be recover'd, was good Law, contrary to the Opinion of Co. Litt. 54. a. 15 H. 7. 11. And he cited the Case of Lord Abingdon b. Sir Rd. Montauil, in Action of Waste, for Wafle done in Kitchen and Larder of a Castle, and all the Castle was recover'd, because a Castle is not dividable, and so adjudged. 11 Eliz. See D. 272. b. Marg. pl. 53.

5. If a Man brings Action of Waste, because he permitted the Pales Cro. C. 381. of a Park, which incompsals the Park, to decay; but it is not aver'd pl. 9. and that there were any Deer in the Park, or that thereby the Deer were 347. pl. 9. disperfed, and in this Action the Plaintiff recovers; he shall not recov- er all the Land which is comprised within the Pales, but only the not appear, Place where the Pales stood. P. 11 Car. 2. R. between Sir John Cor- bet and Mr. James Stonehage. it was so held; and the Court seem'd to incline to it in Writ of Error upon such Judgment in Bank, the Judgment being affirmed in the King's Bench to recover the Place wafted.

6. Stat. of Gloucester, 6 E. 1. cap. 5. Enacts, That * be which shall be * If one attained of Waste, shall leas the Thing that he hath wafted; and moreover shall + recompeze thrice so much as the Wafe shall be tax'd at; tained of the Wafe &c. 2 Inst. 503. —— S. P. But treble Damages shall be recover'd against him that did the Wafte only. 2 Inst. 502.

† In an Action of Waste against a Lette for Life, for Waste done in 5 Acres, the Defendant claims Fees; whereupon the Jury is join'd. The Jury find against the Defendant. That he hath but an Estate for Life; and inclined further of the Wafe, and found the Wafe done in one Acre only. The Plaintiff cannot have Judgment for the whole Land, in respect of the Forfeiture and treble Damages; for that Judgment is not according to this Act, that is to lay of the Place wafted, and treble Damages in respect of the Place wafted; wherefore he had Judgment, according to the Statute, of one Acre and treble Damages. 2 Inst. 503.

‡ Whereover the Common Law gave single Damages against any, this Act does give treble, unless there be any Special Provision made by this Act. 2 Inst. 500.

This Statute does not bind the King; per Coke Arg. Mo. 321. in Englefield's Case.

And
Wafle.

If the Guardian suffers a Stranger to cut down Timber-Trees, or to prostrate any of the Housfs, and according to his Name of Guardian doth not endeavour to keep and preserve the Inheritance of the Ward in his Custody and Keeping, nor to forbid and withstand the wrong Doer, this shall be taken in Law for his Confent; for in this Case Qui non prohibet, bonum praebere potest, affinitatem videtur. And if such Wafle and Distraction be done without the Knowledge of the Guardian, or with such Number as he could not withstand, then ought the Guardian to cause an Affile to be brought against such Wrong Doers by the Heir, whereon he shall recover the Freehold, and Damages for such Wrong and Distraction. So note a Diversity between the Interest of a Guardian created by Law; for there in Affile the Heir shall recover Damages; but otherwise it is in Case of a Lease for Years, which is the Lessor's own Act. 2 Inst. 505.

See (L. a) The Committee of a Ward did Wafle, and after ten years had Marriage to the Heir, and he refused, and married elsewhere. The Wafle is found by Office. The Question was, Whether the Committee may bring Forfeiture of Marriage. The Court upon Advice held, That the Committee by doing Wafle lost only the Ward of the Land, and not of the Body, by the express Words of this Statute. D. 25. b. pl. 163. Hill. 28 H. S. Anon.

7. If 2 Coparceners leave Land for Life, and after Wafle committed one dies, the Aunt and Niece must join in Action; and tho' the Niece shall recover no Damages, yet she shall recover the Place walled; and it seems they shall hold the Lime in Coparcenary. F. N. B. 60. (B) cites M. 11 E. 3.

If Termor of a Wood does
Waste in one
Corner of the Wood, he
shall not lose all the Wood; see Finesse Ch. J. clearly; but only the Place walled. Br. Wafle, pl. 96. cites 15 H. 7. 11. — But if there be diverse Parts of Land in one Wood in diverse Places, now if the Termor does Waste in the Wood he shall lose those Parts, tho' he did not do Waste in them; for those are Parcel of the Wood, and this seems to be where he has done Waste in the Wood (parim & circumjacent); and this was laid by Finesse for Law, in the Reading of Thecher. Ibid.

8. In Wafle at the Nifi Prius, Wafle was found in four Oaks in divers Parts in a Wood; and it was doubted if he shall recover the Wood or the Place walled; and at last it was awarded, that he recover the Place walled, and his treble Damages. Br. Wafle, pl. 24. cites 41 E. 3. 23.

9. If a Man does Waste, and grants his Estate over, yet upon Action brought against him, he shall lose the Place walled; and his Grantee, who is not party to it, shall lose his Interest. Quod nostrum. And therefore it is a good Plea for the Grantee, that such a Day he granted his Estate over, before which Grant No Wafle was done; and in Action against the Grantee it is a good Plea, that such a Day the N. granted it to him, after which Grant No Waste done. Br. Wafle, pl. 33. cites 43 E. 2. 8.

10. If the Guardian in Chivalry does Wafle in Ward, to the Damage of 20s. he shall lose the Ward to the Value of 20l. viz. he shall lose all the Ward. Br. Wafle, pl. 68. cites 12 H. 4. 3. Per Hank.

S. P. 2 Inst. 302.

11. Wafle by two upon a Lease for Term of Life, and one was summoned and severed, and the other sued forth, and assigned the Wafle in diverse Things, and in cutting of Willows, and found for the Plaintiff, and Damages taxed; and he had Judgment to recover the Moiety of the Damages, and the Moiety
Moity of the Place wafted, and as to the Willows, the Court advised. Br. Waite, pl. 116. cites 12 E. 4. 1.

12. If a Man does Waite in Hedge-rows which surround a Pasture, nothing shall be recover’d but the Place wafted, viz. the Circuit of the Root, and not the entire Pasture; Per Bromley Ch. J. Br. Waite, pl. 156. cites 4 E. 6.

13. A hath the Wardship of Black-Acre and the Heir of B. and White-Acre and the Heir of C. per Caufe de Gard. A doth Waite in Black-Acre. He shall lose only Black-Acre; for that Waite is done only to the Differifon of that Heir. And so it is if he does Waite in White-Acre, he shall only lose that Acre for the Waite done there to the Differifon of that Heir. 2 Inft. 306.

14. If the Tenant of one House is Differifor of the next House, and he pulls down both and builds them into one new one, Differifor shall recover all the House. D. 272. b. Marg. cites 34 Eliz. Allen v. Hayes.

15. When Waite is brought in the Tenant, Damages are only to be recover’d. 6 Rep. 44. Mich. 3 Jac. C. B. in Blake’s Cafe.

16. If Leffe for Years or Life grants a Rent out of the Land so leaved, and afterwards commits Waite, if the Lord recovers the Place wafted, yet the Land shall be charged. Brownl. 238. Anon.

(K. a) What Estate shall be recover’d.

1. Where a Lease is made to one for Life, Remainder to another for Years, and the first Leffe looses by Action of Waite, Quære if the Tenor cannot enter after the Death of him who left. Br. Waite, pl. 44. cites 46 E. 3. 17.

2. If a Man grants a new Lease to commence after the End of a former Lease, and the first Leffe does Waite, Action lies against the first Leffe notwithstanding this future Interest, and the Term shall be saved. Co. Litt. 54. a. (T).

3. If Leffe for Life leases for Years, and after enters into the Land and does Waite, and the Leffor recovers in an Action of Waite, he shall avoid the Leafe made before the Waite done. Co. Litt. 233. b.

4. But a precedent Rent granted out of the Land shall not be avoided, but the Leffor shall hold the Land charged during the Life of Tenant for Life; But if the Rent were granted after the Waite done, the Leffor shall avoid it. Co. Litt. 333. b. 334. a.

5. Lease for Life to A. Remainder to a Feme sole for Years; they intermarry, and after Waite is committed; as well the Estate for Years as the Estate for Life shall be recover’d. 2 Le. 7. Arg. in Cranmer’s Cafe.

6 O (L. a) Recover’d
(L. a) Recover'd, What. Damages.

1. Waste by a Prior against J. N. Writ to enquire of the Waste was awarded, and return'd served; and Judgment was given that he should recover the Place wasted, and treble Damages, but Co'st executed till the Collision was tried; quod nota; and this seems to be by Quale jus. And from hence it follows that this is a Recovery by Default as it seems. And it seems there by Belkn. that the Plaintiff shall have the Damages the Collision be found, but not the Place wasted. Br. Waite, pl. 23, cites 46 E. 3. 37.


3. A Man shall recover treble Damages in Waite tho' the Action be not form'd upon the Statute. Br. Damages, pl. 193, cites 12 H. 4. 3.

4. In Action of Waste by the Heir against the Guardian, which is brought by the Common Law, the Plaintiff shall recover treble Damages, tho' this be given by Statute; For when Action of Waste is given with treble Damages, this shall extend as well to those who shall have the Action before as after. Br. Waite, pl. 68, cites 22 H. 4. 3. per Thirm.

5. And if Action of Waste was now given generally against Tenant in Tail, after Possibility of Issue &c. treble Damages should be recover'd against him without more Words; for those are adjourn'd to it by the former Statute, and when this is given in a new Case, all that is adjourn'd to it is given with it likewise. Br. Waite, pl. 68, cites 22 H. 4. 3. per Thirm.

6. Waste was found to the Damage &c. and Costs 10 Marks. The Plaintiff recover'd the treble Damages, and 10 Marks for Costs, which were not treble. Quod mirum, that he recover'd the Costs where the Damages are treble. Br. Waite, pl. 72, cites 5 H. 5. 12.

7. It is agreed per Cur. That upon this Issue of No such Vill, if the Plaintiff has No such Land in which he assigns a Part of the Waste, yet they shall give Damages; for such Issue the Waite is not denied; per Cur. Br. Waite, pl. 10, cites 9 H. 6. 65.

If a Man sells Trees, and after suffers the Germans to be destroyed, it is a double Waite, and treble Damages shall be recover'd for both; yet he cannot recover Locum Vandalum. P. N. R. 59 (M) (e) (f) in the new Notes there, cites 22 H 6 12.

8. Waite per Cur. where the Lessor cuts 100 Oaks, and after cuts the Stocks of the same Oaks, which grow again, Waite shall lie for both, and so it did; for he brought Writ of Waste, and aliqun the Waite in both; For the Stocks will grow to Oaks again, if they are well kept; and in this Case he shall recover treble Damages twice, but he shall have only one Judgment of the Place wasted. But note, that he brought but one Writ of Waste of both Waite; For if he had first brought Waite for the Cutting of the Oaks, and recover'd the Place wasted, and after the Tenant had cut the Stocks, Waite does not lie; For by the first Recovery of the Place wasted, his Lease is determin'd in this Parcel, and therefore Trif- poses lies of the second Cutting. Br. Waite, pl. 91. cites 22 H. 6. 13.

9. If
Waste.

9. If a Man disposes the Tenant for Life, and does Waste, Action of Waste lies against the Tenant for Term of Life; For he may have his Remedy over against the Disposer. Quere if he shall have this, viz. treble Damages in Affire, before that he be damnified by Action of Waste, or after? It seems that after the Action of Waste brought, and Execution bad. Br. Waste, pl. 138. cites 23 H. 8.

10. If the Guardian commits Waste, and the Heir, being within Age, S. P. Co. brings an Action of Waste, the Guardian thereby shall lose the Wardship and Damages for so much as is wasted, besides the Value of the Wardship, which is lost. But if the Heir at full Age brings a Writ of Waste against him who was Guardian, and recovers, then he shall recover treble Damages against the Guardian, because the same is out of the Statute of Gloucester, which says that the Guardian shall lose the Wardship; For he cannot lose the Wardship there, and therefore he is not in that Case as before. F. N. Tenant in Dower or by the Curtesy are, who were punifiable in Waste by the Common Law. And cites M. 12 H. 4. 3. in the Title of Waste. 1672. Notes there the Opinion of Thirming. F. N. B. 69. (T).

II. Lease for Years commits Waste, and the Years do expire, yet but this is shall the Lessee have an Action of Waste for the treble Damages, although he cannot recover the Place waited, and tho' the Statute of Gloucester be in the Conjointive, perdura le chose &c. & outer eco face gree &c. For expires by as there was at the Common Law 2 Forms of Actions of Waste, viz. in Diffusion of Times, as in the Case of the Tenet, as against Tenant by the Curtesy &c. and in the Tenuir against the Guardian after full Age; so upon this Act the like kind of Lease for Forms is cram'd by equal Construction, viz. in the Tenet, to recover the Years, or Place waited and treble Damages; and in the Tenet to recover treble when the Damages only. 2 Inst. 304.

* It seems that this should be (Vie.) — And Co. Litt 285. a. says, If Ceily que Vie dies, Waste shall lie only for the Damages. And if pending a Writ Ceily que Vie had died, the Writ shall not abide, but the Plaintiff shall recover Damages only; because it Ceily que Vie had died before any Action brought, the Leslor might have an Action of Waste for the Damages. ibid.

(M. a.) Recovery of Damages. By and against whom.

1. A Man seised leased for Life, and had Issue two Daughters, and died, the Tenant did Waste, the one Daughter had Issue and died, and the Tenant did Waste again, and the Issue and the Aunt brought Writ of Waste and counted upon their Cafe. The Defendant pleaded No Waste done, and all found as above. And it was adjudged that they recover the Place waited, and treble Damages in their own Time, and the Aunt alone the treble Damages in the Time of her Sister to herself. Quod nota. Br. Waste, pl. 41. cites 45 E. 3. 3.

— If a Cophereous lease Land for Life, and Waste is committed, and after one dies, the Aunt and the Niece shall join in Action of Waste for the Waffe done before; and yet the Niece shall not recover any Damages for the same, but the Place waited. F. N. B. 60. (K) cites M. 11 E. 5. and in the new Notes there (f) cites 11 E. 2. Waste, 115. 45. E. 3. 5. b. 11 H. 4. 16 b. 43. E. 3. 14. b. 33 H. 6. 23 b. Kelw. 105. a. Nat. Br. 101. 22 H. 6. 15. 49 E. 5. 2.

2. If
2. If there be Tenant for Life without Impeachment of Waste, and a Stranger cuts Trees, the Tenant for Life shall not have the Damages, because the Property is the Leiflor's. Lat. 269. in Cafe of Sacheverel v. Dale, Arg. cites 27 H. 6. Statham Wafte, pl. 47.

3. Two Jointenants for Years or Life, and one of them does Waste. This is the Wafte of them both as to the Place waited; but treble Damages shall be recover'd against him only that did the Wafte. 2 Inst. 302.

See (B. a 2) (N. a) Writ of Inquiry. Awarded in what Cases. And how the Inquiry ought to be.

1. In Wafte at the Grand Distrefs, the Parol was without Day by Protection, and the Plaintiff brought Summons, and the Defendant made Default; the Procels shall be Pone, and not Writ of Inquiry of Wafte. Br. Refummons, pl. 42. cites 27 E. 3. 78. and Fizth. Wafte, 13.

2. In Wafte where at the Grand Distrefs the Sheriff returns Issues, and the one of the Plaintiff's upon Demand makes Default, and the other appears, he shall be for'd by Award, and Writ shall issue to inquire of the Wafte; and so it did. Br. Wafte, pl. 57. cites 2 H. 2. 4.

3. In Wafte, if the Defendant appears at the Grand Distress, and has Day over, and after makes Default, the Plaintiff shall never have Writ to inquire of the Wafte; but shall have the Procels of the Common Law, viz. Distress infinite. Quod nota. Br. Wafte, pl. 119. cites 7 H. 4. 15.

In Wafte the Sheriff return'd Nil, and yet Writ issued to inquire of Wafte; and good per Thirn, Hank. & Culpeper. For the Statute is, That if he does not come at the Distress, the Sheriff shall be commanded &. And yet per Skrene, in Writ Quas tenet he may be summoned in Terra petita. Contra in this Action Quas tenuit. Br. Wafte, pl. 68. cites 12 H. 4. 3.

4. The Summons, Attachment, and Distress in Writ of Wafte were return'd Nil, and yet Writ issued to inquire of Wafte; and good per Thirn, Hank. & Culpeper. For the Statute is, That if he does not come at the Distress, the Sheriff shall be summoned &. And yet per Skrene, in Writ Quas tenet he may be summoned in Terra petita. Contra in this Action Quas tenuit. Br. Wafte, pl. 68. cites 12 H. 4. 3.

5. If the Sheriff has done his Office ill in one Vill, and well in another, all shall be inquire'd De novo; inasmuch as all the Inquisition shall be by one and the same Inquest, all at one Time. Br. Wafte, pl. 68. cites 12 H. 4. 3. Per Thirn.

