The publishers acknowledge their gratitude to the Curators of the Bodleian Library, Oxford for their permission to reproduce the Library's copy. (Shelfmark: G. Pamph.2315(4) and 4°.G.44.Art)
The title-page and quire A of volume I are reproduced, from the copy in the British Museum (Shelfmark: 508.c.8.), by kind permission of the Trustees.

S.T.C.No. 1134
Collation: unsigned², A-B⁴, *², C-P⁴. Part 2: A-L⁴, M²

Published in 1969 by Theatrum Orbis Terrarum Ltd., O.Z. Voorburgwal 85, Amsterdam
& Da Capo Press - a division of Plenum Publishing Corporation -
227 West 17th Street, New York, 10011
Printed in the Netherlands

ELEMENTS OF THE COMMON LAWES OF ENGLAND.
Branched into a double Tract:

THE ONE
Contayning a Collection of some principall Rules and Maximes of the Common Law, with their Latitude and Extent.
Explicated for the more facile Introduction of such as are studiously addicted to that noble Profession.

THE OTHER
The Use of the Common Law, for preservation of our Persons, Goods, and good Names.
According to the Lawes and Customs of this Land.

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

Fidere Vilitatis.

LONDON, Printed by the Assignes of J. More Esq. 1630.
A COLLECTION
OF SOME PRINCIPALL
RULES AND MAXIMES OF THE
COMMON LAWES OF
ENGLAND,
WITH THEIR LATITUDE AND EXTENT,
Explicated for the more facile introduction of such as are studiously addicted
to that noble profession.

By Sir FRANCIS BACON, then Solicitor
general to the late renowned Queen Elizabeth, and since Lord Chancellor
of England.

Orbe paruo sed non occiduo.

LONDON,
Printed by the Assignes of John Moore Esq.
Anno 1625. c. xxx.
CVM PRIVILEGIO.
The Epistle Dedicatorie.

TO HER SACRED MAJESTY.

I do here most humbly present and dedicate unto your Sacred Majesty a sheafe and cluster of fruit, of the good and favourable season, which by the influence of your happy government we enjoy: for if it be true, that silent leges inter arma, it is also as true, that your Majesty is in a double respect the life of our lawes: Once, because without your authority they are but litera mortua, and againe, because you are the life of our peace, without which lawes are put to silence; and as the vitall spirits doe not onely mainaine and move the body, but also contend to perfect and renew it, so your Sacred Majesty, who is anima legis, doth not only give unto your lawes force and augour, but also hath bin carefull
The Epistle Dedicatarie

carefull of their amendment and reforming; where-
in your Majesties proceeding may be compared as in
that part of your government (for if your govern-
ment bee considered in all the parts, it is incompara-
ble) with the former doings of the most excellent
Princes that ever have reigned, whose study alto-
gether hath beene alwaies to adorne and honour times
of peace, with the amendment of the policy of their
laws. Of this proceeding in Augustus Cæsar, the
testimony yet remains.

Pace data terris animum ad ciuilia vertit
Iura suum, legesq; tulitiusmus auctor.2

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

Ecquid est quod tam proprie dici potest, a-
ctum eius qui togatus in republica cum potestate
imperioq; verfatus fit, quam lex? quære acta
Gracchi? leges Sempronij proferantur, quære
Sille Corneliae? quid Cu. Pom. tertius consula-
tus in quibus actis consistet? nempe, in legibus:
à Cæsare ipsosi quæreres quidnam egisset in ur-
be, & toga leges multas se responderet & pracla-
ratus tulisse.

The same desire long after did spring in the Empe-
or Justinian, being rightly called,
Ultimus Imperatorum Romanorum,
who having peace in the heart of his Empire, and making his warres prospe-
rously in the remote places of his dominions by his
liuetenants, chose it for a monument and honour of
his government, to revise the Romane lawes from in-
finte volumes, and much repugnancy, into one com-
potent

The Epistle Dedicatarie.

potent and unforme corps of law, of which matter
himselfe doth speake gloriously, and yet aptly calling
ofis, proprium & sanctissirnum templum iustitiæ
consecratum, a worke of great excellency, indeed,
as may well appeare in that France, Italy, & Spaine,
which have long since shaken off the yoke of the Ro-
mane Empire, doe yet neverthelesse continue to use
the policy of that law: but more excellent had the
worke beene done that the more ignorant, and obscure
time undertaking to correct the more learned and flou-
ishing time. To conclude with the domesticall exam-
ple of one of your Majesties royall Ancestors: King
Edward the first your Majesties famous progenitor,
and the principal Law giver of our nation, after he
had in his younger yeares given himselfe satisfacti-
on in the glory of armes, by the enterprize of the ho-
ly land, and having inward peace, otherwise then for
the invasions which himselfe made upon Wales and
Scotland, parts farre distant from the Centre of the
Realme, hee bent himselfe to endow his state with
fundry notable and fundamentall lawes, upon which
the government had ever since principally rested: of
this example, and others the like, two reasons may
be given, the one, because that Kings, which either
by the moderation of their natures, or the maturity of
their years and judgement, do temper their magnani-
mity with justice, do wisely consider & conceive of the
exploits of ambitious warres, as actions rather great
than good, and so distasted with that course of win-
nning honour, they convert their mindes rather to doe
something for the better uniting of humane society,
than for the dissolving or disturbing of the same. Another reason is, because times of peace, for the most part drawing with them abundance of wealth, and fineness of cunning, doe draw also in further consequence multitudes of suits, and controversies, and abuses of law by evasions, and devices; which inconveniences in such time growing more general, do more instantly sollicite for the amendment of laws, so restrain and repress them.

Your Majesties reigne having beene blessed from the Highest with inward peace, and falling into an age wherein science bee increased, conscience is rather decayed, and mens wits bee great; wherein also laws are multiplied in number, and slackened in vigour and execution. It was not possible but that not onely suits in law should multiply and increase (whereof a great part are alwaies unjust) but also that all the indirect courses and practices to abuse law and justice should have bin much attempted and put in use, which no doubt had bred greater enormities, had they not by the royall policy of your Majestie, by the censure and fore-sight of your Councell table and Star-chamber, and by the gravity and integrity of your Benches beene repressed and restrained. For it may bee truly observed, that concerning frauds in contracts, bargains and assurances, and abuses of lawes by delays, counsels, vexations, and corruptions in Informers, Jurors, Ministers of justice, and the like, there have beene sundry excellent statutes made in your Majesties time, more in number, and more politique in provision, than in any

Your Majesties predecessors times.

But I am an unworthy witness to your Majestie of an higher intention and project, both by that which was published by your Chancellor in full Parliament from your royall mouth, in the 35. of your happie reigne; and much more by that which I have bee since vouchsafed to understand from your Majestie, imparting a purpose for these many yeares, infused into your Majesties breast, to enter into a generall amendment of the states of your lawes, and to reduce them to more brevity and certaintie, that the great hollownesse and unsafety in assurances of lands and goods may bee strengthened, the swarving penalties that lye upon many subjects removed, the execution of many profitable lawes revived, the Judge better directed in his sentence, the Counsellor better warranted in his counsaile, the Student eased in his reading, the contentious Suitor that seeketh but vexation disarmed, and the honest Suitor that seeketh but to obtaine his right, relieved; which purpose and intention as it did strike mee with great admiration, when I heard it, so it might bee acknowledged to bee one of the most chosen works, and of highest merit and beneficence towards the subject that ever entred into the minde of any King; greater than wee can imagine, because the imperfections and dangers of the lawes are covered under the clemency and excellent temper of your Majesties government. And though there bee rare presidents of it in government, as it commeth to passe in things so excellent, there being no president full in view but of Justinian, yet I must say as Cicero said
The Epistle Dedicatory.

said to Cæsar, Nihil vulgaum te dignum videri potest, and as it is no doubt a precious seed sown in your Maiesties heart by the hand of Gods divine Majestie, so I hope in the maturity of your Maiesties owne time it will come up and beare fruit. But to returne thereon whether I have beene carried, observing in your Maiestie, upon so notable prooves and grounds, this disposition in generall of a prudent and royall regard to the amendment of your lawes, and having by my private labour and travelled collected many of the grounds of the common lawes, the better to establish and settle a certaine sense of law, which doth now too much waer in incertaintie, I conceived the nature of the subject, besides my particular obligation, was such as I ought not to dedicate the same to any other than to your sacred Maiestie, both because, though the collection bee mine, yet the lawes are yours; and because it is your Maiesties reign that hath bee as a goodly seasonable spring-weather to the advancing of all excellent arts of peace. And so concluding with a prayer answerable to the present argument, which is, That God will continue your Maiesties reign in a happy and renowned peace, and that he will guide both your policy and armes to purchase the continuance of it with suerity and honour. I most humbly crave pardon, and commend your Maiestie to the divine preservation.

Your sacred Maiesties most humble and obedient subject and servant,

FRANCIS BACON.

The Preface.

Hold every man a debtor to his profession, from the which, as men of course doe desire to receive countenance & profit, so ought they of duty to endeavour themselves by way of amends to be a helpe and ornament thereunto; this is performed in some degree, by the honest and liberal practice of a profession, when men shall carry a respect not to descend into any course that is corrupt, and unworthy thereof, and preserve themselves free from the abuses wherewith the same profession is noted to bee infected; but much more is this performed, if a man bee able to visite and strengthen the roots and foundation of the science it selfe, thereby not onely gracing it in reputation and dignity, but also amplifying it in perfection and substance. Having therefore from
The Preface.

The beginning comes to the study of the lawes of this Realme, with a desire no lesse (if I could attaine vnto it) that the same lawes should bee the better for my industry, than that my selfe should be the better for the knowledge of them: I doe not finde, that by mine owne trauell, without the helpe of authority, I can in any kinde conferre so profitable an addition vnto that science, as by collecting the rules & grounds, dispersed throughout the body of the same lawes; for hereby no small light will bee given in new cases, wherein the authorities doe square and varie, to confirme the law, and to make it received one way, and in cases wherein the law is cleered by authoritie; yet nevertheless to see more profoundly into the reason of such judgements and ruled cases; and thereby to make more vse of them for the decision of other cases more doubtfull: so that the uncertainty of law, which is the principall and most just challenge that is made to the lawes of our nation at this time, will, by this new strength laid to the foundation, be somewhat the more settle and corrected; Neither will the vse hereof be onely in deciding of doubts, and helping soundnesse of judgement, but further in gracing of argument, in correcting unprofitable subtlety, and reducing the same to a more found and substantiall sense of law, in reclaiming vulgar errors, and generally the amendment in some measure of the very nature and complection of the whole law, and therefore the conclusions of reason of this kinde are worthily and aptly called by a great Civilian legum leges, lawes of lawes, for that many placita legum, that is, particular and positive learnings of lawes doe easily decline from a good temper of justice, if they bee not rectified and governed by such rules.

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

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

For the former sort, which a man that should rather write to raise an high opinion of himselfe, than to instruct others, would have omitted, as trite and within every mans compasse, yet nevertheless I haue not affected to neglect them, but haue choisen out of them such as I thought good: I haue reduced them to a true application, limi-
ting and defining their bounds, that they may not be read upon at large, but restrained to a point of difference; for as both in the law and other sciences the handling of questions by commonplace without aim or application is the weakest, so yet nevertheless many common principles and generalities are not to be contemned, if they bee well derived and deduced into particulars, and their limits and exclusions duly assigned: for there bee two contrary faults and extremities in the debating and sifting out of the law, which may bee best noted in two several manner of arguments: Some argue upon general grounds, and come not neere the point in question; others without laying any foundation of a ground or difference doe loosely put cases, which though they goe neere the point, yet being put so scattered, prove not, but rather serve to make the law appear more doubtfull, than to make it more plaine.

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

Thirdly, whereas I could have digested these rules into a certaine method or order, which I know would have beene more admired, as that which would have made every particular rule through coherence and relation into other rules seeme more cunning and deep, yet I have avoided to doe, because this delivering of knowledge in distinct and divided Aphorismes doth leave the wit of man more free to turne and tosse, and make vs of that which is so delivered to more several purposes and applications; for wee see that all the ancient wisdom and science was wont to bee delivered in that forme, as may bee seene by the parables of Solomon, and by the Aphorismes of Hippocrates, and the morall verses of Theognes and Phocilides, but chiefly the president of the Ciuil law, which hath taken the same course with their rules, did confirme mee in my opinion.

B 3

Fourthly,
Fourthly, whereas I know very well it would have been more plausible and more current, if the rules, with the expositions of them had been set downe either in Latine or in English, that the harshnesse of the language might not have disgraced the matter, and that Civilians, States-men, Schollers, and other sensible men might not have beene barred from them; yet I have forsaken that grace and ornament of them, and only taken this course: The rules themselves I have put in Latine, not purified further than the propriety of the termes of the law would permit; which language I chose as the briefest to contrive the rules compendiously, the aptest for memory, and of the greatest Authoritie and Majesty to bee avouched and alledged in argument: and for the expositions and distinctions, I have retained the peculiar language of our law, because it should not be singular among the books of the same science, and because it is most familiar to the Students and professors thereof; and because it is most significat to express conceits of law; and to conclude, it is a language wherein a man shall not bee induced to hunt after words, but matter; and for the excluding of any other than professed Lawyers, it was better manners to exclude them by the strangenesse of the language, than by the obscuritie of the conceit, which is, as though it had beene written in no private and retired language, yet by those that are not Lawyers would for the most part not have beene understood, or which is worse, mistaken.

Fiftly, whereas it might have beene more flourish and ostentation of reading, to have vouched the authorities, and sometimes to have enforced or noted upon them, yet I have abstained from that also; and the reason is, because I judged it a matter vndue and.preposterous to prove rules and maximes; wherein I had the example of Mr. Littleton and Mr. Fitzherbert, whose writings are the institutions of the lawes of England, whereof the one forbeareth to vouch any authenticitie altogether, the other never reciteth a booke, but when hee thinketh the case so weake of credit in it selfe, as it needs a surety; and these two I did far more esteeme than Mr. Perckings or Mr. Stamford that have done the contrary: well will it appeare to those that are learned in the lawes, that many of the cases are judged cases, either within the books or of fresh report, and most of them fortified by judged cases, and similitude of reason, though in some few cases I did intend expressly to weigh downe the authority by evidence of reason, and therein rather to correct the law than to soothe a received error, or by unprofitable subtlety, which corrupteth the sense of law, to reconcile contrarieties; for these reasons I resolved not to derogate from the authority of the rules, by vouching of any of the authority of the cases, though in mine owne copy I had them quoted:
for although the meanesse of mine owne person
may now at first extenuate the authority of this
collection, and that every man is adventurous to
controule yet surely according to Gamduells rea-
son, if it bee of weight, time will settle and autho-
rize it; if it bee light and weake, time will re-
proove it: So that, to conclude, you have here a
worke without any glory of affected noueltie, or
of method, or of language, or of quotations and
authorities, dedicated onely to use, and submitted
onely to the censure of the learned, and chiefly
of time.

Lastly, there is one point above all the rest, I
accompt the most materiall for making these rea-
sions indeed profitable and instructing, which is,
that they bee not set downe alone like short darke
Oracles which every man will bee content still
to allow to bee true, but in the meane time they
give little light or direction; but I have attended
them, a matter not practised, no not in the Civill
law to any purpose; and for want whereof, in-
deed the rules are but as proverbs and many
times plaine fallacies; with a cleere and perspi-
cuous exposition, breaking them into cates, and
opening them with distinctions, and sometimes
shewing the reasons aboue whereupon they de-
pend, and the affinity they haue with other rules:
and though I haue thus with as good discretion
and fore-sight as I could, ordered this worke, and
as I might say without all colours or showes
husbanded it best to profit, yet notewhilefes not
wholly trusting to mine owne judgement, haung
collected 300. of them, I thought good before I
brought them all into forme to publish some
few, that by the taste of other mens opinions in
this first, I might receive either approbation in
mine owne course, or better aduice for the al-
tering of the other which remaine, for it is,
great reason that that which is inten-
ded to the profite of others,
should be guided by the
conceits of o-
thers.
REGULAE.

1. **Niure non remota causa, sed proxima spectatur.**
2. **Non potest adduci exceptio eiusdem rei, cuius pictur dissolutio.**
3. **Verba fortiús accipiuntur contra proferentem.**
4. **Quod sub certa forma concessum vel reseruatum est, non trahitur ad valorem vel compensacionem.**
5. **Necessitas inducit privilegium quoad iura priuata.**
6. **Corporalis iniuria non receptit asitationem de futuro.**
7. **Excusat aut extenuat delictum in capitalibus quod non operatur idem in ciuilibus.**
8. **Estimatio prateriti delicti ex post facto non quam crescit.**
9. **Quod remedio desitnitor ipsa re valet, si culpa absit.**
10. **Verba generalia restranguntur ad habilitatem rei vel personae.**
11. **Iura sanguinis nullo iure Civili divini posse sunt.**
12. **Receditur a placitis iuris potissimum iniuriae, ne delicta maneant impunita.**
13. **Non accipi debent verba in demonstrationem falsam.**
falsam, qua competunt in limitationem veram. 59.
14. Licet dispositione de interesse futuro sit inutilis, 
tamen potest fieri declaratio praecedens quae sortiatur 
effessum interveniente novo actu. 60.
15. In criminalibus sufficit generalis malitia intentionis cum facto pari gradus. 65.
16. Mandata licta recipiunt strictam interpretationem, sed illicita latam & extensam. 66.
17. De fide & officio Iudicis non recipitur quae, 
se de scientia sese sit error Iudicis esse facti. 68.
18. Persona commissa equidistant interesse proprio. 72.
19. Non impedit clausula derogatoria qua minus 
ab eadem potestate res dissoluntur a quibus constituuntur. 74.
20. Actus inceptus cuinis perfectio pendet ex voluntate partium renovari potest, si autem pendet ex vo 
luntate tertia persona vel ex contingenti renovari non potest. 79.
21. Clausula vel dispositione inutilis per præsumptionem remotam vel causam ex post facto non fulcitur. 82.
22. Non videtur consensum retinuisse, si quis ex 
præscripto minantis aliquid immutauit. 89.
23. Ambiguitas verborum latens verificatam suppletur, nam quod ex facto ortur ambiguam veri 
ficatam facti sollitatur. 90.
24. Licita bene miscetur, formula nisi iuris ob 
ficit. 94.
25. Presumptio corporis sollit errorem nominis, & ver 
ritas nominis sollit errorem demonstrat. 96.

THE
MAXIMES OF
THE LAW.

In jure non remota causa, sed proxima Regula I.
spectatur.

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

As if an anuity be granted pro consilio inpen 
so & impendendo, and the grantee commit treason, 
whereby he is imprisoned, so that the grantor cannot have accessse into him for his counsell, yet ne 
evertheless the annuity is not determined by this
(2) non feasance; yet it was the grantee's act and default to commit the treason, whereby the imprisonment grew: But the law looketh not so farre, but excuseth him, because the not giving counsel was compulsory, and not voluntary, in regard of the imprisonment.

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

So if I be seised of an advouson in gross, and an usurpation be had against me, and at the next avoidance I usurpe aere, I shall be remitted, and yet the presentation, which is the act remote, is mine own act: but the admission of my Clerk, whereby the inheritance is reduced to mee, is the act of the Ordinary.

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

So if I be bound to enter into a statute before the Mayor of the Staple at such a day for the securitie of 100l. and the obligee before the day accept of mee a lease of an house in satisfaction, this is no plea in debt upon my obligation, and yet the end of that statute was but security of money: but because the entering into this statute itself, which is the immediate act whereunto I am bound, is a corporall act which lieth not in satisfaction, therefore the law taketh no consideration that the remote intent was for money.

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

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

So if I purchase land in fee-simple, and die without issue, in the first degree the law respecteth dignitie of sexe and not proximity, and therefore the remote heir on the part of the father shall have it before the neere heir on the part of
of the mother; but in any degree paramount the first the law respecteth not, and therefore the neere heire by the grand-mother on the part of the father shall have it before the remote heire of the grandfather on the part of the father.

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

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

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

But if I. S. had fallen down his Dagger drawne, and I. D. had fallen by heste vpon his Dagger, there I. D. had beene felo de se, and I. S. shall goe 44 Ed. 3 quit.

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

For if a disseisor enter into religion, the immediate cause is from the party, though the disseisent bee cast in law; but the law doth but execute the act which the party procureth, and therefore the disseisent shall not finde, &c. et sic è converso.

If a lease for yeares bee made rendring a rent, and the lesee make a feoffement of part, and the lessor enter, the immediate cause is from the law in respect of the forfeiture, though the entrie bee Dy. of the party; but that is but the pursuance and putting in execution of the title which the law giveth, and therefore the rent or condition shall bee apportioned.

