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We allow of the Printing and Publishing of the Book Intituled, *A General Abridgment of Law and Equity*, Alphabetically digested under proper Titles, &c. By Charles Viner, Esq;

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A General Abridgment of Law and Equity

Alphabetically digested under proper Titles

With

Notes and References to the Whole.

By CHARLES VINER, Esq;

Favente Deo.

ALDERSHOT in Hampshire near Farnham in Surry:
PRINTED for the Author; by Agreement with the Law-Patentees.
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(B. a) Modus Decimandi. In what Cases a Man may 
preferbe in Modo Decimandi; And How.

1. A Declaring that Tithes of Gras de Jure ought to be made 
into pay by the Parishioner, yet it seems a Parish may pre-
scribe, without any Consideration given to the Parson to pay the 
Tithes of this in Gras-Cocks, before any Tedding thereof. Com- 
son, who seemed e contra them, because this Prescription is Non 
Decimand for this Parc.

to the Parson and his Successors, in full Satisfaction and Discharge of all the Tithes in 
a Place. 13 Rep. 40. Trin. 7 Jac. in the Case of Modus Decimandi.—See (Y) pl. 1. 2. S. C.

2. So it seems a Parishioner may make such Prescription. Contra, 
H. 14 T. B. R. Barham and Goose, per tonam Curiam, because it 
is in Non Decimando for this Parc.

3. So a Parish may prescribe without any Consideration, to pay 
Tithes of Gras-Cocks after tender and making them to be in Holmes 
and Beverstocks, and putting into Gras-Cocks, then out of the Gras-
Cocks to set out the Tithes, and not to make it into perfect Hay.

4. Contra, 16 Ja. B. R. between Popperston and Johnson, a 
Prohibition denied. But note, That only Houghton moved it as 
Double to him, to which no Answer was given, but the Prohibition 
denied nor withstanding.

5. If a Man prescribes, that if he hath under 10 Fleece of Wool, 
that he shall pay one Penny to the Parson for each in lieu of Tithes, 
and that if he hath more, (*) that he shall deliver to the Parson the 
tenth Part of his Wool, upon his Conscience, without Fraud and 
Covin, fine VifU vel tali of the Parson, this is not a good Modus, 
because it is unreasonable. H. 12 Ja. B. per Curiam, between 
Wilton and the Bishop of Carlisle. Vide the same Case, Hobart's 
Reports, 149.

6. If a Man prescribes to pay to the Parson for the Tithes of the 
ten Sheep, as it falls out, and the tenth Swarth, this is not any Modus, 
because he does not prescribe to pay other Things than what was due, but a full Tenth. H. 13 Ja. B. between Barker and 
Bolwoll, per Curiam.

7. A Man may prescribe to pay the tenth Acre of Wood standing, 
and to pay the tenth Acre of Gras standing for the Tith of Hay. 
Hobart’s Reports, Case 328.

8. A Man cannot prescribe in the Negativa to be quit of Tithes, but in 
the Negativa with an Affirminive, viz. That he and all &c. have used to 
be quit of Tithes. Br. Prescription, pl. 17. cites 7 H. 6. 32 and 
8 H. 6. 3.
Difmes, [or Tithes].

Gibb, 120. 9. Modus's were real Compositions by Parson, Patron, and Ordinary, from the written Evidence of which is lost; but the Law presumes by the uninterrupted Usuage that there was such; Agreed unanimously by the Judges and their Assistants. Barnard, Rep. in B.R. 292, 293. Hill. 3 Geo. 2. in Can. Munson's Case.

10. If Tenants Time out of Mind have used to pay a certain Price for a Tith Lamb, so that the Custom is fully settled, though the Parson in-creach more, or the Tenant pay the Lamb in Specie this does not break the Custom; But if one has paid 1 d. for a Lamb for 50 Years, and after pays Tith in Specie before the Custom is settled, though he pay his rd. again for 20 Years, he can't preceive in Modo Deci-mandi. Savil. 13. pl. 34. Hill. 23 Eliz. in Secce. Fleming v. the Tenants of Dudley, and there said to be so resolved Mich. 25 Eliz. in Cam. Scacc. Beake v. Maine.

11. Parson libel'd against A. for Tithes, A. for a Prohibition shew'd, That within the said Parish of D. there is a Hamlet in which A. inhabited, that the said Inhabitants within the said Hamlet had had Time out of Mind a Chapel of Ease within the said Hamlet, because the said Hamlet was distant from the Church of the said Parish; and with Part of their Tithes have found a Clerk to do divine Service within the said Chapel; and also had paid a certain Sum to the said Parson and his Pre-decessors for all manner of Tithes, and it was held a good Precription, and a Prohibition was granted. 4 Le. 24. pl. 77. Trin. 26 Eliz. B. R. Saer v. Bland.

12. Where a Man prescribes 1 s. for the Tithes of all Willows cut down by him in the Parb of D. it is not good. For thereby if he cuts all the Willows of other Men also, he should pay but 1 s. for all. But he should have prescribed for all Willows cut down by him on his own Land, and then it had been good. But as it is laid, it is unreasonable. Godb. 60. pl. 73. Mich. 28 & 29 Eliz. B. R. Anon.

13. A Modus was suggested in this Manner, viz. That the Proprietors and Occupiers of such a Manor, or any Parcel thereof, should pay a Groat to the Parson for Herlage Tithes; Adjudged an ill Modus, because if a Man had but two or three Feet of Ground in the Manor, he was to pay a Groat; But it should have been laid, that the Proprietors and Occupiers of such a Manor for themselves and their Farmers had us'd to pay 4d. 1 Vent. 3. Mich. 20 Car. 2. B. R. Anon.


But if the Parson be tied to find such a Clerk, and such a Sum has been used to be paid to the Parish Clerk in Discharge of the Parson, it had been a good Precription, and so by way of Composition. Le. 94. pl. 122. B. C. — Mu. 908. pl. 1274. B. C & S. P. accordingly.

15. Libel for Tith of Corn, Hay &c. the Defendant suggested a Precription to pay a third Part of the 10th in one Part of the Land, and in another Part, a Moity of the 10th for all manner of Tithes; The Court inclined that it was a good Precription, and a Prohibition was granted. Godb. 120. pl. 139. Hill. 29 Eliz. Rookes Cafe.

16. The Parson of North-Lynn libelled for Tithes, the Defendant suggested, that he is an Inhabitant of South-Lynn, and prescribed to the Inhabitants there, having Parishes in North-Lynn, to pay Tithes in kind to the Vicar of South-Lynn, where he is not resident, and that the Vicar hath paid to the Parson of North-Lynn &c. into Peace for every Ann. The whole Court was against the Prohibition; For Modus Decimandi shall never come in Debate upon this Matter; But who shall have the
Dilmes, [or Tithes].

Tithes, whether the Vicar of South-Lynne, or the Parson of North-Lynne? Besides, the Prescription is not reasonable. Le. 128, pl. 175.


17. The Defendant alleged a Custom, that the Parson should have for his Tithe, Corn the tenth Land sown with any manner of Corn, and that he should begin always at the first Land next the Church &c. The Parson swore, That the Defendant by Fraud and Covin fowled every tenth Land which belonged to the Parson very ill, and with small Quantities of Corn, and did not dung or manure it as he did the other nine Parts, so that it produced not half in proportion of what the other nine Lands did. And the Opinion of Wray J. was, That the Custom was against common Reason, and so void. But if it be a good Custom, then the Plaintiff shall have an Action on the Cafe. Le. 99, 103. Patch. 3o Eliz. B. R. Stebbvs v. Greadyack.

ed notwithstanding the Covin, because the Fraud is to be remedied in an Action on the Cafe in the Common Law. S. C cited Arg. and there it is said, that the Defendant at first got a Prohibition on account of the Covin, but the Parson afterwards had a Confituation, Wray Ch. J. laying, that this Covin was against common Reason. 2 Wms. Rep. 569. cites 1 Le. 99.—[But I do not observe this Matter there.]

18. The Defendant affirmed that he was an Inhabitant of S and that S. C cited Time out of Mind every Inhabitant there, who had Pastures in N. had Arg. paid Tithes for them to the Vicar of S. and that the Vicar of S. had paid to the Parson of N. 2d. for every Acre; and the Court held, that Prohibition lay, and that Plaintiff should declare, and the Defendant (in the v. Mondon) might demur if he will; For it is as if he preferred to pay 2d. for every Acre. Cro. E. 156. Trin. 31 Eliz. B. R. Coford v. Peace.

19. In a Prohibition the Plaintiff preferred to pay the 1oth Sheaf of Rell Rice, Grain growing on 60 Acres, after it was reaped, in full Satisfation of all 175. S. P. Grain being upon the 60 Acres, and which hath been accepted &c. The Court held this Precription not good, for it is no more than to pay so much for the 1oth Part when the Owner pleaseth; because he may chuse whether he will make the Corn into Sheaves or not, or as much into Sheaves as he will, and fo for the 1oth Part he may not have the 3d Part, which is not reasonable. And. 199. pl. 234. Trin. 31 Eliz. Adams's Cafe.

20. Libel for Tithe of Calves &c. the Defendant suggested a Custom in the Parish of B. to pay for the Milk of every Cow 2d. in satisfaction of Calves. The Proof was, That there was such a Custom in the Parish for all the Land except five Farms, and for this Cafe it was held that he had failed in his Precription; For it may be these Lands were Parcel of the five Farms; But had it been proved that the Lands were not Parcel, it had been otherwife, and therefore a Confituation was granted. Cro. E. 266. pl. 41. Mich. 30 & 33 Eliz. B. R. Bennet v. Shortwife.


22. A Prohibition was pray'd on a Suit in the Spiritual Court for this Cafe. Tithes in Kind of a Park now converted into Tilings, upon a Subvention Ch. J. cit. De modo Decimandi, to pay a Buck and a Doe for all Tithes, and allow'd per Cur. and agreed, 1st. Though they are Ferum Nat. yet Cafe. that they may be given for Tithes. So to pay Pleasants &c. 2dly. Though such a Mode, they are not titlable of themselves, yet they may be given for Modus decimandi, as a great Tree may be given for Tiche of Trees titlable for
Difmes, [or Tithes].


23. In a Prohibition the Plaintiff declared, That he for ten Years last past held and occupied 100 Acres of Land in the Parish of S. lying within, and being Part of a Park there, called Unger-Park, and that be, and all the Occupiers of the said Park, Time out of Mind, have used to pay to the Parson of S. a yearly, in full Satisfaction and Discharge of all Tithes of the said Grounds, which he the Parson had so accepted. After Verdict for the Plaintiff, it was moved in arrest of Judgment, that the Park was not alleged to be Antiquus Parcus, and to bear Prescription, and that the Prescription was laid in the Occupiers, when it should have been in the Owners of the Park, nor by Way of Custom in the Place; but resolv'd, that this was no Matter of Interest and Inheritance, but only in Part of Discharge; for every Modus is a Discharge of the natural Tithes, and so works by Way of Discharge. Hob. 118. pl. 148. Hill. 13 Jac. Shelton v. Montague.

24. If a Modus be for Hay in Bl. Acre, and the Party sows it with Corn he en Years together that does not destroy the Modus, but whenever it shall be made into Hay the Modus shall revive; and when it is sown with Corn the Parson shall have Tithes in Kind. Godb. 194. Trin. 10 Jac. C. B. Brown's Cafe.

25. A Libel was for Substraction of Tithes upon the Statute of 2 E. the Defendant suggested, That as to that Farm, whence the Tithes in question arose, there was a Custom to take back thirty Sheaves of the Tith-Corn growing on such a Farm; Per Cur. It ought to be aver'd to be a great Farm, and it there were but thirty Tith-Sheaves in all, the Owner than't have them; because that would be an unreasonable Custom, and Day given to the other Side to shew Cause why the Prohibition should not be awarded. Godb. 234. pl. 324. Mich. 11 Jac. C. B. Jucks v. Cavendish.

26. If there was a Prescription, Time out of Mind, for a Modus Decimandi, if this Modus be not paid for a certain Time, yet this alters not the Prescription for this Modus, but he may pay it when he will. Per Coke Ch. 2 Built 240. Trin. 12 Jac. Price v. Maclay.

27. Prescription, Time out of Mind, for Modus Decimandi for Land when it was a Park, it shall continue for Payment of this Modus only after that such a Park be disparked and converted to another more profitable Use; Per tont Cur. 2 Built. 240. Trin. 12 Jac. Price v. Maclay.

For the Description being to pay so much Money. —- The Difference is, when the Prescription is to pay Money for all the Tithes of such a Park, and it be disparked, there preadventure Tithes shall not be paid.
paid; but where it is to pay the Shouder of a Buck or a Doe at Christmas for all Tithes of the Park; there, if disparked, Tithes shall be paid as of other Land; per Popham Ch. J. Cro. E. 457. (bis) pl. 25 Parch 53 Blin. B. R. in Case of Bedingfield v. Freak.—Mo. 909. pl. 1277. S. C. and same Diversity.—Ow 74. S. P. by Popham.

28. If an Orchard, for which there is a Modus, be plowed and afterwards it was made an Orchard again, the Modus shall be paid. Arg. 2 Show. 462 in Case of Hill and Harris, cites it as agreed. 1 Roll 121. Cooper v. Andrews.

29. Prescription that the Person had two Acres of Meadow given in Discharge of all Tithes of Hay Ground, viz. all the Meadow in the Parish, if any arable Land be converted into Meadow, it extends not to discharge that. Hutt. 58. cites 14 Jac. Conyer’s Case.

30. A Custom in the Parish of B. that all Lambs engendered, fallen, and bred upon any Tenement or Living in the said Parish, tho’ they belonged to several Persons, were reckoned together, as if they were one Man’s, that the tenth, or Tithe-Lamb of them so counted together, hath been paid for Tithe; The Court held, That all Customs against Common Right are triable at common Law; and that this Custom is unreasonable, because it may happen, that one Man may have but one Lamb, and that may be paid for Tithe, and they that have more shall pay nothing. Hob. 329. pl. 453. Mich. 18 Jac. Barker v. Cockr.

31. The King’s Lease shall hold discharged, tho’ his Feoffee shall not. Hett. 60. Mich. 3 Car. C. B. Comins’s Case.

32. Litel for Tithes of Milk and Cows; the Defendant suggested a Modus, that every Inhabitant, &c. shall pay 4 d. for every Cow, and 2 d. for every Calf; Ilue was taken upon the Modus, and at the Trial the Proof was, that the Tithes were never paid in Kind, but that every Inhabitant, &c. should pay 6 d. and three 7 d. so that this was not the Proof of the Suggestion, and a Confiscation was granted; but if a Modus had been suggested to pay 20 s. and the Proof had been that 40 s. was usually paid, that had been good, it being to intitle the Court to Jurisdiction; but in the principal Case no Modus is proved; so, it is merely uncertain. Hett. 100. Trin. 4 Car. Goddard v. Tiler.

33. A Custom to pay the 20th Part, in Satisfaction of the Tithe of all By the Common Law, the Parson cannot have the Tithes of Sheep taken in the Sea, because it is not within any Parish, and then, when the Parson, by the Custom ought to have the Tithes of them, he ought to take them according to Custom, and that the tenth of the Molecy may be a good Discharge of the whole; and the Parties went to Ilue upon the Custom in Cornwall. Nay 182. Hill. 1 Jac. Holland v. Heale.