6. Wafte against two Barons and their Femes. At the Grand Distress the one Baron and Feme appear'd, and the other made Default. Skrene pray'd Writ to the Sheriff, to inquire of Wafte against those who made Default, and counted against the others. Hank. said, You shall not have Writ to the Sheriff, but count against those who appear, and take Procels at Common Law against the others. Thirn said, The Wafte of one is the Wafte of
of all; and a Man shall not recover by Moieties in Wafte as in Precipe of Inquiry quod reddat against two; For in Wafte the Land shall not be lost by Defaulc, but by Action tried. Per Hank. Thole who appear ought to plead; other; for if it be found that No Wafte is done, this shall discharge all. But the one may per Thins, if Wafte be found, it is hard that the others shall be attainted be found who are Straengers to the litue; and after they were forced to answer, the one way, and the other another way. Br. Preces, pl. 45. citing 1 H. 4. 57.

7. Day was given against the Jury to try if B. was a Vill by its self or not; and at the Day they read the Record: because they shall not be sworn unless six of them had the View of every Place where the Wafte is assign'd, and after one was examined if he had the View who said, Yes; by which he was sworn upon the Principal, and there the Jury was charged to inquire of the Damages of each Parcel by itself, and not of a Sum in Gros for the Whole; For if they find that B. is a Vill by it self, then they shall inquire of Damages. And Wafte was assign'd in two Acres in digging of 200 Load of Slate-Stone, and 100 Load of Coals, and there it is agreed, per Cur. that upon this Issue, of No such Vill, if the Plaintiff has no such Land, in which he assigns a Part of the Wafte, yet they shall give Damages; for by such Issue the Wafte is not denied; and also when they say, that they have view'd every Parcel, they shall not say after, No Wafte done, or that there is No such Parcel as one of the Parcels is. And they found Damages of 300 Oakes, and were compell'd to shew the Price of each Oak by it self; and because shoye treble Damages are given by the Statute, therefore the Plaintiff cannot have Coits; Per Cur. Br. Wafte, pl. 10. citing 9 H. 6. 65.

8. In Wafte, if the Defendant demurs upon the Declaration which is adjudg'd against him, as he did where Reversion was devolved by Name of Tenement, and paifed without Arrtornment, there Writ shall not issue to inquire of Wafte; For by the Demurrer he is convicted of the Wafte, but Writ shall issue to inquire of the Damages quod nota. Br. Wafte, pl. 16. cites 34 H. 6. 7.

9. Wafte ex Hereditate as Cousin and Heir, the Tenant made Default after Default, by which Writ was awarded to enquire of the Wafte, upon which he assign'd the Wafte certain, as he ought in Lieu of Declaration, viz. Cutting jo many Oakes &c. ad Valentiam &c. Permitting a Hall &c. &c de singulis, and did not know how Cousin; and yet good, because it is no Declaration but Assignment of Wafte to infrincl the Jury; but contra upon Declaration; where the Defendant appears, there he ought to shew the Coinage. Br. Wafte, pl. 17. cites 34 H. 6. 44.

10. If a Man pleads Release in Wafte which is found against him, the Wafte shall not be inquire; For by the Pleading of the Release, it is confess'd; Per Moile. Br. Wafte, pl. 18. cites 35 H. 6. 44.

11. In Wafte upon a Nil dictt enter'd, a Writ was awarded to the Sheriff to go in proper Person to the Place waited and inquire of the Damages; and the Court held the Writ good; and that he need not inquire of the Wafte; For that is not denied &c. D. 204. pl. 1. Mich. 3 & 4 Eliz. Darrel v. Wybarne. S.P. and if Judgment be given by No from inforrnatis, or upon Demurrer, the Waffe shall not be inquire but the Damages. D. 204. Marg. cites it as adjudg'd Hill. 53 Eliz. C. B. Anon.

Judgment in Wafte was had by Confession by Nihil dictt. It was assign'd for Error, that the Judgment being by Confession, the Wafte ought not to be inquire'd; but because diverse Precedents were so, it was awarded no Error, and the Judgment was affirmed. Cro. E. 290. pl. 10. Hill. 54 & 55 Eliz. E. R. Warnafor v. Haddock.

If the Plaintiff in Wafte recovers by Nihil dictt, and a Writ of Inquiry issues, the Jury may inquire of the Damages but not of the Place waited; For the Nihil dictt is a Confession, and the Precedents are accordingly. And Hobart asked, if the Defendant shall be bound by the Nihil dictt, as to the Place waited, For what Reason he should not be bound as to the Damages? Win. 5. Patch. 19 Jac. Topping. [alias, Tipping] v. King. — Hutt. 44. Tippin v. King S.C. Resolved that the Jury ought not now to inquire.
inquire of the Waffe, and says that it was so adjudged between Ever and Doyle upon Demurrer in Waffe, there the Waffe is confess'd, and the Writ shall be to inquire only of the Damages; so if the Plaintiff will release his Damages, he shall have a Writ upon Judgment of the Place wafted. — Yelv. 120. Mich. 6 Jac. Ever and Doyle S. C. but S. P. does not appear. — Lane 83. Hill S. Jac. S. C. but S. P. does not appear.

D 204 a. MARY cites it as adj. 

12. But the Reporter adds a Quære, if in this Case the Sheriff Ex Rigoire Juris, ought to go in proper Person to the Place wafted; and says, it seems he need not; For this Form is only in the Writ De Vatto where Defendant made Default at the Differs, as in the Statute of Westmiller 2. cap. 15. D 204 a. pl 1. in Case of Darrel v. Wybarne.

Upon Judgment in Waffe it is assigned for Error, that in the Action the Defendant appear'd upon the Differs, and after Declaration made no Answer, but Judgment was given against him by Nil recit, and upon the Writ awarded to enquire of the Waffe and Damages, the Sheriff went not to the Place wafted, but inquired of it at another Place, and this was assigned for Error. Sed non allocatur; for when Judgment in Waffe is given upon a Demurrer or Nil recit, the Waffe is confess'd; and the Writ shall be only to enquire of Damages, and altho' the Writ do command the Sheriff to go to the Place, yet this is but of Form and Nagation; but otherwise it is where Judgment is given by Default before Appearance, so is 3 Eliz. D 204. Cro. E. 290. pl. 10. Hill. 34 & 35 Eliz. in B. R. Warnford v. Haddock — Ow 12. Wardford's Case, S. C. and S. P. and diverse Precedents were produced to shew that this was the Course; wherefore Judgment was affirmed; — S. C. cited Popli. 24. in the Case of Crocker and Yorke v. Dormer, Patch 35 Eliz. as the Case of Haydock v. Warford, and that tho' the Writ was that the Sheriff should go to the Place wafted, and he did not, yet he need not go, for by the Nil recit the Waffe is acknowledg'd; but where a Writ is awarded to enquire of the Waffe upon Default made at the Grand Differs, there by the Statute of Weftm. 2. cap. 24. the Sheriff ought to go in Person to the Place wafted, and inquire of the Waffe done, and therefore in that Case it is needful to have the Clause in it, that the Sheriff shall go to the Place wafted, and there enquire of it; For by the View the Waffe may be the better known to them, but where the Waffe is acknowledg'd, as here, that Clause need not, and altho' it be comprehended in the Writ; yet the Sheriff is not thereby bound to go the Place wafted and to enquire there, but he may do it at any Place within his Bailywick where he will, and therefore it is no Error in this Point.

13. In Waffe there was a Judgment by Default, and upon a Writ of Enquiry, it was found in two Houses and three Gardens generally, as the Plaintiff had declared, and entire Damages given; Upon a Writ of Error it was assigned, that the Jury ought to have found the Damages severall, that it might appear to the Court how much the Waffe is of each Particularly; for if any were under 12 d. the Court would not adjudge it Waffe. Sed non allocatur; For when the Sheriff and the Jury have the View of the Place wafted, and given Damages for the Waffe, it shall not be intended Petit Damages in any. Cro. C. 414. pl. 1. Mich. 11 Car. B. R. King v. Fitch.

514 Waffe.

(O. a) Return of the Writ of Inquiry. Good or not.

Waffe by the B

Because the Sheriff did not take the Inquest in Loco Vastato, Shand

Hear at full

Age against

the Guardian

in Chancery

Quas tentit

in Cauffa

and the

Waffe was assigned in two Hils, and the Sheriff return'd the Writ of Inquiry of Waffe, Quod Pluritute brevis

Præd' in Villa infra contenta septem Zoginatiam, and because the Writ is Quod accedat ad locum Vastatum, he may cause the Jury to see the Waffe in each Hild, and make the Inquisition in the one Hild only as in another Hild 20 Miles from thence; Per Thirm and Hank. Br. Waffe, pl. 68. cites 1 H. 4. 5.
Wafte.

In the Return of the Writ to inquire of the Wafte which was assed in three Vills, He return'd
Inquisitioncopia quod A, one of the Vills, and it did not appear if he came to the noble Vill, and therefore
ill; For it ought to be Quod Privata brevis &c. accessi ad Loca Vafata, viz. the three Vills, & quod A,
one of them, recti Inquisitionem &c. Br. Wafte, pl. 17, cites 34 H. 6. 44. —— Br. Return de Brief, pl. 16, cites S. C.— Br. Wafte, pl. 129, cites S. C. that the Sheriff may return, That he came to A. B. and
C. and made Inquisition at D. and well.

2. The Sheriff ought to return what Day and Year he made the Inquisition, and that he came to the Place wafted. Br. Wafte, pl. 129. cites 40 E. de Briefs, pl. 17, cites S. C. 3. 20.

3. In Wafte, the the Sheriff ought not to return Quod Menduus baldum S. P. 2 Infl. &c. in Writ of Enquiry of Wafte, but he shall be aimerced, and the same in Re-difficult; For in this Action, and in Re-difficult, he is Officer and Judge, which Power cannot be committed to the Bailiff of the Fran-
chise. Br. Wafte, pl. 129, cites 11 H. 4. 82.

4. The Sheriff ought not to return Quod fecit Vafum in Domibus &c. but shall draw certainly Hown and every Thing by it self, and the Da-
mages and Value of every Thing by it self, and if otherwise, then New Writ of Inqury shall be awarded. Br. Wafte, pl. 129, cites 34 H. 6. 44, and 11 the Wafte ought to be returned as

5. If the Wafte is assen'd in S. and the Sheriff returns upon Writ of Inqury of Wafte, That be came to S. and there inquired of the Wafte, this is no good Return; for he may do so, and yet not come to the Place wafted; for he ought to return, That be came to the Place wafted, and there

(P. a) Joinder in Wafte. Who may or must join, and
what shall be recover'd; And How.

1. If three are Tenants in Common Pro indiviso, and one commits A was Te-
Wafte, the other two ought to join in Action of Wafte against the 3d.
F. N. B. 60. (S) cites Mich. 3 E. 2. Wafte.

Recension, and A. brought an Action of Wafte alone, without naming his Companions; The Court held that
the Action did not lie by him alone; and it would be very inconvenient to deliver a 3d Part in Execution.

2. In Wafte against two, it was found by Writ of Inquiry that the one But in such
did Wafte, and the other not; whereupon Herle awarded Sicet alius. The Cate Award
Ioa's Dig. of Writs, lib. 16, cap. 5. S. 37. cites Mich. 6 E. 3. Wafte;

3. A Man leased for Life, and had two Daughters, and died, the Tenant If the Amt
did Wafte, the one Daughter had Issue and died, the Tenant did Wafte again and the Niece
and the Aunt and the Niece brought Wafte upon their Cate, and the Te-
nant pleaded No Wafte done, and it was found as above, by which the Wafte for
Waste.

Plaintiffs recover'd the Place waited and treble Damages in their own Time, and the other treble Damages in the Time of her Sister to herself. Br. Joinder in Action, pl. 12. cites 45 E. 3. 3.

4. Waste against two Priors, where the Ward was granted to both, and they did Waste; and it was not denied but that one Writ of Waste lies against both without several Writs, and per Belknap clearly, If a Co-tenant of an Abbots does Waste, the Abbots shall be charged; for this is the Waste of the Abbots himself. Br. Waste, pl. 55. cites 49 E. 3. 25.

5. If the Tenant enjoys by the Lease of one Coparcener, the Action lies well; but it is a good Plea, that the Lease was made by the Baron and Feene, and the other Coparcener who is alive not named, Judgment of the Writ: abije hoc that it was made by the Baron and Feene only. Quod noras. Br. Waste, pl. 94. cites 22 H. 6. 24.


7. If two Barons and their Femes lease for Years, and the one Baron and Feme have Issue, and the Feme dies, and the Baron is Tenant by the Curtesy, the Baron and Feme who survives, and the Tenant by the Curtesy, shall Join in Action of Waste; for there is Privyty between them. Br. Waste, pl. 94. cites 22 H. 6. 24. Per Newton.

8. But if the Baron and Feme be seized in furse Uxoris lease, and the Baron has Issue by her, and she dies, there the Heir and the Tenant by the Curtesy shall not join in Action of Waste; for there is no Privyty. Br. Waste, pl. 94. cites 22 H. 6. 24.

9. If Tenant for Life and be in Reversion join in a Lease for Life, and the Lease does Waste, they shall join in Action of Waste, and the Tenant for Life shall recover the Place waited, and he in Reversion shall recover the Damages. And the Reason seems to be inasmuch as the one parts with the Soil by the Lease, and the Dintinherence is to the other who has the Reversion. Br. Joinder in Action, pl. 1. cites 27 H. 8. 13.


11. A. and B. Coparceners of a Houfe. A. lets her Part to L. and then B. lets her Part to M. Afterwards both Leases come to the Hands of N. and then A. bargains and sells her Reversion to B. N. does Waste, by permitting the Houfe to fall. B. brings Waste, and has Judgment. In Error it was adjudged, that it being on 2 several Demises there should have been 2 Actions. Per Gawdy J. There is a Diversity when the Right is several and when the Possession is several; for tho' the Possession be several, yet if the Right be entire, one Action only will lie. And to this Popham Ch. J. agreed; For tho' the fifth A. and B. were intituled to several Actions, yet by Matter ex post Facto the Actions may be united. Ow. 11. Mich. 33 & 34 Eliz. B. K. Wardland's Cafe.

And that Paceh. 35 Eliz. the Cafe was bought again; for that it appears by the Count, that
Waffe.

the Defendant held one Part of the Demise of the Plaintiff, and the other of the Demise of a Stranger, which had granted his Reversion to the Plaintiff, so he had the Reversion by several Titles, he cannot maintain this Action; and alfo he hath declared specially how he held it, Ex Dimifione & Affignatione, this will not aid him; but if he had made several Leaves, he might have had one Action of Waffe, as 43 Eliz. b. b. But all the Juflices held the contrary; for in neither as he hath fhewn the Truth of his Cafe in his Declaration, and he hath the Reversion in one Hand, he shall maintain this Action—S. C. fo Lord Poph. 24, 25. to have been agreed, That the Action was well brought upon the several Demises, because neither the Inteach of the Term nor of the Inheritance was severed not divided to several Persons at the Time of doing the Waffe, but the Terms were in N. and the Inheritance of them immediately in B. And by Popham, The Thing waffe is one and the fame, viz. a Houfe.

12. Another Error affign’d was, because A. the other Coparcener was not join’d with B. in the Aftion. But resolved that it was good enough; and the Juflices made this Diversity, viz. when both the Parties have an equal Estate and Inheritance, and when one of them hath but a particular Estate, as in the 27 H. 8. 13. Leafe for Life and be in the Remainder shall join in an Aftion of Waffe, where they had equal Estate of Inheritance; as 2 Coparceners, or 2 Tenants in Common, and one makes a Leafe, and the Leafe commits Waffe, there the Writ of Waffe shall be brought by the Leifer only; For it is not like a Perfonal Injury done upon an Inheritance; for an Aftion of Waffe is now in the Nature of the Realty, alfo’ that at the Common Law (before the Statute of Gloucefter) there was but a Prohibition, yet the Statute gives the Place waffe and Damages, and therefore it is mixt; wherefore both of them shall not join; and the Writ says, To his Diffinheritance that made the Leafe; and cites 22 H. 6. 24. by the Court, and agreeing with this Resolution. Ow. 11. Mich. 33 & 34 Eliz. in B. R. Wardlord’s Cafe.

(Q. a) Voluntary or Permissive Waffe. What. And of What.

1. Of Timber uncover’d, voluntary Waffe may be, but not negligent. See supra (E) pl. 12. cites 43 E. 3. 2. b.
2. Voluntary Waffe is not to be intended of permiffive Waffe; for by this Word Voluntary is not intended an Aft to be done, or Consent to an Aft; and in permiffive Waffe is no Aft done, nor any Consent to an Aft to be done which is intended. Dal. 34. pl. 25. 3 Eliz. Anon.
3. A. leaved a Houfe which was ruinous at the Time of the Demife. The Ow. 92. Leafe oblidged himself not to do or suffer any voluntary Waffe &c. The S. C. and Houfe falls, and A. brought Debt, and adjudged that it lies; for it is the Dife- Waffe, tho’ the Leefe may excufe himself upon the Special Matter. D. recence is between an Action of Waffe and Demife.

(R. a) Equity. Injunction granted in what Cases.