So in the binding of a right by a disseisent, you are to consider the whole time from the disseisin to the disseisent cast, and if at all times the person bee not priviledged, the disseisent bindes.
And therefore if a feme covert bee disseised, and the Baron dieth and shee taketh a new husband, and then the descendent is cast: or if a man that is not infra 4. Maria, bee disseised, and hee returne into England, and goe over sea againe, and then a descendent is cast, this descendent bindeth because of the interim when the persons might have entered, and the law respecteth not the state of the person at the last time of the descendent cast, but a continuance from the verie disseised to the descendent.

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

Non potest adduci exceptio ejusdem rei, cuius petetur dissolusio.

It were impertinent and contrary in it selfe, for the law to allow of a plea in barre of such matter as is to bee defeated by the same suite; for it is included, otherwise a man should never come to the end and effect of his suite, but bee cut off in the way.

And therefore if tenant intaile of a mannour, whereunto a villeine is regardant, discontinue and dye, and the right of the entaile descend to the villeine

(7) 
Ieine himselfe, who brings a formedon, and the discontinued pleadeth villenage, this is no plea, because the devesting of the mannour, which is the intention of the suite, doth include this plea, because it determineth the villenage.

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

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

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

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

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

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

And this seemeth to mee more reasonable, than that generally an outlawrie or an attaintor should bee no plea in a writ of error brought vpon a diversfe outlawrie or an attaintor, as 7. H. 4. and 7. H. 6. seeme to hold, for that is a remedy too large for the mischief: for there is no reason but if any of the outlawries or attaintors bee indeed without error but it should be a peremptory plea to the person in a writ of error as well as in any other action.

But if a man levy a fine St conusaunce de droit come ceo que il ad de son done, & suffer a recoverie of the same lands, and there bee error in them both, hee cannot bring error first of the fine because by the recovery his title of error is discharged and released in law inclusiue, but he must begin with the error vpon the recoverie (which he may do because a fine executed barreth no titles that accrew de prisne temps after the fine levied) and so restore himselfe to his title of error vpon the fine: but so it is not in the former case of the attaintor, for a writ of error to a former attaintor is not given away by a second, except it bee by express words of an act of Parliament, but only it remaineth a plea to his person while hee liveth, and to the conveyance of his heire after his death.

But if a man levy a fine where he hath nothing in the land, which inureth by way of conclusion only, and is executorie against all purchases and new titles which shall grow to the Conusor afterwards, and hee purchase the land, and suffer a recoverie to the Conusor, and in both fine and recoverie,
rie, there is error: This fine is Janus Bifrons, and
will looke forward, and barre him of his writ of
error brought of the recovery, and therefore it will
come to the reason of the first case of the attain-
dor that hee must reply that hee hath a writ also
depending of the same fine, and so demand judg-
ment.

To returne to our first purpose, like law is it if
tenant intaile of two acres make two severall dis-
continuance to severall persons for life rendring a
rent, and bringeth a formedon of both, and in the
formedon brought of white acre the reversion and
rent referred vpon blacke acre is pleaded, and so
contrary. I take it to bee a good replication that he
hath a formedon also vpon that depending where-
unto the tenant hath pleaded the descent of the
rention of white acre, and so neither shall bee a
barre, and yet there is no doubt but if in a forme-
don the warranty of tenant intaile with affets bee
pleaded, it is no replication for the issue to say
that a Precipe dependeth brought by I. S. to quiet
the affets.

But the former case standeth vpon the particu-
ar reason before mentioned.

Verba fortius accipiuntur contra
preferentem.

His rule that a mans deedes and his words
shall be taken strongliest against himselfe,
though it bee one of the most common grounds
of the law, it is notwithstanding a rule drawn out
of the depth of reason; for first it is a Schoole-
Master of wisdome & diligence in making men
watchfull in their owne businesse, next it is au-
thor of much quiet and certainty, and that in two
sorts; first, because it fauoureth acts and conu-
ances executed, taking them still beneficially for
the grantees and possiﬀors; and secondly, be-
cause it makes an end of many questions and
doubts about construction of words: for if the
labour were onely to picke out the intention of
the parties, euery Judge would have a severall
sense, whereas this rule doth give them a sway to
take the law more certainly one way.

But this rule, as all other which are verie gene-
rall, is but a found in the ayre, and commeth in
sometimes to helpe and make vp other reasons
without any great instruction or direction, ex-
cept it be duey conceived in point of difference,
where it taketh place, and where not; and first
we will examine it in grants, & then in pleadings.

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

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

So if I graunt ten pounds rent to Baron and feme, and if the Baron dye that the feme shall have three pounds rent, because these words rest ambiguous whether I intend three pounds by way of increase or three pounds by way of restraint and abatement of the former rent of ten pounds, it shall bee taken stronglie against mee that am the grauntor, that it is 3l. addition to the ten; but if I had let land to Baron and feme for three lives, referring 10l. per annum, and if the Baron dye referuing three pounds, this shall bee taken contrary to the former case, to abridge my rent onely to three pounds.

So if I demise omnes boscos meos in villa de dale for years, this passeth the soil, but if I demise all my lands in dale exceptis boscis, this extendeth to the trees onely and not to the soil.

So if I sowe my lands with corne, and let it for yeares, the corne passeth to my leassee, if I except it not; but if I make a leafe for life to I. S. upon condition that upon request he shall make mee a leafe for yeares, and I. S. soweth the ground, and then I make request, I. S. may well make me a leafe excepting his corne, and not break the condition.

So if I have free warren in mine owne hand, and let my land for life not mentioning the warren, yet the leassee by implication shall have the warren discharged and extract during his leafe: but if I let the land una cum libera warrenis, excepting white acre, there the warren is not by implication referued vnto mee either to bee injoyed or extinguished, but the leassee shall have warren against mee in white acre.

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

Otherwise had it been if the seigniory had bin by homage fealty and rent, because of the dignity of the seruice which could not have passed by intendment by the grant of the rent, but if I be seised of the maner of dale in fee whereof I. S. holds by fealty and rent, and I grant the manor excepting the rent, the fealtie shall passe to the grantee, and I. S. shall have but a rent secke.

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

But if I giue land with my daughter in franco marriage, the remainder to I. S. and his heires, this grant cannot bee good in all the parts, according to the words, for it is incident to the nature of a gift in franco marriage that the donee hold it of the donor, and therefore my deed shall bee taken so strongly against my selfe* that rather than the remainder shall be voide the franco marriage though it bee first placed in the deede shall bee voide as a franco marriage.

But if I giue land in franco marriage referring to mee and my heires ten pounds rent, now the franco marriage stands good and the referuation is voide, because it is a limitation of a benefit to my selfe and not to a stranger.

So if I let white acre, blacke acre, and greene acre to I. S. excepting white acre, his exception is voide, because it is repugnant, but if I let the three acres, aforefaide, rendering twenty shillings rent, viz. for white acre ten shillings, and for blacke acre ten shillings, I shall not destraine at all in greeneacre, but that shall bee discharged of my rent.

So if I grant a rent to I. S. and his heires out of my manour of dale & obligo manerium & omnia bona & catella mea super manerium pradictum existentia ad distringendum per Balium Domini Regis; this limitation of the distresse to the Kings Baliffe is voide, and it is good to giue a power of distresse to I. S. the grantee and his Baliffes.

* Quære cur le leylicle de le contrary, entant que in un grant quant un part del fait ne peut exister nue lauter le dare: ferre voit l'autemant in un deuile et accordan lant lo pint de Sur Anderson et Owen luft: contra Wilmerley Juft: P. 40. Eliz. in le cas de Coule de Wastwick et Sur Barkley in bono banco.

voide, and it shall not be good, as in the other
case, to make a reservation of twenty shillings
good unto my selfe, but it shall bee utterly voide
as if no reservation at all had beene made; and if
the truth bee that I that am the donor hold of the
Lord paramount by ten shillings onely, then
there shall bee ten shillings onely reserv'd upon
the gift entaile as for ovelty.

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

But now it is to bee noted, that this rule is the
last to bee resortted to, and is never to bee relied
upon but where all other rules of exposition of
words faile; and if any other come in place, this
giueth place. And that is a point worthy to bee
observed generally in the rules of the law, that
when they encounter and crosse one anothe in any
case, it bee understood which the law holdeth worther, and to bee preferred; and its in this particular very notable to consider, that this being a rule of some strictnesse and rigour, doth not as it were it's office, but in absence of other
rules which are of more equity and humanity;
which

which rules you shall afterwards finde set downe
with their expostions and limitations.

But now to giue a taste of them to this present
purpose, it is a rule that generall words shall ne-
er bee stretched too farre in intendment, which
the Civilians utter thus. Verba generalia restrin-
guntur ad habilitatem personæ, vel ad aptitudinem
rei.

Therefore if a man grant to another Com-
on intra mesas & bundas villa de dale, and
part of the ville is his feueral, and part his
waste and Common, the grantee shall not haue
Common in the Seueral, and yet that is the
strongest exposition against the grantor.

So it is a rule, verba ita sunt intelligenda, ut res
magic valent quam percat: and therefore if I giue
land to I. S. and his heires reddend' quinque li-
bras annatim to I. D. and his heires, this implies
a condition to mee that am the grantor: yet it
were a stronger exposition against mee, to lay
the limitation should bee voide, and the feoffe-
ment absolute.

So it is a rule, that the law will not intend a
wrong, which the Civilians utter thus: Ea est ac-
cepta interpretatio, qua vitio cares. And there-
fore if the executor of I. S. grant omnia bona &
consella sua, the goods which they haue as execu-
tors
tors will not passe, because *non constat* whether it may bee a defaulation, and so a wrong; and yet against the trespasser that taketh them out of their hand, they shall declare *quod bona sua cepit*.

So it is a rule, that words are so to be understood, that they work somewhat, and bee not idle and friulous: *verba aliquid operari debent, verba cum effectu sunt accepienta*. And therefore if I buy and sell you the fourth part of my manor of dale, and say not in how many parts to be divided, this shall bee construed foure parts of five, and not of 6. nor 7. &c. because that it is the strongest against mee; but on the other side, it shall not bee intended foure parts of foure parts, or the whole or foure quarters; and yet that were strongest of all, but then the words were idle and of none effect.

So it is a rule, *Devinatio non interpretatio est, qua omnia recedit a litera*: and therefore if I have a fee farme rent issuing out of white acre of ten shillings, and I reciting the same reversion do grant to I. S. the rent of five shillings perciendi de redit' predict' & de omnibus terris & tenementis meis in dale with a clause of distresse, although there bee attournement yet nothing paffeth out of my former rent, and yet that were strongest against mee to have it a double rent or grant of part of that rent with an enlargement of a distresse in the other land, but for that it is against the words, because *copulacio verborum indicat actionem in eodem sensu*, and the word *de* (anglice out of) may be taken in two senes, that is, either as a greater summe out of a lesse, or as a charge out of land or other principall interest; and that the coupling of it with lands & tenemtis *vix*. I reciting that I am seised of such a rent of ten shillings, doe grant five shillings perciendi de eodem reddi it is good enough without attornment, because *perciendi de &c.* may well be taken for *parcella de &c.* without violence to the words, but if it had beene *de reddi' predict' al- though I. S. bee the person that payeth mee the forefaid rent of ten shillings, yet it is voide, and so it is of all other rules of exposition of grants when they meet in opposition with this rule they are preferred.

Now to examine this rule in pleadings as wee haue done in grants, you shall finde that in all imperfections of pleadings whether it bee in ambiguity of words and double intendments, or want of certainty and averments, the plea shall be strictly and strongly against him that pleads.

For ambiguity of words, if in a writ of entrie upon disseisin, the tenant pleads jointenancy with I. S. of the gift and feoffement of I.D. judgement de briefe the demandant faith that long time before I. D. any thing had the demandant himselfe was seised in tee *quousque predict'. I. D.*
super possessionem eius intrauit, and made a joint
feoffement, whereupon he the demandant returned
and so was seised until by the defendant alone he
was disseised; this is no plea, because the word
intrauit may be understood either of a lawfull
entrée, or of a tortious, and the hardest against
him shall be taken, which is, that it was a
lawfull entry, therefore he should have alleged
precisely that I. D. disseisiuit.

So upon ambiguities that grow by reference,
If an action of debt bee brought against I. N. and
I. P. Sheriffs of London upon an escape, and
the plaintiff doth declare upon an execution by
force of a recovery in the prison of Ludgate
and so continued sub custodia I. N. & I. L. in 2. King
H. 8. and so continued sub custodia I.
N. & I. L. in 3. K. H. 8. and then was suffered to
escape: I. N. & I. L. plead that before the escape
supposed at such a day anno superior in nara-
tionem specificato the said I. D. and I. S. ad tunc
vicecomites suffered him to escape, this is no
good plea, because there bee three years speci-
fied in the declaration, and it shall be hardest taken
that it was I. or 3. H. 8. when they were out
of office. and yet it is nearly induced by the
ad tunc vicecomites which should leave the in-
tendment to be of that year in which the decla-
roration supposed that they were Sheriffs, but
that sufficeth not, but the yeare must be alleged
in fact, for it may bee mislaid by the plaintiff,
and therefore the defendants meaning to dis-
charge themselves by a former escape, which was
not in their time, must allege it precisely.

For incertitude of intendment, If a warranty
collaterall be pleaded in barre, and the plaintiff
by replication to avoid the warranty, faith, that
hee entred upon the possession of the defend-
ant, non conflat whether this entrie was in
the life of the ancestor or after the warranty at-
ached: and therefore it shall bee taken in hardest
sense, that it was after the warranty descended,
if it bee not otherwise averred.

For impropriety of words, If a man pleade
that his ancestor died by protestation seised, and
that I. S. abated &c. this is no plea, for there can-
not bee an abatement except there bee a dying
seised alleged in fact, and an abatement shall not
be improperly taken for disseisin in pleading car
parols sunt pleas.

For repugnance, if a man in auowrie declare
that he was seised in his demesne as of fee of
white acre, and being so seised did demite the
said white acre to I. S. habendum the moiety for
21 yeares from the date of the deed, the other
moity from the surrender, expiration, or deter-
mination of the estate of I. D. qui tenet predicti
medietatem ad terminum vitæ sui reddend' xl. s.

rent, this declaration is insufficient, because the
feudin that he hath alleged in himselfe in his de-
mene as of fee in the whole, and the state for life
or a moiety are repugnant, and it shall not be cured
by taking the last which is exprest to con-
troll the former, which is but generall and for-
mall, but the plea is naught, and yet the matter in
law had bin good to haue intituled him to haue
distrained for the whole rent.

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

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

So there is another rule, that in pleading a
man shall not disclose that which is against
himselfe: and therefore if it be made that is to
be fet forth on the other side, then the plea shall
not be taken in the hardest sense but in the most
beneficall, and to bee left unto the contrary par-
tie to alleage.

And therefore if a man bee bound in an obli-
gation that if the feme of the obligee doe de-
cease before the feast of Saint Ionh the Baptist
which shall bee in the yere of our Lord God
1598, without issue of her bodie by her husband
lawfully begotten then living, that then the
bond shall bee void, and in debt brought upon
this obligation, the defendants plead that the
feme died before the said feast without issue of
her bodie then living: if this plea should be ta-
k en strongliest against the defendant, then should
it be taken that the feme had issue at the time of
her death, but this issue died before the feast;
but that shall not bee so understood because it
makes against the defendant, and it is to bee
brought in of the plaintiffs side, and that with-
out trauersfe.

Soif in a detinue brought by a feme against
the executors of her husband for her reasonable
part of the goods of her husband, and her de-
mans is of a moiety, and she declares upon the
cultome of the Realme by which the feme is to
have
have a moiety, if no issue be had between her and her husband, and the third part if there be issue had, and declareth that her husband dieth without issue had between them; if this count should be hardliest construed against the partie, it should be intended that her husband had issue by another wife, though not by her, in which case the feme is but to have the third part likewise, but that shall not be so intended because it is matter of reply to be shewed of the other side.

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

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

And therefore if land be given by will by H.C. to his sonne I.C. and the heires males of his bodie begotten; the remainder to F.C. and the heires males of his bodie begotten; the remainder to the heires males of the bodie of the devi-

for, the remainder to his daughter S.C. and the heires of her bodie, with a clause of perpetuities, and the question comes upon the point of forfeiture in an assize taken by default, and evidence is given, and demurrer upon evidence, and in the evidence given to maintain the entry of the daughter upon a forfeiture, it is not set forth nor averred that the devisor had no other issue male, yet the evidence is good enough, and it shall be so intended; and the reason hereof cannot bee, because a jury may take knowledge of matters not within the evidence, and the Court contrariwise cannot take knowledge of any matters not within the pleas: for it is cleere, that if the evidence had been altogether remote, and not proving the issue, there, although the jury might find it, yet a demurrer might well bee taken upon the evidence.

But if I take the reason of difference to be betweene pleadings, which are but openings of the case, and evidences which are the proves of an issue, for pleadings being but to open the veritie of the matter in fact indifferently on both parts, hath no scope and conclusion to direct the construction and intendment of them, and therefore must be certaine, but in evidence and proofs the issue is the state of the question and conclusion shall encline and apply all the proves as tending to that conclusion.
Another reason is, that pleadings must be certain, because the adverse party may know where to answer, or else he were at mischief, which mischief is remedied by demurrer; but in evidence if it be short, impertinent or uncertain, the adverse party is at no mischief, because it is to be thought that the jury will pass against him; yet notwithstanding the jury is not compellable to supply the defect of evidence out of their own knowledge, though it be in their liberty so to do, therefore the law alloweth a demurrer upon evidence also.

Quod sub certa forma concessum vel reseruatum est non trabitur ad valorem vel compensationem.

The Law permitteth every man to part with his owne interest, and to qualifie his owne grant as it pleaseth himselfe, and therefore doth not admit any allowance or recompence if the thing be not taken as it is granted.

So in all profiles a prender, if I graunt Common for ten beasts, or ten loads of wood out of my Coppes, or ten loads of hay out of my Meads to be taken for three yeares, hee shall not have Common for thirty beasts, or thirty loads of wood or hay the third yeare if hee forbear for the space of two yeares, here the time is certain and precise.

So if the place be limited, or if I graunt Estovers to bee spent in such a house, or stone towards the reparation of such a Castle, although the grantee doe burne of his fuel and repair of his owne charge, yet hee can demand no allowance for that he tooke it not.

So if the kind be specified, as if I let my Park referring to my selfe all the Deere and sufficient pasture for them, if I do decay the game whereby there is no Deere, I shall not haue quantite of pasture answerable to the feed of so many Deere as were upon the ground when I let it, but am without any remedy except I replenishe the ground againe with Deere.

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

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

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

As if I graunt Common ubicunque averia mea ierint, the Commoner cannot otherwise entitle himselfe, except that hee auctre that in such grounds my beasts have gone and fed, and if I never put in any but occcupie my grounds otherwise, hee is without remedy; but if I put in, and after by poverity or otherwise I desist, yet the Commoner may continue; contrariwise, if the words of the graunt had beene quandocunque averia mea ierint, for there it depends continually upon the putting in of my beasts, or at least the generall seasons when I put them in, not vpon every hour or moment.

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

But

Necesitas inducit privilegium quoad iura privata.

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

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

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

So if divers bee in danger of drowning by the casting away of some boate or barge, and one of them
them get to some plancke, or on the boates side to keepe himselfe above water, and another to save his life throwth him from it, whereby hee is drowned; this is neither se defendendo nor by misadventure, but industriable. So if divers felons bee in a Iaile, and the Iaile by casualty is set on fire, whereby the prisoners get forth, this is no escape, nor breaking of prison.

So vpon the Statute, that every Merchant that setteth his merchandize on land without satisfying the Customer or agreeing for it (which agreement is construed to bee incertainty) shall forfeit his merchandize, and it is so that by tempest a great quantity of the merchandize is cast over board, whereby the Merchant agrees with the Customer by estimation, which falleth short of the truth, yet the over-quantity is not forfeited; where note that necessity dispenseth with the direct letter of a Statute law.

So if a man have right to land, and doe not make his entry for terror of force, the law allows him a continual claim, which shall bee as beneficiall vnto him as any entry; so shall a man sue his default of appearance by crestein de eau, and avoid his debt by dureste, whereof you shall finde proper cases elsewhere.

The second necessity is of obedience, and therefore

fore where Baron and Feme commit a felony, because the law intends her to have no will, in regard of the subjection and obedience shee owes to her husband.

So one reason amongst others why Embassadors are vse to bee excused of practices against the State where they reside, except it be in point of conspiracie, which is against the law of Nations, and society, is, because non constat whether they have it in mandatis, and then they are excused by necessity of obedience.