36. But a Custom to pay the Twelfth Sheaf, in Satisfaction of the Tithe Sid. 275. pl. of all Sheaf Corn, is not good, because the Tenth of the Corn is due de jure; per Cur. Ibid.

37. A Modus was alleged in this Manner; That the Proprietors and Occupiers of such a Manor, or Parcel thereof, shall pay a Groat to the Parson for Herbage-Tithes. The Court held that this could not be, for if a Man had but two or three Feet of Ground in the Manor he should pay a Groat; but it ought to have been laid; That the Proprietors and Occupiers of such a Manor, for themselves and their Farmers, had paid 4 d. Vent. 5. Mich. 20 Car. 2. B. R. Anon.

C 38: Parson
38. A Parson libell'd against J. S. for Tithes, who in a Declaration for a Prohibition suggested a Composition by Deed made in 125, which was excepted to, for being before R. H.'s Time, was before Time of Memory, and so no Tithes could be taken, or could it be tried. 2. That if they did vest by the Grant, yet that they revealed in the Parson by the Council of Lateran in 1215, or else by the Disolution of Monasteries. 3. Because 'twas not known that the Bishop was Party; 'Twas answer'd, that the Concurrence of the Bishop was not necessary; for as this Case was he had nothing to do with it, it being a Person, which had an absolute Estate, which a Patron hath not. And, per Cur. The sole Objection against this Prescription is, because it shews the Reason of the Prescription, if they had relied on the Deed it might be otherwise.

The Court of Lateran can affect nothing in this Matter &c. and Judgment affirmed. 2 Show. 439. &c. 403. Mich. 1 Jac. 2. B. R. James v. Trollop.

39. Whenever a Modus runs high it is a strong Prefumption that it is no Modus; per Holt Ch. J. And the Court refuted a Prohibition because it appeared (as the Modus was pretended to be) that it was of nigh the full Value. 11 Mod. 60. pl. 37. Trin. 4 Ann. B. R. Startup v. Doderidge.

40. A Modus was set forth to pay on or about such a Day so much &c. it is ill, for the Day must be alleged certain. And the Bill further was, that the Parishioners of &c. constantly paid, or ought to pay, so much which should have been constantly paid, and ought to pay. 8 Mod. 375. Trin. 11 Geo. and cites it as lately resolved in the Cafe of Harri-son v. Clerk.

41. Though every Modus must be supposed to have a reasonable Com- mencement, which the Court admitted; yet as to the Necessity of showing now that the Modus is reasonable, that seemed not to be so clear; for these Modus's having been from Time im memorial, none can know but that there were such Circumstances in those ancient Times as might have made such a Composition reasonable tho' not discoverable now; And that it was sufficient to satisfy us now that Parson, Patron and Or- dinary might then bind the Revenues of the Parson, but tho' such In- strument be lost, yet the Modus is not. Per Ed. C. King affiled by Reynolds and Forrefcue J. 2 Wins's Rep. 572. Hill 1729, in Cafe of Chapman v. Monfon.

42. But if an Instrument had been made by Patron, Parson or Ordina- ry, to a Layman to discharge his Farm of all Tribes, (tho' it would be good so long as the Instrument could be shown) and the same should once be lost this being a Privilege in Non Decimando, the Privilege would be lost by Loss of the Deed; so far the Law went in favour of the Church; Per Ed. C. King, affiled by Reynolds and For- refcue J. 9 Wins's Rep. 573. Hill 1729, in Cafe of Chapman v. Monfon.

43. A Bill was brought to establish a Modus, which was, That in Consideration the Parishioners, at their own Expense, made Tithe-Graves into Hay, the Inhabitants were to pay no Tribes for dry and unprofitable Cattle. It was proved, that the Parishioners had not paid such Tithes Time out of
Dismes, [or Tithes].

...of Mind, but not that such Non-payment was in Consideration as aforesaid. On the other Side it was proved, That Foreigners living out of the Parish made the Tithe-Grafs into Hay, as well as the Inhabitants, and yet paid Tithe-Herbage, which Ld. C. King thought a material Objection against the Cution, and made it seem to be the Utage of the Parish for the Parish to make their Grafs into Hay of Course; And likewise that the Parishioners did not divide the Grafs into ten Parts, when cut down, nor till made into Hay, so that the Parson could not have any Opportunity of making the Tithe-Grafs into Hay himself; and dimiffed the Bill with Colts, but without Prejudice as to any Litigation at Law. 2 Wms's Rep. 521. Pafch. 1729. Fox v. Ayde.

44. A Modus, that the Parishioners making Tithe-Grafs into Hay should excuse not only the Herbage of the same Ground, but also all Tithe-Herbage for all other Land depaupered by him within the Parish, tho' it might be a great Parcel of Paiture Land, and tho' the same might be fed all the Year, is such a Modus as would be too much for a Court of Equity to establish. 2 Wms's Rep. 523. Pafch. 1729. per Ld. C. King. Fox v. Ayde.

45. A Modus was laid to be that every Person not inhabiting within the Parish of B. occupying any Meadow or Paiture Land within the Parish of B. had Time &c. paid 4d. an Acre yearly, and so proportionably for any greater or jeffer Quantity. And this was held by Ld. C. King, aflifted by Reynolds and Fortecue J. to be a good Modus and certain enough. 2 Wms's Rep. 565. 572. Hill. 1729. Chapman v. Monfon.

46. Every Modus must be certain, otherwise no Length of Time will make it good. Admitted by Ld. C. King, aflifted by Reynolds and Fortecue J. 2 Wms's Rep. 572. Hill. 1729. in Case of Chapman v. Monfon.

(C. a) Modus Decimandi.

[Good. What is.]

1. It is a good Modus Decimandi, that, in consideration the Parishioners hath Time out of Mind &c. paid Tithe-Wool of all his Sheep which he hath thorn, as well of those as he bought two Days before the Shearing, as of others that he had kept through the whole Year, he hath used Time &c. to be discharged of Tithe-Wool of such Sheep that he sold two Days before the Shearing; for by the Spiritual Law they should have Tithes of him, and be Violous pro Rata which he sold before Shearing, and therefore, in consideration that he here pays Tithes of these which he bought, to small a Time before the Shearing for the whole Year, which is not due by the Spiritual Law, it is therefore Good. 9. 14 Ja. 25. adjudged.

2. It is a good Modus for the Tithes of Calves to pay a Call for the Tithe if he hath feven in one Year, and if he have under feven, to pay an Halfpenny for every Call for the Tithe, and if he sells any Call, that he shall pay the Tenth of that for which he sells it. 9. 14 Ja. 25. R. between Lee and Collins resolved, and a Prohibition granted.
Difmes, [or Tithes].

s. C. cited per Cur. 
2. Salk 666. 
15 W. 3. 
B. R. in Cofe of Hill v. Vaux, that he is bound to pay if he has Hens or not, and he must pay them at a certain Time.—Ed. Raym. Rep 360. S. C. cited by Holt Ch. 1. accordingly; but if the Custom was that he should pay 50 Eggs of his own Hen, the Custom would be ill.

3. It is a good Modus for Tithes of Eggs, to pay in Lent 30 Eggs for all Tithes of Eggs. B. 14 Ed. 3. B. R. between Lee and Collins, a Prohibition granted thereupon.

4. It is not a good Modus to pay every tenth Pound of Wool for the Tithes of Wool, if he doth not shew that he hath paid something, if his Wool does not amount to ten Pound; for otherwise it is in Non Decimanda if it be under ten Pound. B. 7 Ed. 3. between Delman and Barton, per Curiam, for the tenth part of this is due.

5. Note; by the Serjeants that in the Spiritual Court, they will not admit any plea in Discharge against Tithes, good nota. Br. Difmes, pl. 11. cites 8 E. 4. 14.

6. In prescribing to be dischargin of Locks of Wool, it ought to be shewn of Locks casually lost; Nota. Mo. 911. in pl. 1283. Mich. 37 & 38 Eliz. B. R.


8. A Custom was alleged to pay Tithes-Wool at Lammas Day, and says, that he let it out at that Day; it was objectted that this is not good; for that this is not Modus Decimandi, but for the Time only which is to be tried in the Spiritual Court. But the Court held it good; for it is de Jure when it is clip'd, but by Preceptio in may be set out altogether at another Day, and that is good; Per Cur. Cro. E. 702. pl. 21. Mich. 41 & 42 Eliz. B. R. Green v. Hun.

9. Libel &c. by the Vicar of D. for Tithes, the Defendant suggested a Modus to pay to much to the Parson of D. in discharge of his Tithes. The whole Court agreed, that a Modus to pay so much to the Parson will not discharge him from paying Tithes to the Vicar; And therefore a Consultation was granted. 3 Bull. 220, 221. Mich. 14 Jac. Wintell v. Child.

10. A Custom was suggested, That if one has Lamb under the Number of seven, he ought to pay an Halfpenny for every Lamb in lieu of all Tithes of Lambs, if he has but seven the Parson to have the seventh, and should pay 3d. if he had eight he should pay 2d. if he had ten the Parson should have the tenth, without paying any Thing. Agreed that this being a Custom which they refused to allow of in the Spiritual Court, that a Prohibition should be awarded. Cro. C. pl. 2. Pauch. 10 Car. B. R. Anon.

11. Custom to pay Tithes in Kind for Sheep if they continue in the Parish all the Year; but if they are fold before Shearing time, then to pay but an Halfpenny for every one to fold; This was held an unreasonable Custom. Mar. 79. pl. 128. Pauch. 17 Car. C. B. Weeden v. Harding.

12. A Vicar libelled for Tithes of Willow Faggots. The Defendant suggested for a Prohibition a Modus of paying 2d. per Ann. to the Rector for all Tithes of Willow. The Court held, that a Modus to the Rector is a good Discharge against the Vicar. Mod. 216. pl. 3. Trin. 29 Car. 2. C. B. Anon.

13. Prohibition was pray'd upon a Custom alleged, That all Persons who had Lands in such a Village, but lived out of the Village should pay 4d. per Ann. only, in Satisfaction of Tithes. But this was held an unreasonable Custom, that Foreigners should have greater Privilege than those who...
of any Modus so variable and dancing. — Modus for Foreigners to pay 4d. per Acre yearly for Herbage and Tillage held good, per King C. and two Judges. Gibb. 120 Hill. 3 Geo. in Canc. Monfort v. Chapman. — But these two Cases were exploded, and the Court held it a good Modus, and laid, that all Modus' were first upon an Agreement between the Parson, Patron, and Ordinary, and by some Deed or Instrument in Writing, in the Nature of a Contract or Agreement, which though now lost, yet being run out into a Prescription continues good; that here is no Uncertainty in the Modus, for the Parson is always sure to have the 4d. per Acre, or else the Tithes in Kind, nor is there any Burthen on the rent of the Parishioners by one or two going out of the Parish, and a leaping or dancing Modus in which the Modus itself varies, and is sometimes more, or sometimes less, which is not the present Cafe, and decreed accordingly by the Lord Chancellor, assisted by Mr. J. Reynolds, and J. Fortescue. Lt. Chancellor said, the Cafe in Keble might perhaps be the Occasion of this Sun. Abru Eqn. Cales 569. Trin. 1750. Chapman v. Bp. of Lincoln. — Lt. C. King disapproved of the Reason in Lev. 116. that the Inhabitants ought to be more favoured in a Modus than Foreigners, because liable to Repairs and Vellments of the Church; whereas by the Revolution in Jeffrey's Cafe, 5 Rep. 66. b. a Foreigner occupying lands within the Parish, though living out of the Parish, is liable to Repairs, and even Ornaments, and laid it was a sudden Opinion upon a Motion. 2 Wms's Rep. 561 to 567 Hill. 1759. S. C. by Name of Chapman v. Monfort, and e contra. — Ibid. 574. Lt. C. King, assisted by Reynolds and Fortescue J's, dislik'd that Cafe in Lev. 116. and it was then said, that in the same Parish in which the Modus was inquired into in Lev. 116. the very Modus, notwithstanding that Opinion, had been observed, and Tithe paid in Kind, which shewed that no regard was had to that Opinion, and the Parson not advised to rely upon it. — Gibb. 121. in Cafe of Monfort v. Chapman, that Cafe in Lev. 116. was denied to be Law.

14. A Custom was alleged, That all Persons in the Parish who had Sheep on their Grounds on Candlemas-Day, should upon full Payment of all Tithes for such Sheep whose there were on that Day, be discharged of Tithes of all Sheep that afterwards should be upon their Ground in that Year; But this was held an unreasonable Custom. Med. 229. pl. 18. Trin. 28 Car. 2. C. B. Moor v. Field.

15. A Prohibition was prayed upon a Suggestion of a Modus to pay for all Tenants and Occupiers of the Land in Discharge of Tithes; but upon the first Motion of the Prescription in the Occupiers was doubted by the Court; tho' at Length, inadmiss as it goes only in Dilcharge, and not in claiming of an Interest; the Prohibition was granted upon Consideration of the Cafe of Cowper v. Andrews. Hob. 116. & Ibid. 183. Shelton v. Montague, and 1 Cro. Baker v. Bedeven. 3 Lev. 386. Hill. 5 W. & M. in C. B. Stopp v. Peacock.

16. 11 & 12 W. 3. cap. 16. S. 1. Enrols, That every Person who shall sew Hemp or Flax shall pay to the Parson, Vicar or Impropriator of such Parish or Place, yearly 5s. for every Acre of Hemp and Flax, before the same be carried off the Ground; for the Recovery whereof, the Parson & Co. shall have the usual Remedy. S. 2. This All shall not extend to charge any Lands discharged by any Modus Dicendants. Ancient Composition, or otherwise. Made perpetual by 1 Geo. 1. cap. 26.


18. Bill was brought to establish a Modus which was laid thus; For Payment of such a Sum of Money, [while the Lands are in the Hands of the Proprietors] but if in the Hands of any other Person, to pay Tithes in Kind, or the Money, at the Election of the Parson. Ld. Chancellor said, that he would never establish a Modus against a Parson, without a Trial at Law, if he defies it; but this Modus is clearly ill, for a Modus cannot be delitory. Sel. Cales in Canc. in Ld. King's Time. 52. 53. Mich. 11 Geo. Webber v. Taylor.

D 19. Note;
19. Note; The Court unanimously agreed, That the same Land may at one Time pay Tithes in Kind, and at another Time a Modus, where there are different Circumstances; the only Thing essential to a Modus is, that the same Land should not pay Tithes in Kind and a Modus both, where there are the same Circumstances. Barnard. Rep. in B. R. 293. Hill. 3 Geo. 2. in Munton's Cafe.