1. The Plaintiff’s Bill was, For that he being a Copyholder leaved to the Defendant for Years, and the Defendant hath digg’d Gravel, and sold the same away, whereby the Copyhold is prejudiced.” The Defendant justified, for that the Copyholders are not punishable in Waffe; which

6 Q. Caufe
Caufe this Court allows not of; For tho' the Copyholders of the Manor are punishable, yet the Leases of the Copyholders of the Manor are punishable; therefore a Subpoena is awarded, to shew Caufe why an Injunction shall not be granted for staying his digging of Gravel, and selling Woods upon the Copyhold-Lands. Cary's Rep. 89, 90, 19 Eliz. Dalton v. Gill and Pindor.

2. The Bill was to be relieved against a Judgment indirectly gotten by R. C. in the Name of T. C. his Brother, by Default in an Action of Waite; and because it so appear'd, an Injunction is granted. Cary's Rep. 108. cites 21 & 22 Eliz. Galley v. Cavendish.

S. P. per Ld. 3. Egerton Ld. Keeper laid, He had seen a Precedent in the Time of R. 2. that if there be Tenant for Life, the Remainder for Life, the Remainder in Fee, and the Tenant for Life commits Waite, so as he is punishable by the Common Law; yet upon Complaint, he in the Remainder in Fee may have an Injunction against him not to do Waite. Mo. 55. pl. 748. Patch. 41 Eliz. Anon.


Ibid. 299. 4. It was order'd that no ancient Pasture or Meadow Ground should be Plow'd. Toth. 114. Patch. 4 Jac. Hatlings v. Cowper.

S. P. in Cafe of Tenants for Life. Chan. Rep. 106. 12 Car. 1. Cole v. Peyfon — S. P. held accordingly, the it was inferred that the Nature of the Ground was for Tillage, and had been formerly Plow'd.

Ibid. 116. 13 Car. 1. Fermier v. Maind.—S. P. And the Defendants insisted that the Land was very full of Boughes and Furze, and that the Plowing and Burn-baiting was an Improvment; but the Plaintiff insisted that the Land was Sheep-fret or Sleeps light, and the Surface of the Still so thin, that it plough'd up two Years together, the same soil yield no Profit in many Years after. The Court, on reading an Order of 20 Feb. 21 Car. 2. and a Certificate of Referrees, decreed a perpetual Injunction against the Plowing up or Burn-baiting the Land above 2 Years. Chan. Rep. 94. 25 Car. 2. Tregonwell v. Lawrence.


7. On a Bill against Tenants for Life, to restrain them from cutting Timber Trees, the Defendants demur'd, for that they are not particularly excepted in the Lease; and pray the Judgment of the Court if they do not pay in the Grant as Part of the Freehold. But they having only an Estate for their Lives, and having cut Timber Trees, and cleared them out for Fewel, the Court granted an Injunction. Chan. Rep. 106. 12 Car. 1. Cole v. Peyfon.

8. Feme, Tenant in Tail and her Husband, contravell'd with J. S. for cutting down Timber. The Feme died, whereby the Husband was Tenant by the Canty. They had Issue a Daughter (the Heir) an Infirm, who by her Guardian exhibited a Bill in the Exchequer, to stop her Father's cutting the
the Trees. And an Injunction was granted to stay Waite. Hard. 96. pl. 2. Pach. 1657. Roberts v. Roberts.

9. An Injunction was granted against selling Trees, which the Defendant wo'd to dissolve, inquiring that he had sworn in his Answer that he had an Estate of Inheritance, and for 14 Years had cut down and sold Timber without Interruption, and produc'd the Settlement made on his Marriage; whereby it appear'd that he had an Estate in the Premises without Impeachment of Waite. The Court disallow'd the Injunction. Chan. Rep. 242. 15 Car. 2. Manthi v. Minthi.

10. A surrender'd Copyhold Lands to the Use of B. on Condition that C. should enjoy the same for Life. B. brought a Bill to stay Waite. Decreed there could be no Relief for what Waite was pass'd, it appearing that C. had paid 100 l. of his own Money, to discharge a Mortgage on the Premises, but an Injunction against him to stay all future Waite. Fin. Rep. 220. Trin. 27 Car. 2. Cornith v. New.

11. A devis'd to C. all her HouseHold Goods after the Death of B. who was her Executor, and was to have the Use of them only for his Life. Decreed there can be no Relief for Waite done to the Goods; but Injunction was granted to stop future Waite. Fin. Rep. 220. Trin. 27 Car. 2. Cornith v. New.


13. Tenant in Tail after Possibility, shall be restrain'd in Equity from doing Waite by Injunction &c. because the Court will never see a Man disinherit'd, Per Chanc. Finch. And he took a Devicry where a Man is not punishable for Waite, and where he hath Right to do Waite; and cited Overdale's Case, 24 Car. 1. ruled by the Lord Roll, to warrant that Distinction. 2 Show. 69. pl. 53. Trin. 31 Car. 2. Abraham v. Bubb.

and the Heirs of their 2 Bodies A. died without Issue. M. married B. the Defendant being then Tenant in Tail after Possibility. M. and B. fell'd some Trees that grew near to and in a Grove, which was an Ornament to the Manor in Waste; and intending to fell the rest, the Plaintiff being the Remainder-man brought his Bill for an Injunction. Ed. C. Nottingham discover'd his Inclination strongly for granting an Injunction; but at length the Case was refer'd, and if they could not agree, then to be set down again—— A Woman. Tenant in Tail, after Possibility of Issue extinct, was restrain'd from committing Waite in pulling down Houses, or in cutting down Trees, which were in Defence of the House, and Fruit-Trees in the Garden; but for cutting Trees, which stood a Land's Length or two from the Court, would grant no Injunction, because she had by Law Power to commit Waite; and yet notwithstanding the was restrain'd in the Particulars aforesaid, because that seems to be malicious. 2 Freem. 278; 279; pl. 549. Hill 1704. Anon.

14. A Leafe was made by a Bishop for 21 Years, without Impeachment of Waite, of Lands that had many Trees upon it. The Tenant cut down none of the Trees till about half a Year before the Expiration of his Term, and then goes to selling down the trees. But the Court granted an Injunction; for tho' he might have fell'd Trees every Year from the Beginning of his Term, and then they would have been growing up again gradually, yet it is unreasonable that he should let them grow till towards the End of his Term, and then sweep them all away; for tho' he had Power to commit Waite, yet this Court will not do the Exercise of that Power; Per Lord C. Nottingham 2 Freem. Rep. 55. pl. 61. Patch. 1680. in Cafe of Abraham v. Bubb, cites it as the Bishop of Winchester's Cafe.

15. Tenant for Life; Remainder to the first Son for Life, without Impeachment of Waite, with Remainders over; the first Son, by the Leave of the Leafe of Tenant for Life, comes upon the Land, and falls the Trees. Al-
tho' he could not in that Case be punilh'd by an Action of Wafte, yet he was injoin'd by this Court; Per Lord C. Nottingham. 2 Freem. Rep. 55. pl. 61. Patch. 1680. in Cafe of Abraham v. Bull, cites it as the Lady Evelin's Cafe.

16. Leisue for Years covenants not to play Pastore Land, and if he does, to pay 29 s. per Acre per Ann. Per Cur. The Parties have set a Price, and denied to grant Injunction, or relieve the other Party for the Penalty. 2 Vern. Rep. 119. pl. 118. Hill. 1690. Woodward v. Gyles.

17. If A. is Tenant for Life, Remainder to B. for Life, Remainder to the first and other Sons of B. in Tail Male. Remainder to B. in Tail &c. B. (before the Birth of any Son) brings a Bill against A. to stay Wafte, and A. demurs to this Bill, because the Plaintiff had no Right to the Trees, and none that had the Inheritance was Party, yet the Demurrer will be over-ruled, because Wafte is to the Damage of the Publick, and B. is to take Care of the Inheritance for his Children, if he has any, and has a particular Interest himself, in Cafe he comes to the Estate. Abr. Equ. Cafes 400. Trin. 1700. Dayrell v. Champneys.


18. On a Motion for an Injunction to stay a Jointreft's Tenant in Tail after Possibility &c. from committing Wafte, it was urged, that he being a Jointreft within the 11 H. 7. ought in Equity to be refrains'd from cutting Timber, that being Part of the Inheritance, which by the Statute he is refrains'd from aliening; and the Court granted an Injunction against willful Wafte in the Site of the Houfe, and pulling down Houfes. Abr. Equ. Cafes, 400. Hill. 1701. Cook v. Whaley.


Decreed not only the In- junction to continue, but that the Cafe should be repair'd and put into good Condition as it was before the Wafte done. 2 Vern. 718. pl. 647. Hill. 1716. Vane v. Ld. Barnard.—Chanc. Prec. 454. Ld. Barnard's Cafe S. C. accordingly—G. Rep. R. 127. S. C. and in the same Words of Chanc. Prec. only that it adds, that the Defendant Tenant for Life, was Tenant by the Curtesy, which seems not agreeable to the State of the Cafe in 2 Vern. and 1 Salk. — S. C. cited in Cafes in Equity in Ld. Talbot's Time, 12 Arg. in Cafe of Ld. Glencorish v. Bolfive. — 2 Chanc. Cafes 52. Trin. 52 Car. 2. Anon. Ld. Chancellor Nottingham declared, he would stop pulling down Houfes or defacing a Seat by Tenant in Tail after Possibility &c. or by Tenant for Life, who was disputable of Wafte by express Grant or by Traut. — S. L. per Emdem. 2 Freem. Rep. 54. Patch. 1682. in Cafe of Abraham v. Bull. (which seems to be S. C.) For this Court will moderate the Excess of that Power, and refrain extravagant huncrous Wafte, it being Pro Bono Publico to refrain it; and he said, he never knew an Injunction denied to stay the pulling down of Houfes by Tenant for Life without Impeachment of Wafte, unless it were to Serjeant Peck, in my Ld. Oxford's Cafe; and he believed he should never see this Court deny it again.


21. An Injunction to stay Wafte must be had upon a Bill filed to that Purpose. P. R. C. 212.

22. Tho'
22. Tho' a Bill is exhibited, yet an Affidavit of Waffle committed or threatened, is ordinarily necessary to induce the Court to grant the Injunction. P. R. C. 213.

23. An Injunction was pray'd to restrain Tenant for Years from doing Waffle in a Warren, upon Affidavit of several great Numbers of Conies destroy'd at unseasonable Times. It was also alleg'd, that he cut Timber-Trees &c. (and I suppose they would have an Injunction for all together.) The Court said an Injunction might as well be granted to keep a Man in quiet Possession of his Houle. But it being urg'd, that it was a very considerable Warren, and that the Leases Term was near an End, it was granted. P. R. C. 213, 214.

24. It was said, that for staying Waffle an Injunction is to be granted against those only who claim or hold, either immediately or mediatly under him that pray's it. P. R. C. 214.

25. And tho' this Court will stay a mere Leafe from doing Waffle, yet not (or not so easily) a Mortgage or his Leafe. In Cur. P. R. C. 214.

26. A very long Leafe was made by a Bishop of London in E. 6. Time, and of which there were about 18 Years to come. The Leafe was made without Impeachment of Waffle, and the Affigee articulated with Brick-makers that they might dig and carry the Soil of so many Acres, and of such Depth a Year, but to level those Acres before they dug up others. The now Bishop of London having the Inheritance in Right of his Bishoprick brought his Bill to injoin the digging. And Ld. Chancellor Parker saith, that before the Statute of Gloucester Waffle did not lie against Leafe for Years, and the being without Impeachment of Waffle seems originally only intended to mean that the Party should not be punishable by that Statute, and not to give a Property in the Trees or Materials of a House pull'd down by Leafe for Years Sans Waffle. But he said, that the Resolutions having established the Law to be otherwise he would not shake it, much less carry it further, and that he took this to be within the Reason of Ld. Barnard's Case; And decreed accordingly. But directed that the Defendant might carry off the Brick (Earth) he had dug, but ordered an Injunction to stop further digging. Wma. Rep. 527. Hill. 1718. Bishop of London v. Webb.

27. Where there is an Arrear of a Charge upon a real Estate, an Injunction shall go to prevent cutting of Timber upon the Premises chargeable. M S. Tab. tit. Injunction cites 27 March 1723. Ld Blaney v. Mahon.

28. Tenant in Tail may commit Waffle in Houles as well as in all the other Parts of the Estate, notwithstanding any Restraint to the contrary; And no Inference can be thewn where a Tenant in Tail has been restrain'd from committing Waffle by Injunction of this Court. And Ld. Chancellor said, it was refuted in Mr. Sobille's Cofe of Yorkshire, who being an Infant, and Tenant in Tail in Possession, in a very bad State of Health, and not likely to live to full Age, cut down by his Guardian a great Quantity of Timber just before his Death to a very great Value; the Remainder-man applied here for an Injunction to restrain him, but could not prevail. Caes in Equ. in Ld. Talbot's Time, 16. Mich. 1733. Glynorcy v. Bofville.

(S. a) Relief in Equity.

Toth 265, cites S. C.

1. Damages given to the Plaintiff for Waffe committed by the Defendant upon the Plaintiff’s Woods as much as he was dammified. Toth. 114, cites 22 Eliz. Brown v. Lady Bridges.

2. Waffe done by one which held by Covenant, therefore not punishable by Law, yet holpen here. Toth. 285, cites Songhurst v. Dixy, 221.

3. A Lease is made for Life, the Remainder over in Fee, the first Leafe makes Waffe, and because he in the Fee hath no Remedy by the Common Law, and Waffe is a Wrong prohibited, he shall be holpen in Chancery. Cary’s Rep. 27, cites Crompton 48. 6.

4. Nota, per Egerton Chancellor, where Tenant for Life is the Remainder for Life, those there lie no Action of Waffe in Chancery, yet he shall be prohibited to do Waffe by the Chancellor, for Wrong to the Inhabitants, and Hurt to the Commonwealth. Cary’s Rep. 36, cites Hill 1 Jac.

And where he was, the Housie, it was declared that he should repair two Parts.


Mod. 94, pl. 4, patch.

24 Car. 2. B. R. Cole v. Forth.

S. C. but the Point of the order, in Chancery does not appear.

5. Converting a Brewhouse into Tenements of a greater Value is Waffe notwithstanding the Melioration, by Reason of the Alteration of the Nature of the Thing and the Evidence, and so resolved on a Trial before Hale Ch. J. and the Jury gave the Verdict accordingly, and 500 Marks single Damages, which being trebled amounted to 200 l. which the Chancellor compelled Cole to take. Lev. 311. Hill. 22 & 23 Car. 2. Cole v. Green.


6. Leafe for 500 Years of Land of about 200 l. a Year, built several Houses, and thereby improved the Rents from 200 l. a Year to 1400 l. a Year, and quietly enjoy’d the same for 20 Years and more, and then an Action of Waffe was brought for pulling down a Brick-Wall, and cutting down Fruit-Trees, and digging Gravel for laying the Foundations of the Houses built on the said Ground. He brought a Bill setting forth, That such Building could not be accounted any Waffe, but rather a Melioration and Improvement of the Land. The Defendant pleaded the Statute, by which Provision is made for bringing Actions of Waffe. But the Court over-ruled the Plea, and ordered the Defendant to answer, and to speed the Cause. Fin. Rep. 135. Mich. 26 Car. 2. Wild v. Sir Edward Stradling.

7. Under-Tenant of a Jointreß commits Waffe sparsim, so as at Law the Estate was forfeited, but inferred he had improved the Estate from 40 l. to 60 l. per Ann. and offer'd to take a Lease of it at that Rent for 50 Years, and to answer the Value of the Timber on a Quantum Damnicus. Quære. 2 Vern. R. 263. pl. 247. Patch. 1692. Ligo v. Smith & Leigh.

8. A made a Settlement voluntarily to himself for Life, and then to his Nephew. Afterwards he committed Waffe sparsim, and the Nephew recover'd, so as A. could not go out of his House. 2 Vern. R. 263. in the Case of Ligo v. Smith & Leigh, cited as the Case of Sir Percival Hart.

9. A
9. A bill was brought against the Executors of a Jointure, to have a satisfaction out of Affairs for permissive Waste upon the Jointure of the Testatrix &c. But by Cowper C. The Bill must be dismissed; for here is no Covenant that the Jointure shall keep the Jointure in good Repair, and in the common Cafe, without some particular Circumstances, there is no Remedy in Law or Equity for permissive Waste after the Death of the particular Tenant. MS. Rep. 1 Geo. 1. in Canc. Turner v. Buck.