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

The third necessity is of the act of God, or of a stranger, as if I bee particular tenant for yeares of a house, and it be overthrown by grand tempest, or thunder and lightning, or by sudden floods, or by invasion of enemies; or if I have belonging unto it some Cottage which hath beene infected, whereby I can procure none to inhabit it, no workeman to repaire them, and so they fall down. In all these cases I am excused in waste: but of this last learning when and how the act of God and strangers doe excuse, there bee other particular rules.
But then it is to be noted, that necessitie priviledgeth only quoad iura priuata, for in all cases if the act that should deliver a man out of the necessitie be against the Common-wealth, necessity excusat not: for privilegium non valet contra Republicam; and as another saith, Necessitas publica maior est quam priuata; for death is the last and farthest point of particular necessitie, and the law imposeth it upon every subject, that he preferre the urgent service of his Prince and Country before the safety of his life; As if in danger of tempest those that are in the ship throw over other men's goods, they are not answerable: but if a man be commanded to bring Ordnance or Munition to relieve any of the King's towns that are distressed, then he cannot for any danger of tempest justify the throwing of them overboard, for there it holdeth which was spoken by the Romans when they alleged the same necessity of weather to hold him from imbarquing, Necesse est ut eam non ut viuam. So in the case put before of husband and wife, if they joyn in committing treason, the necessity of obedience doth not excuse the offence as it doth in felony, because it is against the Common-wealth.

So if a fire be taken in a street, I may justify the pulling down of the wall or house of another man to save the row from the spreading of the fire; but if I be assailed in my house in a City or Towne, and distressed, and to save my life I set fire on mine owne house, which spreadeth and taketh hold upon other houses adjoining, this is not justifiable, but I am subject to their action upon the case, because I cannot remove mine owne life by doing any thing which is against the Common-wealth: But if it had beene but a private trespass, as the going over another's ground, or the breaking of his inclosure when I am pursued for the safegard of my life, it is justifiable.

This rule admiteth an exception when the Law doth intend some fault or wrong in the partie that hath brought himselfe into the necessitie: so that is necessitas culpabiles. This I take to bee the chiefe reason, why serpsum defendendo is not matter of justification, because the law intends it hath a commencement upon an unlawful cause, because quarrels are not presumed to grow without some wrongs either in words or deeds on either part, and the law that thinketh it a thing hardly triable in whose default the quarrell beganne, supposeth the partie that kills another in his owne defence not to be without malice; and therefore as it doth not touch him in the highest degree, so it putteth him to sue out his pardon of course, and punisheth him by forfeiture of goods: for where there cannot be anie malice nor wrong presumed, as where a man affiaileth mee to robbe mee, and I kill him that affiaileth mee; or if a woman kill him that affiaileth her...
her to rauish her it is justificable without anie pardon.

So the common case proueth this exception, that is, if a mad man commit a felonie hee shall not lose his life for it, because his infirmity came by the Act of God; but if a drunken man commit a felonie, he shall not be excused because his imperfection came by his own default; for the reason and losse of deprivation of will and election by necessitie and by infirmitie is all one, for the lacke of (arbitrium solutum) is the matter: and therefore as infirmitas culpabilis excuseth not, no more doth necessitas culpabilis.

Corporalis iniuria non recipit estimationem de futuro.

The law in many cases that concerne lands or goods doth deprive a man of his present remedie, and turneth him ouer to a further Circuit of remedie, rather than to suffer an inconvenience: but if it bee question of personal paine, the law will not compell him to sustaine it and expect remedie, because it holdeth no damage a sufficient recompence for a wrong which is corporall.

As if the Sheriffe make a false returne that I am

am summoned whereby I lose my land; yet because of the inconuenience of drawing all things to incertaintie and delay, if the Sheriffs returne should not be credited, I am excluded of my auerment against it, and am put to mine action of deceit against the Sheriffs and Summoners; but if the Sheriffs upon a Cap. returne a Cep: corpus et quod est languidus in prisona, there I may come in and falsifie the return of the Sheriffs to fauce my imprisonment.

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

So if a trespasser drive away my beasts ouer another's ground, I pursue them to rescue them, yet am I a trespasser to the stranger upon whose ground I came; but if a man assaile my person, I am

and
and I fly ouer anothers ground, now am I no tres-
passer.

This ground some of the Canonists doe apt-
ly inferre out of Christs sacred mouth, *Amen est
corpus supra vestimentum*, where they say *vesti-
mentum* comprehend all outward things ap-
pertaining to a mans condition, as lands and
goods, which they say, are nor in the same degree
with that which is corporall; and this was the
reason of the ancient *lex talionis, oculus pro oculo,
dens pro dente*, so that by that law *corporalis invia
de præterito non receptæ est mationem*: But our law
when the injury is already executed and inflicted,
thinketh it best satisfaction to the party grieved
to relieve him in damage, and to give him rather
profit than revenge; but it will never force a man
to tolerate a corporall hurt, and to depend upon
that inferiour kind of satisfaction, *ut in damagijs.*

---

_Excusat aut extenuat delictum in capita-
libus, quod non operatur idem in civilibus._

_IN Capitall causes in sauorem vitae, the law will
not punish in so high a degree, except the ma-
lice of the will and intention appeare; but in
Civill trespasses and injuries that are of an inferi-
our nature, the law doth rather consider the
damage of the party wronged, than the malice
of him that was the wrong doer; and therefore,
The law makes a difference betweene killing
a man vpon malice fore thought, and vpon pre-
sent heate: But if I give a man slanderous words,
whereby I damnifie him in his name and credit,
it is not matter all whether I do them vpon sud-
daine choler and pronocation, or of set malice;
but in an action vpon the case, I shall render da-
mgages alike.

So if a man bee killed by misadventure, as by
an arrow at Buts, this hath a pardon of course;
but if a man bee hurt or maimed onely, an action
of trespass lieth, though it be done against the
parties minde and will, and he shall bee punished
in the law, as deeply as if hee had done it of
malice.

So if a Surgeon authorized to praclife, doe
through negligence in his cure caufe the party to
dye, the Surgeon shall not bee brought in questi-
on of his life; and yet if hee doe onely hurt the
wound whereby the cure is cast backe, and death
ensues not, hee is subieet to an action vpon the
case for his misfeisance.

So if Baron and Feme bee, and they commit
felony together, the Feme is neither principal nor acces-
sary, in regard of her obedience to the
will of her husband; but if Baron and Feme joine
in committing a trespass vpon land or other-
wise, the action may bee brought against them
both._

---

Regula 7.
So if an infant within yeares of discretion, or a mad-man kill another, he shall not be impleached thereof; but if they put out a man's eye, or doe him like corporall hurt, he shall be punished in trespass.

So in felonies the law admiteth the difference of principall and accessarie, and if the principall dye, or bee pardoned, the proceeding against the accessarie faileth; but in a trespass, if one command his man to beare you, and the servant after the battery dye, yet your action of trespass stands good against the Master.

Æstimatio præteriti delicti ex postremo facto nunquam crescit.

The law construeth neither penall lawes, nor penall facts by intendments, but considereth the offence in degree, as it standeth at the time when it is committed; so as if any circumstance or matter bee subsequent, which laide together with the beginning should seeme to draw to it a higher nature, yet the law doth not extend or amplify the offence.

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

Regula 8. AEstimatio præteriti delicti ex postremo facto nunquam crescit.

So if John Stile steale 6d. from mee in monie, and the King by his proclamation doth raife monies, that the weight of siluer in the piece now of 6d. should goe for 12d. yet this shall remaine pettie larcenie and no felonie; and yet in all civill reckonings the alteration shall take place: as if I contract with a labourer to doe some worke for 12d. and the inhaunsing of monie commeth before I pay him, I shall satisfie my contract with a sixepenny piece so raifed.

So if a man deliver goods to one to kepe, and after retain the same person into his seruice, who
who afterwards goeth away with his goods, this is no felony by the statute of 21. H. 8. because he was no servant at that time.

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

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

Regula 9. Quod remedio distituitur si a re volet si culpa absit.

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

And therefore if the heire of the disseisor which is in by descent make a lease for life, the remainder for life unto the disseifie, and the lease for life die, now the franketement is cast upon the disseifie by act in law, and thereby hee is disabled to bring his Precipe to recover his right, whereupon the law judgeth him in his ancient right as strongly as if it had beene recovered and executed by action, which operation of law is by an ancient terme & word of law called a remitter, but if there may be assigned any default or laches in him, either in accepting the free hold, or in accepting the interest that drawes the free hold, then the law denieth him anie such benefit.

And therefore if the heire of the disseisor make lease for yeares the remainder in fee to the disseifie, the disseifie is not remitted, and yet the remainder is in him without his owne knowledge or assent, but because the free hold is not cast upon him by act in law it is no remitter. quod nota.

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

So if the husband bee seised in the right of his wife, and discontinue and dieth, and the feme takes another husband, who takes a feoffment from the disseisee to him and his wife, the feme is not remitted; and the reason is, because shee was once sole, and to a laches in her for not pursuing her right: but if the feoffment taken backe had been to the first husband and herselfe, she had been remitted.

Yet if the husband discontinue the lands of the wife, and discontinue make a feoffment to the vse of the husband and wife, she is not remitted, but that is upon a speciall reason, vpon the letter of the statute of 27. H. 8. of vses, that withheld that the *cesa quæ vse* shall have the possession in qualitie and degree as he had the vse; but that holdeth place onely vpon the first vesting of the vse; for when the vse is absolutely executed and vested, then it doth infue merelie the nature of possessiouns; as if the discontinuee had made a feoffment in *fee* to the vse of I. S. for life, and the remainder to the vse of baron and feme, and leseie for life die, now the feme is remitted, *causa quasupra*.

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

So if the feme be disseised and intermarry with the disseisor, who makes a lease for life, rendring rent, and dieth leaving a sonne by the same feme, and the sonne accepts the rent of the leseie for life, and then the feme dies, and the leseie for life dies, the sonne is not remitted, yet the *frankement* was cast upon him by act in law, but because he had agreed to be in the tortious reversion by acceptance of the rent, therefore no remitter.

So if tenant intaile discontinue, and the discontinue make a lease for life, the remainder to
(44) the issue intaile bbeing within age and at full age, the leassee for life surrendereth to the issue intaile and tenant intaile dies, and lessee for life dies, yet the same issue is not remitted, and yet if the issue had accepted a feoffement within age, and had continued the taking of the profits when he came of full age, and then the tenant intaile had died, notwithstanding his taking of the profits he had beene remitted: for that which guides the remitter, is, if he be once in of the free hold without any laches: as if the heire of the disseifier enfeoffes the heire of the disseisee who dies, and it descends to a second heire upon whom the frank tenement is cast by descent, who enters and takes the profits, and then the disseisee dies, this is a remitter, causa qua supra.

Also if tenant intaile discontinue for life, and take a surrender of the leassee, now he is remitted and seised againe by force of the tail, and yet hee commeth in by his owne act: but this case differeth from all other cases, because the discontinuance was but particular at first, and the new gained reversion is but by intendment and necessity of law, and therefore is but as it were initio, with a limitation to determine whenever the particular discontinuance endeth, and the state commeth backe to the ancient right.

To proceed from cases of remitter, which is a great branch of this rule, to other cases: If executors do redeeme goods pledged by their testator with their owne money, the law doth convert so much goods as doth amount to the value of that they hide forth, to themefelse in property, and upon a plea of fully administred it shall be allowed: the reason is, because it may bee matter of necessity, for the well administring of the goods of the testator, and executing their trust that they disburse money of their owne: for else perhaps the goods would bee forfeited, and hee that had them in pledge would not accept other goods but money, and so it is a libertie which the law gives them, and they cannot have any suite against themselves; and therefore the law gives them leave to retaine so much goods by way of allowance: and if their bee two executors, and one of them pay the money, hee may likewise retaine against his companion if hee have notice thereof.

But if there bee an overplus of goods, above the value of that he shall disburse, then ought he by his claim to determine what goods hee doth elect to have in value, or else before such election if his companion doe sell all the goods, hee hath no remedy but in Spiritual Court: for to say he should bee tenant in common with himselfe and his companion pro rata of that hee doth lay out, the law doth reject that course for intriciteness.

So if I have a lease for yeares worth 20l. by
the yeare, and graunt vnto I. D. a rent of 10l. a
yeare, and after make him my executor, now I.
D. shall be charged with assets ten pounds one-
ly, and the other ten pounds shall be allowed and
considered to him; and the reason is, because the
not refusing shall bee accounted no laches unto
him, because an executorship is *puum officium*
and matter of conscience and trust, and not like a
purchase to a mans owne vse.

Like law it is, where the debtor makes the
debeec his executor, the debt shall bee con-
considered in the assets, notwithstanding it bee a thing
in action.

So if I have a rent charge, and graunt that up-
on condition, now though the condition be bro-
ken, the grantees estate is not defeated till I have
made my claime; but if after such grant my fa-
ther purchase the land, and it descend to me,
now if the condition be broken, the rent ceaseth
without claime. But if I had purchased the land
my selfe, then I had extincted mine owne condi-
tion, because I had disabled my selfe to make my
claime, and yet a condition collateral is not sus-
pended by taking backe an estate, as if I make a
feoffment in fee, vpon condition that I. S. shall
marry my daughter, and take a lease for life from
my feoffee, if the feoffee breake the condition,
I may claime to hold in by my fee-simple; but
the cale of the charge is otherwise, for if I have a
rent charge issuing out of 20. acres, and graunt
the rent ouer vpon condition, and purchase but
one acre, the whole condition is extinct, and the
possibilitie of the rent by reason of the condi-
tion, is as fully deftroyed as if there had beene no
rent in *Esse*.

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

But if I let land to I. S. rendring a rent, with a
condition of reentry, and I. S. bee attainted,
whereby the lease comes to the King, now the
demand vpon this land is gone, which should
give mee benefit of reentrie, and yet I shall not
have it reduced without demand; and the rea-
son of difference is, because my condition in this
case is not taken away in right, but onely sus-
pended by the priviledge of the possession: for if the
King grant the lease ouer, the condition is reu-
ied as it was.

Also if my tenant for life graunt his estate to
the King, now if I will graunt my reversion o-
uer, the King is not compellable to atturne, there-
fore it shall passe by graunt by deedde without at-
turnment.
So if my tenant for life bee, and I graunt my reversion per altrius vit, and the grantee dye, living cei que vie, now the privity betweene tenant for life and mee is not restored, and I have no tenant in effet to atturne, therefore I may passe my reversion without atturnement. quod nota.

So if I have a nomination to a Church, and another hath the presentation, and the presentation comes to the King, now because the King cannot bee attendant, my nomination is turned to an absolute patronage.

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

But if a man graunt the third presentment to I. S. and his heires, and impropriate the advouson, now the grauntee is without remedy, for hee tooke his graunt subject to that mischief at first; and therefore it was his laches, and therefore not like the case of the dower; and this graunt of the third avoidance is not like tertia pars aduationis, or medietas aduationis, upon a tenancy in common of the advouson; for if two tenants in common

common bee, and an usurpation bee had against them, and the usurper doe improper, and one of the tenants in common doe release, and the other bring his writ of right de medietate aduationis and recouer, now I take the law to bee that becaufe tenants in common ought to joine in presentment which cannot now bee, he shall have the whole patronage: for neither can there bee an apportionment, that he should present all the turnes, and his incumbent but to have a moitie of the profits, nor yet the act of impropriation shall not bee defeated. But as if two tenants in common bee of a Ward, and they joine in a writ of right of Ward and one release, the other shall recouer the entire Ward, because it cannot bee dividued: so shall it bee in the other case, though it be an inheritance, and though he bring his action alone.

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

But if I devise land by the statute of 32. H. 8. and the heire of the devisor enters and makes a feoffment in fee, and the seoffee dieth seised, this descent bindeth, and there shall not bee a I perpetuall
perpetual liberty of entry upon the reason that he never had seison whereupon he might ground his action, but hee is at a mischief by his owne laches: and like law is of the Kings Patentee: for I see no reasonable difference betwixt them and him in the remainder, which is Littletons case.

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

So if upon my aowry for services, my tenant disclaime where I may have a Writ of right as upon disclaimer, if the land after descend to me, I shall never be remitted.

Regula 10. Verba generalia restringuntur ad habilitatem rei vel persona.

It is a rule that the Kings grants shall not bee taken or construed to a special intent; it is not so with the grants of a common persona for they shall be extended as well to a forrein intent as to a common intent; yet with this exception, that they shall never bee taken to an impertinent or

ora repugnant intent: for all words, whether they bee in deeds or statutes, or otherwise if they be general and not express and precise, shall bee restrained unto the fitness of the matter or persona.

As if I graunt common in omnibus terris meus Perkpl.108. in D. and I have in D. both open grounds and feuerall, it shall not bee stretched to my common in feuerall, much lesse in my Gardens and Orchards.

So if I graunt to a man omnes arbores meas crescentes super terras meas in D. hee shall not have Apple trees or other fruit trees growing in my Gardens or Orchards if there bee any other trees upon my ground.

So if I graunt to I. S. an annuitie of x. l. a yeare pro consilio impenso & impendendo, if I. S. bee a Phytsitian, it shall bee understood of his counsell in Physicke; and if he bee a Lawyer, of his counsell in Law.

So if I doe let a tenement to I. S. neere by my dwelling house in a Burrough, provided that hee shall not erect or use any shop in the same without my licence, and afterwards I licence him to erect a shop, and I, S. is then a Miller, hee shall not by vertue of these general words erect a joiners shop.
So the statute of Chantries that willeth all lands to be forfeited, given or imploied to a superstitious use shall not be construed of the glebe lands of Parsonages; nay further, if the lands be given to the Parson of D. to say a Masse in his Church of D. this is out of the statute, because it shall bee intended but as an augmentation of his glebe; but otherwise had it beene if it had beene to say a Masse in any other Church but his owne.

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

Iura sanguinis nulla iure ciuili dirimi possunt.

They bee the very words of the civil law, which cannot bee amended to explaine this rule. Harces est nomen Iuris, filius est nomen Natura: therefore corruption of blood taketh away the privitie of the one, that is, of the heire, but not of the other, that is, of the sonne; therefore if a man bee attainted and murthered by a stranger the eldest sonne shall not have the appeale, because the appeale is given to the heire, for the youngest sonnes who are equal in blood shall not have it; but if an attainted person bee killed by his sonne, this is petty treason, for that the privitie of a sonne remaineth: for I admit the law to be, that if the sonne kill his father or mother it is petty treason, and that there remaineth so much in our lawes of the ancient foote-steps of Potestas patriae and naturall obedience, which by the law of God is the very instance itselfe, and all other governement and obedience is taken but by equitie, which I had, because some have thought to weaken the law in that point.

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

So if a man bee attainted and have a Charter of pardon, and bee returned of a Jury betwene his sonne
Sonne and I. S. the challenge remaineth; for hee may maintaine any suite of his sonne, notwithstanding the bloud be corrupted.

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

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

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

So if a villein bee attainted, yet the Lord shall haue the issues of his villein borne before or after the attainder, for the Lord hath them iure naturæ but as the increafe of a flocke.

Quere whether if the eldest sonne bee attainted, and pardoned, the Lord shall haue aide of his tenants to make him a Knight, and it seemeth hee shall; for the words of the writ hath filium primogenitum, and not filium & hæredem, and the like writ hath pur file marrier who is no heire.

Receditur à placitis iuris, potius quam inu-riae, delicta maneant impunita.

The law hath many grounds and positive learnings, which are not of the maximes and conclusions of reason, but yet are learnings received with the law, set downe, and will not have called in question: these may bee rather called placita iuris than regulæ iuris; with such maximes the law will dispense, rather than crimes and wrongs should bee vnpunished, quia falsus populi supreme lex, and falsus populi is contained in the repressing offences by punishment.

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

But if lands bee giuen to two, and to the heires of one of them, and they lease in a Precipe by default, now they shall not joine in a writ of right, because the tenant for life hath a severall action, viz. a quod ei deforciat, in which respect the jointure is broken.

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

So if two coparceners bee, and they lease the land, and one of them dye, and hath issue, and the lessee commit waste, the aunt and the issue shall joine in punishing this waste, and the issue shall recover

recoorer the moity of the place wasted, and the aunt the other moity and the entire damages; and yet actio iniuriarum moritur cum persona, but in favorabilibus magis attenditur quod prodest, quam quod nocet.

So if a man recovers by erroneous judgement, 40.Ed.3. and hath issue two daughters, and one of them is attainted, the writ of error shall bee brought against the parceners, notwithstanding the privity faile in the one.

Also it is a positive ground, that the accessory in felony cannot bee proceeded against untill the principal bee tried; yet if a man upon subtilty and malice set a mad man by some device to kill him, and hee doth so, now forasmuch as the mad man is excused, because hee can have no will, nor malice, the law accounteth the incitor as principall, though hee bee absent, rather than the crime shall goe unpunished.