20. Bill set forth that there was a Custom in the Parish of B. that all Persons occupying Pasture and Meadow there, should be discharged of Tithes in Kind by paying 4d. an Acre, unless they were Inhabitants of that Parish or of the Parish of ——. The Plaintiffs were Occupiers of Pasture and Meadow Ground in this Parish, but Inhabitants in the Parish of W. And whether this Modus was good or not, was the Question. Reynolds and Fortescue J. assisted the Chancellor in determining this Question. They all unanimously agreed, That Modus's were real Compositions by Parson, Patron and Ordinary, the written Evidence of which is lost; but the Law presumes there was such by the long uninterrupted Usage. Undoubtedly, they said, there would have been no Dispute about this Modus if it had been without Restrictions; and as the Restriction is for the Benefit of the Parson, they thought the Restriction could make no Difference. They all allowed however that something must be due from the Modus, and that too every Year; for as no Prescription can be in a Non Decimando generally and at all Times, so neither can it be for so long a Time as a Year together. They seemed to allow too, that a Modus would not be good where it depends upon the Will of the Occupiers, whether it should be more or less. But here they said, The Rule for the Payment of this Modus is as uncertain as the Rule for the Payment of any other Modus possibly can be; the only Variation is as to the Persons paying the Modus, and that they said was never in Objection. Accordingly the Chancellor was going to decree for the Modus, but tho' the Proof was very clear to support it, he gave the Defendant's Counsel a Day to talk with their Client whether they would have the Modus tried or not, as it did concern the Inheritance. Barnard. Rep. B. R., 292, 293. Hill. 3 Geo. 2. in Chancery. Munton's Cafe.

(D. a) Modus Decimandi.

What shall be a good Modus Decimandi.

* Cro. E. 660. pl. 7. S. C. adjug'd a good Pre.

cription, that they had used to make the Hay of the first Months into Coaks, and to set forth the tenth Coak for the Vicar. —— Mor. 910. pl. 1280. Aubrey's Cafe, S. C. but mentions the making the first Moath into Hay, and adjudged good. —— S. C. cited per Cur. by the Name of Aubrey v. John as adjug'd. Cro. J. 42. pl. 7.

† Cro. C. 463, 464. pl. 2. Anon S. P. and seems to be S. C. and a Prohibition granted.

2. It
2. It is a good Modus Decimandi, that, in consideration of the See pl. 1, cutting of the Grafs, and spreading and putting it into Wecrens, and the fellece, teading, and after making the Tithes of the Parfon of the firft Moath into Grafs-Cocks at his own (\( S. C. \) and Charges, he hath been discharged of Tithes of the Alter-Grafs. Pitch. 42 & 43 El. \( S. P. \) adjudged, jobbon and Poppinger; 1 Act. Ecles and Vachin; 3 Act. Ecles and Winterb".

And in all these Cases Prohibitions were granted in \( B. R. \) as adjudged, the Prov. 25. Hill. the & was demed. Pitch. 41 El. \( B. R. \) between Aubrey and jobbon; 16 Jac. Hide Ellys. Pitch. 11 Car. \( B. R. \) Langford's Cafe, a Prohibition granted, upon such Surmilk for the Alter-Soat, Pitch. 14 Car. \( B. R. \) says the like between Manning and Clearpom, a Prohibition granted for the letting judgment of Sheep upon the Alter-Pature.

3. It is a good Modus Decimandi, that, in consideration of the making the Tithe-Grafs of the Parfon of certain Land into perfect Hay at his Costs, he hath been discharged of Tithe of the Pature of the said Land for the whole Year after. Pitch. 16 Jac. S. between Nichols and Pope, resolved, and a Prohibition granted.

4. It is a good Modus Decimandi, that, in consideration that they who fow the Land ought to reap it, and bind and lever the tenth Part from the nine, and let it up in Hillocks or Heaps, that the Parfon shall not have any Tithe of this Land the next Year following; the Land lying ley, and not tilled nor converted into Dadow, for of Common Right the Parfon is not bound to gather and let up the Tithes in Hillocks \( \& \) but it is a good Remarke of Throwing to throw the Shoots out. Hill. 6 Jac. 23. per Curiam.

5. It is a good Modus, that, in consideration that he hath Time of, wound up the tenth Fleece of his Wool at his Shearing for the Parfon, at his Costs and Charges, and paid it to the Parfon, he hath been discharged of Tithes of the Necks of his Sheep when he shpare them about their Necks for their preservation two Weeks more before Michaelmas, and two Weeks after Michaelmas. Pitch. 14 Jac. 23. \( B. R. \) between monks and Parker. Pitch. 14 Jac. \( B. R. \) between Northmoleton in Devon, resolved, and a Prohibition granted, because the Parfon fixed for the Titch of this Neck; for it appears, that the Shearing at this Time of the Year cannot be for the Benefit of the Wool.

6. It is a good Modus, that, in Consideration the Parfon and his Predecessors Time out of Memory &c. have been sieled in Fee of certain Meadow within the Vill of D. and taken the Profis thereof, in full satisfaction and discharge of all Tithes of Hay within the same Town, Time out of Memory &c. for it shall be intended that this Meadow was given at the Beginning, in full satisfaction of all the Hay within the same Town. Pitch. 16 Jac. 23. \( B. R. \) between Moor and Bullock, adjudged upon a Prohibition, this Matter being moved in Arrest of Judgment.

the Parith, that all the Parson of the said Church, Time out of Mind Labourous for such Juraments, such Land Parish of the Master of \( F. \) in recompence of all Tithes of Wood in the said Parish &c. But and
Difmes, [or Tithes].

Not after that the Lands and/or the Tithes are demanded over Parcel of the Manor; but adjudged, that the Preemption was good, for it might be, that at the beginning all the Land within the Parish was Parcel of the Manor, and that the Land of the Allottee, and that such a Part was allotted to the Parfon in lieu of Tithe Wood. Cro. E. 487. pl. 19. Mich. 39 & 40 Eliz. B. R. Somerton v. Coton.


In the principal Case of Moor v. Bullock it was moved in arrest of Judgment that the Surmise was not good; for he shew'd that he was letted in Fee, that is, parcel of his Glebe, it cannot be in accordance of the Tithes; or shown that he and his Predecessors time whereof Fee have had the Occupation of the Glebe, and the Profits thereof in lieu of Tithes; and not to say that he was tided, which shall be intended as Parcel of the Glebe; Sed non allocatur, for it is a better Form to say that he was letted in Fee; for it is so antient that it cannot be shewn when, or by whom it was given; but having had it always in lieu of Tithes, it is good enough, and shall be intended to be given before Time whereof Fee in accordance of the Tithes. Cro. J. 501. pl. 16. Mich. 16 B. R. Moore v. Bullock.

The Suggestion for a Prohibition was, That the Parfon had 20 Arres of Paraffure, and a Clofe of 10 Arres of Wood, in satisfaction of all the Tithes demanded; The Witnesses examined according to the Statute 2 Ed. 6. cap. 13; proved that the Parfon had the 20 Arres of Paraffure, but not the 10 Arres of Wood, and yet the Prohibition was granted, because it appears that the Label was unjust; for though the Parfon had failed of his full Proof, yet there was enough to bar the Parfon of his Tithes in kind, and he need not shew how, or by what Title the Parfon had the Land; For if it was not in Satisfaction of Tithes, the Parfon ought to show that himself. Mo. 911. pl. 1283. Hill. 42 Eliz. B. R. Austin v. Pidge. — Cro. E. 756. pl. 4 & C. the Substance is proved that he held Land in satisfaction. — Cro. J. 501. In pl. 10. S. C. cited that the Prohibition was held good.

7. It is a good Modus Declaimandi, that he hath paid the Tenth of the Wool of all Sheep that he had before Lady-day, and threed or fold, or put in any other Parith, or hath paid the Value of the Tenth thereof, to be in full satisfaction as well of all the Wool of such Sheep, as of all other Sheep brought within the Parith after Lady-day, for it is not reasonable that the Tithes he hath paid should be a Discharge for all the other Parifhioners; but this was intended to be a Discharge of all the Sheep of the Parith hitherto brought within the Parith after Lady-day; but this was not so expressed, and this has been a good Culfom. Mich. 9 Car. B. R. between Market and Knight, adjudged upon Denemurer, and so ruled in another Case the same Term upon a Trial at Bar.

8. It is not a good Modus that he ought to be discharged of Tithes, in consideration that he hath used Time out of Memory &c. to employ the whole Profits of the Land in the Reparation of the Body of the Church, and to find all Necessaries for the Church, for this is not a Recompence to the Parfon. Patch. 37 Eliz. B. between Longley and Meredith, adjudged.

In a Prohibition Plainly suggested that Time out of Mind of the Owner of the Land had passed Straw for the Body of the Church, in discharge of all Tithes of Hay. Coke moved, that it is no Case of Discharge, for the Parfon was not chargeable with it, nor had any Benefit by it, but if he had alleged that he gave the Straw to the Parfon, and he believed it in the Body of the Church, or that the Parfon had a Boar in the Body of the Church it had been otherwise; and therein the Case was granted. Cro. E. 276. pl. 7. Patch. 34 Eliz. B. R. Scory v. Barber.

9. But it is a good Modus to be discharged, because he hath used &c. to employ the Profits for the Reparation of the Chancel; for the Parfon hath a Benefict by this. Patch. 37 Eliz. B. said to be adjudged in B. R.

10. It is not a good Modus, that, in consideration that the Parifhioner having arable Land hath ploughed it, and hath had Headlands, green slips, or Doles, parcel or appurtenant to their Husbandry-Houses or Lands, that in consideration the Parifhioner would plough and sow his Land with some Kind of Grain, and sow it, and make it up into Shocks, Pocks, and sever it from the ninth Part, and prepare it for carriage for the Parfon, the Parfon hath used to be discharged of the Payment of any Tithes thereto, growing upon the Headlands &c. of such arable Land, and then sowed, applied, and converted for the Nutriment of his Cattle of Husbandry employed in the Tillage of the said arable Land, that is not a good Modus, because of common Right the Parifhioner ought to cut and prepare the Grain, and let out the Tithes. Mich. 3 Jr. B. R. between Perry and Chauncey, adjudged upon Denemurer, and a Confisca-

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* Nov. 15.


**Dismes, [or Tithes].**

1. It is not a good Modus, that in consideration that the Parishioner having Barley, the greatest Part whereof he hath cut down and tied into Sheafs, and set in Cocks, of which the Parson had the tenth Cock, that he hath used to leave a small Parcel of the Barley to stand, to the Intent to cut it down after for Bands for the Raking voluntarily scattered, and to be discharged of the Tithes of this small Parcel of Barley when he cuts it. Hill. 8 Car. B. R. between Saunders and Paramour, per Curiam, a Prohibition denied.

2. If a Parishioner prefers, that whereas the greatest Part of the Land within the Parish, and within the Parishes next adjoining thereto, is arable Land, so that for want of Grass they ought to provide other Sustenance for their Plough-Cattle, and because he hath used to cut and tie into Sheafs the Grain sowed there, and to put them into Shocks, of which the Parson had the tenth Shock, by which the Parson hath the Benefit of the Labour of the Plough-Cattle, and in consideration thereof the Parishioner hath Time out of Memory, yet, used to be discharged of the Tithes of green Tares before they come to Perfection, [and] in small Parcels in the Time of Harvest, or before, and given to his Plough-Cattle for their Subsistence; this is not a good Modus, because if he cuts them down, he shall pay Tithes for them, as well as if they had come to their Perfection. Hill. 8 Car. B. R. between Saunders and Pararmour, per Curiam, a Prohibition denied, sicclet, Hill. 10 Car. B. R. between Meal and Thurland, a Prohibition granted per Curiam in such Case, this being allowed by way of Custom.

3. It is not a good Modus, that, in consideration that he hath expended his Hay for his Husbandry-Cattle, to be discharged of his Tithes of Hay. 3 H. 3 B. R. and there cited. See Warner's Case, adjudged.

4. It is a good Modus for an Inn-keeper, that, in consideration that he and all others, have paid Tithe-Hay and Grain growing upon the Land belonging to the said Inn, and have paid Tithe for all their own Cattle feeding upon the Land, that they have been Time et. discharged of the Tithes of the Horfes of their Guests a BOTH in the said Land when they travel by the said Inn; for some have said, that this was but a personal Tithe, and others have said, that no Tithes should be paid for such Agistment by the Common Law, without any Modus, between Gabel and Richardson relised, and a Prohibition granted.

5. It is a good Modus to be discharged of the tenth Swarm of Bees for Tithe, in consideration of the Payment of the Wax and Honey to maintain them in Winter, and find Caps for them, inasmuch as they are of a Nature of themselves, and require great Care and
and Labour to keep them when they swarm. Dibitatur, Hall.
10 Car. W. R. Langford's Cafe. Park, 11 Car. in this Cafe
moved again, and their Prohibition granted. But some of
the Judges said, the Modus was not good, felicit, but only the Duty
which the Law gave; But they held, That no Tithes were due of
the tenth Swarm, because they are Ferae Nature.

16. It is not a good Modus to prescribe to pay one Tithe for
another.

Prescription that all the Occupiers of L. have used to pay to the Parson, Proprietor of the Tithes all their Hay in Stocks which have
been in lieu of all Brown, and other Benefits of the Tenement was held an unreasonable Suggestion; For a Modus of one Kind will not serve for another. 2 Keb. 212. pl. 48. Palch. 19 Car. 2. B. R. Brown v. Haywood.

Cro. E. 475. 17. As it is not a good Modus to prescribe to pay for every pl. 5. S. P. Milk-Cow 2 d. and for every Calf 1 d. in satisfaction for all Tithes of Mo. 909. all manner of Cattle, for this shall not discharge dry Cattle, for S. C. & S. P. Coke to be so adjudged, but this is but one Tithe for another. Mich. 3 Jac. B. R. is cited by between * Sherrington - Gouldish & Fleetwood, which Coke was Trin. 38 Eliz. B. R.
147. pl. 66. S. C. & S. P. — S. C. cited 2 Bull. 238. — 2 Silk. 673. pl. 3. Mich. 3 Ann. in the Exchequer in Cafe of the A. Bp. of York v. the Duke of Newcaste; the Court admitted the Payment of Tithes of one Species or payment of a Modus for one Species of Tithe could not be a Discharge to another Species; — But if he had preterfert that he had paid 1 d. for all Cows and males agsailed, that przedament was good; and says this Diversity was fo used in Dr. Lewis's Cafe, and of that Opinion were all the Court here. — See Ld. Raym. Rep. 242. in Cafe of Norton v. Briggs.

Mo. 454. 18. So if a Man prescribes to pay one Heifer for all Tithes, this shall not discharge the Tithes of other Cattle, but he shall pay them Mo. 625. pl. 625. in Kind. Trin. 38 Eliz. B. R. per Curiam.
and seems to be S. C. and the Court held accordingly.

Mo 909. pl. 2297 S. C. & S. P. according, because the Cheese is made by Labour and Charge. — Cro. E. 609. pl. 15. S. C. held accordingly; but to pay the tenth Quart of Milk is not good; because that is only for what is due. But Popham said that to pay the 10th Quart of Milk at the Parlonage House, or at any other Place is good enough. — S. C. & S. P. cited Marg. Raym. 278. — S. C. cited 3 Salk. 574. pl. 20. Trin. 4 Ann. B. R. in Cafe of Say b. Lester, which was on a Modus beggarded to pay every 14th Day's Milk from April till November fumated and turnout into Cheese in lieu of all Tithes of Milk, a Prohibition was trying the Modus and settle the Matter. — 6 Mod. 261. Leister v. Fop. S. C. The Court did not like the Modus as seeming very severe on the Vicar, but to settle the Point which they thought of great Consequence, they granted a Prohibition, directing them to declare forthwith.