10. A Customary Tenant of Lands, in which was a Copper-Mine which never had been open'd, open'd the same, and dug out, and sold great Quantities of Oar, and died, and his Heir continued digging and disposing of great Quantities out of the said Mine. The Lord of the Manor brought a Bill in Equity against the Executor and Heir, praying an Account of the said Oar; and alleged, that these Customary Tenants were as Copyhold Tenants, and that the Freehold was in the Plaintiff as Lord of the Manor and Owner of the Soil; and that the manner of paffing the Premises was by Surrender into the Hands of the Lord, to the Use of the Surrenderee. It was inquired for the Defendants, That it did not appear that the Admission in this Cafe was to hold As voluntam Domini sequens, &c. without which Words it was inquired that there could be no Copyhold, as had been adjudged in Lord Ch. J. Holt's Time. And it was decreed by Ed. C. Cowper for the Defendant. Wms.'s Rep. 406. pl. 112. Hill. 1717. The Bishop of Winchester v. Knight.

11. A Tenant for Life, Remainder to Trustees to preserve &c. Remainder to C. the Plaintiff in Tail, Remainder over, with Power for A. with Consent of Trustees to sell Timber, and the Money arising to be invested in Lands &c. to same Uses &c. A. fell'd Timber to the Value of 3000l. without Consent of Trustees, who never intermeddled, and A. had suffer'd some of the Houses to go out of Repair. C. by Bill pray'd an Account and Injunction. The Matter of the Rolls said, That the Timber may be consider'd under 2 Denominations, (to wit) such as was thriving, and not fit to be fell'd; and such as was unthriving, and what a prudent Man and a good Husband would fell &c. And order'd the Matter to take an Account &c. and the Value of the former which was Waste, and therefore belongs to the Plaintiff, who is next in Remainder of the Inheritance, is to go to the Plaintiff, and the Value of the other is to be laid out according to the Settlement &c. But as to Repairs, the Court never interposes in Cafe of permissive Waste either to prohibit or give Satisfaction, as it does in Cafe of useful Waste; and where the Court having Jurisdiction of the Principal, (viz.) the Prohibiting, it does in Consequence give Relief for Waste done, either by way of Account as for Timber fell'd, or by obliging the Party to rebuild &c. as in Cafe of Houses &c. and mention'd Lord Barnard's Cafe, as to Raby-Castle, 2 Vern. But as to the Repairs it was objected, That the Plaintiff here had no Remedy at Law, by Reas. of the Estate for Life to the Trustees Mean between Plaintiff's Remainder in Tail and Defendant's Estate for Life, and that therefore Equity ought to interpose &c. and that this was a Point of Consequence. Sed non allocatur. MS. Rep. Mich. Vac. 1733. Lord Cafllemain v. Lord Craven.
In False Imprisonment. 13 Ed. 1. cap. 4. the E Nacts, That in great wall'd Towns, Gates shall be put from Sun-set to Sun-rise, and no Person shall lodge in the Suburbs from 9 of the Clock until Days, unless his High Court shall answer for him; and the Bailiffs of Towns, every Week or 15th Days, shall make Enquiry of all Persons lodged in the Suburbs, or Out-Parts of the Town, and shall call to Account those who have lodged or received Strangers, or suspicious Persons; and a Watch shall be kept yearly, from the Feast of Ascension to St. Michael, in manner following, viz. in every City 6 Men shall keep at every Gate, every Borough shall have 12, and every Town 6 or 4 Watchmen, according to the Number of the Inhabitants, who shall watch from Sun-set to Sun-rise; and every Stranger passing by them shall be arrested till Morning; and if it do not appear to be a suspicious Person, he shall be discharged; otherwise he shall be delivered to the Sheriff, who shall keep him till he be is duly acquitted: And where any Person will not obey the Arrest, he shall be delivered with Hue and Cry by all the Town, and the Towns near; and so Hue and Cry shall be made from Town to Town, until he be taken and delivered to the Sheriff as aforesaid.

The Plaintiff was an Inhabitant there; and he cannot appoint a Stranger to watch, neither by this Statute nor the Statute of H 4 cap. 5. 2dly, It was moved That the Constable cannot imprison one for refusing to watch, but must complain to a Justice of Peace, and he may indict Punishment upon the Refusers. 3dly, That he ought to shew it was the Plaintiff's Turn to watch. The Court held, That for the first Cause clearly, the Plea is not good; but for the 2d, Wray held, That the Constable might imprison one for refusing to watch. Gaudy comra. And for the third Cause it was adjudged for the Plaintiff. Cro. E. 204. pl. 37. Mich. 52 & 53 Eliz. in B. R. Stretton v. Brown.

Serjeant Hawkins says, 2 Hawk P.C. So. cap. 13. S. 4. That it has been resolved, That a Stranger, who is not an Inhabitant of a Town, cannot be compell'd by Virtue of the Statute of Winchester, to keep Watch in it; but lays it seems to be agreed, That every Inhabitant is bound to keep it in his Turn, or to find another sufficient Person to keep it for him; From whence it follows, that he is indiectable for a Refusal; but it is not agreed that he may be committed by the Constable till he consent to do his Duty.

S. was indicted for that he, on the 19th of June. and before, being an Inhabitant, was summoned to watch with B. a Constable, but made Default. Exceptions were taken, first, because it does not say that he was bound to be in. 2dly, That Notice was given him to watch within the Parish; 3dly, because it was that he did not watch with B. a Constable; whereas he should have said That he did not watch at all; for possibly he might watch the same Night with another Constable. It was answered, That this Indictment is founded at Common Law, and not upon the Statute of Winton. And as to the 2d, there may be an extra Parochial Place where the Constable is to watch. But nothing was said as to the 3d Exception. The Court bid them demur to the Indictment; for they would not quash it. 5 Mod. 395. Patch. to W. 3. B. R. The King v. Stanford.
Water-Courfe.

(A) The Original. And in what Cases they may be diverted.

1. A Water-Courfe does not begin by Prescription, nor yet by Affent, but begins Ex jure Nature, having taken this Courfe naturally, and cannot be averted; per Whitch J. 3 Build. 340, in Case of Sury v. Piggott.

2. If one had ancient Ponds, which were replevins'd by Channels out of a River, he might change the Channels, if any Prejudice accrue by it to another; Per Cur. Hert. 32. Mich. 3 Car. C. B. Dancomb v. Randall.

3. Suppose a Man has a Water-Courfe running thro' his Ground, and his Neighbour diverts it, this is no Trespass; but if by diverting it he turns it on his Neighbour's House &c. it will be a Trespass, per Cur. 6 Mod. 274. Trin. 10 Geo. in Case of Reynolds v. Clerke.

(B) Action. What Action lies of a Water-Courfe, or for flopping or diverting it.

1. I F a Man srops a Water-Courfe in his own Soil to the Nuissance of his [the Plaintiff’s] Franktenenent, he to whom the Nuissance is done shall not have Trespass Vt. Arms of the Act done in his [the Defendant’s] own Franktenenent. Quod nota. Br. Trespass, pl. 78. cites 3 H. 4. 5.

2. In Case by one who had Franktenenent in a Mill, against one that had Franktenenent in a Meadow, the Plaintiff declared That the De- fendant diverted multum Curfus Aqua per Levationem Were &c. ex trans- verso Curfus Aqua illius & foletto in prato pradicto facito, per quod multum Aqua quod ad Molendinum illud curaret conficit, e contra recurrit & anni- quam Curfum fumum divirtit; & to that the Mill which was used to grind 2 b. Pint, Quarters of Corn in a Day, can hardly now grind one. The Question was Whether Aflile of Nuissance lay or not, supposing that the Defendant di- verted Curfum Aqua, where only a Part of the Water was turn’d. D. 248. b. pl. 80. Pich. 8 Eliz. Anon.

the Plaintiff demurred, and prayed judgment; but because it appeared by the Court that the Plaintiff was seized of the said Mill in Fee, to that he ought to have Aflile of Nuissance, and not an Action of the Courfe, the Court would not give Judgment for the Plaintiff.

In Aflile of Nuissance pro Diverfione majoris partes Curfus Aqua, the Plaintiff recover'd by Judgment coram Harper & Wotton. Ibid. cites Mich. 12 & 13 Eliz. & Pich b. S[e]rt, but lays that Error was brought thereof in B. R.--S. C. cited 4 Rep. 89. 3. and lays the Judgment was affirmed.

Brownl. 143. 4. Where a Water-Course is diverted, if the Land under the Water or River does not belong to the Plaintiff, but the River only belongs to him, then upon Disturbance his Remedy is Action on the Case only, & non alter. Quod nota. Yelv. 143. in Cafe of Challoner v. Thomas.

(C) Declaration and Pleadings. Good or not.

IN Cafe for diverting a Course of Water, which run from such a Place in a Conduit to the Plaintiff's House, neither the Writ nor Court supposed the Plaintiff to be Owner of the said House at the Time of the Diversion, but only at the Time of the Action commenced. viz. Quod cum Querens seítitus exiitit &c and did not say Exintit &c. and to the Plaintiff not being damnedified, he could not have Judgment. D. 319. b. 320. a. pl. 17. Mich. 14 & 15 Eliz. Moor v. Brown.

In Cafe the Plaintiff declared, that the Defendant exalavit flagnum, by which the Plaintiff's Meadow was flooded; the Defendant pleaded Not Guilty, and the Jury found, that exsit flagnum; and if exctio & exaltario are all one, then they find the Defendant Guilty; if not, then they find him Not Guilty. Judgment was given for the Plaintiff. Upon Error brought all the Justices held, that erigere is de novo facere, but exaltare is in majorem altitudinem attingere, but at length the Judgment was afirmed; For the Ch. J. had turned all his Companions, when he came to be of Opinion, that it was all one. And to the Cafe pals'd against the Plaintiff in Error. Godb. 59. pl. 70. Mich. 28 & 29 Eliz. B. R. Giles's Cafe.

In Cafe the Plaintiff declared, that he was seïd of certain Mills, and preferred that Magna pars Aqua cujusdam Routi run from H. to the said Mills, and that Defendant broke down a Bank, and diverted it &c. It was afigned for Error, that it was uncertain how much of the Water shall be comprehended in those Words (Magna pars Aqua) and if the Truth be that the same River before its coming to the Mills divides itself into Branches whereof one only runs to the Mills, the better Form was to prescribe to have Aqua curfum to the said Mills; For every one of the Branches is Aqua Curfus; Quod fuit Conceftion, as this Point; But resolvd, that though the Count might have been better, yet in Subltance it was good enough, it not being possible to shew how much of the Water run to the Mills, and the Quantity is not material, in as much as the Defendant by breaking the Bank diverted the Water which should run to the said Mills. 4 Rep. 88. b. 89. a. Patsh. 43 Eliz. B. R. Cottell v. Lutterell, alias Lutterell's Cafe.

Cafe &c. for that he was seïd of two Acres of Meadow in D. and J. Q. the Leflor of the Defendant was seïd in Fee of a Water-Mill in D. whereunto the Water run out of the River S. by the said two Acres,
Water-Courts.

527

Acres, and that the said J. Q. ered ripas stagni Molendini pre-
dict, so high that the Water overflowed the said Meadow &c. It was
moved in Arrêt of Judgment, 111. That there was no Place lāte where
the Stagnum molendini was, fed non allocatur; For it shall be intended
in the Vill where the Mill is. 2dly, That the Request to abate it was
made to the Leffe who had no Authority to abate it, it being ered in
time of the Leffe; fed non allocatur; For the Continuance is a Nuisance
by him, and Attest lies against him. Adjudged for the Plaintiff. Cro.
5. B. having an ancient Water-courte to a Mill, and the ancient Banks
being hollow, a Dam was made by Direction of certain Justices a Road
from the River-Bank in the Ground of C. and so the River was held in.
J. S. cut up the Dam, whereupon B. brought an Action for subverting Rip-
am conjilium River. Upon a Trial before Hobart Ch. J. after Evidence
he caused it to be flayed, the Declarant on being insufficient, (as it was
afterwards held by the Court to be) and ordered the Plaintiff to take
a new Writ, as his Case was, de quaedam Risa, Anglice a Dam, includen-
te Ripam predictam; [whereas ] It was before laid to the Bank time out
6. In Cafe for breaking down an ancient Dam upon the River D. by which
a great Part of the Water of the said River from its ancient and usual
Course to the Mill of the Plaintiff upon the said River was diverted, by
which &c. ad Damnum &c. It was objected, that it is not known that Hebleth-
the Mill was ancient, nor that the Defendant time whereof &c. had re-
paired the Dam, but only called it an ancient Dam ; nor that the Water
at the time whereof &c. run this Way, but only that Defendant had di-
verted it from its ancient and usual Courfe. Upon these Exceptions the Patch.
Cafe depended long. North Ch. J. held the Declaration sufficient, to
which Levins inclin'd, but the Adjutant. Windham and Charleton e contra.
North being made Lord Keeper, Pemberton Ch. J. held it good, to
which Windham now agreed, and Levins helianteur. And Charleton
9 Hill 1 &
toris Viribus contra. And it hung till another Term, and then ad-
judged for the Plaintiff; and that Judgment laid to be affirmed in Error.
3 Lev. 133. Trin. 35 Car. 2. B. C. Nulnes v. Hoblethwaite.
— Med. 48 Heblethwaite v. Palmes. Mich. 56 Car. 2. B. R S. C. The Court held, that the
Word (Soler) implies Antiquity, and will amount to a Precedent; & solitus cursus Aque running
in a Mill, makes the Mill to be ancient; for if it be newly erected there cannot be solitus cursus A-
que towards that Mill, for which Reasons the Judgment in the original Action was affirmed in Hill.
1 W. But the Ch. J. was of Opinon, that if the Court had been tried upon such a Declaration, that
the Plaintiff ought to prove his Precedent, or else he must be nonuit.
7. Cafe for diverting of a Water-Courfe in per aed and trans Manus Meus. Af-
Corb. 42. S.
ater Verdict for the Plaintiff, it was moved in Arrêt of Judgment,
C. Thai in
Treffas for
That he doth not say for what Ufe, whether Family, Cattle, or Field ; divert-
and if it was not useful when it was run, it cannot be actionable to divert Water-
it. 2 Show. 507. pl. 470. Hill. 2 & 3 Jac. 2. B. R. Glyne v. N.-
Corfe by a
choils.
demurred to the Declaration, and took an Exception thereto that no Title is made in the Declaration
to the Water-Courfe, nor for what Ufe it was. But adjudged pro Quer. — Per Holt Ch. J. suppose a
Water-Courfe runs to my Ground, and I have no Ufe for it, and one upon another Ground divers
it before it comes to mine; will an Action lie? Must not you pay some Ufe for it? Show. 64 in Cafe
of Palmer v. Heblethwaite.
8. In Cafe the Plaintiff declared, that the 11f. of May 1 W. & M. he was pd off of a House from which a Courfe of Water for & trans the
Garden of the Defendant Corvete debuit & debat &c. The Court gave
Judgment for the Plaintiff nili; but an Exception being taken because
he does not say that the Water ever ran from the House, or that he was
pd off of it, but only that debuit, the Court ordered it to be put into
the
the Paper again; & advise a vult; and afterwards this being a posses-

low, in the Plaintiff declared, that he was possesled of an ancient

an ultimate in Com. S. and that a certain Water-course at D. currere de-

it & aduers debit in quemam fontem, and as often as the Well overflowed

run into the Plaintiff's House for his necessary Use, and that the Defendant
dug the Ground so near the Well and placed a Cistern there, so that the
Water was diverted and did not overflow from such a Day whereby the
Plaintiff lost his necessary Water. After Verdict for the Plaintiff it was
moved, 1st. That there was no Terminus a quo. 2dly, That it is not a-
curred that it used to overflow. 3dly, Neither is there a sufficient Div-
ersion alleged; But resolved that it is not necessary to allege a Terminus
a quo, and that the other Informalities are cur'd by Verdict; and
Prickman v. Trip.

he having diverted it when it was at the Well, this is a Terr, and it is not material from whence it comes; to which it was laid at the Ear, that the Terminus was necessary, otherwise the Jury could not
know that there was such a Current, if it be not known; but per Car. this ought to have been in Proof, but it is not material after a Verdict. And as to the 2d, it was held, that confuenti eque debuit is sufficient; and
as to the 3d. That no All of Discretion is alleged, for it is not sufficient to say that he had diverted the Current, but he ought to shew such an All which was the Cause of the Discretion, which the Court
might adjudge a sufficient Case; led non allocatur; and after it was adjudged for the Plaintiff, and that the Count was good after a Verdict though it might have been in a better manner; for it was not al-
leged, that the Water had used to run from the Well to his House so certainly as it might have been; but all these Things shall be intended to be proved upon Evidence, and so aided by the Verdict. Skin. 380.

10. In Cafe for diverting a Water-Course which the Plaintiff had to a Mill, he cou'd that the Defendant intending to deprive him of the Profit of the said Mill did divert the Water ab antiquo curiu sui per quod he could not molare suo fact &c. After Verdict it was moved, That he did not
say, that he diverted the Water from the Mill, but from its ancient Course,
per quod &c. and that Molare was insenible; But the Plaintiff had his
Judgment; and they held, that the Word (Molare) being insenible no Damages could be given for it, and that the Declaration had been
good if that Part had been let out. 5 Mod. 206. Patch. 8 W. 3. B.
R. Richards v. Hill.

For more of Water-Courses in General, See Indictment, Mills,
Insurance, and other proper Titles.

Waver.

(A) How it may be.