So it is a ground of the law, that the appeale of murther goeth not to the heire where the party murthered hath a wife, nor to the younger brother where there is an elder; yet if the wife murther her husband, because shee is the party offender, the appeale leaps over the heire, and so if the sonne and heire murther his father, it goeth to the second brother.
But if the rule bee one of the higher sort of maximes, that are regulæ rationales and not positūæ, then the law will rather endure a particular offence to escape without punishment, than violate such a rule.

As it is a rule that penal statutes shall not bee taken by equity, and the statute of 1. Ed. 6. enacts that those that are attainted for stealing of horses shall not have their Cleargie, the Judges conceived, that this did not extend to him that should steal but one horse, and therefore procured a new act for it in 2. Ed. 6. cap. 33. and they had reason for it, as I take the law, for it is not like the case upon the statute of Glost. that gives the action of waste against him that holds pro termino vita vel annorum. It is true, that if a man holds but for a year, he is within the statute, for it is to bee noted, that penal statutes are taken strictly and literally only in the point of defining and setting downe the fact and the punishment, & in those clauses that doe concern them, and not generally in words that are but circumstances and conveyance in the putting of the case, and to see the diversity, for if the law bee, that for such an offence a man shall leefe his right hand, and the offender hath had his right hand before cut off in the warres, hee shall not lose his left hand, but the crime shall rather passe without the punishment which the law assigned, than the letter of the law should be extended, but if the statute of 1. Ed. 6. had beene, that hee that should steal one horse should bee oufled of his Cleargie, then there had beene no question at all but if a man had stolne more horces than one, but that hee had beene within the statute, quia omne minus continent in sem minus.

Non accipi debent verba in demonstrationem Regula 13 falsam qua competunt in limitationem veram.

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

Therefore if the Parish of Hurst do extend into the Counties of Wiltsh. and Barksh. and I grant my Close called Callis, situate and lying in the Parish of Hurst in the countie of Wiltsh. and the troth is, that the whole Close lieth in the County of Barksh. yet the law is, that the whole Close lieth in the County of Barksh. yet the law is, that it paffeth well enough, because there is a certaintie sufficient in that I have given it a proper name where the false reference doth not destroy, and not upon the reason that these words, in the Countie of Wiltsh.
Wiltsh. shall be taken to goe to the Parish onely, and so to bee true in some sort, and not to the Close, and so to be false. For if I had granted omnes terras meas in Parochia de Hurst in Com. Wiltsh. and I had no lands in Wiltsh. but in Barksh. nothing had past.

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

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

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

Regula 14. Licet dispositio de interesse futuro sit inutilis, samen potest fieri declaratio precedens qua fortes ait effectum intercessionem novo actu.

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

But of declarations precedent before any interest vested, the law doth allow but with this difference, so that there be some new act or conuance to give life & vigour to the declaratio precedent.

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

And therefore if I grant unto you, that if you enter into an obligation to me of 100 l. and after doe procure mee such a lease, that then the same obligation shall be void, and you enter into such an obligation unto me, & afterwards do procure such a lease, yet the obligation is simple, because the defeisance was made of that which was not.

So if I grant unto you a rent charge out of white acre and that it shall be lawfull for you to distraine in all my other lands whereof I am now seised, and which I shall hereafter purchase, although
though this bee but a libertie of distress, and no rent faue onely out of white acre, yet as to the lands afterwards to bee purchased the clause is void.

So if a reversion bee graunted to I.S. and I.D. a stranger by his deed doe graunt to I.S. the particular estate, hee will attune to the graunt, this is a void attunement, notwithstanding he doth afterwards purchase the particular estate.

But of declarations the law is contrarie; as if the disseisee make a charter of feoffement to I.S. and a letter of attuney to enter and make livery and seisme, and deliver the deed of feoffement, and afterwards livery and seisme is made accordingly, this is a good feoffement and yet hee had no other thing then a right at the time of the deliverie of the charter, but because a deed of feoffement is but matter of declaration and evidence, and there is a new act which is the livery subsequent, therfore it is good in law.

So if a man make a feoffement to I.S. vpon condition to enfeoffe I. N. within certaine daies, and there are deeds made both of the first feoffement and the second, and letters of attuney accordingly, and both those deeds of feoffement and letters of attuney are delivered at a time, so that the second deed of feoffement and

and letters of attuney are delivered when the first feoffee had nothing in the land, and yet if both liveryes bee made accordingly, all is good.

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

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

So if I devise the mannour of D. by speciall name, of which at that time I am not seised, and after I purchase it, except I make some new publication of my will this devise is voide; and the reason is, because that my death which is the con-

consummation of my will is the act of God, and not my act; and therefore no such act as the law requireth.

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

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

So if two Jointments bee, and one of them bargain, and sell the whole land, and before the enrollment his companion dieth, nothing passeth of the moiety accrued unto him by survivor.

In criminalibus sufficit generalis malitia intentionis cum facto paris gradus.

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

Therefore if an impoisoned apple bee laid in a place to poison I. S. and I. D. cometh by chance and eateth it, this is murther in the principal that is actor, and yet the malice was not against I. D.

So if a thiefe finde the doore open, and come in by night and rob an house, and bee taken with the manner, and break a doore to escape, this is burglary, yet the breaking of the doore was without any felonious intent, but it is one entire act.

So if a Caliuer bee discharged with a murderous intent at I. S. and the Pece breaketh, and strike into the eye of him that dischargeth it and killeth him, hee is felo de se, and yet his intention was not to hurt himselfe; for felonia de se and murther are crimina paris gradus. For if a man perfwade another to kill himselfe, and bee present
present when he doth so, he is a murtherer.

But quære, if I S. lay impoisoned fruit for some other stranger his enemy, and his father or mother come and eate it, whether this bee petty treason, because it is not altogether crimen paris gradus.

Mandata licita recipiunt strictam interpretationem, sed illicita latam & extensam.

IN committing of lawful authority to another a man may limit it as strictly as it pleaseth him, and if the partie authorized doe transgress his authority, though it bee but in circumstance expressed, it shall be void in the whole act.

But when a man is author and monitor to another to commit an unlawful act, then he shall not excuse himself by circumstances not pursu'd.

Therefore if I make a letter of attorney to I.S. to deliver lierie and feisin in the capittall Mesnage, and hee doth it in another place of the land, or betweene the hours of 2. and 3. and he doth it after or before, or if I make a Charter of feeoffement to I.D. and I.B. and express the feisin to be delivered to I.D. and my attorney deliver it to I.B. in all these cases the act of the attorney as to execute the estate, is void; but if I say generally to I.D. whom I meane only to entroffe, and my attorney make it to his attorney, it shall be intended, for it is a lierie to him in law

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

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

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

As if a man bid I.S. to pilfer away such things out of a house, and precisely restrain him to doe it sometmes when he is gotten in without breaking of the house, and yet hee breaketh the house, yet hee is accesary to the burglarie: for a man cannot condition with an unlawfull act, but he must at his peril take heed how hee putteh himselfe into another mans hands.

But if a man bid one robbe I.S. as he goeth to

L 2 Stur-
Sturbridge-faire, and he robbe him in his house
the variance seemes to be of substance, and he is
not accessarie.

De fide & officio Iudicis non recipitur qua-
stio, sed de scientia, siue error sit Iuris siue facti.

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

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

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

But the greatest doubt is where the Court doth
determine of the veritie of the matter in fact; so
that is rather a point of tryall than a point of
judgement,
shall bee tried by the records of the Chancerie, and upon judgement given no error lieth.

So if a felon demand his clearie, and read well and distinctly, and the Court who is judge thereof doe put him from his clearie wrongfully, error shallneverbe brought upon this attainder.

So if upon judgement given upon confession for default, and the Court doe assesse damages, the defendant shall never bring a writ, though the damage bee outrageous.

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

And therefore this is a certaine rule in error, that error in law is ever of such matters as were not crost by the record, as to allege the death of the tenant at the time of the judgement given, nothing appeareth upon record to the contrary.

So when the infant leueth a fine, it appeareth not upon the record that he is an infant; therefore it is an error in fact, and shall be tried by inspection during nonage.

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

Personae coniuncta æquiparatur interesse proprio.

The law hath that respect of nature and conjunction of blood, as in divers cases it compareth and matcheth neareness of blood with consideration of profit and interest, yea, and in some cases alloweth of it more strongly.

Therefore if a man covenant in consideration of blood, to stand seised to the use of his brother, or sonne, or neere kinsman, an vise is well raised of this covenant without transmutation of possession, neuertheless it is true, that consideration of blood is not to ground a personal contract upon: as if I contract with my sonne, that in consideration of blood I will give vnto him such a summe of mony, this is a nudum pactum, and no assumpsis lieth vpon it; for to subiect me to an action, there needeth a consideration of beneft but the vise the law raiseth without suite or action, and besides, the law doth match real considerations with real agreements and covenants.

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

So in challenges of juries, challenge of blood is as good as challenge within distress, and it is not materiall how farre off the kindred bee, for the pedigree can bee conveyed in a certainty whether it bee of the halfe blood or whole.

So if a man menace mee, that hee will imprison, or hurt in body my father, or my childe, except I make such an obligation, I shall auoide this duresse, as well as if the duresse had beene to mine owne person: and yet if a man menace me, by taking away or destruction of my goods, this is no good duresse to pleade, and the reason is, because the law can make mee reparacion of that losse, and so it cannot of the other.

So if a man under the yeares of 21, contract...
Therefore if I make my will, and in the end thereof doe add such like clause, [Also my will is if I shall revoke this present will, or declare any new will, except the same shall bee in writing, subscribed with the hands of two wittneses, that such revocation or new declaration shall be utterly void, and by these presents I doe declare the name not to bee my will, but this my former will to stand] any such pretended will to the contrarie notwithstanding; yet neverthelesse this clause or any the like neuer so exactly penned, and although it do restraine the revocation but in circumstance and not altogether, is of no force or efficacie to fortifie the former will against the second, but I may by paroll without writing repeale the same will, and make a new.

So if there bee a statute made that no Sheriffe shall continue in his office aboue a yeare, and if any Pattent be made to the contrarie, it shall bee void; and if there be any Clausula de non obstante contained in such Pattent to dispence with this present act, that such clause also shall be void: yet neverthelesse a Pattent of the Sherifftes office made by the King with a non obstante will bee good in law, contrary to such statute, which pretendeth to exclude non obstatantes, and the reason is, because it is an inseparable prerogatiue of the Crowne to dispence with politick statutes and of that kinde, and then the derogatory clause hurteth not.
So if an act of Parliament be made wherein there is a clause contained, that it shall not be lawful for the King by authority of Parliament during the space of seven yeares to repeal and determine the same act, this is a void clause, and such act may be repealed within the seven yeares, and yet if the Parliament should enact in the nature of the ancient *Lex Regia*, that there should be no more Parliaments held, but that the King should issue the authority of Parliament; this act were good in Law, *quia potestas sua potest*. *Suo disolvit potest, legare non potest*: for as it is in the power of a man to kill a man, but it is not in his power to save him alive and to restrain him from breathing or feeling; so it is in the power of a Parliament to extinguish or transfer their own authority, but not whilst the authority remains entire to restrain the functions and exercises of the same authority.

So in the 28. of K. H. 8. chap. 17. there was a statute made, that all acts that passed in the minority of Kings, reckoning the same under the years of 24. might be annulled and revoked by their letters patents when they came to the same years; but this act in the first of K. Ed. 6. who was then between the years of 10. & 11. ca. 11. was repealed, and a new law surrogate in place thereof, wherein, though other laws are made revocable according to the provision of the former law with

*with some new forme prescribed, yet that verie Law of revocation, together with pardons, is made irrevocable and perpetuall*; so that there is a direct contrarietie between these two lawes: for if the former stands, which maketh all latter lawes during the minority of Kings revocable without exception of anie law whatsoever, then that very law of repeale is concluded in the generalitie, and so it selfe made revocable: on the other side, that law making no doubt of the absolute repeale of the first law, though it selfe were made during the minority, which was the verie case of the former law in the new provision which it maketh, hath a precise exception, that the law of repeale shall not be repealed.

But the law is, that the first law by the imperitiness of it was void *ab initio & ipso facto* without repeale, as if a law were made, that no new statute should be made during 7. yeares, and the same statute be repealed within the 7. yeares, if the first statute should bee good, then the repeale could not bee made thereof within that time; for the law of repeale were a new law, and that were disabled by the former law, therefore it is void in it selfe, and the rule holds, *perpetua lex est nullam legem humanam as positam perpetuam esse*, & clausula que abrogationem excludit initio non males.

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

derogatoria ad alias sequentes voluntates posita in testamento (vix si testator dicat quod si contigerit eum facere aliud testamentum non vult ibid valere) operatur quod sequens dispositio ab ipsa clausula regulatur & per consequens quod sequens dispositio direetur sine voluntate & sic quod non sit attendendum.

The sense is, that where a former will is made, and after a later will, the reason why without an express revocation of the former will it is by implication revoked, is because of the repugnancy between the disposition of the former and the latter.

But where there is such a derogatorie clause, there can be gathered no such repugnancy, because it feemeth that the testator had a purpose at the making of the first will to make some shew of a new will, which nevertheless his intention was should not take place: but this was answered before, for if that clause were allowed to be good without a revocation, then would no revocation at all be made, therefore it must needs be void by operation of law at first. Thus much of Clauula derogatoria.
So if I contract with I. D. that if he lay me into my seller three tunnes of wine before Mich., that I will bring into his Garner 20. quarters of wheat before Christmas, before either of these days the parties may by assent dissolve the contract; but after the first day there is a perfection given to the contract by action on the one side, and they may make cross releases by deed or paroll, but never dissolve the contract, for there is a difference betweene dissolving the contract and release or surrender of the thing contracted for: as if lessee for 20. yeares make a lease for 10. yeares, and after he take a lease for 5. yeares, yet this cannot inure by way of surrender: for a petit lease derived out of a greater cannot be surrendered backe againe, but inureth onely by dissolution of contract; for a lease of land is but a contract executorie from time to time of the profits of the land, to arise as a man may sell his corn or his tythe to spring or to be perceiued for divers future yeares.

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

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

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

The same difference appeareth in nominations and elections, as if I enfeoffe such a one as I. D. shall name within a yeare, and I. D. name I. B. yet before the feoffement and within the yeare I. D. may countermand his nomination and name againe, because no interest paath out of him. But if I enfeoff I. S. to the use of such a one as I. D. shall name within a yeare, then if I. D. name I. B. it is not revocable, because the use paath presently by operation of law.

So in judicall acts the rule of the civill law holdeth, sententia interlocutoria revocari potest; that is, that an order may be revoked, but a judgement cannot; and the reason is, because there is a title of execution or barre giuen presently unto the partie vpon judgement, and so it is out of the Judge to revoke in Courts ordered by the common law.
Clausula vel dispositio inutilis per presumptionem remota vel causam, ex post facto non fulcitur.

Clausula vel dispositio inutilis are said, when the act or the words doe work or express no more than the law by intendment would have supplied; and therefore the doubling or iterating of that and no more, which the conceit of law doth in a sort prevent and preoccupate, is reputed negation, and is not supported and made of substance either by a foreign intendment of some purpose, in regard whereof it might bee materiall, nor vpon any cause emerging afterwards, which may induce an operation of those idle words.

And therefore if a man demise land at this day to his sonne and heire, this is a void devise, because the disposition of law did cast the same vpon the heire by descent, and yet if it be Knights seruice land, and the heire within age, if hee take by the devise hee shall have two parts of the profits to his owne vse, and the guardian shall have benefit but of the third; but if a man devise land to his two daughters, having no sones, then the devise is good, because he doth alter the disposition of law, for by the law they shall take in copercenaric, but by the devise they shall take jointly, and this is not any foreigne collateral purpose, but in point of taking of estate.

Regula 21. So if a man make a Seoffement in fee, to the vse of his last will and testament, these words of speciall limitation are voids, and the law referreth the ancient vse to the feoulver and his heires: and yet if the words might stand, then might it bee authority by his will to declare and appoint vses, & then though it were Knights seruice land, hee might dispose the whole. As if a man make a Seoffement in fee, to the vse of the will and testament of a stranger, then the stranger may declare an vse of the whole by his will, notwithstanding it bee Knights seruice land, but the reason of the principall case is, because vses before the statute of 27. H. 8. were to have beene disposed by will, and therefore before that statute an vse limited in the forme aforesaid, was but a frivolous limitation, in regard of the old vse that the law reserved was devisable; and the statute of 27. H. 8. altereth not the law, as to the creating and limiting of any vse, and therefore after that statute, and before the statute of wills, when no land could haue beeen disposed, yet was it a void limitation as before, and to continueth to this day.

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

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

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

So if a man having land on the part of his Mother make a feoffement in fee to the use of himselfe and his heires, this use though expressed, shall not go to him and the heires of the part of his

his Father as a new purchase, no more than it. But if I have done if it had beene a feoffement in fee nakedly without consideration, for the intendment is remote. But if baron and feme be, and they joine in a fine of the feme's land, and express an use to the husband and wife and their heires; this limitation shall give a joint estate by intierties to them both, because the intendment of law would have conuined the use to the feme alone. And thus much touching forreign intendment.

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

So if a man graunt a rent charge out of 10 acres, and grant further that the whole rent shall issue out of euerie acre, and distresse accordingly, & afterwards the graunter purchase an acre, now this clause should seeme to be material to uphold the rent, but yet nevertheless the law at first accepteth of these words but as words of explanation.
tion, and then notwithstanding the whole rent is extinct.

So if a gift intail be made upon condition, that if tenant intail die without issue it shall be lawful for the donor to enter and the donee discontinue and die without issue; now this condition should seem material to give him benefit of entrie, but because it did at the first limit the estate according to the limitation of law, it worketh nothing upon this matter emergent afterward.

So if a gift intail be made of lands held in Knights seruice with an express reservation of the same seruice, whereby the land is held out, and the gift is with warrantie, and the land is evicted, and other land recovered in value against the donor held in soccage, now the tenure which the law makes between the donor and donee shall be in soccage, and not in knights seruice, because the first reservation was according to the oweltie of seruice, which was no more than the law would have referred.

But if a gift intail had beene made of lands held in soccage with a reservation of knights seruice tenure, and with warrantie, then because the intendment of law is altered the new land shall be held by the same seruice the last land was, without any regard at all to the tenure paramount:

mount: and thus much of matter post patris.

This Rule faileth where that the law saith as much as the partie, but upon forreine matter not pregnant and appearing upon the same act, and conuincence, as if lessee for life be, and bee lets for 20. yeares, if he live so long; this limitation (if he live so long) is no more than the law faith, but it doth not appear upon the same conuincence or act, that this limitation is nugatorie, but it is forreine matter in respect of the truth of the state whence the lease is derived: and therefore if lease for life make a feoffment in fee, yet the state of the lease for yeares is not enlarged against the feoffice, otherwise it had beene such limitation had not bee but that it had beene left only to the law.

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

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

There remaneth yet a great question on this rule.

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

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

which is against the Law.

But if I make a gift intaile, and say upon con- dition, that if tenant intaile discontinue and after die without issue it shall bee lawfull for me to en- ter; this is a good clause to make a condition, be- cause it is but in one case, and doth not erode the law generally: for if the tenant intaile in that case bee disseised and a descent cast, and dye without issue, I that am the donor shall not en- ter.

But if the clause had beene provided, that if tenant intaile discontinue, or suffer a descent, or doe anie other fact whatsoever, that after his death without issue it shall bee lawfull for mee to enter: now this is a void condition, for it importeth a repugnancy to law: as if I would over- rule that where the law faith I am put to my acti- on, Iuerthelesse will refere to my selfe an entrie.

Non videtur consensum retinuisse si quis ex Regula 22.

proscripto minantis alicui immutavit.

Although choice and election bee a badge of consent, yet if the first ground of the act bee duresse, the law will not construe that the duresse doth determine, if the party dureffed doe make any motion or offer.
Therefore if a party menace me, except I make unto him a bond of 40 l. and I tell him that I will not do it, but I will make unto him a bond of 20 l., the law shall not expound this bond to be voluntarie, but shall rather make construction that my mind and courage is not to enter into the greater bond for any menace, and yet that I enter by compulsion, notwithstanding, into the lesser.

But if I will draw any consideration to myselfe, as if I had said, I will enter into your bond of 40 l. if you will deliver me that piece of Plate, now the duresse is discharged, and yet if it had beene removed from the dures sor, who had said at the first, you shall take this piece of Plate, and make me a bond of 40 l. now the gift of the Plate had beene good, and yet the bond shallbe avoided by duresse.

Ambiguitas verborum Latens verificatione suppletur, nam quod ex facto oritur ambigu-um verificatione facti sollisur.

There bee two sorts of ambiguities of words, the one is Ambiguitas Patens, and the other Latens. Patens is that which appeares to bee ambiguous vpon the deed or instrument, Latens is that which seemeth certaine and without ambiguity, for any thing that appeareth vpon the deed.

Regula 23.