Savil 100. 19. It is a good Modus in consideration of the Payment of the tenth Cheese made from the first of May, until the last of August, that he hath been discharge of the Tithe of Milk, for this is not a Tithe in kind of Parcel in discharge of the Whole, for no Tithe in kind is due of Cheese, but only of Milk, and is a good Consideration. Palch. 49 Eliz. between Aften and Lucas, adjudged.

Mo. 185. 20. One can't make a Prescription to pay Parts of the Tithes in Kind S. C. by the Name of Savil v. Adams. 199.
and Labour to keep them when they swarm. Dubitatur, Hall.
10 Car. W. R. Langford's Cafe. Park, 11 Car. in this Cafe
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Mo. 185. 20. One can't make a Prescription to pay Parts of the Tithes in Kind S. C. by the Name of Savil v. Adams. 199.
22. A Presumption for a Modus Decimandi that in Regard be paid for Milch Kine 1d. be prescribed to be discharged of the Tithe of Milch Kine and all of the Dry Cattle; but this was held to be contrary in itself; for a Modus of one Kind to be discharged of another Kind, and the Court held that good. 2 Bull. 231. Trin. 2 Jac. Arg. cites Mich. 37 Eliz. Lewis v. Gibboun.

23. It is not a good Presumption to pay Tithe-Corn in Satisfaction of all Tithe of the Land. Mo. 454. pl. 623. Trin. 38 Eliz. cites it as adjudged in C. B. in Richard's Cafe.

24. The Lord of the Manor of B. in the Parish of B. prescribed, That he and his Ancestors, and all those whose Estate &c. had used, from 585. S C &c. Time to Time whereof &c. to pay the Parson of D. the now Plaintiff, and his Predecessors 6 l. per Ann. for all Manner of Tithes growing within the said Parish, and that by reason thereof he and all whole Estates &c. S. C. cited Lords of the said Manor had used Time whereof &c. to have Decimam garbamin or Decimam cuimmum Garvarium fei Granorum of all of his Tenants within the said Manor. Resolved, That it was a good Presumption, and that a Modus Decimandi by the Lord for himself and all the Tenants of his Manor, to bar the Parson from demanding Tithes in Specie is good, for it might have a lawful Beginning, viz. That before it was a Manor all the Lands were in the Lord's Hands, and that was paid for the Tithe thereof; and then when he conveys Parcel thereof to others it shall be discharged as it was in the Lord's Hands. And as to the Decimam Garbam &c. he has it as a Profit Apprentice as Parcel or Appurrant to his Manor not as Tithe. Cro. E. 399. pl. 5. Hill. 49 Eliz. B. R. Pigott v. Hearn.

25. It is a good Presumption that he has used to pay 1 d. called a Cro. E. 702. Heart-Penny, in Satisfaction of Tithe of all combustible Wood. Mo. 910. pl. 21. cites 41 & 42 Eliz. B. R. Green v. Hundle.

26. Surmise that he used to pay the tenth Sheaf of Corn, the tenth Coat of Hay, the tenth Fleece of Wool. the seventh Calf. &c. and that it was in Satisfaction of all Tithes of all dry Cattle, and for all other Tithe of Corn, Hay and Cattle. The Court held this Surmise not sufficient; for which he used to pay is but Tithe in Kind, and therefore cannot be in Satisfaction for the Tithe of other Things than themselves. Cro. E. 716. pl. 26. Mich. 42 & 43 Eliz. C. B. Ingoldsby v. Johnson.

27. Parliheimer suggested that he had all the Tares &c. that he sowed and cut green to give to his Horses, Tithe-tree; and a Prohibition was granted, Nisi. Freem. Rep. 72. pl. 87. Hill. 1672. Stone v. Peacock.

28. Libel &c. for Tithes of rough Hay growing on the Penny Lands of M. The Defendant suggested that there were 2200 Acres of Penny Land within the Parishes, and 600 Acres of Meadow, and that the Parishioners paid Tithe of Hay and Corn growing upon the Meadow and Arable Lands, and so much for every Cow and Calves, and because they had not sufficient Grass to keep their Cattle in Winter, they used to gather this Hay, called Penny fodder, for the Sustenance of their Cattle for the better Increase of Husbandry, and for what Reason had been always freed from Tithe; Adjudged that this Surmise is not sufficient; For one may not prescribe in Non Decimando, and they alleging that they bestowed it upon their Cattle is not any Caule of Discharge. Cro. J. 47. pl. 17. Mich. 2 Jac. B. R. Webb v. Warner.

29. Payment of Tithes to the Parson is sufficient discharge against the Vicar, because of Common Right all Tithe belong to the Parson and the Vicarage is deriv'd out of the Parsonage, so as no Tithes De Jure belonging to the Vicar but only upon Endowment or Prescription, which
which ought to be shewn Ex Parte the Vicar and the Court cannot int
end it; for the Vicarage is a Diminution and an Impairing to the Par
fage, whereof the Court will not take Notice without Monstrance of the Par
ties; Resolved. Yelv. 86. Pach. 4 Jac. B. R. Grene v. Aus
tin.

30. Where the Owner of the Land pays Tithes of Hay he is thereby
discharged of Common Right, as to Tithe of Agriment of the fame Land in
the same Year; because the same Land shall not answer the same Year
but only one Tithe, and the Agiment is only Profit by the Mouth of the
Beasts of the same Land whereof the Parfon before had Tithes of
Hay; Resolved. Yelv. 86, 87. Pach. 4 Jac B. R. Grene v. Aus
ten.

31. Whether a Modus Decimandi may accrue after Endowment of a
8 Jac. C. B. Anon.

32. If a Man prescribes to pay a Buck and a Doe yearly out of a Park in
Discharge of all Tithes of the Park, and the Park is disparked the Modus
is gone; Agreed per Cur. and that which is by Name of Park is for the
Land, and is annexed to the Land by the Name of a Park. Hutt. 57,

33. But if a Man prescribes to pay a Buck and a Doe out of the Park
it would alter the Cafe; but it is general and had been paid after the
Reynolds.

34. A Libel was for Tithes of Broom, the Defendant prescribed that for
the rooting of the Broom and fowing the Land the following Year
with Corn, which is of greater Benefit to the Parfon, and also because the
Broom is of little Value and good to cover Houses, they have used to be
discharged of Tithes of Broom, which it was urged was in Effect
Non Decimando and consequently not good; but it was answered, that
the rooting it is a great Charge to the Party and the fowing the Land
with Corn is more Benefit to the Parfon, and therefore the Prescription
not good; Coke Ch. J. said he thought the Land which has Broom is
not within the Statute of 7 E. 6. for it is not barren Land, and therefore
if converted into arable is tithable; for the Statute speaks of barren
of Maccall v. Price.

35. Lord of a Manor prescribed to have the Tithes within the Manor, for
the he and all their whole Estates he has, have used to maintain a Chaplain
in the Church of Dinn. Exception was taken because he dii not allege
that the Church of Dinn was within the fame Parthi with the Manor
and so no Conderation, nor does he allege the Maintainance of the
Chaplain for so long Time as he claims the Tithes, viz. Time out of Mind,
nor did he prove the Maintainance of the Chaplain within the last six
Months as he had suggested, but only the Refidue, whereas this is the
principal Matter which makes his Prescription good; and upon this last
Point a Confutation was granted per Cariam, And Coke Ch. J. said it
should be granted for all the other Exceptions also, but as to them the
other Justices said nothing. Roll Rep. 2. pl. 3. Pach. 12 Jac. B. R.
Boocher v. Rogers.

36. A Libel was for Tithe-Hay; The Defendant suggested a Cause to
pay a Lord of Hay for all Tithes of Hay growing and remaining on the Land
where &c. It was argued that this Prescription was good and that it
was not Tithes in Kind, because it is alleged that Defendant used to make
the Groves into Hay by his Labour, and that it feems the Parfon de Jure
ought to do this himsell, for that the Tithes are to be set out for the Parson
Parson when it is cut and is only Grass, and consequently this is a good Modus Decimandi; But Curia e contra, and Prohibition was denied. Roll Rep. 172, 173. pl. 3. Patch. 13 Jac. B. R. Cumberland's Cafe. 36. Libel &c. for Tithe-Wood &c. The Defendant suggested for a Prohibition that the Libel was for Tithes of Beeches above 30 Years old, and that the Parish had a Consideration for Tithe-Wood, viz. Certain Wood in the Lord's Wood, Time out of Mind, and never had any Tithe-Wood; per Cur. This shall be intended a Composition for Tithe-Wood; and a Prohibition was granted. Roll Rep. 355. pl. 6. Patch. 14 Jac. B. R. Lapthorn's Cafe. 37. Custom to make the Tithe up in Cocks, upon Parishioners Refusal, the Parson may sue in Court Christian for not making it into Cocks. Lat. 125. Patch. 2 Car. Layton's Cafe. 38. The Earl of Devonshire had a Manor in the Parish of C. in Buckinghamshire, which extends to Latmos where there is a Chapel of Ears, and the Vicar of C. libels for Tithes against one of the Tenants of the Manor; and Henden moved for a Prohibition, for the Earl prescribed that he and all his Tenants should be acquitted of all the Tithes of Land within Latmos, paying 10l. per Ann. to the Chaplain of Latmos; and he said that such a Prescription is good as it was adjudged in Bowles's Cafe; and a Prohibition was granted. Helt. 52. Mich. 3 Car. C. B. The Vicar of Chelham's Cafe. 39. A Libel was for odd Sheaves, to which it was suggested, That the Parishioners for the better dividing the Corn have used to be at the Charge of making it up in Sheaves, and when made into Sheaves they set it out a Stack for Tithes; and because they have been at this Pains they have been discharged for Tithes of odd Sheaves as will not make a Stack. This was held a good Custom and a Prohibition granted, because they do more than of common Right they ought to do. Lat. 226. Mich. 3 Car. Anon. 40. Consideration of making Hay to be discharged of Payment for Greenflips, Headlands &c. good, because it is more than they are bound to do. Helt. 147. Mich. 5 Car. C. B. Wood and Carverner v. Simmonds. 41. The Court refused to grant a Prohibition on Suggestion of a Modus to pay 4 s. for every Day's Plowing of Wheat, and 2 s. for every Day's Plowing of Barley, for the Uncertainty; But if the Modus had been so much for every Day's Work with Assent that it is certainly known, and been much it continuas, it might be. But by Hyde, Wheat could scarce be so much worth Time out of Mind. Keb. 612. pl. 86. Mich. 15 Car. 2. B. R. Took v. Ledgierd. 42. A Prohibition was granted to a Suit for Tithes of Cows, Calves, &c. Latw. Herbage and Pasture, upon Suggestion of a Custom that every Parson from Time whereof &c. had used to pay 1 d. for every Cow having a Calf, and for every Cow not having a Calf 1 d. halfpenny as far as five Cows, for five Cows 1 s. 3 d. for six Cows 2 s. 6 d. and for ten Cows 2 s. 8 d. in plult Satisfaction omnium Decimarum Vaccarum et Vittoriarum, et Herbagit, et Pasture. The Plaintif declared in Attachment upon this Prohibition, and upon Traverse of the Custom a Verdict was found for the Plaintif in the Prohibition; Upon which Latwych Serjeant mov'd in Arreil of Judgment in Easter Term last part. 1. That this Custom was void, for it is laid to be a Discharge of Tithe of all Cows which it is not; for nothing is laid for the Tithe of the seventh, eight and ninth Cows, and Payment for the sixth cannot be Payment for the seventh &c. 2. This cannot be a Discharge of the Tithes of Herbage and Aghiment; for Tithes of one Thing cannot be a Discharge of Tithes of another, and
Tithes are payable of both; then since the Custom is laid intire it is void in the whole; and cites 3 Cro. 446, 475. and of this Opinion was the whole Court, and therefore Judgment was arrested and a Consultation granted, unless Cause should be shewn this Trinity Term. ld. Raym. Rep. 242. Trin. 9 W. 3. Norton v. Briggs

43. Modus to pay a whole Meat’s Milk such a Day, and every ninth and tenth Night and Morning after, till a young Lamb yean’d be heard to bleat, in Lieu of Tithe of Milk is ill; for by this Modus the Parson may have nothing; as suppos’d a Lamb be heard to bleat before the 9th of May. 2 Salk. 656, pl. 2. Mich. 10 W. 3. B. R. Hill v. Vaux.

44. A Modus was laid to be ten Fleeces of Wool and two Lambs for all Tythe, the Court was divided whether good or not. 2 Salk. 656. Mich. 3 Ann. in Scace. Arch-Bp. of York v. the Duke of Newcastle.

45. Payment of Tithe of one Species or Payment of a Modus for one Species of Tithe cannot be a Discharge as to another Species. 2 Salk. 657. pl. 3. Mich. 3 Ann. in Scace. Archbp. of York v. the Duke of Newcastle.

46. Modus to pay 2 s. in the Pound of the improved Rent is ill, for that it is to rise and fall as the Land is let and the Parson cannot know it, and a Modus should be as certain as the Duty that is destroy’d by it; Holt dubitante. 2 Salk. 657. pl. 4. Patch. 4 Ann. B. R. Startup v. Dodridge.

47. Objection was to a Modus that it was too great and too near the Value of Tithes in Kind; Prescriptions had their beginning before R. 1. when it is probable that 12 d. or 8 d. might have been the Value of the Inheritance, therefore decreed in the Exchequer to be a Composition and not a Modus, but reveried; for Churches might have been endowed with more than the Value of the Tithes. MS. Tab. March 5th, 1707. Pole v. Gardener.

49. Parson leased his Tithes by Parol for a Year to A. B. and C. at 2 s. 6 d. per Acre, who let every Land-bolder his Tithes at 3 s. per Acre. The Money which the Leafee receives of the Land-Owners shall be accounted a Modus. 8 Mod. 63. Mich. 8 Geo. The King v. Fairclough.

50. A Modus that the Inhabitants of such a Tenement with the Lands usually enjoyed therewith had been accustomed to pay such a Modus for Tithes-Corn, was held by the Matter of the Rolls to be quite uncertain, for the House may fall, or be uninhabited, and then no Modus will be payable, and nothing can be more uncertain than Lands usually enjoyed with the Tenement, since Lands lett with a Farm-house may probably be after shifted. 2 Wms’s Rep. 465. Trin. 1728. Charlton v. Brightwell.

51. Modus to be discharged of Herbage-Tithes in Consideration of making Gains into Hay and letting it up in Stocks for the Parson is not good. Gibb. 52. Patch. 2 Geo. 2. in Canc. Fox v. Ayde.
(E. a) To what Thing the Modus shall extend.

1. If a Man prescribes to pay to the Parson a certain Thing as a Modus Decimandī for all the Demesne of his Manor of D. and after erects a Windmill upon part of the said Demesnes, he shall not pay any Tithes for this Mill, but the Modus Grain for the Demesnes shall go in Discharge of this also which is built upon the Land discharged. *Tn. 39 Eliz. B. R. between Russell and Moore, per Curiam, and a Prohibition granted.