1. Our [were made] feitennants by a Deed delivered to 3 in the Absence of the 4th. afterwards the 4th. comes and would waive en pais but non potuit without Record; and in the Argument of the Cafe it is put, that the
(B) By whom Waiver of a Thing may be. Of what.

1. In Cui in Vita the Tenant said that he was in by Defect as Heir of his Father, and pray'd his Age, and the Demandant said, that the Land is devisable by Testament, and that the Father devised it to the Son in Tail, the Remainder over in Fee &c. Quære; For it seems that he shall not have his Age; For he cannot waive the Devise and take to the Defect in Fee by reason of the Advantage of him in Remainder. But it seems, that if the Devise had been to him by his Father in Fee, he might waive the Devise and take to the Defect; Note the Difference. Br. Waiver de Chores, pl. 1. cites 3 H. 6. 46.

2. A Man was bound to Baron and Feme, and he made the Feme his Executrix and died, and she brought Debt upon Obligation as Executrix of the Baron, and well per Cockain J. for the may waive it by the Conversation and refuse the Survivorship. Contra per Wotton Serjeant. Br. Waiver de Chores, pl. 13. cites 4 H. 6. 5.

3. Infant or Feme-Covert may at full Age or Discoveirt waives Leafe or Gift made to them during the Conversation or Nonage. Br.Waiver de Chores pl. 49. cites Doct. & Stud.

4. If a Man takes a Leafe for Years rendering more Rent than the Land is worth, and dies, his Executors shall not waive the Leafe if they have waived an Affets, but if they have not Affets they may waive it by special pleading. Br. Tern come to him, per Roll J.

Sti 52 Mich. 22 Car. B. R. Vondicoot's Case —— Ibid 61, per Roll J. according, but per Bacon J. contra if the Executor finds the Rent to be more than the Land is worth, in the Case of Hale v. Jocelyn. —— Executor cannot waive a Term if he has Affets, but if he has not Affets he may; Per Roll J. Sti. 119, in Case of Cornish v. Cowse. —— Held that he cannot waive it unless it had been specially alleged that the Rent was greater than the Value of the Land; and then peradventure by Special Pleading he should be discharged. Cro. J. 549. pl. 10. Mich. 17; Jac. B. R. Mawle v. Casyfye.

6 T 5. Where
5. Where Lease or Remainder is limited to a Parson, Bishop, Abbot &c. they cannot waive it. *Contra of their Successors, if they do not take the Profits.* Br. Waiver de Chofes, pl. 49, cites Doct. & Stud. 6. Upon Waiver of Privilege by one of the King's Servants, who was after taken in Execution by Conuifee of a Statute, Ld. Chancellor said, the Privilege is the King's Privilege and not the Servant's. And the Conuifee was order'd into Custody of the Warden of the Fleet. 2 Chanc. Cases 69. Mich. 23 Car. 2. Sir Ph. Howard's Cafe.

(C) Plea. What shall be said a Waiver in Pleadings.

Br. Affife, pl. 510. cites S. C. 1. *In Affife by two Partecners against the third, he pleaded Partition in Bar against the one, and to the Affife against the other;* and per Cur. by his pleading to the Affife against the one he has waived his Bar. Br. Waiver de Chofes, pl. 17, cites 30 Aff. 7.

2. An Infant who sued by Procebin Amy, would have disallow'd his Suit and was not tutor'd, because he was an Infant, if the Defendant joins Issue and after makes Default, yet the Issue thereby is not waived. Br. Waiver de Chofes, pl. 37. cites 34 Aff. 5. Contra 33 E. 3. 38 H. 6. 33. and 16 Aff. 13.


Br. Demur- rer, pl. 1. cites S. C. 4. Where a Man pleads a good Plea or Replication, and also demurs upon the Plea or Declaration of the other, there the Plea or Replication shall stand, and the Demurrer is void, and waiv'd, per Priof. Br. Waiver de Chofes, pl. 4. cites 33 H. 6. 10.

5. If a Man makes Default after Plea pleaded, and Issue join'd or Demurrer in Law, there by this, the Plea the Issue or Demurrer is waived, and Judgment shall be by Reason of the Default. Br. Waiver de Chofes, pl. 32. cites 38 H. 6. 33.

Br. Brief, pl. 368. cites S. C. 6. In Ceajlavit of two Acres, the Tenant to one Acre said, That be held it of him by Fealty and 2 d. and the other by Fealty and 1 d. which were open and sufficient to his Diffrefs Absique hoc, that he held both the Acres Modo & Forma, viz. by one entire Tenure, in this Cafe the Pleading of Open to his Diffrefs does not waive the Plea to the Writ; Per Cur. Br. Waiver de Chofes, pl. 33. cites 10 E. 4. 2.

7. Where the Feme claims Dover by Possifion in Law in her Baren, it suffices to conclude; and to fay Doubtfull by the Law, and need not conclude, And fo fay be Dover la poe; For this Conclusion will waive the Special Matter. Br. Waiver de Chofes, pl. 26. cites 21 E. 4. 60.


9. If
(D) Of Pleadings. In what Cases a Man may waive the Plea or Issue, and plead another or the General Issue after Plea entered.

1. In Mortdanceeter the Tenant vouch'd, and the Vouchee was summon'd, and yet the Tenant waived the Voucher, and pleaded the General Issue to the Points of the Writ. Br. Waiver de Choefes, pl. 44. cites 31 E. 1. Fitzh. Mortdanceeter 48.

Counterplea and grant the Voucher, Br. Waiver de Choefes, pl. 58. cites 4 E. 5. 56. and Fitzh. Counterplea de Voucher, 66.


3. After one has pleaded to the Writ he may waive this, and plead to the Action, notwithstanding the Demandant has replied to the Writ. Theol. Dig. lib. 16. cap. 8. S. 1. cites Trin. S. 3. 417.

4. Affire against Baron and Feme, by Name of John Stile and Alice Br. Affire, Stile, and did not say his Wife; and the Feme pleaded in Bari, and the pl 250 cites Man said that the said Alice is his Feme, not named Feme, Judgment of the S.C. Theolos: Dig. lib. 16. cap. 8. pl. 2. Plea in Bar of the Feme. The Plaintiff said that he shall not waive it, cites S.C. inasmuch as it goes in Abatement of the Writ. Et non allocatur; For the Waiving goes in Advantage of the Plaintiff, to have his Writ to stand; and also the Plaintiff shall not difieble his own Writ. And fo see that the Defendant may waive his Exception at the Day of Adjournment.

Br. Waifer de Choefes, pl. 29. cites 23 Aff. 4.

5. In Affire and Action of Affire, it the Defendant pleads a Bar, he * S P. Thom. may come after and waive the Bar, and plead the General Issue; per Thorpe Ch. J. Br. Waifer de Choefes, pl. 28. cites 38 E. 3. 24.

48. cites 35 H. 6 29. — Ibid. pl. 3. cites S.C. per Cur.— † Br. Waifer de Choefes, pl. 42. cites S.C. A Man may waive his Bar, and plead the General Issue, but not plead to the Writ after Bar. Br. Affire, pl. 107. cites 1 Aff. 17.

6. In Covenage the Tenant pleaded Esoppel by Fine levied of the same Ancestor, Judgment if he shall say that he did seise; and the Demandant confess'd, and avoided the Esoppel; and therefore the Tenant would have waived
Waver.

waived the Liglopp the and pleaded in Bar. And the Opinion of the Court was, that he could not. But in Affilse of Mortduence for be may. Note the Diversity. Br. Waiver de Chofoes, pl. 6 cites 40 E. 3. 19.

7. In Affilse the Tenant pleaded Feoffment of the Ancestor of the Plaintiff, whose Heir &c. by Deed with Warranty. The Plaintiff denied the Deed. The Tenant retook the Deed, and said that he is in by Feoffment, without Tort done. And he was compell'd by the Court to redeserve the Deed to the Court, or otherwise he had been awarded to Prifon, and the Affilse taken upon the Traverfe of the Deed. Quære. Br. Waiver de Chofoes, pl. 19. cites 41 Aff. 29.

8. If A Man pleads Plea to the Writ in Affilse in proper Person, or by Attorney, upon which they are at Issue, and adjourn'd for the Trial, in this Case he cannot waive it, and plead in Bar. But where a Man pleads to the Affilse by Earliff, there he may come after in proper Person, or by Attorney, and plead in Bar Matter of which Certificate of Affilse lies. Br. Waiver de Chofoes, pl. 7. cites 50 E. 3. 19.

9. If the Parties demur in Law, yet always before the Judgment he may waive the Demurrer, and join Issue ex Alienf Partium. Br. Waiver de Chofoes, pl. 43. cites 11 R. 2. Fitch. liton, 146.

10. If an Infant pleads by Guardian, he may after wards waive the Plea, and plead in proper Person. But if a Man of full Age pleads by Attorney, he shall not waive it; for he himself made the Attorney. But in the other Case the Court admits the Guardian, whose A£ shall not prejudice the Infant. Note the Difference, and fee the Book. Br. Waiver de Chofoes, pl. 35. cites 3 H. 6. 16.

11. In Quære Impedit the Defendant pleaded that the Plaintiff was made a Knight after the 1st Continuance, Judgment of the Writ. And thereupon they were at Issue; and after the Plaintiff came, and would have waived the Averment, and demurred in Law, and could not without acknowledging the Exception, and then his Writ shall abate. Quod nota, and take heed; for it is peremptory. Br. Waiver de Chofoes, pl. 9. cites 7 H. 6. 15.

12. In Praecipe quod reddat, if the Tenant prays Aid of a Stranger, which is granted, yet he may waive the Aid, and plead alone, before the Prayee appears and offers to join, but not after; but he may contel after. Br. Waiver de Chofoes, pl. 40. cites 4 E. 4. 28.

But on an Information upon a Penal Statute, if the Defendent makes Bar, and traverses the Plea, there the King cannot waive such Issue tender'd, and traverse the former Matter of the Plea, as he may upon Traverfe of Office &c. where the King is sole Party, and intitled by Matter of Record. Br. Prerogative, pl. 116. cites 54 H. 8. Per Whorwood, Attorney-General.

For more of Waver in General, see Devise, Disagreement,Joint-tres, and other Proper Titles.

(A) Weights
(A) Weights and Measures.

1. In Debt upon an Obligation the Question was, How a Mile in Law Cro. E. 267. shall be construed for Carriages, whether by Paces, reckoning five pl. 2. Hill. Foot to a Pace, or otherwise. Gawdy and Wray conceived that the Mile Cro. E. 94 Eliz. B.R. Pleading the Distance by Paces is well enough; for if 1000 Paces make a Mile, S. C. many to many Paces is tantamount to so many Miles. But the Gawdy held, Doubt was, How the Miles should be construed; for Wray said, That that a Mile in the Case of Cambridge it was held, that a Mile shall be taken the most near way, and shall not be taken as a Bird shall fly. Cro. E. 212. pl. 3. Hill. 33 Eliz. B. R. Minge v. Earle.

2. If one sells Land, and is obliged that it contains 20 Acres, this shall be according to the Law, and not according to the Custom of the Country; per Gawdy J. Cro. E. 267. pl. 2. Hill. 34 Eliz. B. R. in Case of Wing v. Earl. resolved by all the Justices, That if one be obliged to affure 20 Acres of Land, the Acres shall be accounted according to the Estimation of the Country where the Land lies, and not according to the Measure limited in the Statute. Cro E. 665. pl. 15; Poph. 41 Eliz. C. B. Same v. Taylor.

3. In a Common Recovery, the which is had by Agreement and Consent of the Parties, of Acres of Land, they shall be accounted according to the accustomable and usual Measure of the Country; and not according to the Statute of 33 [34] E. 1. De Terris Menfurandis. 6 Rep. 67. a. cites it as adjudged in the Beginning of the Reign of Q. Eliz. in Bruyn’s Cafe.

4. If one brings an Ejectment or a Precipe of 100 Acres, it shall be according to the Statute Measure; but if he bargains and sells 100 Acres of Land, that shall not be according to the Statute Measure, but after the cites S. C. usual Account in the Country. Cro E. 476. in pl. 4. cites it as adjudg’d fo in Andrew’s Cafe.

5. M. granted to T. 100 Acres of Land in Bl. Acre, and 60 in Wh. A- But if I cre and 20 of Meadow in such a Meadow in G. and H. in which the Acres are known by Estimations or Limits, there shall take the Acres as Cloes containing 20 Acres of Land by Estimation, for they pass as they are there known, and not according to the Measure by the Statute. Poph. 55. pl. 4. Trin. 36 Eliz. B. R. Morgan v. Tedcastle.

same Cloe to another, there he shall have them according to the Measure by the Statute, because the Acres of such a Cloe are not known by Parcels or by Meets and Bounds; And so it differs from the first Cafe. And upon the Cafe then put to Anderson, Brian and Fenner, they were of the same Opinion; Quad. note. Ibid.

6. Where a certain Number of Acres are to be delivered in Execution, the Measure of them must be according to the common Measure of the Country.
Weights and Measures.


7. If Recovery be of 20 Acres of Land Execution shall be by Metes and Bounds by Admeasurement according to the Statute 47 E. 3. 11. but if Fine be levied of 20 Acres of Land in D. Execution shall not be by Admeasurement. But if a Quantity of Land be in D. which contains 30 Acres, but has been required for 20 Acres, the Conunisee shall have all; for this is a Conveyance by Content. Arg. But per Montague Ch. J. a Fine differs from common Recovery, for Fine is grounded upon the Writ of Covenant, which is Amicabilis Conventio, but every Writ of Entry supposes a Title. 2 Roll. Rep. 67. Hill. 16 Jac. B. R. in the Case of Trefwallen v. Penhules.

8. The 33 [34] of E. 1. is not a Statute but an Ordinance only; Arg. and admitted by the Court. Cro. J. 604. pl. 30. Mich. 18 Jac. B. R. in Stowe's Cafe.

9. Indictment against a Clerk of a Market set forth that he keeps and utés divers false Weights and Measures in Deceit and Oppression of the Subjects, contrà formam Stat. Upon not Guilty pleaded, the Evidence was, that he sold the Weights, and there being a Law, he delivered the Last jury a heavier Weight than that which he sold with; and so they found the Weights too light, whereby the Defendant gained a Fine, and the Profit of selling them again. It was said in this Case, that the same Weight being used in the open Street tillers from its being used in a House, and that the Consequence of the Defendant's being found guilty would be the Loss of his Place, and Fine and Imprisonment. And afterwards he was acquitted. Sid. 421. pl. 10. Trin. 19 Car. 2. B. R. the King v. Ayres.

10. On an Indictment for using false Weights not agreeable to the Standard of London, Exception was taken because it should be Not according to the Standard of the Exchequer, it being in Brandford in the County of Middlesex; but per Cur. were it for false Weights it were sufficient, and they would not quash it without pleading; and it being against the Clerk of the Market for producing Weights ad triandum, not according to the Standard of London, not saying he did try any, yet the Court would not quash it. 2 Keb. 412. pl. 39. Mich. 20 Car. 2. B. R. the King v. Bloom and Hudson.

11. In an Information upon the Statute of 22 Car. 2. cap. 8. for selling by a Buffet not agreeable to the Statute, Exception was taken that it did not say, whether it was above or under 8 Gallons; Sed non allocatur. For be it either way it is an Offence, and being after Verdict, it is well enough. 3 Keb. 468. pl. 57. Patch. 27 Car. 2. B. R. the King v. Kerley.

But see 3 Keb. 518. pl. 82. Trin. 27 Car. 2. B. R. the King v. Kerley.

A. Another Exception was, that there being a particular Proceeding [appointed by the Act] to be before Justices [of Peace] below, no Information lies here; but Judgment was given for the Plaintiff Nil, there being no Negative Words. 3 Keb. 468. the King v. Kerley.

Carewell. —— Ibid. 567. pl. 88. Mich. 21 Car. 2. B. R. the King v. Slaughter S. P. but it was answered, that it being contrà Formam Statutit selling by Measure not agreeable to the Standard of Winchester, is general and well enough; which the Court agreed. And Ibid. 620. pl. 93. Hill. 27 & 28 Car. 2. B. R. in S. C. the Court said that 14 E. 3. cap. 12. of the Standard is all one with Winchester Measure, and the latter Act of 22 & 23 Car. 2. cap. 12. being prohibitory, an Information here is good upon that, it being for selling against the Standard of Exchequer Consumer; both Winchester Measure, and it is not like to where there is but one particular Statue which directs the Way of Information [Prosecution] which can be only in that Way.

13. 15
Windfalls.

13. If I covenant to convey to another an Acre of Land in Cornwall, S. P. admitted the common Acceptation of the Word (Acre) there amounts to as much as 100 of other Counties; so a Perch in Staffordshire is as much as 20 Perches in some other Places, and therefore must be governed by the common and known Acceptation of the People. Per Cur. 4 Mod. 186. Pasch. of Waddy v. Newton, because the publick Ufage of the Country gives it a Sanction and cites Crompt. Jurisfd. of Courts 222. to prove that the Measure in those Counties is different from all other Places in England.