(90)

(91)

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

So if a man give land intaile, though it bee by will, the remainder intaile, and adde a Proviso, in this manner: Provided that if hee or they or any of them doe any &c. according to the usuall clauses of perpetuities, it cannot be auerred vpon the ambiguities of the reference of this clause, that the intent of the devisor was, that the restraint should goe onely to him in the remainder, and the heires of his body, and that tenant intaile in possession, was meant to bee at large.
Of these, infinite cases might be put, for it holdeth generally that all ambiguitie of words by matter within the deed, and not out of the deed, shall bee holpen by construction, or in some case by election, but neyer by averrement, but rather shall make the deed voide for uncertainty.

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

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

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

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

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

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

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

For in the case of equivoocation the generall intent includes both the speciall, and therefore stands with the words: but so it is not in variance, and therefore the averment must be of matter, that doe endure quantitie, and not intention.
As to say of the precinct of Oxford, and of the universitie of Oxeford is one and the same, and not to say that the intention of the parties was, that the graunt should bee to Christ-Church, in that Vniuersitie of Oxeford.

Licit a bene miscentur, formula nisi iuris oblicer.

The law giueth that favour to lawfull acts, that although they bee executed by severall authorities, yet the whole act is good.

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

So if tenant intaile be at this day, and he make a lease for three lives, and his owne, this is a good lease and warrantted by the statute of 32. H. 8, and yet it is good in part by the authoritie which tenant intaile hath by the common law, that is, for his own life, and in part by the authoritie which he hath by the statute, that is, for the other three lives.

So if a man seised of lands denieable by custome, and of other land held in knights service, and deuide all his lands, this is a good deuise of all the land customarie by the common law, and of two paarts of the other land by the statutes.

So in the Starchamber a sentence may bee good, grounded in part vpon the authority to giuen the Court by the statute of 3. H. 7, and in part vpon that ancient authoritie which the Court hath by the common law, and so vpon severall comissions.

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

As if three Coparceners be, and one of them alien her purpartie, the feoffee and one of the sisters cannot joine in a writ de part' facienda, be Vide 1. Ind. cause it be nooweth the feoffee to mention the statute in his writ.
Regula: 1. Præsentia corporis tollit errorem Nominis, & veritas nominis tollit errorem Demonstrations.

There be three degrees of certaintie.
1. Presence.
2. Name.
3. Demonstration or Reference.

Whereof the Presence the law holdeth of greatest dignitie, the Name in the second degree, and the Demonstration or Reference in the lowest, and always the error or falsitie in the lesse worthy.

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

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

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

So if I by deed grant unto you by general words, all the lands that the King hath passed unto me by letters patents dated 10. May unto this present Indenture annexed, and the Patent annexed have date 10. July, yet if it bee proved that that was the true Patent annexed, the presence of the Patent maketh the error of the date recited not material; yet if no Patent had been annexed, and there had beene also no other certaintie given, but the reference of the Patent, the date whereof was mistaking, although I had no other Patent ever of the King, yet nothing would have passed.

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

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

So if I grant you for life a way over my land according to a plot intended between us, and
after I grant unto you and your heires a way according to the first plot intended, whereof a table is annexed to these presents, and there bee some speciall variance betweene the table and the original plot, yet this representation shalbe certaintie sufficient to lead vnto the first plot, and you shalhave the way in fee neverthelesse, according to the first plot, and not according to the table.

So if I grant unto you by generall words the land which the King hath granted mee by his letters patents, 

Quarum tenor sequitur in hæc verba, &c.

and there bee some mistaking in the recitall and variance from the originall patent, although it bee in a point materiall, yet the representation of this whole patent shal bee as the annexing of the true patent, and the grant shall not be void by this variance.

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

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

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

As modo in tenura & occupatione, of the proprietorie tenure or possessor is but a thing transitory in respect of land; Generatio venit, generatione migrat, terra autem manet in aeternum.

So likewise matter of conuincance, title, or instrument,

As, que perquisui de I. D. que descendebant à I. N. patre meo, or, in prædicta Indentura dimissiones, or, in prædictis litteris patentibus specificat.

So likewise continens per aquisitionem 20. acres, or if (per aquisitionem) be left out, all is one,
for it is understood, and this matter of measure, although it seeme locall, yet it is indeede but opinion and observation of men.

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

Therefore if I grant my close called Dale in the parish of Hurst, in the Countie of Southampton, and the parish likewise extendeth into the Countie of Barkshire, and the whole close of Dale lieth in the Countie of Barkshire, yet because the parcel is especially named, the falsitie of the addition hurteth not, and yet this addition is found in name, but (as it was said) it was lesse worthie than a proper name.

So if I grant tenementum meum, or omnia tenementa mea (for the universal and indefinite to this purpose are all one) in parochia Sancti Butolphii extra Aldgate (where the veritic is extra Bishopsgate) in tenura Guilielmi, which is true, yet this grant is void, because that which sounds in denomination is false which is the more worthy, and that which sounds in addition is true which is the lesse; * and though in tenura Guilielmi, which is true had beene first placed, yet it had beene all one.

But if I grant tenementum meum quod perquisui de K. C. in Dale, where the truth was T. C. and I haue

I have no other tenements in D. but one, this grant is good, because that which foundeth in name (viz. in Dale) is true, and that which founded in addition (viz. quod perquisui, &c.) is onely false.

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

So if I grant all my lands, being parcels manery de D. in praedictis literis patentibus specificat', and there be no letters patent, yet the grant is good enough.

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

And therefore if an obligation be made to I. S. filio & heredi G. S. where indeede he is a bastarde, yet this obligation is good.
So if I grant land Episcopo nunc Londinensi qui me erudiuit in puellit, this is a good grant, although he never instructed me.

But a converso, if I grant land to I. S. filio & hæredi G. S. and it be true that he is sonne and heire unto G. S. but his name is Thomas, this is a void grant.

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

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

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

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

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

As my boxe of Ivorie lying in my study sealed up with my seale of armes, my suite of Arras with the storie of the Nativitie and Passion of such things there can be no name, but all is of description, and of circumstance, and of these I hold the law to bee, that precise truth of all recited circumstances is not required.

But in such things ex multitudine signorum col. ligitor identitas vera, therefore though my boxe were sealed, and although the arras had the storie of the nativitie and not of the passion, if I had no other boxe nor no other suite, the gifts are good, and there is certaintie sufficient, for the law doth not expect a precise description of such things as haue no certaine denomination.

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

As, prata mea iuxta communem fossam in D. whereof the one is true, the other false, or, tenementum meum in tenura Guillemi quod perquisui de R. C. in predicat' Indent' specificas' whereof one is true and two are false, or two are true and one false.

So adcuriam quam senebat die mercurii tertio die
the Martii, whereof the one is true the other false.

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

As if I grant all my land in D. *in tenura I.S.* which I purchased of I.N. specified in a devise to I.D. and I have land in D. whereof in part of them all these circumstances are true, but I have other lands in D. wherein some of them fail, this grant will not passe all my land in D. for there these are references and no words of falsitie or error but of limitation and restraint.

*(104)*

**THE USE OF THE LAW.**

Provided for Preservation of Persons, Goods, and Good Names.

According to the Practice of the Laws and Customs of this Land.

By the #5 Vesculam Viscount of S.Albons &c.

LONDON,
Printed by the Assignes of John Moore Esquire. 1630.

Cum Privilegio.
THE USE OF THE LAW.
Provided for Preservation of Persons, Our Goods, and Good Names.
According to the Practice of the Laws and Customes of this Land.

By the Right Honorable Viscount of S. Albans &c.

LONDON,
Printed by the Assignes of John Moore Esquire. 1630.

Cum Privilegio.
A Table of the Contents of this ensuing Treatise.

What the Use of the Law principally consisteth in, Fol. 1.
Surely to keep the Peace, fol. ibid.

Action of the Case for Slaundcr, Batterie, &c., fol. 2.
Appeal of Murder given to the next of kinne, fol. ibid.

Manslaughter, and when a forfeiture of Goods, and when not, fol. 3.
Felo de se, Felony by mischance, Deodand, fol. ibid.
Cutting out of Tongues, and putting out of Eyes, made felonie, fol. 3.
The Office of the Constable, fol. ibid.

Two high Constables for every Hundred, and one petitie Constable for every Village, fol. 4.
The Kings-Bench first instituted, and in what matters they anciently had Jurisdiction in, fol. 5.
The Court of Marshalsey erected, and its Jurisdiction within 12. miles of the chiefest Tunnell of the King, which is the full extent of the Perige, fol. 6.

Sheriffes Tourne instituted upon the division of England into Counties: the charge of this Court was
THE TABLE.

was committed to the Earle of the same County.
fol. 7.

Subdivision of the County Courts into Hundreds,
fol. ibid.

The charge of the County taken from the Earles,
and committed yearly to such persons as the King
pleased, fol. 8.

The Sheriffe's judge of all Hundred Courts not
given away from the Crown, fol. ibid.

County Courts kept mony by the Sheriffe, fol. ibid.

Hundred Courts to whom first granted, fol. 9.

Lord of the Hundred to appoint two High Constables,
of what matters they enquire of in Leets and
Law days, fol. 10.

Confermators of the Peace, and what their Office
was, fol. 11.

Confermators of the Peace by virtue of their Office,
of what matters they enquire of in Leets and
Law days, fol. 12.

Justices of Peace ordained in lieu of Confermators.
Of placing and displacing of Justices of Peace
by aye delegated from the King to the Chancel-
lor, fol. ibid.

The power of the Justice of Peace to fine the Offen-
ders to the Crown, and not to recompense the
parties grieved, fol. ibid.

Authority of the Justices of Peace, through whom
ran all the County services to the Crown, fol. 13

Beating, killing burning of Houses, fol. ibid.

Relatives, for failure of the Peace, fol. ibid.

Recogni-

THE TABLE.

Recognizance of the Peace delivered by the Justi-
ces at their Sessions, fol. ibid.

Quarter Sessions held by the Just. of Peace, fol. 14

The authority of Justices of the Peace out of their
Sessions, fol. 15

Justices of Assizes came in place of the ancient
Judges in Eire, about the time of R. 2, fol. ibid.

England divided into six Circuits, and two lear-
neam in the Lawes, assigned by the King's
commission to ride twice a year through those
Shires, allotted to that circuit for the tryall
of private titles to Lands and goods, and all
Treasons and Felonies, which the County
Courts meddle not in, fol. 16.

The Authority of the Judges in Eire translated by
Parliament to Justices of Assizes, fol. 17

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

The Justices of Assizes have at this day five Com-
misions by which they sit, viz. 1. Oyer and Ter-
nier, 2. Goal delivery, 3. To take Assizes, 4.
To take Nisi Prius, 5. Of the Peace, fol. 18

Booke allowed to Clearge for the scarry of them
to be disposed in Religious houses, fol. 21

The course the Judges hold in their Circuits in
the Execution of their Commission concerning
the taking of Nisi Prius, fol. 24

The Justices of the Peace and the Sheriffs are to
attend the Judges in their Countie, fol. 25

Of Properties of Lands to be gained by Entry, f. 26

A 3 Land
<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>27.</td>
<td>Land left by the Sea belongeth to the King.</td>
</tr>
<tr>
<td>28.</td>
<td>Property of Lands by Descent.</td>
</tr>
<tr>
<td>33.</td>
<td>Customs of certaine places.</td>
</tr>
<tr>
<td>34.</td>
<td>Every Heire having Land is bound by the binding Acts of his Ancestors if he be named.</td>
</tr>
<tr>
<td>35.</td>
<td>Property of Lands by Escheat.</td>
</tr>
<tr>
<td>36.</td>
<td>In Escheat two things are to be observed.</td>
</tr>
<tr>
<td>37.</td>
<td>Concerning the tenure of Lands.</td>
</tr>
<tr>
<td>38.</td>
<td>Every Heire having Land is bound by the binding Acts of his Ancestors if he be named.</td>
</tr>
<tr>
<td>39.</td>
<td>Property of Lands by Conveyance is, first distributed into Estates for Years, for Life, Intayle and Fee Simple.</td>
</tr>
<tr>
<td>40.</td>
<td>Leases are forfeitable.</td>
</tr>
<tr>
<td>41.</td>
<td>How Mannors were at first created.</td>
</tr>
<tr>
<td>42.</td>
<td>Knights service Tenure reserved to common persons.</td>
</tr>
<tr>
<td>43.</td>
<td>Soccage Tenure reserved by the Lord.</td>
</tr>
<tr>
<td>44.</td>
<td>Court Baron, with the use of it.</td>
</tr>
<tr>
<td>45.</td>
<td>What Attainders shall give the Escheat to the Lord.</td>
</tr>
<tr>
<td>46.</td>
<td>Hee that killeth himselfe forfeiteth but his Chattels.</td>
</tr>
<tr>
<td>47.</td>
<td>Property of Lands by Conveyance is, first distributed into Estates for Years, for Life, Intayle and Fee Simple.</td>
</tr>
<tr>
<td>48.</td>
<td>Leases are forfeitable.</td>
</tr>
<tr>
<td>49.</td>
<td>The Institution of Soccage in Capite, and what it is now turned into monies rents.</td>
</tr>
<tr>
<td>50.</td>
<td>Ancient Demeasne, what?</td>
</tr>
<tr>
<td>51.</td>
<td>Office of Alienation.</td>
</tr>
<tr>
<td>52.</td>
<td>How Mannors were at first created.</td>
</tr>
<tr>
<td>53.</td>
<td>Knights service in Capite, is a tenure de persona Regis.</td>
</tr>
<tr>
<td>54.</td>
<td>Grand serjeantie, Petty serjeantie.</td>
</tr>
<tr>
<td>55.</td>
<td>The Institution of Soccage in Capite, and what it is now turned into monies rents.</td>
</tr>
<tr>
<td>56.</td>
<td>What Liverie of Seisin is, and how it is requisite to every estate for life.</td>
</tr>
<tr>
<td>57.</td>
<td>Of the new Device called a Perpetuities, which is an Intayle with an addition.</td>
</tr>
<tr>
<td>58.</td>
<td>The inconveniencies of these Perpetuities.</td>
</tr>
<tr>
<td>59.</td>
<td>The last &amp; greatest estate in land is Fee Simple.</td>
</tr>
<tr>
<td>60.</td>
<td>The difference between a Remainder and a reversion.</td>
</tr>
<tr>
<td>61.</td>
<td>What a Fine is.</td>
</tr>
<tr>
<td>62.</td>
<td>What a Use is.</td>
</tr>
<tr>
<td>63.</td>
<td>A Conveyance to stand seised to a Use.</td>
</tr>
<tr>
<td>64.</td>
<td>Of the continuance of Land by Will.</td>
</tr>
</tbody>
</table>
THE TABLE.

By Letters of Administration, fol. 79
where the Intestate had Bona notabilia in divers Diocesses, then the Archbishop of that Province where hee Dyed is to commit Administration, fol. 80.

An Executor may refuse the Executorship before the Bishop, if hee have not entermeal with the Goods, fol. ibid.
Debts due in equal degree of Record, the Executor may pay which of them bee please before suite be commenced, fol. ibid.
But it it otherwise with Administrators, fol. 82.
Propertie by Legacie, fol. 83.
Legacies are to be payed before debts by Shop-books, Bills unsealed, or Contracts by word, fol. ibid.
An Executor may pay which Legacie hee will first. Or if the Executors doe want they may sell any Legacie to pay Debts, fol. 84.
when a Will is made and no Executor named, Administration is to be committed Cum testamento annexo.

THE USE OF THE LAW.

And wherein it Principally Consisteth.

The Use of the Law, consisteth principally in these Three things:

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

For safty of persons the Law prouideth, Surety to keep the Peace, that any man standing in feare of another, may
may take his Oath before a Justice of Peace, that he standeth in feare of his life, and the Justice shall compell the other to be bound with Surties to keepe the Peace.

If any man Beate, wound or maime another, or give false scandalous words that may touch his Credit, the Law giveth thereupon an action of the Case, for the slander of his good name, and an action of Batterie, or an appeale of Maime, by which recompence shall be recovered, to the value of the hurt, damage or danger.

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

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

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

And if a man kill another upon a suddain quarrell, this is Man slaughter, for which the Offender must dye, except he can reade; and if he can reade, yet must hee lose his goods, but no lands.

And if a man kill another by misfortune, as Felony by mis-shooting an Arrow at a Butt or Marke, or chance, casting a Stone over an house, or the like, this is loss of his goods and Chattels, but not of his lands, nor life.

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

The Cutting out of a mans Tongue, or putting out of his eyes maliciously, is Felonie, for which the Offender is to suffer Death, and lose his lands and goods.

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

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

1. Constabulary
2. Conseratores Pacis.

The Office of the Constable was, to arrest the parties that he had scene breaking the Peace, or in furie ready to breake the peace, or was truely informed by others, or by their owne confession, that they had freshly broken the peace; which persons he might imprison in the Stockes, or in his owne house, as his or their quality required, untill they had become bounden with sureties to keepe the peace; which obligation from thenceforth, was to be sealed and delivered to the Constable to the use of the King. And that the Constable was to send to the Kings Exchequer or Chancery, from whence Processe should bee awarded to leavy the debt, if the peace were broken.

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

The Office of the Constable

The office of the Constable was to arrest the parties that he had seen breaking the Peace, or in fury ready to break the peace, or was truly informed by others, or by their own confession, that they had freshly broken the peace; which persons he might imprison in the Stocks, or in his own house, as his or their quality required, until they had become bounden with sureties to keep the peace; which obligation from thenceforth, was to be sealed and delivered to the Constable for the use of the King. And that the Constable was to send to the King's Exchequer or Chancery, from whence Process was awarded to levy the debt, if the peace were broken.

The Sheriff's Tourne is a Court very ancient, incident to his Office. At the first, it was erected by the Conqueror, and called the King's Bench, appointing men studied in the Knowledge of the Lawes to execute Justice, as substitutes to him.
Court of Marshalsea erected, and its Jurisdiction within 12 miles of the chiefest Tunnel of the King, which is the full extent of the Virge. Him in his name, which men are to be named, Justiciary ad placita coram Rege assignati. One of them being Capitalis Justiciarius called to his fellowes, the rest in number as pleaseth the King, of late but three Justiciary, holden by Patent. In this Court every man above twelve yeares of age, was to take his Oath of Allegiance to the King, if he were bound, then his Lord to answer for him. In this Court the Constables were appointed and sworn; breakers of the peace punished by fine and imprisonment, the parties beaten or hurt recompensed upon complaints of damages. All appeales of Murder, Maim, Robberie decided, contempts against the Crowne, Publicke annoyances against the people, Treasons and Felonies, and all other matters of wrong, betweene partie and partie for Lands and goods. But the King seeing the Realm grow daily more and more populous, and that this one Court could not dispatch all; did first ordain that his Marshall should keep a Court, for Controversies arising within the Virge. Which is within xii. miles of the chiefest Tunnel of the Court, which did but ease the Kings Bench in matters onely concerning debts, Courts, and matters of like concerning the Kings Bench, in matters only concerning breaches of the Peace, or concerning the Land. At which meeting or Court, there fell by occasion of great Assemblies much bloodshed, scarcitie of Victuals, Mutinies, and the like, which are incident to the Congregations of people, by which the King was moved to divide the Countie once every yeare into Hundreds, and every Hundred to have a Court, wherein the people of every Hundred should be assembled twice a yeare for renewal of Pledges and vice versa, which was formerly executed in the sheriffes Tourne. A view of the pledges of freemen, or, Turnus Comitatus. A view of the County Court, once every yeare kept in the Countie Courthouse, called the Sheriffes Tourne. At which meeting or Court, the people of every Hundred were assembled, wherein the sheriff took Pledges for Allegiance, and all that were under age, and not able to appear before the Court, were declared by the sheriff to be freed of the Charge of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers, or any pleas of Lands, Hiremongers.
The charge of the Countie taken from the Earls, and committed yearly to such persons as it pleased the King.

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

The charge of the Countie taken from the Earls, and committed yearly to such persons as it pleased the King.

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

He hath another Court, called the County Court, belonging to his office, wherein men may sue monthly for any debt or damages under 40l. and may have writs for to replevie their cattell distrainted and impounded by others, and there try the cause of their distresse; and by a writ called *justicier*, a man may sue for any summe, and in this Court the Sheriffe by a writ, called an *exonget*, doth proclaim men sued in Courts above, to render their bodies, or else they be Out-lawed.

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

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

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

There hath beene by vfe and Statute Law (besides

The Office of the Sheriff.

The Office of the Sheriff.

The Office of the Sheriff.
(10)

(11)

(charge upon them for taxation for poore, for Souldiers, and the like, and dealing without corruption, and the like.)