2. If a Man prescribes in *God's Decimandī for Hay and Grass in 46 Acres of Land, and the Tenant converts it into a Hop-Yard, or Cafe of Tillage, the Modus is gone, for when the Modus is special for Hay and Grains only, by Conversion of this to other, these the Modus is gone. *B. 6 Ja. B. between Sharp and Coke, per Curiam.

In Suffolk, who sued for Tithe of Hops, and that there a Prohibition was granted, and seems to be S. C.

3. If a Man prescribes to pay 6s. 8d. for all manner of Tithes of if there was a Park, and after the Park is disparked, and converted into Tillage, a Precept and Pature Land, the Modus is gone by the Alteration aforesaid. *Spurdom's Cafe, adjudged and cited by Coke. *Pill. 6 Jac. and there agreed per Curiam.

When it was a Park, this Prescription shall have Continuance clearly for the Payment of this Modus only, after that such a Park be disparked, and converted to another more profitable Use; *Per Coke Ch. 1. The whole Court agreed with him herein. *2 Bull. 249. Trin. 12 Jac in Cafe of Price v. Macklow.

4. [But] if a Man prescribes to pay 6s. 8d. for all manner of Nov 148. in Tithes arising from many Acres of Land which contain the Park, Cafe of though the Park be disparked, and the Land converted into Tillage, etc. yet the Modus shall continue, because the Prescription is in the Coke Ch. 2. Soil and not in the Park. *Spurdom's Cafe cited one *Shipden's Cafe, that a Modus Decimandī to adjudged; cited per Coke, *Pill. 6 Jas. B. and there agreed per Curiam.

Pay a Buck and a Doe generally for the Park is not good if it is disparked, but it shall be particularly for all Acres contained in the Park.

5. If a Man prescribes to pay yearly 28. for every Acre of 140 Roll Rep. Acres, which were once a Park, and all the Shoulder of every third 122. pl. 4. Deer that should be killed within the Park, in Discharge and Satisfaction of all Tithes, and after the Park is disparked, by which the Tithe(*) of the Deer is gone, which is part of the Confidencet, yet it seems the 28. for every Acre shall discharge the Land. *Fol. 652. Dubitatur. *Pill. 12 Jac. B. between Hooper and Andrews, quod vide my Reports, 12 Jac. and Hobart's Reports 54. *Et vid. *Mich. 5 Jac. B. between Sharp and Sharp.

Court divided —— Godh. 137. pl. 329. S. C. adjournatur. —— Hob. 19. pl. 47. S. C. with a long Argument by the Ch J — Win. 46 Arg cites Mich. 10 Jac. Rot. 122. 8 P. that the first Opinion of the Court was, that the Defendant ought to plead in certain how that was disparked, and
6. Inhabitants of A. a Hamlet within the Parish of B. had a Chapel of Ease within the said Hamlet, because the said Hamlet was distant from the Church of the said Parish, and prescribe that with park of their Tithes they have found a Clerk to do Divine Service within the said Chapel, and also had paid a certain Sum of Money to the Parson of B. and his Predecessors for all Manner of Tithes, and held a good Prescription. Le. 25. pl. 77. Trin. 26 Eliz. B. R. Sear v. Bland.

7. R. was seised of Hadley Park, and of all the Tithes thereof, and paid for the Tithes but one Buck in the Summer, and a Doe in the Winter for 30 Years past. The Park was disparked, and turned into arable Land. Carus and Catlin said, that he need not pay other Tithes but a Buck and Doe, for although they be not titheable, yet may they be paid by Composition, and he may not take them, but they are to be delivered to him; and in like manner Partridges and Pheasants in a Garden are not titheable, yet may they be paid in Lieu of Tithes, and shall be brought dead to the Parson, and although there be no Park yet may he give a Buck out of another Park, and perhaps it may be made a Park again. Ow. 34, 35. Trin. 31 Eliz. Ld. Rich’s Cafe.

8. In the Cafe of a Park in Norfolk the Parson prescribed Pro Modo Decimandi to be paid 3s 4d. for all Tithes arising out of the said Park, and that the Park was afterwards converted into arable yet no other Tithes shall be paid; Per Coke Arg. But Popham said, it had been adjudged otherwise in Wrath’s Cafe in the Exchequer; but that the Law is clearly as has been said, and that the Difference is when the Prescription is to pay so much for all Tithes, or when it is to pay a Shoulder of every Buck or Doe at Christmas; for there if the Park be disparked, Tithes shall be paid; for Tithes are not due for Venison and therefore they are not Tithes in Specie. Ow. 74. Pauch. 38 Eliz. B. R. in the Dean and Chapter of Norwich’s Cafe.

9. Where the Custom is to pay a Sum for all Grounds of such a Farm and woody Ground is converted into Meadow, the Custom shall not extend to the Meadow; Per Montague Ch. J. 2 Roll Rep. 162. Pauch. 18 Jac. B. R. cites the Cafe of Conev v. Larke in C. B.

10. Where the Custom is for every House to pay a Garden-Penny this will extend to Beams or Hops if they do not grow in Ground newly added to the Garden. Litt. Rep. 151. Trin. 4 Car. C. B. Allfrey v. Mills.

11. Modus for a Corn Mill, two new Mill-stones are added; Per Holt it seems reasonable the Parson should have the tenth Toll-Dill; Per Cur. the Modus is not. Ch. J. it seems reasonable the Parson should have the tenth Toll-Dill; adjunctur. Show. 251. Mich. 3 W. & M. Guinley v. Falkingham.

12. A
Dimes, [or Tithes].

12. A Modus was, that the whole Crop of two Acres was given in Discharge of all Tithes of Hay within the Parish; it was lately determined in the Exchequer that it was extended only to the old Meadow Ground; Arg. Gibb. 53. Pauch. 2 Geo. 2. B. R.

13. A Modus paid to the Parson may be the Vicar of small Tithes claimed by him; for originally, and of common Right all the Tithes, as well small as great, were the Parson's, and the Modus, if good, must have been Time out of Mind, and have commenced when the Parson was feized of all, and the latter Endowment of a Vicarage shall not deprive the Parishioners of a Modus they were entitled to before. 2. Wills's Rep. 522. Pauch. 1729. by Ld. C. King. Fox v. Ayde.

(F. a) To what Thing it [the Modus] shall extend. Mills.

1. If a Man be discharged of two ancient Grift Water-Mills for one Modus, follow, for 6s. 8d yearly paid to the Parson and after, by continuance of Time, by the Act of God, the Water-Course which used to run to the Mills is diverted, and runs in another Place a little Distance off from the ancient Mills, and thereupon the Owner of the Mills pulls down one of the ancient Mills, and rebuilds it upon the Stream in the new Course, he shall be discharged of Tithes of this new Mill for the said 6s. 8d. for this is altered by the Act of God. Mich. 11. Cat. B. R. between Johnson and Dandridge, per Curiam resolved, and a Prohibition granted accordingly.

2. But in the said Case, if the ancient Water-Course be changed by the Act of the Party himself who is the Owner of the Mill, he shall pay Tithes thereof as for a new Mill, and the said ancient Modus shall not discharge it. Mich. 11. Cat. B. R. in the said Case of Johnson and Dandridge, per Curiam resolved.

3. If for two ancient Meliages, and two ancient Water-Grain-Mills, Time out of Memory &c. there hath used to be paid to the Parson 20s. per Annum in lieu of all Tithes issuing out of the said Meliages and Mills, and after the Owner of the Meliages and Mills erects two new Grain-Mills within the said Meliages, it seems the Modus will not discharge these new Mills from the Payment of Tithes, because the Tithes of a Mill is not merely predial, but mixed with the Peronalty, and is more of the Personalty than of the Predialty. Mich. 13. Cat. B. R. Goodwin and Smith, concerning Terrington Hills in the County of Devon, upon a Demurrier. Justice Berkeley and Curia seemed to incline, that the Modus should not extend to these new Mills; but they did not resolve it, because the Fine was taken upon the Modus as to the two Meliages and ancient Mills; and at the M11 Price the Plaintiff in the Prohibition was nonuit, by which he was nonuit as to the Demurrier also, and for this Cause a Consultation was granted for the Whole.

4. If a Man be seised of eight Acres of Pasture, and of Meadow, for the Tithes of which there has been paid Time out of Memory &c. 5s. 6d. and after the Owner thereof erects thereupon a Corn-Mill, he shall pay no Tithes for the Corn-Mill, because the Land was discharged per Modum Decimandi. Co. Nania Charta 490.
5. In a Prohibition to a Libel for Tithes of a Corn-Mill, the Plaintiff suggested a Modus &c. the Defendant confessed the Modus, but alleged that a new Pair of Mill-stones were added to the old Mill, and so prayed that the Prohibition might go only to the Tithes of the ancient Mill; but it was said e contra, that the Modus extends as well to the new Mill-stones as to the old, for if these break, the Modus goes to the New, so that if they are laid down elsewhere under the same Roof the Prescription will extend to all, because the Mill is the Subsance to which it chiefly relates; the Prescription is to the Mill in general, and it is but accidental whether there are one or two Pair of Mill-Stones therein. tis still but unum Molendinum, and must be so demanded in a Pracipe, and a Prohibition was granted. 4 Mod. 45. Trin. 3 W & M. in B. R. Grimley v. Falkingham.

Brownl. 32. Anon. is, that if you have but one Pair of Stones, and pay a Rate-Tithe for the Mills, and then you add another Pair of Stones, new Tithes shall be paid in Kind.

(G. a) [Modus.]

To what Thing it shall extend for a collateral Respect.

Fraud.

1. If a Man prescribes to pay an Halfpenny for every Lamb which he shall kill before the first Day of May without other Tithe of them, and after by Fraud to deceive the Parson, he sells the Lambs but a Day before May, this is not a Discharge by the Custom of Tithing. Hitch. 17 Jac. B. per Curtiam.

Mo. 915. pl. 120. S. C. a Prohibition was granted notwithstanding the Con, because the Fraud is to be remedied in an Action on the Cafe at the Common Law.

2. Libel &c. for Tithes, the Defendant suggested a Custom in the Parish of Letcombe, that the Parson should have for his Tithes, the 10th Land sowed with any Manner of Grain, to be reckoned at the first Land next the Church, the Parson replied, that the Defendant by Fraud sowed every 10th Land which belonged to the Parson as above very ill, and with small Quantity of Corn, and did not Dung and Manure it as he did the other nine Parts, by Means whereof the other nine each of them yielded eight Cocks, but the tenth yielded but three Cocks. Wray Ch. J. held, that this Custom was against common Reason, and therefore void; but if it be a good Custom, then the Parson shall have an Action on the Cafe. Le. 99. pl. 127. Patch. 30 Eliz. B. R. Stebbs v. Goodlack.

3. A Custom was for the Vicar to have Tithes for all Peas and Beans sct, drilled, or sowed in Rows in Gardens or like Manner, afterwards a new Improvement was found out to use a Plow instead of a Spade, yet such Pease and Beans shall pay Tithes. MS. Tab. January 23, 1717. Auffin v. Nicholas.

(H. a)
(H. a) *Who shall prescribe in Non Decimando.\* [Vol. 655]

1. A Layman cannot prescribe in Non Decimando without special Matter, though he be capable of a Discharge of Tithes in favour of the Church, because it shall not lose its Right without an actual Recompence. Co. 2. the Bishop of Winchester [44] resold.

Perfons cannot prescribe in Non Decimando, but in Mado Decimandi they may.

2. A Spiritual Person may prescribe generally in Non Decimando, because he is more favoured than a Layman, for this is always in [pl. 42. Mich.] a Spiritual Person, and so not taken from the Church, for such [32 & 33 Eliz. B. R.] Spiritual Person was capable of a Grant of Tithes at the Common Law in Pemancy. Co. 2. the Bishop of Winchester [44] resold.

may prescribe in Non Decimando, and by the 31 H. S. he shall hold it discharged as the Prior held it; and if he held it discharged Non referit by what Means. — Le. 240. pl. 352. S. C. held accordingly.


A Dean and Chapter may, though it was objected, that a Dean may be a Layman, as the Dean of Durham was by special Licence and Dispensation of the King; yet it was answered, that this is a rare and special Café, and therefore not to be brought for an Example. Win 63. Patch 21 Jac. C. B. Briggs's Café.

3. As a Bishop may prescribe in Non Decimando, as to be discharged of Tithes for him, his Farmers, and Tenants at will, for certain Land in the Parish of another. Co. 2. the Bishop of Winchester [44] adjudged; And Mich. 15 Ja. B. R. same Case came in Question, and adjudged, and a Prohibition granted accordingly. Mich. 42 43 Eliz. B. R. between Crowcher and Fryar, adjudged; Mo. 15 Ja. B. R. in the Bishop of Hereford's Café, resold, and a Prohibition granted accordingly.

Cited Mo. 531. \[Mo. 618. pl. 844. Crowcher v. Fryar, S C.\

4. [And] when certain Land is so discharged by Prescription in Non Decimando in the Hands of a Spiritual Person, it he leaves 591. Hill. it for Years to a Layman, he may now prescribe in Non Decimando also, because the Land is discharged in Facto. Co. 2. the Bishop of Winchester [45] adjudged; And Mich. 15 Ja. B. R. in the same Café it was adjudged also, and a Prohibition granted.


6. The Church-Warden of a Parish, admitting they may have Land by Prescription, yet cannot prescribe generally in Non Decimando, for they Land which they have for the Reparation of the Church for the Parishioners, for they are not Spiritual Persons; 39. 37 El. B. between Length and Meredie, adjudged.
Diftizes, [or Tithe].

10. So in Wild may prescribf in Non Decimando, As the Wild of Suffolk; 24th. p. 2. B. R. A Trial was at 6th Bar upon a Preecription upon such a Pre subscription to be discharged of the Tithes of Wood between Ferter and Tike, and the Pre subscription found, and Judgment given accordingly. Hill. 14. (A) B. R. per Curiam, such a Prescription is good in Barbam and Goose's Case, 24th. p. 17. B. R. in Dr. Andrews and, adjudged upon a Trial at Bar, by which the Pre subscription is found.

1. Coypholders of Inheritance that hold of a Bishops as of his Manor, may prescribe, That the Bishop and his Predecessors seized of the said Manor for themselves, their Tenants for Life, Years, and Tenants by Copy of Court Roll of the said Manor Time out of Memory &c. have been discharged of the Paynent of Tithes for their Lands parcel of the said Manor; for this is a good Pre subscription, and the Copyholders shall be discharged of Tithes thereby, for their Tenements are part of the Demesnes of the Manor, and this must con- currence upon a real Composition for the whole Manor. B. 43. 43

El. B. R. between Croceh v. Friar, adjudged.