14. A Tenant in Tail covenanted to levy a Fine and suffer a Recovery of Lands, and accordingly levied a Fine thereof by the Name of 140 Acres in S. and declared the Use thereof to himself and his Heirs. The Land being more than 140 Acres, the Defendant being Heir in Tail, claim’d all above those 140 Acres. The Court observed, that it was admitted by the Counsel for the Defendant, that if this Fine had been levied and Recovery suffer’d, in Pursuance of a former Agreement or Covenant for a valuable Consideration; and if it had appear’d to be the Intent of the Parties to Pay the whole Estate by the Name of 140 Acres, in such Case the whole would pass. And said, that here the Jury hath found that the whole Estate entail’d was computed in the County to be 140 Acres, and it will be difficult to apprehend a Difference between a Covenant for a valuable Consideration and a voluntary Covenant; for it cannot reasonably be said, that the fame Words shall pass all the Lands in one Cafe, and shall not pass the whole in the other Cafe, especially when the Tenant had it in his Power of passing it as he pleased. 8 Mod. 275. Trin. 10 Geo. 1725. Waddy v. Newton.

15. In an Indictment for making light Bread, it is not enough to shew that it had not due Weight, without shewing what is due Weight. 2 Salk. 687 Mich. 10 W. 3. B. R. the King v. Flint.

16. The keeping of false Weights and Measures is indilable in the Sheriff’s T orn, whether it appear that they were actually made Use of or not. 2 Hawk. Pl. C. 67, cap. 10. S. 59.

For more of Weights and Measures in general, see Fin (X. 4) and other Proper Titles.

Windfalls.

(A) Who shall have them.

1. It was in a Manner admitted, that the Lessee may have the Windfalls, S. P. and Br. Waife, pl. 39. cites 44 E. 3. 44.

2. It
In Information upon this Statute, for not fencing of Coppices, 1st Exception was, that it is not alleged that the Defendant had lawful Interest in them, as the Words of the Statute are. 3dly, because it is shown that certain Coppices were cut, but shows not what Coppices they were. 4thly, because it is recited that he shall forfeit for every Foot of Land, where it should be for every Foot of Land. But it was said the Parliament-Roll is Rood of Land, and so was the last Impressions; but for the 2 first Exceptions the Party was discharge'd.

Information upon this Statute for growing up it off in Buckinghamshire, contra Forman Statuti, 1. After a Verdict for the Plaintiff it was moved in Arrest of Judgment, 1. That it is not mentioned in the Information, that the Wood was growing at the Time of the Act made; for to the Words of the Statute run, and so it ought to be set forth, as upon the 5th Eliz. concerning Apprentices, which has been often adjudged. To which it was answered, That the Province in the Statute is general, and not tied up to Wood growing at the Time of the Act; and contra Forman Statuti supplies it, if the Law were so, as in Dyer 512. The Court conceived the Exception first, and that it could not be supplied by the Words contra Forman Statuti; for they do but make the Conclusion upon the Act before set forth, and are themselves no Part of the Act, but disallow the Reflex of the Premises, and will not of themselves change a Cathe without sufficient Premises, which ought to be set forth the Law, as it is upon the Statute. 2. But afterwards Judgment was arrested upon this Exception.

None shall convert into Pasture or Tillage any such Wood under, or Coppice containing two Acres or above, which now be Wood or Underwood, and put or reserved to the Use or Increase of Wood or Underwood, and being two Pursongs distant from the House of the Owner thereof, or from the House wherein such Wood doth appertain, on Pain to forfeit 40 s. for every Acre so converted.
Wreck.

Half of the Forfuffures to be to the King, the other half to him that will sue for the same by Bill, Plaint, Action of Debt or Information, in any of the King's Courts of Record, in which no Proteftion, Wager of Laws, or Effign, shall be allowed.

Note of 21 Jac. I. the Information ought to be brought and tried in the proper County. But it was answered, that this is a Mistake; for that Law takes place only in fuch Caffes where Juftices of Peace, or of Affife, have Power by Law to hear and determine; but by this Act of Parliament, upon which the present Information is grounded, they have no Power at all; for the Proteftion is tied up to Courts of Record, and thus that Law has always been conftrued. Hard. 105. pl. 1. Trin. 1657. Morby v. Urtin.

2. Eliz. cap. 25. Adds 2 Years more than the 4 Years limited by 35 H. 8. cap. 17. for preferring the Sprung from Diftribution by Cattle.

For more of Woods in General, fee Forests, Trees, Wood, and other Proper Titles.

* Wreck.

(A) Goods cast over-board or wreck'd. How they ought to be ordered, and to whom they belong.

1. If any Ship, or other Veffel, failing to and fro, and coaling the Seas, whether in the way of Merchandizing, or upon a Flying Design, happen by fome Misfortune, through the Violence of the Weather, to run against the Rocks, and there to be flutter'd and broken, be it in what Cours, Country, or Dominion ever, and the Mariners, Merchant or Merchants, or any one of them, escape and come safe to Land, in this Caff the Lord of that Place or Country where fuch Misfortune hath happen'd, ought not to hinder or oppofe the Saving of as much of the Ship or Lading as may pofibly be faved by thofe who have escaped as aforefaid, or thofe to whom the faid Ship and her Lading belong. But on the contrary, the Lord of that Place or Country ought by his own Interet, and by thofe under his Power and Jurifdiction, to be aiding and affifiting to the faid diiftreff'd Mariners and Merchants, in faving their Ship-broken Goods, and that without taking any thereof from them; nevertheless there ought to be a Confideration for the Salvers, according to Equity, and a good Confequence, and as Justice fhall appoint, notwithstanding what Promise in that Caff has been made to the Salvers by fuch diftreff'd Merchants and Mariners, as is declared in the fourth Law. And in cæfa any one fhall do contrary hereunto, or take any Part of the faid Goods from the faid poor, diiftreff'd, ruin'd, and Ship-broken Perfons, againft their Wills, or without their Consent, the fame fhall be excommunicated by the Church, and fhall receive the Punifhment of Thieves, unless speedy Restitution be made; and there is no Cultom or Statute whatever that Eliz. B. R.
that can protect him against the said Punishment. Miege’s Laws of Oleron 11. S. 28.

2. When a Ship or other Vessel, entering into an Harbour, happens by Misfortune to be broken and perish, and the Master, Mariners, and Merchants on board her to be drown’d, and the Goods thereof be driven ashore, or floated on the Sea, without being fought after by those to whom they belong, not knowing any thing of the Disaster; in this doleful Case the Lord of that Place ought to lend Personas to save the said Goods, and such as shall be recover’d he shall secure, and put into safe Custody; which being done, he ought to take care (as much as in him lies) to give Notice thereof to the Friends or next of Kin of the Parties so drown’d; and to satisfy the Salvers according to their Pains, not out of his own Purse, but out of the Goods saved; and the Remainder shall be left wholly to the said Lord’s Custody for the Space of one Year, and if in that Time they to whom the said Goods did appertain do not appear and claim the same, the Year being fully expired, the said Lord shall publicly sell and dispose of the said Goods (unless he pleases to stay a longer Time) to such as shall bid most; and the Moneys proceeding of the Sale thereof shall be converted to pious and charitable Uses, as in relieving the Poor, in providing Marriages for poor Maids, and doing therewith such other Works of Piety and Charity as is agreeable to Reason and a good Conscience. And if the said Lord should assure the said Goods, either in Whole or in Part, unto himself, he shall by so doing incur the Curfe or Malediction of our Mother the Holy Church, with the aforesaid Penalties, without ever obtaining Remission, unless he make Satisfaction.

3. If a Ship happen to be lost, either by striking on some Rock or running a-ground, and the Mariners thinking to save their Lives, swim to the Shore, and come thither half drown’d, in Expectation of Help; and whereas it sometimes happens, that in many Places they meet with People more inhuman, barbarous, and cruel than Mad Dogs, who get their Moneys, their Cloaths, and other Goods, do murder and destroy the poor distressed Mariners; in this Case the Lord of the Country ought to execute Justice on such Malefactors, and to punish them in their Bodies and Goods. They shall be plunged into the Sea, until they be half dead, then being drawn forth out of the Sea, they shall be floned, or knock’d down, as they would do to a Wolf or a mad Dog. Miege’s Laws of Oleron, 11. S. 30.

4. When a Ship being under Sail, or riding at Anchor in any Road, is overtaken by so violent a Storm that it is thought expedient, for the lighting of the Ship, to cast Part of the Lading overboard; and that Part of the Goods are thrown overboard, in order to preserve the Ship, the Men thereof, and the rest of the Lading; it is to be understood, that the said Goods, so cast overboard, do become his that can first possess himself thereof, and carry them away, provided the Merchants, Master, or Mariners, (which must be first known and understood) did cast the said Goods overboard, without any Hope or Likelihood of ever recovering them again, and so give them over as utterly lost and forsaken, without ever making any Pursuit after them; in which Case only the first Occupant becomes the lawful Proprietor thereof. Miege’s Law of Oleron, 11. S. 31.

5. When a Ship or other Vessel has cast overboard several Goods and Merchandize, it is to be supposed the said Goods were lock’d up, and made fast in Chests; and if they be Books, that they are so well secured and so well condition’d, that they may not be disannihed by Salt-water; in such Cases it is apparent, that they who did cast such Goods overboard do still retain an Intention, Hope, and Delire of recovering the same. And therefore whoever shall happen to find such Things shall be bound to make Restitution thereof, to him that shall make a legal Pursuit therefor.
after them; or at least to employ them in charitable Uses, according to a good Conscience. Mieg's Laws of Oleron, 11. S. 32.

6. The Captain of the Country is to be observed in all Things found by the Sea-farers, which have been formerly in the Possession of some body or other, such as Wines, Oils, and other Merchandize, altho' they have been cut overboard, and left by the Merchants, and so ought to appertain to him; but if there be a Presumption that these Goods belong to some Ship that perished, then neither the Lord nor the Finder ought to take any Thing thereof, so as to convert it to their own Use; but they ought to do therewith as aforesaid, that is to do Good to poor People; otherwise they shall incur the Judgments of God. Mieg's Laws of Oleron, 12. S. 41.

7. If a Vessel by Sreads of Weather be forced to cast her Cables by the End, so as to leave behind her both her Cables and Anchors, and make to Sea as pleasure the Wind and Weather; in such Case the said Cables and Anchors ought not to be as loit to the said Vessel, if there were any Buoy at them; and such as fish for them are bound to restore them, if they know to whom; but withal they ought to be paid for their Pains, according to Justice and Equity. And in Case they don't know who to restore them, to the Lord of the Place shall take his Share, and the Salvers theirs; for it has been ordain'd, That every Master of a Ship caufe to be ingraven, or set upon the Buoys thereof, his own Name, or the Name of his Ship, or of the Port or Haven wherein he is; which must needs prevent great Inconveniences, and be of great Advantage to many; inasmuch that he who left his Anchor in the Morning, may possibly recover it again by Night; and such as shall detain it from him shall be counted no better than Thieves and Pirates. Mieg's Laws of Oleron, 12. S. 43.

8. When a Ship or other Vessel has the Misfortune to be wreck'd, and perished, in that Case the broken Pieces of the Ship, as well as the Ladings thereof, ought to be reserved and kept in Safety for them to whom it belonged before the Shipwreck, any Cution to the contrary notwithstanding. And all Partakers, Abettors, or Contrivers in the said Wreck, if they be Bishops, Prelates, or Clerks, they ought to be depoited and deprived of their Benefices respectively; and if they be Laymen, they are to incur the Penalties aforesaid. Mieg's Laws of Oleron, 12. 13. S. 44.

9. Writin. 1. 3 E. 1. cap. 4. Concerning Wrecks of the Sea, it is agreed, Many have the making of this Statute; and some have held that the Common Law was, That the Goods wreck'd upon the Sea were forfeited to the King, and that they were forfeited also since the Statute, unless they be saved by following this Statute. To this I answer with Macrobius, Multa ignorantus, quae nobis non aterant, et veterum secto nobis effe familiaris; For Bracton, who wrote before this Statute, proves that this Art is but a Declaration of the Common Law. 2 Inf. 166. cites Bract. ii. 5. fo. 120 Brst. fo. 7; 26 S. Flet. ii. 1. cap. 41. and 2 Inf. 167. cites Murr. cap. i. S. 15. and cap. i. S. 28 Wrecks. But this is wrong before the making of this Statute; yet he wrote of the Ancient Laws before the same, and is more large than the Words of the Act; for therein is named only of a Man, a Dog, or a Cat, that escapes alive; and this Author speaks generally of any Beasts, Ewes, or other living Things; so as he pursues not this Act, but treats of the Common Law. 2 Inf. 165. — 5 Rep. 167. b. S. P. in Sir H. Constantine's Cafe.—And this Statue being but declaratory of the Common Law, these 3 Insurances are put but for Examples; for besides these two kind of Beasts, all other Beasts, Fowls, Birds, Ewes, and other living Things are understood, whereby the Ownership or Property of the Goods may be known. And Bracton yet goes farther, St. certa firma apposita fuerint mercurius, & aliis rebus &c. 2 Inf. 167, 168. Although this Statue speaks only of a Wreck, yet it extends to *Fleetum, feteam, and Lagona. 2 Inf. 167.

* Fletum.
Wreck.

* Flo'fam is when a Ship is sunk, or otherwise perished, and the Goods float upon the Sea. Wreck is when the Ship is in Danger of sinking, and for preserving the Ship the Goods are cast into the Sea, and notwithstanding this the Ship afterwards perishes. Logan (or rather Ligan) is when the Goods are cast into the Sea, and the Ship afterwards perishes, and the Goods are sold by tender, as they sink to the Bottom, but the Mariners, with Ligan to preserve them, sell them to a Buyer of Cork, or other such Thing, and none of those Goods which are called [fetam], Flotiam, or Ligan, are called Wreck so long as they remain in or upon the Sea; but if any of them are drove to the Land by the Sea, then they shall be said Wreck; so that Flotiam, Jetam, and Ligan pass by the Grant of Wreck. 5 Rep. 160. a. b. Patch. 45 Eliz. B. R. Sir H. Contables's Case.

The Goods therefore originally Wreck cast given to the Crown, found upon 2 main Maximis of the Common Law. 1. That the Property of all Goods whatsoever must be in Some Person, 2dly, That such Goods as no Subject can claim any Property in, do belong to the King by his Prerogative, as Treasure Troyve, Strays, Wreck of the Sea, and others; because of ancient Times, when the Art of Navigation was not in perfect, nor Trade of Merchandize grown to such Perfection as now it is, it was a Matter of great Difficulty to be proved in whom the Property of Goods wrecked at Sea was. Others have yielded another Reason, That the King by old Custom of the Realm, as Lord of the narrow Sea, is bound to found the Sea of the Pirates, and petty Robbers of the Sea; and so it is read of that noble King Edgar, that he would twice in the Year found the Sea of such Pirates &c. and because that could not be done without great Charge, The Law gave unto him such Goods, as be wrecked upon the Sea, towards the Charge. 2 Inft. 166.

If a Ship be ready to swing, and all the Men therein, for Safe guard of their Lives, leave the Ship; and after the forsken Ship perishes, if any of the Men be saved, and come to Land, the Goods are not lost. 2 Inft. 166 b. c. 2.

If a Ship on the Sea is pursued with Enemies, and the Men for Safe-guard of their Lives forsake the Ship, and the Enemies take the Ship, and sell her of her Goods and Tackle, and turn her into Sea; by the Weather she be cast on Land, where her Men arrived; it was resolved by all the Judges of England, That the Ship was no Wreck nor lost. 2 Inft. 167. c. 3 It. 2. Fifineide's Case.

Yet if the Goods be forsaken till the Goods within the Year last are not perished, they should be sold, and nothing be made of them; and therefore for Necessity (which is excepted out of Law) the Sale in that Case is good within the Year. 2 Inft. 168.

Where Goods are taken as Wreck, the Sheriff may sell such Goods within the Year last as they should perished, and nothing be made of them; and therefore for Necessity (which is excepted out of Law) the Sale in that Case is good within the Year. 2 Inft. 168.

But the Goods shall be saved and kept by View of the Sheriff, Corners, or the King's Bailiffs, and delivered into the Hands of such as are of the Town, where the Goods were found; and the Sheriff may sell such Goods within the Year last as they should perished, and nothing be made of them; and therefore for Necessity (which is excepted out of Law) the Sale in that Case is good within the Year. 2 Inft. 168.

Where Goods are taken as Wreck, the Sheriff may sell such Goods within the Year last as they should perished, and nothing be made of them; and therefore for Necessity (which is excepted out of Law) the Sale in that Case is good within the Year. 2 Inft. 168.

Yet if the Owner dies within the Year, his Executors or Administrators may make Proof, for that this Act is but a Declaration of the Common Law. 2 Inft. 168.