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

For this Service, choice was made of the best men of calling in the Countrie, and but few in the Shire. They might bind any man to keepe the peace and to good behaviour, by Recognizance to the King with suerties, and they might by Warrant send for the partie, directing their warrant to the Sheriffe or Constable, as they please, to arrest the partie, and bring him before them. This they vded to doe, when complaint was made by any that he stood in feare of another, & to rooke his Oath; or else, where the Conservator himselfe did without oath or complaint, see the disposition of any man inclined to quarrell and breach of the Peace, or to misbehave himselfe in some outrageous manner of force or fraud, There by his owne Discretion he might send for such a fellow, and make him finde Suerties of the peace or of his good behaviour, as he should see cause; or

Of what matters they enquire of in Leets and Law days.

Of what matters they enquire of in Leets and Law days.
else commit him to the Goale if he refused.

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

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

That there should be Iustices of Peace by Commissions, it was first enacted by a Statute made 1.Edw. 3, and their Authoritie augmented by many Statutes made since in euery Kings reigne.

They are appointed to keepe foure Sessions every yeares; That is, euery Quarter one. These Sessions are a fitting of the Iustices to dispatch the affairs of their Commissions. They have power to heare and determine in their Sessions, all Felonies, breaches of the Peace, Contempts and trespasses, to farre as to fine the Offender to the Crowne, but not to award recompence to the partie grieved.

They are to suppress Ryotts, and Tumults, to restore Possessions forcibly taken away, to examine all Felons apprehended & brought before them; To see impotent poore people, or maimed Soultiers provided for, according to the Lawes. And Rogues, Vagabonds, and Beggars punished. They are both to Licence and suppress Alehouses, Badgers of Corne and Victuals, and to punish Forestallers, regators, and engrossers.

Through these in effect runne all the Countie services to the Crowne, as Taxati ons of Subsidies, Musthing men, Arming them, and leavying Forces, that is done by a speciall Commission or Precept from the King. Any of these Iustices by Oath taken by a man that he standeth in feare that another man will beate him, or kill him, or burne his House, are to send for the partie by warrant of Attachment directed to the Sheriffe or Constable, and then to bind the partie with Suerties by Recognizance to the King to keepe the peace, and also to appeare at the next Sessions of the Peace; at which next Sessions, when every Iustice of Peace hath therein delivered all their Recognizances to taken, then the parties are called and the cause of binding to the Peace examined, and both parties being heard, the whole Bench is to
Quarter Sessions held by the Justices of the Peace.

to determine as they see cause, either to continue the partie so bound, or else to discharge him.

The Justices of Peace in their Sessions, are attended by the Constables and Bayliffs of all Hundreds and liberties within the County, and by the Sheriff or his Deputy, to be employed as occasion shall serve in executing the precepts and directions of the Court. They proceed in this sort, The Sheriff doth Summon 24 Free-holders, discreet men of the said County, whereof some 16 are selected and sworn, and have their charge to serve as the Grand Jury; The partie indicted is to traverse the indictment, or else to confess it, and so submit himselfe to be fined as the Court shall think meet (regard had to the offence) except the punishment be certainly appointed (as often it is) by speciall Statutes.

The Justices of Peace are many in everie County, & to them are brought all Traitors, Felons, and other malefactors of any sort upon their first apprehension, and that Justice to whom they are brought, examineth them, and heareth their accusations, but judgeth not upon it; only if hee find the suspicion but light, then hee taketh bond with sureties of the accused, to appeare either at the next Assizes, if it be a matter of Treason or Felony;

The Justices of the Peace out of their Sessions.

nie; or else at the quarter Sessions, if it bee concerning Ryot or mis-behavior or some other small offence. And he also then bindeth to appeare those that give testimonie and prosecute the accusation, all the accusers and witnesses, and so letteth the partie at large. And at the Assizes or Sessions (as the case falleth out) he certifieth the Recognizances taken of the Accused, Accusers, and Witnesses, who being there are called, and appearing, the cause of the accused is debt, according to Law for his clearing or condemning.

But if the partie accused, seeme upon pregnant matter in the accusation and to the Justice to bee guilty, and the offence heinous, or the Offender taken with the manner, then the Justice is to commit the partie by his warrant called a Mittimus to the Goaler of the common Goal of the County, there to remaine untill the Assizes. And then the Justice is to certify his Accusation, Examination, and Recognizance taken for the appearances and prosecution of the witnesses, so as the Judges may, when they come, readily proceed with him as the Law requireth.

The Judges of the Assizes as they bee now become into the place of the ancient Judges in Eyre, called Justiciarij itinerantes, which in the prime Kings after the Conquest untill

H. 3.
H.3. time especially, and after in lesser measure even to R.2. time, did execute the Justice of the Realme; they began in this sort.

The King not able to dispatch busines in his owne person, erected the Court of Kings Bench, that not able to receive all, nor meet to draw the people all to one place, there were ordained Counties, and the Sherifffes Tournes, Hundred Courts, and particular Leets, and Law-dayes, as before mentioned, which dealt onely with Crowne matters for the publique; but not the private titles of Lands or Goods, nor the tryall of grand offences of Treasons and Felonies, but all the Counties of the Realme were divided into Six Circuits. And two learned men well read in the Lawes of the Realme, were assigned by the Kings Commission to every Circuit, and to ride twice a yeare through those shires allotted to that Circuit, making Proclamation before hand, a convenient time in every Countie, of the time of their comming, and place of their sitting, to the end the people might attend them in every Countie of that Circuit.

They were to stay 3. or 4. dayes in every Countie, and in that time all the causes of that Countie were brought before them by the parties grieved, and all the Prisoners of the said Goale in every Shire, and whatsoever controversy arising concerning Life, Lands or Goods.

The authority of these Judges in Eyre, is in part translated by A & of Parliament to Justices of Affizes, which be now the Judges of Circuits, and they doe the same Course that Justices in Eyre did, to proclaime their comming every halfe yeare, and the place of their fitting.

The businesse of the Justices in Eyre, and the authority of the Justices of Affizes at this day is much lessened, for that in H.3. time there was erected the Court of Common-pleas at Westminster, In which Court have beene ever since and yet are, begun and handled the great suits of Lands, debts, benefices and contracts, fines for assurance of Lands and recoveries, which were wont to bee either in the Kings Bench, or else before the Justices in Eyre. But the Statute of Mag.Char. Cap.11.5. is negative against it. Viz. Communia placita non sequuntur, Curiam nostram sed teneantur in aliquo loco Certo; which locus Certus must be the Common-pleas, yet the Judges of Circuits; Of the Peace.
The course now in use with the Judges for the execution of the Commission of Goal Delivery is this. There is no Prisoner committed to Goal Delivery but committed by some Justice of Peace, who before he committed him took his examination, and bound his accusers and witnesses to appear and prosecute at the Goal Delivery, and the Judges are of the Quorum, and many other of the best accounts in their Circuits; but without them there can be no proceeding.

The manner of the proceedings of the Justices of Circuits in their Circuits, the Judges are of the Quorum, and this is the largest Commission they have.

This Commission giveth them power to deal with Treasons, Murders, and all manner of Felonies and Misdemeanors whatsoever; and this is the largest Commission they have.

The second is a Commission of Goal Delivery; that is only to the Judges themselves, and the Clerk of the Assize associated: And by this Commission they are to deal with every Prisoner in the Goal, for what offence soever he be there. And to proceed with him according to the Laws of the Realm, & the quality of his offence; and they cannot by this Commission do any thing concerning any man but those that are Prisoners in the Goal. The course now in use of Execution of this Commission of Goal Delivery, is this. There is no Prisoner but is committed by some Justice of Peace, and the Judges are of the Quorum, and many other of the best accounts in their Circuits; but without them there can be no proceeding.

The manner of the proceedings of the Justices of Circuits in their Circuits, the Judges are of the Quorum, and this is the largest Commission they have.
fence hee can make, and then the Jury goe together and consult. And after a while they come in with a verdict of guilty or not guilty, which verdict the Judges doe record accordingly. If any Prisoner plead not guilty upon the indictment, and yet will not put himselfe to tryall upon the Jury, (or stand mute) he shall be pressed.

The Judges when many prisoners are in the Goale, doe in the end before they goe, peruse every one. Those that were indicted by Grand Jury, and found not guiltie by the secket Jury, they judge to be quitted, and to deliver them out of the Goale. Those that are found guilty by both Iuries they judge to death, and command the Sheriffe to see execution done. Those that refuse tryall by the Countrie, or stand mute upon the indictment, they judge to be pressed to death, some whose offences are piltring vnder twelve pence value, they judge to be whipped. Those that confess their indictments, they judge to death, whipping or otherwise, as their offence requireth. And those that are not indicted at all, but their bill of indictment returned with ignoramus by the Grand Jury, and all other in the Goale against whom no bills at all are preferred, they doe acquit by proclamation out of the Goale; That one way or other they ridde the Goale of all the prisoners in it. But because some prisoners

prisoners have their bookes, and be burned in the hand and so delivered, It is necessary to shew the reason thereof. This having their bookes is called their Clergie, which in ancient time began thus.

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

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

And this Clergie was allowable in the ancient times and Law, for all offences whatsoever they were, except Treason and robbing of Churches of their goods and ornamentals.
Clergy allowed in all offenses except Treason and Robbing of Churches, and now taken away by many Statutes.

1. In Treason.
2. In Burglarie.
3. Robberie.
4. Purse-cutting.
5. Horse stealing, and in divers other offenses particularized in several Statutes.

By the Stat. of 18. Elizabeth the Judges are appointed to allow Clergie, & to see them burned in the hand, and to discharge the Prisoners without delivering them to the Bishop.

The third Commission that the Judges of Circuits have, is, a Commission directed to themselves only and the Clerk of Assize to take Assizes, by which they are called Justices of Assize, & the Office of those Justices is to do right upon Writs called Assizes, brought before them by such as are wrongfully thrust out of their Lands. Of which number of writs there was far greater store brought before them in ancient times than now, for that mens seizons & possessions are sooner recovered by sealing Leaves upon the ground, and by bringing an Electione firme, and trying their title so, than by the long suites of Assizes.

The fourth Commission, is a Commission to take Nisi Prius directed to none but to the Judges themselves and their Clerks of Assizes, by which they are called Justices of Nisi Prius. These Nisi Prius happen in this sort:

When a suit is begun for any matter in one of the three Courts, the Kings Bench, Common Pleas, or the Exchequer here above, and the parties in their pleadings do vary in a point of fact; As for example, If in an action of Debt upon obligation the defendant denies the obligation to be his debt, or in any action of trespass grown for taking away goods, the Defendant denies that he took them, or in an action of the Case for slanderous words, the Defendant denies that he spake them, &c.

Then the Plaintiff is to maintain and prove that the obligation is the Defendant's deed, that he either took the goods, or spake the words, upon which denial and affirmation on the Law saith, that Issue is joined between them, which issue of the Fact is to be tried by a Jury of Twelve men of the County where it is supposed by the Plaintiff to be done, & for that purpose the Judges of the Court do award a writ of Venire fac. in the Kings name to the Sheriff of that County, commanding him to cause four and twenty discreet Freeholders of his County at a certain day to try this issue so joined, out of which four and twenty, only Twelve are chosen to serve. And
And that double number is returned, because some may make default, and some be challenged upon kindred, alliance, or partial dealing.

These four and twenty, theSheriff doth name and certify to the Court, and withall that he hath warned them to come at the day according to their writ. But because at his first summons there falleth no punishment upon the four and twenty if they come not, they very seldom or never appear upon the first Writ, and upon their default there is another Writ returned to the Sheriff, commanding him to distraine them by their Lands to appear at a certain day appointed by the writ, which is the next terme after, nisi prius, ad Assizas capiendas Postea. Of which words the writ is called a nisi prius, and the Judges of the circuit of that County in that vacation and mean time before the day of appearance appointed for the Jury above here by their Commission of nisi prius have authority to take the appearance of the Jury in that County before them, and there to hear the Witnesses and proofs on both sides concerning the issue of fact, and to take the verdict of the Jury, and against the day they should have appeared above, to return the verdict read in the Court above, which return is called a Postea.

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

By those tryals called nisi prius, the Juries and the parties are eased much of the charge they should bee put to, by coming to London with their Evidences & Witnesses, and the Courts of Westminster are eased of much trouble they should have, if all the Juries for tryals should appear and try their causes in those Courts; for those Courts above have little leisure now; though the Juries come not vp, yet in matters of great weight or where the title is intricate or difficult, the Judges above, upon information to them, doe retaine these causes to bee tried there, and the Juries doe at this day in such causes come to the Barre at Westminster.

The fifth Commission that the Judges in their Circuits doe sit by, is the Commission of the Peace in every County of their circuit. And all the Justices of the Peace having no lawfull impediment, are bound to present at the Assizes to attend the Judges, as occasion shall fall out; if any make default, the Judges may yet a fine upon him at their pleasure and discretions. Also the Sheriff in every shire through the Circuit, is to attend in person.
person, or by a sufficient deputy allowed by the Judges, all that time they be within the Countie, and the Judges may fine him if hee faile, or for negligence or misbehaviour in his Office before them; and the Judges above may also fine the Sheriffe for not returning or not sufficient returning of Writs before them.

Propertie in Lands, is gotten and transferred by one to another, by these foure manner of wayes.

1. By Entry.
2. By Descent.
3. By Escheat.
4. Most usually by Conveyance.

Propertie by Entry is, where a man findeth a piece of Land that no other possesseth or hath title unto, and hee that so findeth it doth enter, this Entry gaineth a Propertie; this Law seemeth to be derived from this text, Terra dedit filiis hominum, which is to be understood, to those that will till and manure it, and so make it yeeld fruit; and that is he that entreteth into it, where no man had it before. But this manner of gaining Land

All Lands in England were the Conquerors hands, & appropriated unto him; except Religious and Church lands, and the lands in Kent, which by composition were left to the former owners, as the Conquerour found them, so that no man but the Bishopricks, Churches, and the men of Kent, can at this day make any greater title then from the Conquest to any Lands in England; And Lands possessed without any such title, are in the Crowne, and not in him that first entreteth; as it is by Land left by the Sea, this Land belongeth to the King and not to him that hath the Lands next adjoyning, which was the ancient Sea Bankes; This is to bee understood of the inheritance of Lands: viz. That the inheritance cannot bee gained by the first entry. But an estate for an other mans life by out-Lawes, may at this day be gotten by entrée. As a man called A. having land conueyed vnto him for the life of B. dyeth without making any estate of it, there, whosoever first entreteth into the Land after the decease of A. getteth the propertie in the Land for time of the continuance of the estate which was granted to A. for the life of B. which B. yet liueth, and therefore the said Land cannot revert till B. die. And to the heire of A. it cannot goe, for
that it is not any state of inheritance, but only an estate for another man's life; which is not descendable to the heir, except he be specially named in the grant: viz. To him and his heirs. As for the Executors of A, they cannot have it, for it is not an estate testamentary, that it should go to the Executors as goods and chattels should, so as in truth no man can intitle himself into those lands, and therefore the Law prefers him that first entereth, and he is called Occupator, and shall hold it during the life of B, but must pay the rent, perform the conditions, and do no waste. And he may by deed assigne it to whom he please in his lifetime. But if he die before he assigne it over, then it shall go againe to whomsoever first entereth and holdeth. And so all the life of B, so often as it shall happen.

Likewise, if any man doth wrongfully enter into another man's possession, and put the right owner of the freehold and inheritance from it, he thereby getteth the freehold & inheritance by disceisin, & may hold it against all men, but him that hath right, & his heirs, & is called a disseisor. Or if any one die seized of lands, and before his heir doth enter, one that hath no right doth enter into the land, and holdeth them from the right heir, he is called an Abator, and is lawfull owner against all men, but the right heir.

And if such person Abator, or disseisor (so as the disseisor hath quiet possession five years next after the disceisin) do continue their possession, and die seised, and the land descend to his heir, they have gained the right to the possession of the land against him that hath right till he recover it by suit at law. And it be not sued for at the common law within three score years after the disceisin, or abatement committed, The right owner hath lost his right by that negligence. And if a man hath divers children, and the elder being a bastard doth enter into the land and enjoyeth it quietly during his life, and dieth thereof seised, his heirs shall hold the land against all the lawfull children and their issues.

Propertie of lands by descent is, where a man hath lands of inheritance and dieth, not disposing of them, but leaving it to goe (as the law casteth it) vpon the heir. This is called a descent of law, and vpon whom the descent is to light, is the question. For which purpose the law of inheritance prefers the first child before all others, and amongst children the male before the female; and amongst males the first borne. If there be no children, then the brother, if no brothers, then sisters, if neither brothers nor sisters, then vncles, & for lack of vncles Ants, if none of them, then Couzens in the

Occupancie.

And
Of descent

Three rules.

1. That the eldest male shall solely inherit; but if it come to females, then they being all in an equal degree of nearenest shall inherit altogether, and are called Parceners, and all they make but one heire to the Ancestor. 2. That no brother nor sister of the halfe blood shall inherit to his brother or sister, but as a child to his Parents; as for example. If a man have two wives, and by either wife a sonne, the eldest son overliving his Father is to be preferred to the inheritance of the Father being fee-simple; but if he entret & dyeth without a child, the Brother shall not be his heire, because he is of the halfe bloud to him; but the Uncle of the eldest Brother or Sister of the whole bloud, yet if the eldest Brother had dyed or had not entred in the life of the Father, either by such entry or conuincence, then the youngest Brother should inherit the Land that the Father had, although it were a child by the second wife, before any daughter by the first. The third rule about discents. That land purchased so by the partie himselfe that dyeth, is to be inherited; first, by the heires of the Fathers side, then if he have none of that part, by the heires of the Mothers side. But Land descended to him from his father or mother, are to goe to that side only from which they came; and not to the other side.

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

And there is another note to bee observed in fee-simple inheritance, and that is, that every heire having fee-simple land or inheritance, be it by common Law or by Custome of gavelkind or Burgh English, is chargeable so farre forth as the value thereof extendeth with the binding acts of the Ancestors from whom the inheritance descendeth; and these acts are colaterall encombrances, and the reason of this charge is, qui sentit commodum sentire debet & incommodum se inimicum. As for example, if a man bind himselfe and his heires in an obligation, or doe Covenant by writing for him and his heires, or do grant an Annuity for him & his heires, or do make a warranty of Land binding him and
and his heires to warrantie; in all these cases the Law chargeth the heire after the death of the Ancestor with this obligation, Covenant, Annuity & Warrantie, yet with these three cautions: first, That the partie must by speciall name binde himselfe & his heires, or covenant, grant and warrant for himselfe and his heires; otherwise the heire is not to be touched. Secondly, That some action must bee brought against the heire whilest the land or other inheritance resteth in him unaliened away: for if the Ancestor dyeth, & the heire, before an action be brought against him upon those Bonds, Covenants, or Warranties doe alien away the land, then the heire is cleane discharged of the burthen, except the land was by fraud conveyed away, of purpose, to prevent the suit intended against him. Thirdly, that no heire is further to be charged than the value of the land descended unto him from the same ancestor that made the Instrument of charge, and that land also, not to bee sold out-right for the debt, but to be kept in extent and at a yearely value, untill the debt or damage bee run out. Neuerthelesse if an heire that is sued upon such a debt of his ancestor doe not deal clearly with the Court when he is sued, that is, if he come not in immediately, & by way of confession set downe the true quantitie of his inheritance descended, and to submit himselfe therefore, as the Law requireth, then that heire that otherwise demaneth himselfe shall be charged of his owne other lands and goods, and of his money, for this Deed of his ancestor. As for example: If a man binde himselfe and his heires in an Obligation of one hundred pounds, and dyeth leaving but ten acres of land to his heire, if his heire bee sued vpon the Bond, and commeth in, and denyeth that he hath any lands by descent, and it is found against him by the verdict that he hath ten acres, this heire shall be now charged by his false plea of his owne lands, goods & body, to pay the hundred pound, although the ten acres be not worth ten pound.

Propertie of lands by Escheat, is where the owner dyed seized of the lands in possession without child or other heire, whereby the land for lacke of other heire is said to escheat to the Lord of whom it is holden. This lacke of heire happeneth principally in two cases: first, where the lands owener is a Bastard, secondly, where he is attainted of Felonic or Treason. For neither can a Bastard have anie heire except it bee his owne childe, nor a man attainted of Treason, although it be his owne childe.

Vpon attainer of Treason the King is to take one token of the King, though the lands be not holden of him, otherwise it is attainer of felonie &c. for there the King shall haue but Annum diem & vstium.
have the land, although he be not the Lord of whom it is held, because it is a royall Escheat. But for Felonie it is not so, for where the King is not to have the Escheat, except the land be holden of him: and yet where the land is not holden of him, the King is to have the land for a yeare and a day next ensuing the judgement of the attainer, with a libertie to commit all maner of wast all that yere in houses, gardens, ponds, lands and woods.

In these Escheats, two things are especially to be observed. 1. The tenure. 2. The manner of the Attainer. All lands are holden of the Crowne immediately or mediately by Meine Lords, the Reason. Concerning the tenure of Lands.