2 Judges, Popeman contra. Ye. 2. S. C. adjudged by 3 Judges. And adds a Note of the Reason, be cause Pre subscription in the Lord ought of Necessity in common Intendment to precede the Pre subscription in the Estate of the Copyholder, and the Discharge of Tithes in the Lord, which in this Case may well be, (because he is a Spiritual Person) shall trench so to the Benefit of the Tenant who is the Copyholder; for by this Means it is to be presumed that the Lord has greater Fines and Rents; And adds another Note, that Popeman was against this Judgment because the Plaintiff, who is a Copyholder, will have in Sau Generis an Estabe of Inheritance distinct from the Estate of the Lord, who is the Bishop. — Not 52. S. P. and cites S. C.

A Copyholder may prescribe to be discharged of Tithes, by pleading that he was always Tenant by Copy to a Spiritual Corporation. Lane 17. Arg. cites it as it referred 48 Eliz.

Mar 26.


Anon. S. P.


S. W. 5. B. R. the S. P. as to a Thing that is in its Nature de Jure titheable; for as no finge Person, or his Eatee, can, no more by the same Reason can the Hundred, [or County] which consists but of many finge Person's Eatees. In the Case of Hicks v. Woodford.

Though it be generally put in Dr. and Stud. 166, that a County may prescribe to be discharged of any Tithes, yet I find no Instance of it in any other Case than Tithe Wood, (except one in Rolf 654. which I am not furnished with.) Now Tithe Wood does not seem to be due of common Right, because it does not renovate Annuitant, but the Church had got Possession of it, and the Statue of Silva Codaua, 43. 5. cap. 7. is but an Affirmance of the Common Law, and, therefore have obtained it, it is to be paid as a Customary Tithes, and yet in the Case of Wood the Parson need not by a Custom in his Liberty; but if the County be discharged by Custom, it must come on the other Side. (Contra 12 Co. 113) The Case of Tithe Wood is somewhat like the Case of Tithe of Mills; The Church claimed Tithes for Mills, and by the Statute of Artifex Cleri, cap. 5 of molendino

1. a Prohibition, but yet of an old Mill a Man may now prescribe generally in Non Decimando. Per Holt; Ch. J. Comb. 404. Hill. 9 W. 3. B. R. in Case of Hicks v. Woodford.

Likely for Tithes of Wood; the Defendant suggested for a Prohibition, a Pre subscription to be discharged of the Tithes of Wood within the Wild of Kent. The Plaintiff traversed the Pre subscription, and found for the Plaintiff in the Prohibition, and allowed, and the Plaintiff was discharged; And there is a Note, that the Wild of Kent has twenty Parishes in it; And Henley Arg" said, that Tithe of Wood was not originally given to the Clergy before John Stratford, Arch-Bishop of Canterbury, Anno 15 Ed 3. made a Confulation, that Tithes of Silva Codaua should be paid within his Province, and that in the next Parliament, 16 E 3. and so at every Parliament to the 16 R. 2. the Commons complained of this as a Grievance and Oppression, and staved two Parliament Rolls, where it was concluded, that Tithes in them shall be paid as the Usages were before, and not otherwise; and that upon the same Usus the Wild of Suffolk was discharged the Year before in B. R. and so the Wild of Surrey was in two Trials in C. B. and in B. R. Palm. 37. 38. Mich. 17. Jac. B. R. Chamrick (Earl of) v. Denton (Lady) — 2 Roll Rep. 122. S. C.

24 E. 784
Dished, or Tithes.

There is not any Case of a Custom in Non Decimandy excepting for Wood in the Wilds of Kent and Sussex, which is no Authority for allowing such a Custom as to any other thing which is titulable of common Right, for per Cur. Wood is not titulable of common Right being part of the Freehold, but it is titulable by Custom only; Quod Non. Curth. 392. Hill. 8 W. 5. B. R. Hicks v. Woodham.

But Suppose, for it Wood is titulable only by Custom, then all the Libels for Tithe Wood ought to be founded upon the Custom alleged; and if so, then there could be no Suggestion of a Modus for Title-Wood; for it would be absurd to figugre one Custom against another for one and the same Thing; for if the Duty arises by Custom only, it cannot be discharged by another contrary Custom, and yet many Modus's have been allowed against Libels for Tich-Wood. Curth. 395. Hill. 8 W. 3. (seems to be a Note of the Reporter.)

11. So the Wild of Kent may prescribe in Non Decimando of Wood. Tr. 15 Ja. B. between Bell and Tarde, a Prohibition granted. Mitch. 17 Ja. B. R. between adjudged upon a Trial at War, in which the Prescription was found. Mitch. 21 Ja. B. R. between Loan and Dixon, a Trial was at the War upon a Prohibition, in which the Issue was, whether Hidden Borough-Ward was within the Wild of Kent or not? admitting and agreeing that it was discharged of Tithes of Woods if it was within the Wild, and found by Verdict that it was within the Wild. Tr. 17 Ja. B. between Fawkeuer and Andrews, per Curiam.

12. A Man may prescribe, that by the Custom of the Country where he is such for the Tithes of Milk of Ewes, no Tithes Time out of Memory have been paid for Milk of Ewes. Mitch. 14 Car. B. R. between Seel and Bebner, per Curiam, a Prohibition granted upon such a Surname to the Confinship of Wintom.

13. A Man may prescribe that there is a Custom within the Hundred of Daliston in the County of Piddlesir, and in the County of Surcery, that if any common Baker of Bread inhabiting within any of those Hundreds erects any Water-Mill, Wind-Mill, or Hand-Mill, within any of those two Hundreds, to grind his Grain to be employed in making of Bread for himself, in his Trade of a common Baker, for the making of Bread for the Maintainance of his Family, and to fell to his Customers inhabiting there, or near the said Hundreds, for their Sustainment, by the Support of whom the Parfons within the said Hundred have more ample Tithes, videlicet, of those who have Lands or Tenements, and others, as of Handicraft Tradesmen, Offerings, and such like, no Tithes hath used to be paid from the Time at which the grinding of this Grain so employed as is aboreaid in his Trade, for two Hundreds may prescribe in Non Decimando. D. 15 Car. B. R. between Kidden and Edwards, a Prohibition granted upon this Suggestion, where the Baker is inhabitant in one of the said Hundreds, and erected a Mill in the other Hundred.

14. If an Abbot or Prior had been seized of Lands discharged of Tithes, he who is now Farmer of such Lands shall be admitted to prescribe in Non Decimando by the Statute 2 E. 6. which wills that none shal pay Tithes otherwise than they did for 40 Years before, but in no other Case shall a Man prescribe in Non Decimando, but only in Modo Decimando. Mo. 219. pl. 356. Mich. 27 & 28 Eliz. in Branche's Cafe.

15. A whole Country may prescribe to be discharged from Payment of A Country Tithes but this at the first of Necessity ought to have a lawful Commencement by Way of Composition or &c. Per Doderide J. cites Linwood and Dr. and Student, to which Coke Ch. J. agreed. 2 Bull. 283. Mich. 12 Jac.

Difmes, [or Tithes].

16. A Hundred may prescribe in Non-Declamando and it is good; for it is the Custom of the Country, which is the best Law that ever was; but a particular Town cannot prescribe in Non-Declamando; and thereupon a Prohibition was granted. Mar. 25. 26. pl. 59. Pach. 15 Car. Anon.

17. In Prohibition upon a Suggestion that the Hundred of Hunsbyton in the County of Somerset is an ancient Hundred, that there has been a Custom, Time out of Mind, that the Inhabitants of that Hundred have been discharged of the Tithes of barren Cattle, Ilfic was taken upon the Custom, and Verdict for the Plaintiff, but Judgment was said. 1. Tithe is due for Agitation of barren Cattle of common Right, and at the common Law it is 2s. per Pound, but the Custom governs it as to the Sum. Comb. 403. Mich. 9 W. 3. B. R. Hicks v. Woodifon.

404. Says a Consultation was granted, and the Court directed that it should be specially entered, because it appears that the Custom is void and against Law. — Carth. 392. S. C. the Custom was held void, and a Consultation granted. — 2 Sill. 655. pl. 1. S. C. held accordingly, and a Consultation granted; — 12 Mod. 111. S. C. held accordingly and Consultation granted; For no Country or Hundred can prescribe in Non-Declamando for any Thing that is titheable of common Right. — Ld. Raym. Rep. 137. S. C. ruled accordingly, and the Judgment was arrested, and the Court directed the Entry to be made as is mentioned above out of Comb.

18. Custom to pay no Tithe of Hay employed in fothering Cattle is ill, for Hay is a prejinal Tithe, and though you feed your Cattle with it, yet you ought to pay Tithe; Per Holt Ch. J. 12 Mod. 495. Pach. 13 W. 3. Selby v. Bank.

19. B. moved for a Prohibition to the Spiritual Court, the Libel being for Tithe Hay and Lambs, Custom to pay the 10th Lamb yeared there, in Consideration whereof to be Tythe-free of Lambs which were not yeared there is ill; Per Holt Ch. J. of common Right Tithe Lamb is payable where they fall, but by Canon Law there is a Regard to be had to the Place where they were engendered and bred; And after Consideration the Court declared at another Day that no Prohibition should go in either Part, for as to the Lambs it is a dangerous Custom, because easily converted into Fraud by taking the Sheep away in yeaning Time. 12 Mod. 496, 497, 498. Pach. 13 W. 3. Selby v. Bank.

20. Of Wood spent in an ancient Misusage for Husbandry one may prescribe in Non-Declamando, for that formerly Tithe was not paid for Wood; Per Holt Ch. J. 12 Mod. 497. Pach. 13 W. 3. in Case of Selby v. Banks.

(H. a. 2) Modus Decimandi; What is; And Remedy for it; And Pleadings.

1. Prohibition for suing for Tithes of 15 Acres of Land, 10 Acres of Meadow and seven Acres of Palture, and furnished, that he and all those &c. Time out of Mind &c. had used to pay 4d. yearly in Satisfaction of all Tithes of Hay cut there; The Jury find the Prescription, but that Part of the Land was never mowed, but shew not certainly what Part; It was adjudged for the Plaintiff; for both Parties agreed that all the Land had been mowed, and the finding contrary is void; and
3. One Modus sued for in the Spiritual Court, and another Modus suggested is no Caufe of Prohibition unless for other Caufe; Per Doderidge j. but per 2 Justices contra. 3 Bulst. 241, 242. Mich. 14 Jac. Harding v. Gofling.

4. Bill in Chancery to maintain the Prescripion of a Modus Decimandi, to which the Defendant demurred, and says, It is proper for the common Law or Ecclefiatiical Court; and the Court allowed the Demurrer and dismissed the Bill. Ch. Rep. 27. 4 Car. 1. Brown v. Thertford.

5. In Actions for Tithes and a Prohibition brought upon this Prescripion, That Time out of Mind &c. the Sum of 2 s. 9 d. had been paid for 11 Doles of Meadow at 3 d. the Dole, and the Cafe was that this was a small Piece of Meadow taken off and inclofed from a great Meadow of which it was Parcel, and the Witnesses did prove that 3 d. the Dole had used to be paid for the whole Meadow, and that the 11 Doles in question was Parcel of it, and the Judge did direct the Law to be against the Plaintiff, because he had laid his Prescripion intire 28. 6 d. 28 9 d.] for the Whole, and not 3d. the Dole, which does amount just to so much, and upon this Direction the Plaintiff was Nonuit. Clayt. 56, 57. pl. 97. Ailizes in Lent, by Vernon J. Ann. 1637. Seton's Cafe. And says, Vide if it is not all one in Mountjoy's Cafe. 5 Rep.

6. In a Prohibition and the Prescripion suggested was to pay a Rate-Tithe of 13 s. 4 d. for all Land &c. and for Profits of a Mill, and in Evidence the Witnesses proved several small Sums paid, at 5 s. 2 s. &c. which in the Whole came to the just Sum laid in the Prescripion, and it was helden no good Proof by the Owner of the Inheritance; otherwife it had been if these several Sums had been paid by the several Tenants of several Parcels of the Land in question; and in this Cafe it was held if such a Prescripion is laid for an 100 Acres, and the Plaintiff fails in the Number, it is doubtful whether it be not a Failure in Proof; The best Way is to lay it that it has been paid for such Clofes &c. by Name; and in this Cafe it was held clearly that no Proof being to extend this Sum paid for the Mill, the Plaintiff did fail in his Prescripion in all. Clayt. 81, 82. pl. 133. Ailifa 15 Car. before Henden Baron of the Exchequer. Sir Arthur Robinson's Cafe.

7. There was a Compofition between the Prebendary of A. and the Abbet and Convent of B. that the Prebendary of A. and his Successors, for all Time to come, should have their Election yearly, either to receive Tithes in Kind of Corn or Grain arising within certain Lands of the Abbey, or else to receive five Marks, to be paid by the said Abbset and Convent in lieu thereof, so assuch Election was notified to the Abbet or any of the Monks, or Porter of the Abbey &c. The Lands came to the King by the 31 H. 8. and from him to the Defendant, and the Prebend came to the King by the 1 E. 6, of Chanteries &c. and from him to the Plaintiff. Admitting the Composition good, it was adjudged that the Power of Election was gone, because it cannot now be made according to the Compoftion; but in this Cafe it was said by Hale Ch. B. that in one Southwell's Cafe in 44 Eliz. where an Abbet had a Quantity of Wood to be taken yearly


2. Every Modus Decimandi is a Diffcharge of the natural Tithe, and Modus's are to works by Way of Diffcharge. Hob. 118. pl. 148. Hill. 13 Jac. in Cafe of Shelton v. Montague cites D. Parfon of Pyekirk's Cafe.

Per King C. Gibb. 120. —— A Modus is nothing but a real Composition for, or in lieu of Tithe, or an annual Profit certain and permanent; Per Ward Ch. B. and Smith B. 1 Salk. 656. Mich. 5 Annu. in Scacc. in Cafe of the Arch-Bp. of York v. D. of Newcastle.
yearly in such a Wood, or a Sum of Money at his Elefion; it was held
the Elefion was transferred to the King by the Snature of Diffolution
Wivel & al. 7

8. If the Jury on an Ifue joined in a Prohibition upon a Modus De-
cimandi find a different Modus, yet the Defendant shall not have a Con-
sultation; for it appears he ought not to fue for Tithes in Specie there
being a Modus found. Vent. 32. Pach. 21 Car. 2. B. R. Anon.

9. Chancery deny'd to decree Rate Tithes, though it might be after
two Verdicts, and though it was urged that it was frequently done in
10. There is no Remedy for a Modus Decimandi but in the Spiritual
Ryfon.

11. Where a Modus was for forth payable or about such a Day, this
was not good; for the Day must be certain. 3 Mod. 375. Trin. 11
Geo. 1. Blackett v. Finny; and cites it as lately resolved in the Cafe of
Harrifon v. Clerke.

In what Cases a Parol Agreement is good,
or where there must be a Leafe.

IN Trespass the Plaintiff counted that a Parfon Anno 18 H. 6. Sold
to him all his Tithes of his Parith of A. payable which did or might
arife in the said Parith during seven Years next &c. and justified for
Tithes Anno 18 and 19. Per Newton this cannot be good; for in Anno
18 the Tithes which came Anno 19 were not in Effe, and therefore it is
not a good Contract of a Thing not in Effe; But per Patron contra, and
therefore the Plaintiff recovered notwithstanding these Objections.
2. A Parfon may leafe his Tithes for Years without Deed; Per
Choke J. Quod non Negatur. Quere Tamen. Br. Difmes, pl. 8. cites
9 E. 4. 47.