* This Year and Day shall be counted from the Seizure made as Wreck, for this is the Thing whereof the Owner may take the best Notice. 2 Inft. 168. 3 Rep. 100. 122. N. P. in 3d T. Contables's Case; For though the Property is in Law vested in the Lord before Seizure, yet till the Lord doth seize then take it into his actual Possession it is not notorious who the Person is that claims the Wreck, nor to whom the Owner must refer to make his Claim, and to show his Proofs. But if the King's Goods be wrecked and cast upon the Ground where a Subject is; A wreck of the Sea, which suffices the King, the King may make his Proof at any Time when he will, and is not confined to a Year and a Day, as the Subject is. 2 Inft. 168. S. P. for Nutum Tenuis occurrit Regi. Br. Wreck, pl. 2. c. 31 167 b. 7.

Yet if the Goods or Merchandize so cast upon the Land be not sold, it is a spoil, and in such a Case, in every Event, and in every Way, they may find them again, and it is called Ligan a Ligan and not a Wreck. 2 Inft. 168. 3 Rep. 100. 122. 14. Sir H. Contables's Case.
Wreck.

541

And where Wreck belongeth to another than to the King, he shall have it, in like manner.

By Grant from the King, or by Prescription. 2 Inf. 168.

Of ancient Time Wreck of the Sea, and other Casualties, as Treasurers trove in the Land, Strays, and the like, were Primi inventoris quis totius Populi, sed Pollica ad Regem translatas fuerunt quin non modo totius Populi, sed Reipublicae etiam caput effe; but ifTreasure be found in the Sea the Finder shall have it at this Day. 2 Inf. 168.

And be that otherwise doth, and thereof be attainted, shall be awarded to Prison and make Fine at the King's Will, and shall yield Damages also.

Which is to be understood, that the King's Justices before whom the Party is attainted, shall sell the Fine; Et non Dominus Rex per fì in Camera finit, nec alteri coron fì, nisi per Judiciarioris suas, & his eft voluntat Regis, viz, per Judiciarior & legem fuerat, unum eft dicere. 2 Inf. 168.

And if a Bailiff do it, and it be disallowed by the Lord, and the Lord will not pretend any Title thereunto, the Bailiff shall answer, if be have sobred: and if be have not sobred, the Lord shall deliver his Bailiff's Body to the King.

10. In an Information for landing Goods without paying or agreeing for the Caffon, the Defendant pleaded that the Goods were Wreck, and call upon the Land of C. who had Wreck of Sea appurtenant to his Manor adjoining to the Sea, and that C. seized them and sold them. They suffered the Goods to the Defendant and so justified. Quere if the Justification be good, or that they could not then be chargeable with Custom.

and by Statute W. 1. cap. 4. where Wreck belongs to another than the King, he shall have it in like Manner, that is, as the King has his. Vaughan 162. Shepherd v. Gofnold.

The Words of the Statute of 12 Car. 2. cap. 4. of Tonnage and Poundage granted to the King, are of all Merchandize &c. to be imported &c. into the Kingdom of England &c. by way of Merchandize of such a Value &c. Per Vaughan. Ch. J. in delivering the Opinion of the Court, by these Words Wreck imported, and not imported as Merchandise, is not to pay the King's Subsidy; and Judgment accordingly. Vaughan 160. 168. 170. Hill. 23 & 24 Car. 2. C. B. Shepherd v. Gofnold & al'.

Molley 276. (5th. Edit.) lib. 2. cap. 5. S. 8. says, that in the like Case in all Circumstances Hill. 6 W. 3. C. B. between Power and Sir Wm. Portman, the Judges, and more particularly Treby Ch. J. seemed to be of Opinion that Goods wreck'd or Flowtian should pay Custom. —— Ld. Raym. Rep. 588. Mich. 10 W. 5. Atom. 5. That Mention being made that this Point had been argued 2 or 4 times in C. B. in the Case of Sir Wm. Courtney v. Bower, he said that he would not have suffered more than one Argument if it had been in B. R. and that Pro forma tautum; And that always since the Case of Shepherd v. Gofnold, Vaughan 159. there had never been a Doubt, but that Wreck should not pay Custom. —— Ld. Raym. Rep. 501. S. C. of Courtship v. Bowr having been adjudged in C. B. by 3 J. that no Customs ought to be paid contra to the Opinion of Treby Ch. J. a Writ of Error was brought in B. R. and Judgment affirmed without another Reason given by the Court than the Authority of that Case in Vaughan.


12. Derelict Goods, viz. deserted by the Owners and cast into the Sea, which happens upon various Occasions, as coming from infected Towns and Places, and for many other Respects, will be Wreck, if cast on Shore afterwards, though never purposed for Merchandize; but Goods cast overboard to lighten a Ship are not by Brafton, nor from him in Sir D. Couttsable's Case esteemed derelict Goods; which is a Question not thoroughly examined; Si autem ea mente, ut nolit eft Dominus, allud erit per Brafton. By Vaughan Ch. J. Vaughan 168 in Case of Shepherd v. Gofnold & al'.

In Trover for an Anchor &c. a special Verdict found that the Plaintiff was possessor of this Anchor &c. and that the Manor of M. adjoins to the Sea, and that the Custom of the Manor is, that if any Ship or Boat sink or floating on the Sea sink, the man of

But where an Action was brought upon a like Custom, the
Wreck.

Defendant that it perishes, though it be not Wreck, yet the left Anchor and Cable belong to the Lord, and that the Ship to which this Anchor &c. belonged struck upon the Soil of the Manor and adjoins &c. without permit, but that the Men in it were saved, and that the Defendant suffered the Anchor and Cable to the Cafe of Man there.

14. Wreck may be claimed by Prescription, and may belong to the Lord High Admiral by Prescription, for it is an ancient Office Time whereof &c. per Holt Ch J. And said he made no doubt but Wreck belonged to the Admiral about the Cinque Ports and such Places where he was most convenient in ancient Time. 12 Mod. 260. Hill. 11 W. 3. in Cafe of Wiggan v. Branthwaite.

15. If a Man, either by Grant or Prescription, has right to a Wreck thrown upon another Man's Land, of neccessary Consequence he has a Right to a Way over the same Land to take it. And the very Possession of the Wreck is in him that has such Right before any Seifure. Originally all Wrecks were in the Crown, and the King has a Right to a Way over any Man's Ground for his Wreck, and the same Privilege goes to Grantee thereof; per Cur. 6 Mod. 149. Pauch. 3 Ann. B. R. Anon.

16. It seems that the taking of Wreck before Seifure can not be Felony, because no one has Property of the Goods at the time of the taking.


(B) Pleadings.

If a Man has Wreck by Prescription, or by the King's Grant &c. and Goods are wreck'd upon his Lands, and another takes them away, he who has the Wreck shall have Action of Trepas of taking Goods Vi & Armis, the Defendant justified in Jure Uxoris, that he is seized in Jure Uxoris of the Manor of D. and that the Ancestors of the Feme, and all those whose Estates they have in the Manor, have had Wreck before Time out of Mind, and a Ship was wreck'd, and came into the same Manor with the Goods &c. and the Plaintiff as Lord of the Hundred there would have carried them away, and the Defendant would not suffer him, Judgment &c. and Ilife joined upon the Preception, and it was admitted that a Man may prescribec in Wreck, and shall have it by Prescription without Charter of the King; per Hank. the one or the other shall not have Wreck; For they have not shewn Charter of Grant or Allowance in Eyre; Skrene said, and adventure the Eyre has not been there. Per Thirn, Men have had several Points of Franchise in England without Allowance in Eyre. Per Hank. Wreck cannot be Parcel of a Hundred; Horton said, We do not claim it as Parcel, but that the Lords of the Hundred have had Wreck there Time out of Mind by Prescription, and after Ilife was joined upon the Preception. Br. Wreck, pl. 1. cites 1 H. 4. 16.

2. In
2. In Trespass the Defendant justified for Wreck by Prescription, the Plaintiff said, that De non tort dememne abique hoc that it was Wreck, and it was admitted for a good Plea without making Title; quod nota. Br. De fon Tort, pl. 38. cites 9 E. 4. 22.

3. Trespass of Goods taken, scilicet 2 Butts of Wine, the Defendant said, that he is Lord of the Manor of D. and that he and all those whose Estate &c. have bad Wreck within the same Manor Time out of Mind, and the same Butts were in a Ship on the High Seas, which Ship was drown-
ed, and by the redounding of the Water the Butts were cast upon his Man-
or, and he took them as Wreck &c. and the Defendant was compelled to
give Colour, and so he did. Br. Prescription pl. 32. cites 9 E. 4. 22.

For more of Wreck in General, See Court of Admiralty, and other proper Titles.

* Writ.

(A) Writ Necessary in what Cases. And what must be done by Writ, or may be by Bill, Commission &c.

1. Bill to the King in such as the Plaintiff and J. N. were at Issue in such Action, and the Defendant then Sheriff kept them by Com-
mandment of the Court, and he suffered them to eat and drink, by which he
left their Verdict, ad damnum &c. and the King sent it to the Justices of
Bank quod faciam rectum &c. and Venire faciam issued against the Sheriff.
Br. Bille, pl. 40. cites 24 E. 3. 4.

thing comm'd in the said Letter to be done for the Reason briefly in this Letter expressed, which is to be dilated in some Court of the King by the Law. Thelot's Dig of Writs, lib. 1. cap. 1. § 4.

2. Bill of Trespass in C. B. for the King and the Party, that where he was coming towards the Court to make his Defence of certain Land, the De-
fendant met with him with his Charters the last Term, with others unknown, such a Day and Year in D. in the County of N. and assaulted and beat him, and menaced Him of Life and of Member, so that he dared not approach, but with great Force, to his excessive Costs in Contemptum Regis, contra pecunia & ad damnum &c. Fifth, demanded Judgment, if of this Trespass in an-
other County ought to be sued by Writ, and not by Bill. Per Greene, the King is Party, and he comes by Command of the King, and do de-
spight to the King; and bid him answer; Fifth said, he did no Wrong. Per Mombray, this is no Answer; For it others did by his Command-
Writ.


Note, by the Statute of *37. E. 3. that where Jurors take Money to give their Verdict, the Party may have Bill against them immediately before the Judges of nisi Prius, or other Judges; but per Thorp, they cannot award them to Prison before Judgment. Br. Bille, pl. 46 cites 41 E. 3. 15.

* So are all the Editions of Brooke. The Year-Book does not mention the Statute. But it seems it should be Statute of 54. E. 3. cap. 8.


where it was held that it was Error and not void, but says, quere inde; for without Original they have no Commission to hold Plea, and then they are not Judges of this Cause; And of this Opinion was Bromley Ch. J. II. 2. M. 1. Ibid.

5. Ludd. said, that if the Debtor of the King be found in the Exchequer, he shall be compell'd to Answer upon his Presence without Process; Per Fitzh. John, this is if be Debtor of Record there, and not upon Suggestion without Record. For upon Suggestion he shall come by Process, quod non contradictitur. Br. Relipson, pl. 49. cites 40 AfI. 35.

6. Bill of Debt was brought in C. B. upon the Escape of a Man condemned in Account for 200 L. the Defendant said, that the Plaintiff had a Bill in the Exchequer of the same Debt, Judgment of the Bill, & non allocatur. And the Opinion of the whole Court was, that this Suit ought to be by Writ, and not by Bill, by which the Plaintiff was non-suited, and brought Writ and recover'd. Br. Brief, pl. 306. [310.] cites * 41 AfI. 11.

Br. Escape, pl. 50. cites 42 AfI. 11. Br. Bill, pl. 23. cites S. C. 42 AfI. 11. It is ill, because the Statute gives Writ of Debt, and not Bill — — — * All the Editions of Brooke are as here, viz. 41 AfI. 11. but it seems to be misprinted, and that according to Br. Escape, pl. 3. and pl. 42. it should be 42 AfI. 11.

7. Bill of Debt was brought against the Warden of the Fleet for letting Prisoners go at large, inasmuch as he is an Officer of the Place; but the Statute speaks of Writ, and not of Bill. Br. Bille, pl. 38. cites 42 E. 3. cites S. C. 3. 13. 3. 13. because the Statute gives the Remedy by Writ of Debt, notwithstanding he was an Officer attendant to the Court; therefore Quere.

As Writ 8. A Thing cannot be done by Writ which ought to be by Commission. Br. shall not Commisions. pl. 16. cites 42 Afr. 12.


9. Writ issued to the Exchequer of E. to inquire what Larceny 7. N. had done to one W. by which it was found that the said J. N. had sold 20 Gal-

lons
lons of Wine of the Price &c. and another Accessory, and this Indictment was lent into Chancery, and after into B. R. and the Justices would not do any Thing, because it was against Law. Br. Commotions, pl. 16. cites 42 All. 13.

10. If a Justice of Nisi Prins takes a Verdict, and dies before the Day in Bank, his Executor shall certify it by Writ, or otherwise it is void, Per Gafcoigne. Br. Record, pl. 17. cites 8 H. 4. 4.

11. Warrant of Attorney recorded by a Justice in the Time of one King cannot be certified by the same Justice in the Time of another King without Writ; For their Commision is determined. Br. Record, pl. 17. cites 8 H. 4. 4. per Gafcoigne.

12. If a Justice takes Constate of a Fine and is discharged, this shall be certified by Writ. Br. Record, pl. 17. cites 8 H. 4. 4. per Gafcoigne.

Refsummons shall issue upon the Writ of Covenant, and Writ to the Justices or to his Executors, to certify the Fine. Br. Record, pl. 17. cites 8 H. 4. 4. per Gafcoigne.

13. Note per Cheney, a Man shall not have Bill in B. R. against another, unless the Defendant be a Prisoner to the Court at the time &c. or an Officer as it seems; For if he be not a Prisoner he is not bound to answer to a Bill; but he may anwer gratis if he will, and it is good. Br. Bill, pl. 6. cites 7 H. 6. 41.

Where a Man takes Surety of Peace of another in B. R. by which he remains in Ward, by which another brings Bill against him, to which he appears, and immediately be who prays the Peace relieves the Peace by reason whereof it is not entered that he was Prisoner to the Marshal, and the Defendant in the Bill makes Default in another Term upon a Day given to him and to the Plaintiff by the Court, but no Imparlance at the Suit of the Party; there he shall not be condemned because the Day was given by the Court, and not prayed by the Party; therefore at the least he shall have only Proces. Brooke says, Quare what Proces. Br. Bille, pl. 6. cites 7 H. 6. 41.

15. A Man is impeached at B. R. and at the Diftrefs he appears, and immediately one offers Bill against him, and prays that he may answer when he comes; for he comes out of London by Writ of Privilege in Ward of a Serjeant; Hales said, when he was removed out of London by the Privilege, he is at large as to the Suit in London; and here he is not in Ward; for it is only at the Diftress. Br. Bille, pl. 7. cites 7 H. 6. 41.

And where a Man is let to Mainprise from Day to Day, Bill lies not; for he is not in Ward; see Hales. Quare of Bail, by which the Party upon his Oath demanded Surety of Peace of him, and had it; by s. 11. he was committed to the Keeping of the Marshal, and then was awarded to answer to the Bill, and to see that the coming in Ward of a Serjeant by Writ of Privilege is no Imparlance of B. R. and therefore it is not sufficient to award Bill against him to another. Quod nota. Ibid.


17. So if the Justices command the Sheriff to arrest a Man in the Hall by Parol and without Writ, this is good. Br. Precefs, pl. 184. cites 16 H. 7. 14. per Cur.

18. Bill of Maintenance by W. against 7. who was present in Court, because he maintained in the Presence of the Justices one H. in a Suit between the Plaintiff and H. Defendant demanded Judgment of the Bill; For he does not lay that prejens sit in Court. Per Newton, the Bill is not taken because he was present and maintained, but that fedeante Curiae he maintained; and this appears by the Bill. Per Brown, in the Replication shall be made express Mention of his Appearance, quod Paf ton con-

And per Port. in Bill of Maintenance against an Attorney, it shall make mention of the Appearance of the Attorney, and yet they are al-
ways intended to be Attendat at Court; and because this Bill was of Maintenance sedente Curia, it shall
19. Bill against one in Custodia Marefcalli, but in R. the Plaintiff recovered notwithstanding that it was alleged in Arrest of Judgment, that there was no Record in the Court by which it may appear that the Defendant was Prisoner, and upon Search a Record was found, that he was let to Bail, which is sufficient without declaring for what Cause he was let to Bail, or how he became a Prisoner; for they are often committed to Ward upon Sureties, and let to Bail; but it was agreed, that if no Record had been, there all had been void, & coram non Judge; quod nota. Br. Bille, pl. 34. cites 31. H. 6. 10.

20. A Man shall not have Averment against the Return of a Sheriff, but shall have Bill upon the Matter against the Sheriff upon his Account. Br. Bille, pl. 23. cites 3 E. 4. 29.


22. He who is accountand in the Exchequer may have Bill against his Debtor; for by this the King may be the more easily paid. Br. Bille, pl. 27. cites 9 E. 4. 53.