The Conquerer by right of Conquest got all the land of the Realm into his owne hands in demesne, taking from every man all estate, Tenure, propertie and libertie of his. And as hee gave it, he still referred rents and services. Knights service in Capite first instituted.

In which rescruation, hee had foure Institutions, exceeding politique and futile to the state of a Conquerer.

1. Seeing his people to be part Normans, and part Saxons, the Normans hee brought with him, the Saxons he found here: hee bent himselfe to conjoyne them by marriages in amitie, and for that purpose ordaines, that if those of his nobles, Knights and Gentlemen, to whom hee gave great rewards of Lands should dye, leaving their heire within age, a Male within 21. and a Female within 14. yeares, and unmarried, then the King should have the bestowing of such heires in marriage in such family, and to such persons as he should thinke meete, which interest of marriage went still imployed, and doth at this day in every tenure called Knights service.
The second was, to the end that his people should still bee conserved in warlike exercises and able for his defence, when therefore he gave any good Portion of Lands, that might make the party of abilities or strength, hee withall reserved this service, That that party and his heires having such Lands, should keepe a horse of service continually, and ferue vpon him himselfe when the King went to warres, which is a part of that tenure called Knights service.

But if the Tenant himselfe bee an Infant, the King is to hold this Land himselfe untill he come to full age, finding him meat, drink, apparel, and other necessaries, and finding a horse and a man, with the overplus, to ferue in the warres as the Tenant himself should do if he were at full age.

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

The third Institution, was that his Tenant that his tenant shall keepe a horse of Service, and serve upon him himselfe when the King went to warres, which is a part of that service called Knights service.

The fourth Institution, was that for Recogniz on of the Kings bounty by every heire succeeding his ancestor in those Knights service lands, the King should have Primer feisin of the lands, which is one yeares profit of the lands, and till this be paid the King is to have possession of the land, and then to restore it to the heire, which continueth at this day in use, and is ever receiv'd by the Kings eldest Son a Knight, or to marry his eldest Daughter, is likewise due to his Majestie from every one of his Tenants in Knights service, that hold by a whole fee rent, and from every Tenant in Soccage if his land be worth 20s. pound per ann. Vide N. 3. fol. 82.

Escuage was likewise due unto the King from his Tenant by Knights service, when his Majestie made a voyage royal to warre against another Nation, those of his Tenants that did not attend him there for 40 days with Horse and furniture fit for service, were to be assessed in a certaine summe by Act of Parliament to bee paid into his Majestie, which assessment is called Escuage.
Knights Service in Capite, is a Tenure de persona Regis. Tenants by Grand Serjeantie, were to pay reliefe at the full age of every heire, which was one yeeres value of the lands so held ultra Repriss. Grand Serjeantie. Pettie Serjeantie.

These before mentioned be the rights of the tenure, called Knights service in Capite, which is as much to say, as tenure de persona Regis, & Caput, being the chiefest part of the person, it is called a Tenure in Capite, or in Chiefe. And it is also to be noted, that as this tenure in Capite by Knights service generally was a great faderie to the Crowne, so also the Conquerour instituted other tenures in Capite necessary to his estate; as namely, he gaue divers lands to be holden of him by some speciall Service about his person, or by bearing some speciall Office in his house, or in the Field, which haue Knights service and more in them, And these hee called Tenures by Grand Serjeantie. Also he provided upon the first gift of Lands, to haue Revenues by continuall Service of Ploughing his Land, repairing his Houses, Parkes pales, Cattles and the like. And sometimes to a yearly provision of Gloues, Spurres, Hawkes, Horses, Hounds and the like; which kind of reforuations are called also tenures in Chiefe or in Capite of the King, but they are not by Knights Service becauе they required no perfonall Service, but such things as the Tenants may hire another to doe or prouide for his money. And this Tenure is called a tenure by Soccage in Capite, the word Soccagium signifying the Plough. Howbeit in this later time, the Service of Ploughing the land is turned into monies rent, and so of Harueft worke, for that the Kings doe not keepe their Demeasne in their owne hands as they were wont to doe, yet what Lands were De antiquo Domino Corona, it well appeareth in the Records of the Exchequer called the booke of Doomesday. And the Tenants by ancient Demeasne, haue many immunities & pruileges at this day, that in ancient times were granted unto those Tenants by the Crowne, the particulars whereof are too long to set down.

These Tenures in Capite, as well that by Soccage, as the others by Knights Service, haue this propertie; that the Tenants cannot alien their Lands without licence of the King; if he doe, the King is to haue a Fine for the contempt, and may feize the land, and retaine it vntill the fine be paid. And the reason is, because the King would haue a libertie in the choyce of his Tenant, so that no man shoulde presume to enter into those Lands and hold them (for which the King was to haue those speciall services done him) without the Kings leave; This licence and fine as it is now digested is cattie and of course.
Office of Alienation.

There is an office called the office of Alienation, where any man may have a licence at a reasonable rate, that is, at the third part of one year's value of the Land moderately rated. A Tenant in Capite by Knights service or grand Serjeantie, was restrained by ancient Statute, that he should not give nor alien away more of his Lands, than that with the rest he might be able to do the service due to the King; and this is now out of use.

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

And it is to be noted, that all those that hold Lands by the Tenure of Soccage in Capite, although not by Knights service, cannot alien without licence, and they are to sue lierly, and pay Primer Seisin, but not to be in Ward for bodie or Land.

By example and resemblance of the King's policy in these Institutions of Tenures, the Great men and Gentlemen of this Realm did the like so near as they could; as for example, when the King had given to any of them two thousand Acres of Land, his party purposing in this place to make his dwelling, or (as the old word is) his Mansion house, or his Mannor house; did devise how he might make his Land a compleat habitation to supply him with all manner of necessaries, and for that purpose, he would give of the outermost parts of those two thousand Acres, or more or lesse, as he should think meet, to one of his most trustie Servants, with some reparation of rent to find a horse for the Warres, and goe with him when he went with the King to the Warres, adding voe of Homage, and the Oath of Fealtie, Wardship, Marriage, and reliefe. This Reliefe is to pay five pound for every Knights Fee, or after the rate for more or lesse at the entrance of every Knights Fealtie; and if the Tenant so created and placed, was and is to this day called a Tenant by Knights Service, & not by his own percone, but of his Mannors; of these he might make as many as he would. Then this Lord would provide that the Land which he was to keep for his own use, should be ploughed, & his Haruest brought home, his Houfe repayed, his Parke pailed, and the like; and for that end he would
would give some lesser parcels to sundry others of twenty, thirty, forty or fifty acres; reserving the service of ploughing a certain quantity, or so many days of his land, and certain harvest works or days in the harvest to labour, or to repair the house, park, pale, or otherwise, or to give him for his provision capons, hens, pepper, commin, roses, gilliflowers; spurres, gloves, or the like; or to pay him a certain rent, and to be sworn to be his faithful tenant, which tenure was called a socage tenure, & is so to this day, howbeit most of the ploughing and harvest services, are turned into mony rents.

The tenants in socage at the death of every tenant were to pay relief, which was not as knights service, is five pound a knights fee. But it was, and so is still, one year's rent of the land; and no wardship or other profit to the lord. The remainder of the two thousand acres he kept to himselfe, which he vned to manure by his bondmen, and appointed them at the courts of his manor how they should hold it, making an entry of it into the roll of the remembrances of the acts of his court, yet still in the lord's power to take it away; and therefore

fore they were called tenants at will, by villenage or coppie of court roll; being thereunto boundmen at the beginning, but having obtained freedom of their persons, and gained a custom by the using of occupying their lands, they now are called coppie-holders, and are so privileged, that the lord cannot put them out, and all through custom. Some coppie-holders are for lives, one, two, or threesuccessively; & some inheritances from heir to heir by custom, and custom rules these estates wholly, both for widows estates, fines, harriots, forfeitures, and all other things.

Mannors being in this sort made at the first, reason was that the lord of the manor should hold a court, which is no more than to assemble his tenants together, at a time by him to be appointed; in which court, he was to be informed by oath of his tenants, of all such duties, rents, relieff, wardships, coppie-holds or the like, that had hapned vnto him; which information is called a presentment, and then his bailife to seize and distrain for those duties if they were denied or withheld, which is called a court baron, and herein a man may sue for any debt under 40 value, and the freeholders are to judge of the cause upon proof produced upon both sides. And
Therefore the Free-holders of these Mannors, as incident to their Tenures, doe hold by suit of Court, which is to come to the Court, & there to judge betweene partie and partie in those pettie actions, and also to informe the Lord of duties of rents and services unpaid to him from his Tenants. By this course it is discerned who be the Lords of lands, such as if the Tenants dye without heire, or be attainted of felonie or Treason, shall have the Land by Escheat.

Now concerning what attainders shall give the Escheat to the Lord, it is to be noted, that it must eithery bee by judgement of Death given in some Court of Record against the Felon found guiltie by Verdict, or confession of the Felonie, or it must bee by Out-lawry of him.

The Out-lawrie groweth in this sort, a man is Indicted for Felonie, being not in hold, so as he cannot be brought in personal appear & to be tryed, insomuch that Process of Capias is therefore awarded to the Sheriffe, who not finding him returneth Non est inventus in Ballivus mea; and thereupon another Capias is awarded to the Sheriffe, who likewise not finding him maketh the same retumre, then a Writ called an Exigent is directed to the Sheriffe, commanding him to Proclaim him in his Countie Court five seuerall dayes to yeeld his body, which if the Sheriffe doe, and the partie yeeld not his body, he is sayd by the Default to be Outlawed, the Coroners there adjudging him Out-lawed, and the Sheriffe making the returns of the Proclamations and of the judgement of the Coroners upon the backside of the writ. This is an attainder of Felonie, whereupon the Offender doth forfeit his Lands by an Escheat to the Lord of whom they are holden.

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

So a man indicted that will not answer nor put himselfe upon tryall, although he be by this to have judgement of Preffing to Death, yet he doth forfeit no Lands, but Goods, Chattels, Leases and Debts, except his offence be Treason, and then he forfeiteth his Lands to the Crowne.
(46)

So a man that killeth him-selfe shall not lose his Lands, but his Goods, Chattels, Leaves and Debts. So of those that kill others in their owne defence, or by misfortune.

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

So a man Indicted of Felonie, if he yeeld not his body upon the Exigent for Felonie forfeith his goods.

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

The Custome of Kent is, that Gauilkind land is not forfeitable nor Escheatable for Felonie, for they have an old saying; The Father to the Bough, & the Son to the plough.

The wife loseth no power notwithstanding the husband he attained of Felonie, but yet she is no offender, but at this day it is holden by Statute Law that she loseth them not, for the Husbands Felony. The relation of these forfeits are these.

1. That men attained of Felonie or Treason by verdict or confession, do forfeit all the Lands they had at the time of their offence committed, and the King or the Lord who focuer

Attainder in Felony or treason by verdict, confession, or outlawry, forfeith all they had from the time of the offence committed.

Lands entailed, Escheat to the King for Treason.


Tenant for life committed Treason or Felony, there shall be no Escheat to the Lord.

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

If the Husband was attainted, the Wife was to lose her thirds in cases of Felonie and Treason, but yet she is no offender, but at this day it is holden by Statute Law that she loseth them not, for the Husbands Felony.
And so it is upon an attainder of outlawry, otherwise it is in the attainder by verdict, confession and outlawry, as to their relation for the forfeiture of goods and chattels.

The Kings Officers upon the apprehension of a Felon are to seize all his goods and chattels.

The Kings Officers, upon the apprehension of a Felon, have no capacity in them to take, obtain or purchase, only to the use of the King, until the party be pardoned. Yet the party guied not backe his lands or goods without a speciall Patent of Restitution, which cannot restore the bloud without an Act of Parliament. So if a man have a Sonne, and then is attainted of Felonie or Treason, and purchaseth lands, and then hath issue another son, and dyeth; the Sonne he had before he had his pardon, although he be his eldest Sonne, and the Patent have the words of restitution to his lands, shall not inherit, but his second Sonne shall inherit them. And not the first; because the bloud is corrupted by the attainder, and cannot be restored by Patent alone, but by Act of Parliament. And if a man have two Sonnes, and the eldest is attainted in the life of his Father, and dyeth without issue, the Father living, the second son shall inherit the Fathers lands; but if the eldest Son have any issue, though he die in the life of his Father, then neither the second Son, nor the issue of the eldest, shall inherit the Fathers Lands, but the Father shall there be accounted to dye without Heire, & the Land (shall Escheate, whether the eldest Sonne have issue or not afterward or before, though he be pardoned after the death of his Father.)
Proprietie of Lands by Conveyance is first distributed into Estates, for Yeares, for Life, in Tayle, and Fee-simple.

These Estates are created by word, by writing, or by record. For Estates of Yeares, which are commonly called Leases for Yeares, they are thus made; where the owner of the Land agreeth with the other by word of mouth, Lease Paroll, that the other shall have, hold, and enjoy the Land, to take the profits thereof for a time certain of Yeares, Months, Weekes or Dayes, agreed betweene them, and this is called a lease Paroll, such a lease may be made by writing Pole or Indented of devise grant and to farme let, and so also by fine of Record, but whether any Rent be referred or no, it is A rent need not to be referred. Leases there may bee annexed such exceptions, conditions and Covenants, as the parties can agree on. They are called Chattels real, and are not inheritable by the heires, but goe to the Executors and Administrators, and be saleable for debes in the life of the owner, or in the Executors or Administrators.
Lease for life is not forfeitable by outlawry except in cases of Felonie or Premunire, and then to the King and not to the Lord by Escheat; and it is not forfeited by any of the means before mentioned of leases for years.

Lease for lives are also called Freeholds, they may also be made by Word or writing, there must be Liverie and Seisin given at the making of the Lease, whom we call the Lessor; who commeth to the door, backside or Garden if it be a house, if not, then to some part of the Land, and there he expresseth, that hee doth grant unto the taker called the Lessee, for term of his life: and in Seisin thereof, hee delivereth to him a Turfe, twig, or Ring of the door; and if the Lease bee by writing, then commonly there is a note written on the backside of the Lease, with the names of those witnesses who were present at the time of the Liverie or Seisin made; This estate is not saleable by the Sheriffe for Debt, but the Land is to be extended for a yearly value, to satisfy the Debt. It is not forfeitable by Outlawrie, except in cases of Felonie, nor by any of the means before mentioned, of Lease for years; saving in an Attainder for Felonie, Treason, Premunire, and then onely to the Crowne, and not to the Lords by Escheat.

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

If a man have an Estate in Lands for another mans life, and dyeth, this Land cannot goe to his Heire, nor to his Executors, but to the partie that first entreth, and he is called an Occupant as before hath beene declared.

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

Entayles of Lands are created by a gift, with Liverie and Seisin to a man, and to the heires of his body; this word (Body) making the entaille, may be demonstrated and restrained to the Males or Females, heires of their two bodies, or of the body of either of them, or of the body of the Grand father or father.

Entayles of Lands began by a Statute made in E. I. time, by which also they are so much strengthened, as that the Tenant in Tayle could not put away the Land from the heire by any Act of conuoyance or At-tainder, nor let it, nor incumber it, longer then his own Life.
But the inconvenience thereof was great, for by that means, the Land being so sure tied upon the heir as that his Father could not put it from him, it made the Sonne to be disobedient, negligent, and wasteful; often marrying without the Father's consent, and to grow insolent in vice, knowing, that there could be no checke of disinheriting him. It also made the owners of the land less fearful to commit Murthers, Felonies, Treafons, and Mafflaughters; for that they knew, none of these acts could hurt the Heire of his inheritance. It hindered men that had intayled lands, that they could not make the best of their lands by fine and improvement, for that none upon so uncertain an estate as for term of his owne life would give him a fine of any vallue, nor lay any great stocke upon the land that might yeeld rent improved.

Lastly, those Entailes did defraud the Crowne, and many Subjects of their Debts, for that the land was not lyable longer then his owne life-time; which caused that the King could not safely commit any office of accompt to such, whose land were entailed, nor other men trust them with loan of money. These inconveniences were all remedied by Acts of Parliament, as namely, by Acts of Parliament later then the Acts of Entailes, made, 4. H.7. 32. H.8. A Tenant in taile may disinherit his Sonne by a fine taken by fine, with Proclamation, and may by that means also, make it subject to his Debts and Sales.

By a Statute made, 26. H.8. A Tenant in taile doth forfeit his lands for Treafon; and by an other Act of Parliament, 32. H.8. He may make leaves good against his heir for 21. yeares or three lives, so that it be not of his chief House, Lands, or demeanour, or any lease in Reversion, nor leave rent reserved then the Tenants have payed most part of 21. yeares before, nor have any manner of discharge for doing wasts and spoiles: by a Statute made 33. H.8. tenants of Entailed lands are lyable to the Kings debts by Extent, and by a Stat. made 13. & 39. Eliz. they are saleable for the arrerages upon his accompt for his Office; So that now it refeth, that Entailed Lands have two privileges, Firstly, Not forfeitele for Felonies. Secondly, Not to be extended for Debts after the parties death, except the Entailes be cut off by Fine and Recoverie.

The prejudice the Crowne received thereby.
Of the new device called a Perpetuity, which is an Entail with an addition.

But it is noted that since these notable Statutes, and remedies provided by Statutes, doe dock Entayles, there is starr vp a device called Perpetuity, which is an Entail with an addition of a Proviso Conditionall, tyed to his Estate, not to put away the Land from his next heyre; and if he doe, to forfeit his own estate. Which Perpetuities, if they should stand, would bring in all the former inconveniences subject to Entayles, that were cut off by the former mentioned Statutes, and farre greater; for by the Perpetuity, if he that is in possession start away never so little, as in making a Lease, or selling a little quillet, forgetting after two or three Dissents, as often they doe, how they are tyed, the next Heyre must enter; who peradventure is his Sonne, his Brother, his Uncle or kinsman, and this raiseth unkind Suites, setting all that kindred at jarres, some taking one part, some another, & the principal parties wasting their time and mony in suites of law. So that in the end, they are both constrained by necessitie to ioyne both in a Sale of the land, or a great part of it, to pay their Debts, occasioned through their Suits; And it the chiefest of the Family for any good purpose of well seating himselfe, by selling that which lyeth faire off, to buy that which is neere, or for the advancement of his Daughters or younger Sonnes, should have reasonable

These Perpetuities would bring in all the former inconveniences of Entailstailles.

The inconveniences of these Perpetuities.

Quere whether it be better to restraine men by these Perpetuities from alienations, or to hazard the undoing of houses by unthrifty Posteritie.

Wherefore seeing the dangerous times and unwardly Heyres, they might prevent those mischiefes of undoing their Houses by conveying the Land from such heyres, if they were not tyed to the stake by those Perpetuities, and restrained from Forfeiting to the Crowne, and disposing of it to their owne or to their Childrens good; Therefore it is worthy of consideration, whether it be better for the Subject and Soveraigne to have the lands secured to mens Names & Blouds by perpetuities, with all inconveniences above-mentioned, or to be in hazzard of undoing his House by vnthrifty Posteritie.

The last and greatest Estate of Lands is Fee-simple, and beyond this there is none of the former for Lives, Yeares or Entayles; Fee-simple.
A remainder cannot be limited upon an estate in Fee-simple.

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

A Reversion cannot be granted by word.

A Reversion cannot be granted by word.

Atturnement must be had to the grant of the Reversion.

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

The difference between a remainder and a Reversion.

The difference between a remainder and a Reversion.

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

The difference between a Remainer and a Reversion. The difference between a Reversion & a Remainder, is this. The Remainder is always a succeeding Estate appointed upon the gifts of a precedent Estate, at the time when the Precedent is appointed. But the Reversion is an estate left in the giver, after a particular estate made by him for Yeares, Life, or Entaile; where the remainder is made with the particular estates, then it must bee done by Deeds in writing, with Liuerie and Seisin, and cannot be by words; And if the giver will dispose of the Reversion after it remaineth in himselfe, he is to doe it by writing, and not by word; and the Tenant is to have notice of it, and to atturne it, which is to give his assent by word or paying rent, or the like; and except the Tenant will thus atturne, the partie to whom the Reversion is granted cannot have the Reversion, neither can he compell him by any Law to atturne, except the grant of the Reversion is by fine; and then he may by writ provided for that purpose: and if he do not purchase that writ, yet by the fine, the Reversion shall passe; and the Tenant shall pay no rent, except he will himselfe, nor be punished for any wastes in houses, woods &c. unlesse it be granted by bargain and Sale by Indenture inrolled; These Fee simple estates lye open to all perrils of Forfeitures, Extents, Incumbrances and fales.