3. A Parfon in Consideration of 12 d. granted to one of his Parishioners
that he should hold his Lands discharged of Tithes; It was held by the
whole Court that the same was no good Difcharge, being without Deed
as a Leafe of his Tithes; But it was held, if the Parfon afterwards
fues the Parishioner for Tithes against the fame Grant and Promife, the
Parishioner may have an Action upon the Cafe against the Parfon upon
his Promife, although he cannot plead the Grant as a Leafe. 2 Le. 73.
pl. 98. Trin. 28 Eliz. B. R. Wellock's Cafe.

4. Consideration to pay to A. the Parfon 10 l. per Annum during such
a Term for his Tithes, A. promised that the Plaintiff should hold his
Lands without Tithes and without any Suit for the fame; Per Gawdy;
It is a good Difcharge for the Time, and a good Compaionion to have a
Prohibition
Prohibition upon; and is not like unto a Covenant. Le. 151. pl. 208.

Trin. 31 Eliz. B. R. Chapman v. Hurit. 5. Libel for Tithes, the Defendant suggested for a Prohibition, that P. was seized of the Lands out of which the Tithes were illusing; and in a Deed, Confideration but P. and his Assigns should hold the said Lands discharg'd of Tithes during the Parson's Life; A Prohibition was granted, but afterwords it was held that they may still proceed in the Spiritual Court; because here is no express Grant of the Tithes, but only a Covenant or Agreement that P. should be discharg'd of the Payment, for which he hath a proper Remedy by an Action for not performing the Agreement, and therefore no Prohibition shall go; for this Agreement cannot be without Deed, and the Assignee has no Colour to take Advantage thereof. Cro. E. 188. pl. 13. & 459. pl. 10. Mich. 33 & 34 Eliz. B. R. Nelfon and Bugg v. Woodward.

for Life, which cannot be during his Life without Deed; and afterwards the Record was read, which was Concordatam aequitatis between the two Parties pro omnibus Decimis, during the Time that one should be Parson, and the other Occupier of the said Lands, that in Consideration of the said Prettman and his Assigns should hold the said Lands discharged of Tithes, the same is not a Contract but a Promise, for he does not grant any Tithes for. Le. 217. pl. 31. S. C. in toto.

thus, that the Defendant, when it was agreed, that the Township was granted, and Popham succeeded, and was sworn the same Day, and the Court held that the Agreement by Parol was not good, and a Confutation was awarded; but this, that upon Search made no Judgment is entered upon the Roll.

6. If a Man sell his Tithes for Years by Word it is good; but if the Nov. 28. Parson agrees that one shall have his Tithes for seven Years by Word it is S. P., Tithes may be granted for one year without Deed; and Fleming Ch. J. held strongly that Tithes cannot be leased for Years without Deed. Brownl. 98 Mich. 9 Jac. Anon. for no longer; Per Coke Ch. J. Roll Rep. 174 Sorrell v. Grove. — Because the Parson for that Year had, as it were, an Intereft; Per Fenner J. Ow. 103. in Cafe of Woodward v. Nelfon. — By way of Agreement Tithes may pass for Years without Deed, but not by way of Leafe without a Deed; But a Leafe for one Year may be of Tithes without Deed. Godd. 514 pl. 449. — S. P. by Wray and Fenner. Cro. E. 249. pl. 10. in Cafe of Nelfon v. Woodward. —

7. An Agreement to be discharged from Tithes may be for a Year by Parol, and shall be good; but to have such an Agreement during the Parson's Life or for Years cannot be without Deed; And although it were objected that this Agreement being in Way of Contract by Retainer is not any Leafe of them, but only a Contract which may be for many Years by Way of Discharge to the Party himself who ought to pay them by retaining them without Payment, as well many Years as one Year; yet the Court held that it could not be, because the Law will permit it for a Year; it being Quasi by Way of Sale; but for many Years (which found in Nature of a Leafe) it cannot be. And Tankfield said, That such a Surnlife was in a Cafe between Nelfon and Prettman to be discharged for Years, and ruled to be void; a Mulfo Portiori to be discharged during the Parson's Life, and such a Cafe was ruled between Rolls and Rolls; Wherefore without further Argument it was adjudged for the Defendant, and Confutation was awarded. Cro. J. 137. pl. 13. Mich. 4 Jac. B. R. Hawkes v. Brayfield.

8. A Parson contracts with me by Word for keeping back my ewe 2 Brownl. Tithes for three or four Years, this is a good Bargain by Way of Retainer, and if he sue me in the Ecclesiastical Court, I shall have a Prohibition on this Composition; But if he grants to me the Tithes of another, though it be but for an Year, it is not good unless it be by Deed. 2 Brownl. 11. in a Note there. Mich. 3 Jac. B. R. adjusted; but the last Point of the Grant of the Tithes of another was agreed by all to be void; is 1 of
Difmes, [or Tithes].

of the Tithes of the Parish without Deed. Godb. 373. Bellamy v. Bulthorp —— But agreement for his own Tithes for Life is not good, and in the Case of Years it is the better Way to plead it as an Agreement, and not as a Leaf. Nov. 121. Small's Cafe. —— Agreement to retain them for Life of the Parson adjudged good. Lev. 24. Bernard v. Evans. —— Pleading it by way of Demise for a Year is void by Parol; but discharge of Tithes by Parol is good, or Leave of the Realty, consisting of the Glebe and Tithes by Parol for Years is good. Lat. 178. Bellamy v. Balthorp. —— Not good without Deed. 2 Le. 29. Woodward v. Bugg. —— 3 Le. 247. S. C. —— Per Hutton J. Hct. 107. —— Cro. J. 137. Hawks v. Brayfield. —— Grant of Tithes by Deed for Life is not good if it be to commence at a future Day, and to enure by way of Interest and not by way of Discharge, and though it be to the Owner of the Land, yet to make it good there must be Words of Discharge in it Yelv. 131. Edmunds v. Booth. —— During the Life of the Parson the Contract is on foot, but though the Contract was with the Parsoner, his Executors and Assignes, yet the Assignee cannot sue the Parson upon this Contract, but he may have a Prohibition to stay the Parsons Suit in the Spiritual Court for the Tithes in Kind, and may put the Parson to his Right Remedy, and that is to sue here. This Agreement is no Leaf, because not by Deed, and the Parsoner being dead, the Parson shall have his Remedy against the Executor, and not against the Executors, Leafe at Will. Per Doderidge J. and a Prohibition was granted. Godb. 353. Snell v. Barret. S. C.

Cro. J. 137.

9. Libel &c. the Defendant suggested, That there was an Agreement between the Lord Chandos who was seft of the Manor of B. in the Country of Wilts, and the Plaintiff who was Parson of B. that the said Lord Chandos and his Tenants of the said Manor, should pay unto the said Parson for as long as he should continue Parson there, so much Money in Satisfaction of all Tithes, and that in Consideration thereof they should hold the said Manor discharged &c. and upon Demurrer it was adjudg'd for this Defendant, and a Consultation awarded. Hob. 176. pl. 199. Hill. 13 Jac. B. R. Hawkes v. Bayfield.

Year, yet it cannot be during the Parson's Life, or for Years, without Deed, and cites S. P. ruled between Rolls and Rolls. Yelv. 94. Hawkes v. Brothwick, S. C. takes a Diversity where it is a Contract to have Tithes by way of Retainer without Deed, and where by way of Perception. 10. A Parsoner covenants with the Parson by Deed to pay the Parson annually on Lammas-Day 11 s. and the Parson in Consideration thereof and upon Receipt of the said 11 s. covenants by the same Deed to discharge and acquit him of the Payment of the Tithes of B. Close as long as he shall be Parson; The Parsoner being Tenant for Life made a Lease for a Year and alter at Will to another; The Parson for Tithes in Kind in the Spiritual Court, about three Years afterwards a Prohibition was moved for by demy'd; One Reason was, That this was only a Covenant and no Leaf. 1. Because it depend on a Condition Precedent. 2. Because of the Words, (upon Receipt of 11 s.) and a Leaf ought not to have a certain Commencement and nor depend on a Condition; (cites Pl. C. 271) 3. Because the Words are not that he shall retain the Tithes, but that he will discharge and acquit him of the Payment of Tithes, which Words found only in Covenant. 2 Roll Rep. 121. Mich. 17 Jac. B. R. Alders v. Wray.

11. In Consideration of Composition promised by the Parsoner for his Tithes; Parson promises that he will not sue for Tithes after Parson pays; the Tithes do not pass in Interest, for which the Parsoner was put to his Covenant being by Deed. Palm. 377. cites Alders v. Rayner. 16 Jac.

So of a Covenant. Poph. 140. Fulcher v. Griffin. —— So where the Parson in Consideration of 61. per Ann. covenanted and granted by Deed to discharge the Parsoner of Tithes on Condition to be void on Non-payment. The Parson paid in the Spiritual Court; But the Court would not grant a Prohibition, because the Original, viz. the Tithes, belonged to the Spiritual Jurisdiction; But it was held he may have Covenant upon the Deed at Law. Godb. 272. Barnes and Pelle. —— 2 Roll Rep. 42. S. C.

13. The Parson made a Parol Agreement with A. a Parishioner, That in
Consideration of 10 s. to be paid to him every Year by A. his Executors of
Afojus, be and they should be quit of Payment of Tithes for such Lands
during the Life of the Parson; the 10 s. was constantly paid to the Par-
son, which he accepted; afterwards A. the Parishoner made B. an In-
fant his Executor and died; the Mother of the Infant took out an Admi-
nistration during Minor Estate, and made a Leaf at Will of these
Lands, and the Parson libelled against the Lease for Tithes; Per Do-
deridge during the Life of the Parson, the Contract is a Foot; but
the Allignee cannot sue the Parson on this Contract, though he may have
a Prohibition to stay the Suit in the Spiritual Court, and put the Parson
to sue here; and a Prohibition was granted. Godb. 233 pl. 426. Trin. 21 Jac. B. R. Snell v. Bennet.

against the Parson if he sues in the Spiritual Court; and a Prohibition was granted. —— Palm.

14. Where the Defendant in Trover jutified by Lease of the Tithes Exe-
by the Impropriator for a Year; Per Cur. It is meerly void without Deed
otherwise if it be by Lease of the Tithes of a Year by the Parson himself.

Parson may discharge the Parishioner of Tithes by Parol, or lease the Rectory, consisting of Glebe
and Tithes, by Parol for Years. 

15. If A. contracts with the Parson for the Discharge of Tithes for Years
of his Lands, and demises his Lands to another, yet he shall not pay
Tithes, but the Discharge runs with the Land; but if he takes a Lease
for his Tithes by Deed and makes a Demise of his Land he has Tithes
of the Lease; and the Direction was, That the Leasee of the Farm
ought to shew expressly to the Ecclesiastical Court; that the Farmer
(viz. A. the Lessee of the Land) had not a Lease of Deed. Her. 31. 
Mich. 3 Car. C. B. Booth v. Franklin.

16. There was an ancient Composition between the Prior and Con-
vent of Bath and the Vicar of North-Stoke, that the Vicar and his
Successors should base five Marks yearly in Lieu of all Tithes of Sheep kept
upon the Manor of North-Stoke, and that all the Incomes of the said Man-
or should be discharged accordingly, but such Sheep were only to be Hog-
Sheep and not exceeding 500. The Manor came to the King by Divolu-
jution, who granted it to Seymour. The Vicar notwithstanding this
Composition, and though only 500 Hog-Sheep were kept there, and
though the five Marks were constantly paid, libelled for Tithes in
Kind; but the Defendant had a Prohibition upon suggesting this Mat-
ter, and upon hearing the Cause on an English Bill in the Exchequer
the Composition was confirmed. Palm. 525. Patch. 4 Car. in Scacc. 
Lon v. Seymour.

17. A Suggestion for a Prohibition was that the Parson made several
Agreements with his Parishioner for the Payment of 5 s. 8 d. for his Tithes
for four Years, and thereupon a Prohibition was granted; And Harvey
said, That if an Agreement be proved for thole four Years it is suffi-

18. The Vicar and Parishioner Inter se convenunt to pay so much for
Tithes, this was confirmed by the Bishop; This is no real Composition
but only a personal Contract, and shall not bind the Successor; and a
Prohibition was granted. Mar. 87. pl. 140. Patch. 17 Car. Hitch-
cock v. Hitchcock.

19. Agreement made ten Years before at 2 s. in the Pound for every
Pound Rent of Land within the Parish as long as they should live together and
be continue Parson, Payment to be made May 1st and November 1st.
Per Cur. This Agreement will not bind the Patron being by Parol, but it will excuse the Parishioners of the Penalties of 2 E. 6. and from Cofts till Notice given of his Diffent, and Notice given after Payment due is too late, and so it given after Lands are marnered and sowed. Hardi, 203. Mich. 15 Car. 2. in Seacc. Breamer v. Thornton.


21. In a special Verdict in Trover for a Lamb and a Sheaf of Wheat, the Cape was, That the Abbey of Fountaine being of the Celfian Order, and exempted from Payment of Tithes of those Lands, Quas propriis manibus excolentem, was feised of the Grange of Hemmingford &c. within the Prebendary of Stedely &c. and between the Year 1216 and 1261, the Abbot and Convent and the Prebend made a Composition, confirmed by the Patron and Ordinary, that the said Abbot and Convent should be discharged of all Tithes of their Lands, Quas propriis manibus excellent in Hemmingford, but they should pay Tithes there and elsewhe for their Lands out of Hemmingford; and that they should pay yearly to the said Prebendary and his Successors five Marks by equal Payments every half Year. That Anno 1359 there was another Composition made between the then Abbot and Prebendary reciting the former Composition, but the Jury did not find that it was confirmed as the first was by the Patron and Ordinary, and by their later Composition the Prebendary and his Successors were to have the Tithes of Corn and Grain, as well of Lands in the Hands of the Abbot and Convent as in the Hands of Tenants arising yearly in the said Place, or else five Marks at the Election of the said Prebendary &c. of which Notice was to be given to the Abbot &c. or to the Porter of the Abbey, on St. Thomas's Day, and that when no Election was made then the Prebendary &c. could have the five Marks, saving the Right of Tithes of Lambs and Wool which was to be paid as formerly; afterwards the Poffeffions of this Abbey came to the Crown by the Statute of 31 H. 8. and that at the Time of the Trover, the Defendant was Proprietor of the Lands in Hemmingford, and that the Plaintiff was feised in Feo of the said Prebend, and that a Lamb and Sheaf of Wheat were redundant on the said Lands; and the Question was, Whether the Defendant should pay Tithes or not? and this depended upon another Quetion, viz. Whether the second Composition was good? It was inquired for the Plaintiff that it was good, though not confirmed by the Patron and Ordinary, because it was for the Benefit of the Prebend and his Successors, and an Enlargement of the first Composition; for by that he was tied up to the first five Marks, but by this he has his Choice either to take the five Marks or his Tithes in Kind; therefore it needs no Confirmation, for the Rule is that the Parson without his Patron and Ordinary, Potest meliorare Statum Ecclesiae fuæ; it is true the Abbey is now dissolved, and the Poffeffions given to the Crown by the Statute 31 H. 8. and fo is the Prebendary by the Statute 1 E. 6. but yet the Tithes in Kind may be recover'd; for the Dissolution of the Abbey will not hinder it, because it was by Surrender of the Abbot and Convent; for the Statute 31 H. 8. voids nothing in the Crown but what the Abots themselves surrendered since 27 H. 8. and it is a Rule in Law that Res inter alios aetâ alteri nocere non debet; it is likewise true that the Prebendary can make no Election, because his Poffeffions are given to the Crown; but where no Election can be made, there the Party who was to have the Benefit of it shall have the Thing itself without any Election; but adjudged, That the second Composition was void, because it was not confirmed by the Patron and Ordinary, and because there could be no Election according to the Composition, for that the Prebend was dissolved; ther
Dismes, [or Tithes].