23. Bill of Debt was brought against a Serjeant at Law present in Court, and by the best Opinion, the Bill does not lie; but it lies against an Attorney and Officer. And per Brian, Bill lies against Members of the Court, as Officers, Attorneys &c. who are attending in Court; for they shall be demanded to do their Offices; and if they are wanting they shall be fore-judged of their Offices, but contra of Ministers who are not Members, as Sheriff who returns Writs, Bill lies not against him; for his Exercize is in Pais in the County, and the fame of Ordinary who comes to have a Clerk delivered to him, he is Miniter to the Court; but Bill lies not against him; and several shall have Privilege, as Cook, Butler, &c. and yet Bill lies not against them; for it lies only against those who ought to be attendant, as Officers and Attorneys, but a Serjeant is, not bound to be so attendant to any one Court, and therefore Bill lies not against him. Br. Bille, pl. 31. cites 11 E. 4. 2.

24. The Abbot of A. entered into Account in the Exchequer by Bailiff, and pending the Account N. brought Bill of Debt of 20l. against him upon Obligation, and prayed that he should answer. Per Catesby, he has not yet appeared; Per Urswick Ch. B. he has appeared by Bailiff, which is his own Appearance, and during his Account he ought to answer. Br. Bille, pl. 12. cites 15 E. 4. 28.

25. Outlay in Debt, Trespass, or the like in C. B. without Original is not void but Error, for they are Judges of this Plea; per Littleton. Br. Judgment, pl. 123. cites 19 E. 4. 8.


27. No Plea of Frankencement can be without Writ. 2 Lev. 98. 123.

(B) The
(B) The several Sorts of Writs. And what an Original and what a Judicial Writ.

1. Of Writs some are Original, and some are Judicial. And of original Writs some are form'd according to their Cases, and of Court, and granted and approved by the Common Counsel of the whole Kingdom, which cannot be chang'd by any Means, without their Agreement and Consent; and some of them are call'd Brevia Magistrata, and are frequently alter'd according to the Variety of Cases, Facts, and Complaints, As Actions on the Case, which vary according to the Variety of every Man's Case, and thence being not of Court, the Matters being learned Men did make them; and Original Writs are either Real, Personal, or Mist. Co. Litt. 73. b

2. Prohibition is an Original, and upon it B. R. ought to grant an Attachment; quod nota. Br. Prohibition, pl. 6. cites 38 H. 6. 14. per Moil.

3. A. recovers against B. in a Precipe quad reddat by Default; the Writ of Difceit in this Case is Judicial, and立uses out of the Common-Pleas, and the Process is Attachment and Distress, and is mention'd in the Writ; and in this Case A. and the Sheriff, and the Summoners, and Sheriffs, are made Parties by this Writ, that is, he who was Sheriff, and made the Return of the Summons, which by the Writ of Difceit is alleg'd to be false. If the present Sheriff did this Deceit, the Writ of Difceit aforesaid, shall be directed to the Coroner. Jenk. 122. pl. 46.

4. A Scire facias was brought to repeal Letters Patent for the Grant of a Fair obtain'd upon false Suggestions. It was infilied, that this being a Judicial Writ was abated by the Death of the Queen, and not aided by the Statute of 1 Anne cap. 8. But the Attorney General answer'd, That this was not a Judicial but an original Writ; That Judicial Writs are those only that are founded upon Judgment and Judicial Process; but that this was no Consequence of any Judicial Proceeding, or founded on the Letters Patent, but only upon the Fraud; and that there are many Scire facias's in the Register among the Original Writs. [The Court said nothing to this Matter.] 10 Mod. 258, 259. Mich. 1 Geo. B. R. the Queen v. Aires.

(C) Alter'd. The Effect thereof.

1. It is illegal to fill up a Writ after it is seal'd, and whoever is arrested by Virtue of such Writ has an Advantage; Per Holt Ch. J. But the Reporter makes a Quære, if it be false Imprimis, or to be relieved upon Motion. 6 Mod. 310. Mich. 3 Ann. B. R. Anon.

2. A Writ alter'd in a Thing inmaterial after it is seal'd is doing no Harm, and if it be in any Thing material before it was seal'd, yet that will not vitiate it, but the Court would not quaff it or any Proceedings thereon; but said, if the Motion had been made against the Clerk that rafed it, and it appear'd to be done after the Writ was seal'd, it is a Misdemeanor and punishable. 8 Mod. 243. Pash. 10 Geo. Crowther v. Wheat.

(D) Writ
(D) **Writ General or Special.** In what Cases. And in what Cases the Writ shall be General and the Count Special.

So in Debt upon Record. Br. Count, pl. 80, cites 11 H. 4. 58.

1. **DEBT upon Recovery** the Writ shall be General and the Declaration Special upon the Record all in Certain, as the Writ is. Br. General Brief, pl. 17, cites 11 H. 4. 56.

2. In **every Writ founded upon the Case,** he ought to put the Special Matter in the Writ; for it is not sufficient to have General Writ, and make Special Count. *Theolo's Dig.* lib. 9. cap. 7. S. 27. cites Trin. 7 H. 6. 47.


4. **Trespass** upon the 5 R. 2. That the Defendant enter'd into divers Lands and Tenements of the Plaintiff in D. &c. And per Danby Ch. J. and Catesby, this Writ is not good, into diverse Lands &c. for the Uncertainty, tho' he declared the Certainty in the Count. Pigot and Comberiord Prothonotary said, that there are several such Writs in the Chancery, and several such Precedents in C. B. And after the Defendant pas'd over, and pleaded in Bar. Br. Brief, pl. 348. cites 4 E. 4. 18.

5. *So Assis is de libero tenemento* in the Writ, and yet the Certainty is in the Plaint, and the Plaintiff shall recover the Land; Per Brian. Br. Brief, pl. 348. cites 4 E. 4. 18.


7. **So Writ of Wafte is,** that the Defendant did Wafte in Land, Houses, Woods, and Gardens, in N. which is uncertain, and the Declaration shews the Certainty. Br. Brief, pl. 348. cites 4 E. 4. 18. per Pigot.

8. If a Man be bound to pay Greats and Nobles to such a Value as they were of 2 E. 4. and in Anno 9 E. 4. at the Time of the Action brought, they are of a greater Value, the Party shall have General Writ and Special Declaration. Br. Gen. Brief, pl. 27. cites 9 E. 4. 49.

9. **Writ founded upon a particular Act of Parliament shall make Mention of the Act,** As where it is enabled, that the Chancellor calling to him, the Justices of the one Bench and the other may determine Causes of Displeas between A. and B. and shall call B. by Subpœna, this Writ shall be Special and not General; By all except Littleton. And by this it seems that the Chancellor cannot determine Plea of Land nor Displeas without Act of Parliament. Br. Brief, pl. 487. cites 14 E. 4. 1.

10. It was *Enacted by Parliament,* That G shall answer to A. of all Riots and Trespasses to him done, and that he shall have Writ with two Proclamations out of Chancery, by which Proclamation shall be made at two Market-Days in the County of C. to make him appear and answer to all Writs and Bills brought against him by A in Pais &c. and the Writ was Generally to answer of diverse Trespasses and Riots, and he'd done certainly. And because every Original ought to be certain and comprehend to what a Man shall answer, and this Writ does not comprehend any Certainty; And also is not warranted by the Act; Therefore by Judgment the Defendant was dismissed. For tho' the Act was General, yet the Writ to which the Defendant shall answer shall be certain, as in Garnishment in Detinue,
Detinue, the Garnituee shall answer to the Writ of Detinue, and yet the
Scire faits which shall issue to warn him shall be certain; and in
B. R. they use to award Capus to answer to certain Trespasses or Felonies,
and well; For it is the Course and it is at the Common Law, but this Case
is upon particular Statute, and therefore ought to comprehend all cer-
11. If a Statute gives special Matter contrary to the Common Law, as
the Ward of Ceity que Ufe &c. and does not give special Writ, there the
Writ shall be general as it was at Common Law, that he died in his
Homage; and if the Defendant says in avoiding it, that his Father made a
Feoffment &c. abique hoc that he died in his Homage, and the other
says by Replication, that the Father made the Feoffment to the Ufe of
him and his Heirs, this is a good Replication in maintaining of the Ac-
tion; quod nota. Br. General Brief, pl. 1. cites 27 Hill. 8. 3.

(E) Variance between the Writ and the Re-
gister.
1. If Affise be nonrererent nobis where it should be Quesitus est nobis,
or it be Quod diversit eum where it should be Injuste diversit eum, or it be Quod diversit eum of 100 Acres in D. where it should be
De liberis Tenemento in D. such Writs shall abate because they do not
pursue the Form of the Register; and yet the Matter is sufficient, and all
is of one Efficit, and yet Writ of * Formedon which makes the De-
mandant Heir to his Father, and the Father Heir to the Grandfather,
and the Grandfather Heir to the Great Grandfather who was Donee in
Tail where the Father never held Estate such Writ is good; for every
one is made Heir to another therefore is the Demandant made Heir to
him who was last feided, and so well; and the Diveristy between those
Cafes is, in as much as in the one Case the Writ appears to want Form,
and in the other Case the Writ may be as it purports, and the Default
which does not appear shall be disclosed by Exception of the Party,
and therefore in the one Case the Writ shall abate, and in the other not;
2. A Writ of Protection was brought into Court under the Great Seal,
to stay an Outlawry in Assumpit quia ipse (the Defendant) in Guerris
notiris in Flanders et duelit et bit &c. But Exception was taken to
the Writ; because it had not the Words (Loquela veram Jusficatrix notiris
Itinerantibus) according to the Register. Sed non allocatur; for Iter
have been discontinued a long time; and it is not to be intended De In-
neribus circa Foreitas. 3 Lev. 352. Trin. 4 W. & M. in C. B. Barru-
dale v. Lord Cutts.

For more of Writ in general, see Abatement, Amendment,
Formedon, and other proper Titles.
This appears 1. 9 H. 3. cap. 20. to be due W. E will not hold the Lands of them that be * convicted 22. of 4 Felony but one Year and one Day, and then those to the King by hisAncient Prerogative. 2 Inl. 56. cites Glanvil 7. cap. 17. fol. 59.
This Chapter of Magna Charta both express that which both belong to the King, viz. The Year and the Day, and omits the Wafe as not belonging to him; and this is notably explained by our ancient Books with an uniform Content. 2 Inl. 56. cites Bracton, lib. 3. fol. 159. & 157. and Britton, cap. 5. fol. 14, and Fleta, li. 1. cap. 28. and Mirror, cap. 5. b. 2. — The Mirror, speaking of this Chapter, faith, Le point des terres aux felon^s tenent per un an, est defulfte, car per la ou le Roy ne diuit aver que le gait de droit, ou l'an nomme de fine pur salver le fie de l'effriment peignent les minister le Roy ambeixude. Upon all which it appears, that the King originally had no claim to an Estate upon the Attainer of Felony, where the Fine-Land was helden of a Subject but only in Detestation of the Crime, Ut pena ad paucas, menus ad omnes perveniat; to prostrate the House, to extirp the Gardens, to eradicate his Woods, and to plow up the Meadows of the Felon; for saving whereof, & pro bono publico, the Lords, of whom the Lands were helden, were contented to yield the Lands to the King for a Year and a Day; and therefore not only the Wafe was justly omitted out of this Chapter of Magna Charta, but thereby it is enacted, That after the Year and Day the Land shall be rendered to the Lord of the Fee, after which no Wafe can be done — 2 Inl. 37. —Sergeant Hawkins says it seems agreed, that by the Common Law, upon an Attainer of Felony, the King had a Right utterly to wale the Lands helden of any but himself, whereof the Person attainted was setted of any Effect of Inheritance, either in his own or in his Wife's Right. And it is said by some, That the King hath both this Right, and also a Right to hold such Lands for a Year and a Day. But it is holden by others. That the Right to hold over the Lands for 1 Year and a Day was given to the King in lieu of that Wafe, And it seems implied in Magna Charta, cap. 22. which saying, That the King shall not hold over the Lands of those convicted of Felony but for one Year and a Day, and making no mention of the Wafe, it seems plainly to intimate, that at the Time of the making that Statute the King was thought to have no other Right but only to the Year and Day. 2 Haw. Pl. C. 449. cap. 49. S. S. — Ibid. in Margin. says it seems admitted, 8 Ed 3. Fitzw. Trav. 489. Preceptio 50. That the King was intituled to the Wafe as well as to the Year and Day since this Statute.
And where the Treatie of Prerogativa Regis, made in 17. E. 2. says, Et potissim Dominus Rex habuerit annum, diem, & vallum, unum reddat eum tencentument illud capitalli Domino feodi illius, Nisi Prius faciat finem pro anno, die & vultus; which is fo to be expounded, that forasmuch as it appears in the said old Books, that the Officers and Ministers did demand both for the Wafe and for Year and Day, that came in Lieu thereof, therefore this Treatie named both, not that both were due, but that a reasonable Fine might be paid for all that which the King might lawfully claim. But if this Act of 17. E. 2. be against this Branch of Magna Charta, then is it repeal'd by the said Act of 42. E. 3. cap. 1. 2 Inl. 37. — 2 Hawk Pl. C. 449. cap. 49. S. S. says, that the Statute de Prerogativa Regis, made in the 17. E. 2. having declared the King's Right to the Year and Day, and also to the Wafe, it seems to have been the more general Opinion since that Time, that he hath a Right to both. Indeed if this Statute had been against the express Purview of Magna Charta, it would have been clearly repeal'd by those many Subsequent Statutes, which repeal all Statutes contrary to Magna Charta; but being not contrary to the express Words of it, but only to what is argumentively drawn from it, it may be well argued that it is still in Force. 2 Hawk Pl. C. 449. cap. 49. S. S. 
Hereby it also appears how necessary the reading ancient Authors is for understanding of ancient Statutes. And out of these old Books you may observe, that when any thing is given to the King in Lieu, or Satisfaction of an ancient Right of his Crown, when once he is in Possession of the new Reversion, and the same in Charge, his Officers and Ministers will many times demand the old also, which may turn to great Prejudice, if it be not duly and distinctly prevented. 2 Inl. 37. If there be Lord, Meline, and Tenant, and the Meline is attainted of Felony, the Lord Paramount shall have the Meline presently; For this Prerogative belonging to the King, extends only to the Land, which might be walled, in Lieu whereof the Year and Day was granted. 2 Inl. 37.
And this is to be understood when a Tenant in Fee-simple is attainted; For when Tenant in Tail, or Tenant for Life is attainted, there the King shall have the Profits of the Lands during the Life of Tenant in Tail, or of the Tenant for Life. 2 Inl. 57.
2. If Lord and Tenant are, and the Tenant is attainted of Felony, and the King has Annum Diem & Vatimn, yet if the Lord enters without due Process, and the Writ sued to the Escheator, the Land shall be re-jefted, and he shall answer for the menace Issues and Profits. Br. Re-setler, pl. 36. cites 8 E. 2. and Fitzh. Traverfe. 48.

3. The Statute de Prerogativa Regis, cap. 15. wills, that if a Felony was Land tune Rex statim illeam habeat, & habeat inde Annum & vatimn & Terra distructor &c. &c. tunc redditar capitaU Dominion &c. Quere it this Word (Statum) shall be otherwise intended but after Office found. Br. Corone, pl. 209.

4. Tenant by Copy of Court Roll by the Verge in ancient Demeue committed Felony, and was attainted of it, and Annum Diem & Vatimn was awarded for the King, and the Reason seems to be, in as much as Franktenants in ancient Demeue have no other Evidence but Copies of Court Rolls; for otherwise it seems to be of a mere Copyholder out of ancient Demeue for other Franktenement. Br. Tenant per Copie &c. pl. 22. cites 3 E. 3.

5. A Man was outlawed of Felony, and alien’d his Land to f. N. by the King which Scire factas issued agaft him, who came and would have traversed shall have the first Year and Day and he is a Stranger to the Record; but per Pigot by 7 E. 4. 2. he cannot traverse it in Cane of Felony being a Stranger to the Record, contra in Cafe of Trepass; by which it was prayed for the King that Year, Day, and Waite be adjudged for the King immediately, and lo it was immediately from that Day till a Year and a Day next after; quod nota. Quere it the King may take the Year and the Day at what time be after the Attaint, it seems he cannot. Br. Corone, pl. 205. cites 49 Aft. 2. takes the Profits this Year shall answer the Profits to the King; per Fitzhernbert. But it seems that this is to be understood after Office found, or that the highest which attains him finds also what Lands he had at the Time of the Felony committed or after. And in the Case above of 49 Aft. 2. the Outlawry of Felony was S. E. 3. and Writ issued to the Corners to inquire of his Goods, Lands, and Tenements 48 E. 3. which returns that he had Land, and alien’d to f. N. after the Outlawry; and upon this Scire Factas issued against f. N. who came and would have traversed the Felony, and the Year and Day was awarded to the King with the Waite. And lo it seems that the King cannot take it, unless after Office, which was thirty Years after, as there. But Quere if, upon the Office found, he who receives the Profits the first Year after the Felony shall not be charged; it seems he shall, per Fitzh above. Quere the Experience thereof in B.R. Br. Corone, pl. 207. cites F. N. B. fo. 144.

FINIS.