Lands are conveyed by these 6 means, first, by Feoffment, which is, where by Deed Lands are given to one and his heires, and Liuerie and Seisin made according to the forme and effect of the deed; if a lesser estate then Fee-simple be given, and Liuerie or Seisin made, it is not called a Feoffment, except the Fee-simple be conveyed, but is otherwise called a lease for life or gift intaile as above mentioned.

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

Recoveries are where for assurances of lands the parties doe agree, that one shall begin an Action real against the other, as though he had good right to the land, and the other shall not enter into Defence against it, but allege that hee bought the land of I.H. who had warranted unto him, and pray that I.H. may bee called in to defend the Title, which I.H.is one of the Cryers of the Common Pleas, & is called the Common Voucher. This I.H. shall appeare and make as if he would defend it, but shall a pray day to be assigned him in his matter of Defence; which being granted him at the Day, hee maketh Default, and thereupon the Court is to give judgement against him; which cannot be for him to lose his lands because he hath it not, but the partie that he hath sold it to, hath that who vouched him to warrant it.

Therefore the Demandant who hath no defence made against it, must have Judgement to have the land against him that hee fauèd (who is called the Tenant) and the Tenant is to have Judgement against I.H. to recover in value so much Land of his, where in truth he hath none, nor neuer will. And by this Device grounded upon the strict Principles of Law, the first Tenant loseth the land, and hath nothing for it, but it is by his owne agreement for assurance to him that bought it.

This Recovery barreth Entayles, and all Remainders and reversions that should take place after the Entayles, sauing where the king is giver of the Entayle and keepeth the Reversion to himselfe; then neither the Heire, nor the Remainder, nor Reversion, is barred by the Recovery.

I 3
The reason why the Heires, Remainders, and Reversions are thus barred, is because in strict Law the recompence adjudged against the Cryer that was Vouchee, is to goe in succession of Estate as the Land should have done, and then it was not reason to allow the Heire the libertie to keepe the Land it selfe, and also to have recompence; and therefore he loseth the Land, and is to truist to the Re-compence.

This sleight was first invented, when Entayles fell out to be so inconvenient as is before declared, so that men made no Conscience to cut them off, if they could finde Law for it. And now by vfe, those Recoveries are become common assurances against Entailes, Remainders, and Reversions, and are the greatest security Purchasers have for their monies; for a Fine will barre the Heire in tayle, and not the Remainder, nor Reversi-on, but a common Recovery will barre them all.

Upon Feofments and Recoveries, the estate doth settle as the vfe and intent of the parties is declared by word or writing, before the Act was done; As for example. If they make a writing, that one of them shall leve a Fine, make a Feofment, or suffer a common Recovery to the other; but the vfe and intent is, that one should have it for his life, and after his decease, a stranger to have it in Tayle, and then a third in Fee-simple. In this case the land fetheth in an e-state according to the vfe & intent declared. And that by reason of the Statute made 27. HENRY 8. conveying the Land in posse-fion to him that hath interest in the vfe, or intent of the Fine,Feofment, or Recovery, according to the vfe and intent of the parties.

Vpon this Statute is likewise grounded the forth and fifth of the six Conveyances, viz. Bargaines, Sales, Covenants, to stand seized to vfe's; For this Statute, wherefor it fetheth an vfe, coniunction the posse-fion to it, and turneth it into like quality of Estate, Condition, Rent and the like, as the vfe hath.

The vfe is but the equity and Honestie to hold the Land in Conscientia boni viri. As for example. I and you agree that I shall give you money for your Land, and you shall make me assurance of it. I pay you the money, but you made me no assurance of it. Here although the estate of the Land bee still in you, yet the equitie and Honestie to haue it is with me; and this equitie is called the Vfe, vpon which I had no remedy but in Chancerie,
Before 27. H. 8. there was no remedy for a use, but in Chancery.

Chancery, until this Statute was made of 27. Henry 8., and now this Statute contains the Land to him that hath the use. I for my money paid to you, have the Land it selfe, without any other Conveyance from you, and it is called a Bargaine and Sale.

But the Parliament that made that Statute did foresee, that it would be mischievous that mens Lands should so suddenly upon the payment of a little money be conveyed from them, peradventure in an Alehouse or a Tavern upon straineable advantages, did therefore gravely provide an other Act in the same Parliament, that the Land upon payment of this money should not pass away, except there were a Writing Indented, made between the said two Parties, and the said Writing also within six Moneths Installed in some of the Courts at Westminster, or in the Sessions Rolles in the Shire where the land lyeth; unless it be in Cities or Corporate Townes where they did use to Enroll Deeds.

The Statute of 27. H. 8. extends not into Cities and Corporate Townes where they did use to Enroll Deeds.

A Conveyance to stand seized to a use.

The fifth Conveyance of a Fine, is a Conveyance to stand seized to uses: it is in this fort: A man that hath a Wife and Children, Brethren and kinsfolkes, may by writing under his Hand and Seal, agree, that for their or any of their preferment he will stand seized of his Land to their uses, either for life in tail or Fee, so as he shall see cause, upon which agreement in Writing, there arises an Equity or Honestie, that the land should goe according to those agreements; Nature and Reason allowing these provisions; which Equity and Honestie is the use. And the use being created in this fort, the Statute of 27. Henry the Eight before mentioned, conveyeth the Estate of the land, as the use is appointed.

And so this Covenant to stand seized to uses, is at this day since the said Statute, a Conveyance of land, and with this difference from a Bargaine and sale, in that it needeth no Enrollment as a Bargaine and Sale doth, nor needeth it to be in writing Indented, as Bargaine and Sale must; and if the participle to whose use he agreeth to stand seized of the land, be not Wife, or Child, Cozen, or one that he meaneth to marry, then will no use rise, and so no Conveyance; for although the Law alloweth such weightie Considerations of Marriage and blood to raise uses, yet doth it not admit of trifling Considerations, as of Acquittance, Schooling, Services, or the like.
Upon a Fine, Feeement or Recovery a man may limit the use to whom he listeth, without Consideration of blood, or money. Otherwise, in a Bargaine and Sale, or Covenant.

Of the continuance of land by will.

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

The not disposing of Land by will, was thought to bee a defect at Common Law, that men in the wars, or suddenly falling sick, had not power to dispose of their lands, except they could make a Feeoment, or suffer a Recovery, which want of time would not permit; and for men to doe it by these means, when they could not undo it againe, was hard; besides, even to the last hour of death, mens minds might alter upon further proofs of their Children or Kindred, or encrease of Children or debt, or defect of servantes or friends, to be altered.

For which cause, it was reason that the Law should permit him to referee to the last instant the disposing of his lands, and to guide him meanes to dispose it, which seeing it did not fitly serue, men vfed this devise.

They conveyed their full estates of their lands in their good health, to friends in trust, properly called Feeoffees in trust; and then they would by their wills declare how their Friends should dispose of their lands; & if those Friends would not performe it, the Court of Chancery was to compell them, by reason of the trust, & this trust was called, the vse of the land, so as the Feeoffees had the land and the party himselfe had the vse, which vse was in equity, to take the profits for himselfe, & that the feoffees should make such an estate as he should appoint them; and if he appointed none, then the vse should goe to the heire, as the estate itselfe of the land should have done; for the vse was to the Estate like a shadow following the body.
By this course of putting lands into use, there were many inconveniences, as this use which grew first for a reasonable cause; viz., to give men power and liberty to dispose of their own, was turned to deceive many of their just and reasonable rights. As namely, a man that had cause to sue for his land, knew not against whom to bring his action, nor who was owner of it. The wife was defrauded of her thirds. The husband of being tenant by curtesy. The lord of his wardship, relief, heriot, and escheat. The creditor of his extent for debt. The poor tenant of his lease; for these rights and duties were given by law from him that was owner of the land, and none other; which was now the feoffee of trust, and so the old owner which we call the feoffor should take the profits, and leave the power to dispose of the land at his discretion to the feoffee, and yet he was not such a tenant as to be seized of the land, so as his wife could have dower, or the lands be extended for his debts, or that he could forfeit it for felony or treason, or that his heir could be ward for it, or any duty of tenure fall to the lord by his death, or that he could make any leases of it.

Which frauds by degrees of time as they increased were remedied by divers statutes; as the statute of the 1. Henry the 6th, 6. and 4. Henry the 8th. it was appointed that the action may be tried against him which taketh the profits, which was then cessuy que use by a statute made 1. Richard the 3rd. leases and estates made by cessuy que use are made good, & estat. by him acknowledged. 4. Henry the 7th. the heir of cessuy que use is to be in ward: 16. Henry the 8th. the lord is to have relief upon the death of any cessuy que use. Which frauds notwithstanding multiplying daily, in the end 27. Henry the 8th. the parliament purposing to take away all those uses, and reducing the law to the ancient form of conveying of lands by publick livery of seisin, fine, and recovery, did ordain, that where lands were put in trust or use, there the possession and estate should be presently carried out of the friends in trust, and settled and invested on him that had the uses for such time and term as he had the use.

By this statute of 27. Henry the 8th. the power of disposing lands by will is clearly taken away amongst those frauds; whereupon 32. Henry the 8th. another statute was made, to give men power to give lands by will, in fee simple.
Fee-simule; For Tenant for an other mans Life, or Term in Tayle, cannot give Land by Will, by that Statute 3. he must be solely seized, & not joynctly with another, and then being thus seized, for all the Land he holdeth in Soccage Tenure, hee may give it by Will, except he hold any piece of land in Capite by Knights servise of the King; and then laying all his lacks together, hee can give but two parts by Will; for the third part of the whole, as well in Soccage as in Capite, must descend to the Heire, to answer Wardship, Liuerie and primer Seisin, to the Crowne.

And so if he hold lands by Knights servise of a Subiect, he can devise of the land but two parts, and the third the Lord by Wardship, and the Heire by descent is to hold.

And if a man that hath three Acres of Land holden in Capite by Knights servise, doe make a joynture to his Wife of one, and convey an other to any of his Children, or to Friends, to take the profits, and to pay his Debts or Legacies, or Daughters Portions, then the third Acre or any part thereof he cannot give by Will, but must suffer it to descend to the Heire, and that must satsisfe Wardship.

Yet a Man having three Acres as before, may convey all to his Wife or Children by Conveyance in his Life time, as by Feoffment, Fine, Recoverie, Bargaine and sale, or Covenant to stand conveyed to voses and to dis-inherit the Heire. But if the heire be within age when his Father dyeth, the King or other Lord shall have that Heire in Ward, and shall have one of the three Acres during the Wardship, and to sue Liuerie and Seisin. But at full age the Heire shall have no part of it, but it shall go according to the Conveyance made by the Father:

It hath beene debated how the thirds shall be set forth. For it is the use that all Lands which the Father leaveth to descend to the Heire, being Fee-simule, or in tayle, must be part of the thirds; and if it be a full third, then the Kings, nor Heire, nor Lord, be left to de-
can intermeddle with the rest. If it be not a full third, yet they must take it so much as it is, and have a supply out of the rest.

This supply is to be taken thus: If it be the Kings Ward, then by a Commiision out of the Court of Wards, whereupon a Jury by oath, must set forth so much as shall make yt the thirds, except the Officers of the Court of Wards can otherwise agree with the parties.
The Statutes give power to the Testator to set out the third himselfe, and if it be not a third part, yet the King or Lord must take that in part, and have a supply out of the Rent.

But in all those cases the Statutes doe give power to him that maketh the Will to set forth and appoint of himselfe, which Lands shall goe for thirds, and neither King nor Lord can refuse it. And if it be not enough, yet they must take that in part, and only have a supply in manner as before is mentioned out of the rest.

Propertie in Goods.


1. Propertie by gift

By gift the property of goods may be passed by word or writing; but if there be a general Deed of Gift made of all his Goods, this is susiptious to be done upon fraud, to deceive the Creditors.

Executors Administrators, or Vender of the partes himselfe

And if a man who is in Debt, make a Deed of gift of all his Goods to protract the taking of them in Execution for his debt, this Deed of Gift is void as against those to whom he was indebted, but as against himselfe, his owne Executors or Administrators, or any man to whom afterwards he shall sell or Convey them, it is good.

2. By Sale.

Propertie in Goods by Sale. By Sale any man may convey his owne Goods to another, and although he may feare Execution for Debts, yet he may sell them out-right for money at any time before the Execution is sued, so that there be no referation of trust betwene the partes.
between them, paying the money, he shall have the goods againe; for that trust in such case, doth prove plainly a fraud to prevent the Creditors from taking the goods in Execution.

3. By Theft or taking in Jest.

If any Man steale my Goods or Chattels, or take them from me in Jest, or borrow them of me, or as a Trespasser or Felon carry them to the Market or Faire, and sell them, this Sale doth barre me of the property of my goods, saving that if he be a horse he must be ridden two hours in the Market or Faire, betwixt ten and five o'clocke, and Tolled for in the Toll-Booke, and the seller must bring one to avouch his sale, knowne to the Toll-booke-keeper, or else the sale bindeth me not. And for any other goods, where the Sale in a Market or Faire shall barre the owner being not the seller of his property, it must be sale in a Market or Faire where usuall things of that Nature are sold. As for example: if a man steale a Horse, and sold him in Smithfield, the true owner is barred by this Sale; but if he sold the Horse in Cheapeside, Newgate or Westminster market, the true owner is not barred by this Sale: because these Markets are usuall for Flesh, Fish, &c. and not for Horses.

So wheras by the Custom of London every Shop there is a Market all the dayes of the weke, saving Sundayes and Holydayes; Yet if a pice of Plate or Jewell that is lost, or Chaine of Gold or Pearle that is stolne or borrowed, be sold in a Drapers or Scriueners shop, or any others but a Goldsmith, this sale barreth not the true owner, Et sic in similibus.

Yet by stealing alone of Goods, the Thiefe getteth not such propertie, but that the owner may Seize them againe wheresoever he findeth them; except they were sold in Faire or Market, after they were stolne; and that bona fide without fraud.

But if the Thiefe be condemned of the Felonie, or outlawed for the same, or outlawed in any personall Action, or have committed a forfeiture of Goods to the Crowne, then the true owner is without remedie.

Newgate or Westminster market, the true owner is not barred by this Sale; because these Markets are usual for Flesh, Fish, &c., and not for Horses.

But if he make fresh pursuit he may take his goods from the thiefe.

By wayuing of Goods, a property is gotten thus. A thief having stolen goods, being pursued flyeth away and leaveth the goods. This leaving is called wayuing, and the property is in the king, except the lord of the manor have right to it, by custom or charter.

But if the felon be indicted, adjudged, or found guilty, or outlawed at the suit of the owner of these goods, he shall have restitution of these goods, as before.

5. By Straying.

By straying, property in live cattle is gotten. When they come into other men's grounds straying from the owners, the partie or lord into whose grounds or manors they come, causeth them to be seized, and a writ put about their necks, and to be cried in three markets adjoyning, shewing the marks of the cattle; which done, if the true owner claimeth them not within a yeare and a day, then the property of them is in the lord of the manor whereunto they did stray, if he haue all strayes by custome or charter, else to the king.

6. Wracke, and when it shall be said to bee.

By shipwracke, property of goods is gotten. When a ship laden is cast away upon the coasts, so that no living creature that was in it when it began to sink escape to land with life, then all those goods are said to be wracked, and they belong to the crown if they be found; except the lord of the soyle adjoyning can intitle himself unto them by custome, or by the king's charter.

7. Forfeitures.

By forfeitures, goods and chattels are thus gotten. If the owner be outlawed, L 3
if he be indicted of Felonie, or Treason, or either confess it, or be found guilty of it, or refuse to be tryed by Peeres or Jury, or be attainted by Judgement, or flye for Felony; although he be not guilty, or suffer the Exigent to goe forth against him; although he be not outlawed, or that he goe over the Seas without license, all the goods hee had at the Judgement, hee forfeiteth to the Crowne; except some Lord by Charter can claime them. For in those cases precepts will not serve, except it be so ancient, that it hath had allowance before the Justices in Eyre in their Circuits, or in the Kings Bench in ancient time.

8. By Executorship.

By Executorship goods are gotten. When a man possessed of goods maketh his Last Will and Testament in writing or by Word, and maketh one or more Executors thereof; These Executors have by the Will and death of the parties, all the property of their Goods, Chattels, Leases for Yeares, Wardships and Extents, and all right concerning those things.

Those Executors may meddle with the Goods, and dispose them before they prove the Will, but they cannot bring an action for any Debt or duty before they have proved the Will.

The proving of the Will is thus. They are to exhibite the Will into the Bishops Court, and there they are to bring the witnesses, and there they are to be sworne, and the Bishops Officers are to keepe the Will Originall, and certify the Copie thereof in Parchment under the Bishops Seale of Office, which Parchment so sealed, is called the Will proved.


By Letters of Administration property in goods is thus gotten. When a man possessed of goods dyeth without any Will, there such goods as the Executors should have had if he had made a Will, were by ancient Law to come to the Bishop of the Diocese, to dispose for the good of his soul that dyed, he first paying his Funerals and Debts, and giving the rest Ad pios usus.

This is now altered by Statute Lawes, so as the Bishops are to grant Letters of Administration.
administration of the goods at this day to the Wife if shee require it, or Children, or next of kin, If they refuse it, as often they doe, because the debts are greater then the estate will beare, then some Creditor or some other will take it as the Bishops Officers shall think meet. It groweth often in question what Bishop shall haue the right of proving Wills, & granting Administration of goods.

In which Controversie the rule is thus, That if the partie dead had at the time of his Death bona notabilia in divers Diocesses of some reasonable value, then the Arch-bishop of the Province where he dyed is to have the probat of his Will, and to grant the Administration of his goods as the case falleth out, otherwife, the Bishop of the Diocesse where he dyed is to doe it.

If there be but one Executor made, yet he may refuse the Executorship comming before the Bishop, so that he hath not intermedled with any of the goods before, or receiving Debts, or paying Legacies.

And if there be more Executors then one, the Executor ought to pay, 1 Judgements. 2 Stat. Recogn. 3 Debts by bonds and bills sealed. 4 Rent unpaid. 5 Servants wages. 6 Head workmen. 7 Shop-books and Contracts by Word. Debts.

Debts or Legacies, then the value of the goods come to his hands, So that he fore-see that he pay Debts vpon Record, first debts to the King, then vpon Judgements, Statutes, Recognizances, then Debts by Bond and Bil sealed, Rent vnpaied, Servants wages, payment to head workmen, and lastly, Shop-books, and Contracts by Word. For if an Executor, or Administrator pay debts to others before to the King, or debts due by Bond before those due by Record, or debts by Shop-books and Contracts before those by Bond, arrerages of Rent, and Servants, or work mens wages, he shall pay the same over againe to those others in the sayd degrees.

But yet the Law giueth them choyce, that where divers haue Debts due in equal degree of Record, the Executor may pay which of them he please before suit commenced. Any one Executor may release Debts without his companion, and any one by himselfe may doe as much as all together, but one mans releasing of Debts or selling of Goods, shall not charge the other to pay so much of the Goods, if there be not enough to pay debts; but it shall charge the party
party himselfe that did so release or convey. But it is not so with Administrators, for they have but one authoritie given them by the Bishop over the goods, which authoritie being given to many is to be executed by all of them joyned together.

But if an Administrator die intestate, then his Administrator shall not bee Executor or Administrator to the first Testator. But otherwise, if an Administrator die making his Executor, or if Adminis- trators may re- taine.

If the Executor or Administrator pay Debts, or Funerals, or Legacies of his owne money, he may retaine so much of the goods in kind, of the Testator or intestate, and shall

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

But if an Administrator die intestate, then his Administrator shall not bee Executor or Administrator to the first; But in that Case the Bishop, whom we call the Ordinary, is to commit the Administration of the first Testators goods to his Wife, or next of kinne, as if hee had dyed intestate; Always provided, that that which the Executor did in his life-time, is to bee allowed for good. And so if an Administrator dye and make his Executor, the Executor of the Administrator shall not bee Executor to the first intestate; But the Ordinarie must new commit the Administration of the goods of the first intestate again.

Executors or Administrators may retaine; because the Executors are charged to pay some debts before Legacies. And if one of them affent to pay Legacies, hee shall pay the value thereof of his owne purse, if there bee no otherwise sufficient to pay debts.

But this is to be understood, by debts of Record to the King, or by Bill and Bond sealed, or arrerages of Rent, or Servants or Workmens wages, and not debts of Shopbookes, or Bills unsealed, or Contract by word, for before them Legacies are to bee payed.

And if the Executors doubt that they shall not have enough to pay every Legacie, they may pay which they list first; but they may not sell any special Legacie which they will to
If the Executors doe want they may sell any Legacie to pay Debts. But they may sell any Legacie which they will to pay Debts, if they have not enough besides.

If a man make a Will and make no Executors, or if the Executors refuse, the Ordinary is to commit Administration *cum Testamento annexo*, and take bonds of the Administrators to performe the Will, and he is to doe it in such sort as the Executor should have done if he had beene named.

FINIS.