For the first Composition shall stand, Quoad Terras in propriis manibus as these Lands were; and for the others, that Tithes in Kind may be taken; so the Defendant had Judgment. 3 Nels. Abr. 298, 299. pl. 8. cites Hardres 381. [pl. 10. Mich. 16 Car. 2. in the Exchequer.] Ingoldby v. Wivell.

22. A Suggestion for a Prohibition was of an Agreement for a Year, and through this Agreement was pleaded in the Ecclesiastical Court by Way of Contradiction, and not in Bar as an Agreement for Life or for several Years; yet the Court held it all one, and that both are triable in the Spiritual Court if the Suit be for Tithes in Kind; but otherwise if it were for the Money then a Prohibition would be; and so Cro. R. 17. must be intended. 2 Keb. 6. pl. 14. Pach. 18 Car. 2. B. R. Buckley v. Chelten (Bp.)

23. In Ejectment of Tithes upon Denis of J. S. not lying by Deed, for which Caufe after Error brought here on Judgment in C. B. after Verdict, Rotheron prayed for the Plaintiff in the first Judgment that it may be reversed, which Twilden doubted; but per Cur. reversed. 2 Keb. 376. pl. 33. Trin. 20 Car. 2. B. R., Angell v. Rolle.


25. A Lease of Tithes cannot be for more than one Year without Deed, and it is not good by Way of Leafe for one Year, but so it enures by Way of Sale; Per North Ch. J. Freem. Rep. 234. pl. 242, Mich. 1677. Anon.

26. Cale on a Special Promise for Tithes for six Years; on a Motion in Arrest of Judgment it was held good, though such Agreement be not a good Leafe, nor does any Interest pass by the same in the Tithes, yet it is good to ground an Affumptio and the Action lies; Judgment for, the Plaintiff. 2 Show. 307. pl. 314. Trin. 35 Car. 2. B. K. Eaton v. Sherwin. Agreement suffered him to take the Tithes, an Action lies for the Money upon the other's Agreement. Skin. 115. pl. 4. 8. C.

27. The Law for several Years past hath been clearly taken that no Prohibition will lie on any Composition whether for Life or Years for any Tithes, and therefore the proper Remedy is to appeal to the Archb. if the Commonalty Court should refuse a Plea of Composition. Cartl. 70. Mich. 1 W. & M. in B. R. Bradshaw v. Swanton.

28. Parol Agreement for the Tithes of Lands to be inclosed was, That the Proprietors would be at the Charge of enclosing, and that the Rector and his Successors should have every tenth Acre in Satisfaction of all Tithes, which should be likewise inclos'd for him. This Agreement was made with the Predecessors of the present Rector, the present Rector traversed the Agreement, and the Plaintiff took Issue on the Traverse; the Jury found the Agreement, and gave a Verdict against the Rector, and after several Motions the Judgment was affirmed. 2 Lutw. 1037. Hill. 13 W. 3. C. B. Alchin v. Moulton.

29. Where an Agreement is made for Tithes they shall pass by Way of Bargain; for otherwise they cannot pass at all because they ly in Mich. 4 Ch. Grant, and therefore cannot otherwise pass than by Deed; for a verbal Agreement for them is good only for a Year. 3 Mod. 62. Mich. 8 Geo. v. Walsingham, S.t.

The King v. Fairclough.

K

30. Parson
Disines, [or Tithes].

And shall pay the Poor Rate. Ibid.

30. Parson leaves his Tithes for 28. 6 d. per Acre to A. B. and C. they let every Landholder his own Tithes at 3 s. per Acre; The Money which the Leaffes receive of the Landholders for those Tithes shall be accounted a Modus, and wherever there is a Modus he that receives it shall be taken to be Occupier of the Tithes. 3 Mod. 63. Mich. 8 Geo. The King v. Fairclough.

(I. a) Who shall have Advantage of a Prescription in Non Decimando.

1. If a Man prescribes, that such an Abbot and his Predecessors, Time out of Memory held certain Land discharged of Payment of Tithe, and that this came after by Dissolution by the Statute of 27 H. 8. to the Crown, and so derives a Title to it from the Crown, the Parson shall not have Advantage of this Prescription by the Common Law, without the help of any Statute, because it shall be intended that this Discharge was by reason of some Personal Privilege given the Abbot and his Predecessors, and so is gone by Dissolution of the Body Politick, and not in respect of any real Composition. P. 7 Car. in Staccaria, between Clarke and Ward, adjudged in the Case of the Decay of Dancett. Bib. 10 Car. B. R. between * Tiddcombe and Hobbs per Curiam, upon Defendant, and gave a peremptory Rule for Judgment accordingly, if Cause was not shown the next Term to the contrary. But after Judgment was stay'd till 9. 11 Car., at which Time it was solemnly argued by the Court, and then adjudged by Brampton, Jones, and Barckel e contra, the Opinion of Coke, that the Prescription in Non Decimando was gone by the Common Law. 9. 11 Car. between Cock and Thorpe, and so adjudged upon a Defendant without Argument e contra the Opinion of Coke. Inhatu. P. 11 Car. Rot. 28.

2. In a Prohibition, if the Plaintiff prescribes, that King Edw. 6. was seised de nuper de-alloretata foresta de Sawenack in Comitatu Wilts of which 20 Acres of Wood, called Withiam-thevocks, within in the Parish of Pewfey, a Tempore was Parcel, and that King Edw. 6. and all his Progenitors and Predecessors, Kings of England, Foretam predictam, cum pertinentiis, unde * habuerunt & gaviti fuerunt exoneratam & acquietatam immunem & privilegiam de & a Solutione omnium & singularum Decimarum quorumcumque Rektor Ecclesie parochialis de Pewfey predicte; feu Firma rio suo, pro Tempore existenti solubilium infra Foretam predic tam, feu aliquam inde parcellam cresenticum, renovantium, pro venientium, & contingentium, Rektor Ecclesie de Pewfey predicte, feu ejus Firmaario, pro Tempore existenti solubilium and that King Edw. 6. by Deed enroll'd, convey'd the said Forest to the Duke of Somerfet in Fee, and so it was convey'd from him by mean Convey ance to the Plaintiff, the new Earl of Hertford, in Fee, and that the Defendant being Parson of the said Parish, had sued for Tithes of the said 20 Acres of Wood, to which Defendant pleaded for a Consultation, that the said 20 Acres were not Parcell of the said Forest, upon which an Issue being joined, a Verdict was given for the
the Plaintiff; And after it was moved in arrest of Judgment, that this Prescription in Non Decemando, which was laid in the King, and his Progenitors Kings of England, was Personal, and did not extend to the Allience of the King; and after several Arguments at the Bar, it was adjudged per toto Cuviam, that the Plaintiff could not take Advantage of this Prescription, without any Argument by them, and a Constitution granted accordingly, for that the Ground of this Prescription was either because it was a Forest, and could not render Tithes so long as it was used with wild Cattle, Stilect, Deer, or because the King was not within the Council of Lateran, which7 apportends the parochial Right, or because the King is Persona mixta, and so might preferibe in Non Decemando as a Spiritual Person, in all which Cases it could not extend to the Allience of the King, the said Forest being disafforested; and now it may render Title in Kind; and it shall not be intended that any real Composition or Consideration was given for this Discharge, without shewing thereot specially, no more than in Case of a Spiritual Person or Abbot that makes such Prescription. P. 11 Car. B. R. between the Earl of Hertford and Lecb, adjudged. Intercut. Hill 8 Car. Rot. 565. Done by Argument in this Case in my Book.

3. The Abbot of A. was seized in Fes, and that he and his Predecessors Sd. 520. Time out of Mind, had held the same discharged of Tithes, and be granted the Land to All Souls College in Oxford &c. Keeling Ch. J. delivered the Opinion of the Court, in which they all clearly agreed, that this could not be intended of a Discharge by real Composition, not being pleaded cordially, or found so by the Jury, but a mere Prescription, and Personal to the Abbot, and ran not with the Land. 1 Lev. 185. Trin. 18 Car. 2. Bolls v. Atkinson.

(K. a) Who shall pay Tithes.

1. If a Parson sows his Glebe, and after leaves over the Land, and after the Leafe leaves the Embankements, he shall pay Tithes for them to the Patron. P. 40 Cl. B. R. in Humphreys's Case, per Fenner.

2 [So] If a Parson sows his Glebe, and after sells over the Embankements, referring the Land, and the Vendor leaves the Embank-ments, the Patron shall have Tithes of them, notwithstanding his own Grant. P. 40 Cl. B. R. Humphreys's Case. Dubl. Hill 11. B. R. between * Moyle and Ever, Caria, and attainted in a Writ of Error.
Difmes, [or Tithes].

Plaintiff was possessor of the Land tourn with Corn, (but had not then the Patronage) but that before Severance he became Parson.

Hob. 188.

3. If a Parson fows his Glebe, and dies before Severance, and after a Successor is inducted, and after the Executor or his Vendee fears the Emblematica, the Successor shall have Tithes of them, though the Executor represents the Parson of the Tenant, yet he cannot represent him as Parson, much more another as is induced. 

Contra § 46 El. 3 R. Hinstrey's Cafe.

By the Parson appropriate; but the Court would give no Opinion, because it hanged before them in Suit—Brownl. 69. S. C & S. P. in an Action of Debt brought upon the Summt. 2. E. 6. and the Court seem'd to incline that it would lie.

4. If a Parson fows his Glebe, and after is depos'd before Severance, and another is inducted, it seems he shall have Tithes of his Predecessor. (At least, * Whether there be not a Diversion where he dies before the Annunciation, or where after:) § 11 Ja.

R. W. per Curiam.

If a Parson leaves his Glebe for Years the Leafe shall not pay Tithes; Per Brown and Welfon; Quid fit concionum. No 47. pl. 142. Pach. 3 Eliz. —Contra by Coke Ch. J. 2 Bulk. 184. Hill. 1 Jac. —If the Parson of a Church which is not improper leaves his Glebe the Leafe shall pay Tithes; but otherwise if it had been an improper Church, because of the statute of 32 H. 8. of Diversion; cited by Hutton Serjeant. Nov. 152. as ruling in the Exchequer in Cafe of Brewer v. Veylop. —If the Parson demises the Glebe, his Leefe shall pay him Tithes. Per Eyre Ch. J. Gibb. 79. Trin. 2 & 3 Goo 2 C. B.

Cro E. 161.

6. A Parson makes a Leafe for Years of parcel of his Glebe Land of the pl. 52. Value of 13l. per Ann. rendering 13 s. Rent; Adjudged that the Leasee may pay the Tents to the Leifor, notwithstanding his own Leafe, and though the Rerervation of the Rent; But there otherwise it had been, if it the Rent had been a Rack-Rent to the value of the Land. Sed quere of that丁


Factions and Demands, yet a Conflation was granted by all the Judges, For Wray said, that the Words here are no Discharge; For these Tithes arise, and accrue after, and are not Things arising out of the Land, but collateral and due from Divine, and therefore cannot be discharged by special Words; But if the Words had been as well for Tithes growing and arising upon the Land, as for other Demands, then peradventure it had been a good Discharge. But as the Cafe is, it cannot be intended by any Words, that he referred the Rent for Tithes, and to Gowy J. did conceive, especially as the Cafe here is, the Lease being of 24 Acres of Land, and only 13 s. 4d. referred.

D. 41. Marg. pl. 2. cites S. C that it was releas'd the Tithes should not pass by such general Words —S. C cited 11 Rep. 15. b. by the Reporter in a Case as releas'd per tot. Car. that the Tithes shall not pass by such general Words.

7. As long as the Vicar occupies his Glebe Lands in his own Hands, he shall pay no Tithes; but if he demises it to another, the Leafe shall pay Tithes to the Parson that is improper. Brownl. 69. 14 Jac. Harris v. Cotton.

8. If Parson be Tenant of the Land, and at this Time Land is discharged of Tithes of Wood in his Hand, yet if he leaves or sells the Wood the Leafe or Vendee shall pay Tribes unless he sells the Tithes also; Per
Dimes, [or Tithes].


9. If a Layman Impropritor leaves the Glebe the Leeflee shall pay Tithes. And if he purchase other Lands in the Parith which are discharged of Tithes in his Hands, and he demifes them the Leeflee shall pay him Tithes. Her. 31. Mich. 3 Car. C. Booth v. Franklin, said that it was adjudged accordingly in the Case of Perkins v. Hinde.

10. Tithes were claimed by the Defendant as his absolute Inheritance under a Grant from the King, and the same were decreed fo. Fin. Rep. 309. Trin. 29 Car. 2. Roak and Collier v. Lee.

(K. a. 2) Payable to whom.

Executors or Successors &c.

1. IN Trepsfs it was admitted that where Parishioners sow the Land the 10th Day of May, and after the Parson makes his Executors and dies, and after another Parson is instituted and indicted, and after the Parishioners cut the Corn and sever the Tithes from the nine Parts, the Executors of the first Parson shall have the Tithes, and not the new Parson. Br. Dimes, pl. 7. cites 21 H. 6. 30.

2. If a Man keeps Sheep in one Parish until Sheep Time, and then sells them into another Parish; in this Case the Vendee shall pay the Tithes to the Parish where they were depastured in the greater Part of the Time of the growing of the Wool; Per Williams. Lane 16, Hill. 4 Jac. in the Exchequer. Anon.

(L. a) By whom they shall be paid.

1. IF a Man sells to me Wood, and I burn it in my House, the Vendor shall be charged for the Tithes, and not the Vendee, for no Tithes are due for Wood burnt in my House; and this was resolved, P. 14 Jac. B. between Parson Ellis of Devon and Drake, and a Prohibition granted accordingly; although it was said, by the Civil Law the Parson hath Election to sue either of them; But this crosses the Common Law.

2. If A. agits the Cattle of a Stranger in his Land, the Parson may sue the Owner of the Land for the Tithes of the Pasture; for otherwise it would be very inconvenient for the Parson to sue every Owner of Cattle, and it would be very hard to know, and infinite. Jach. 7 Car. B. R. between Facey and Lang, per Ewain. I. 214. pl. 5. S. C. it seems to the Court in reason that a Suit was well brought against the Owner, but be that as it will it belongs to the Court Christian to determine which of them ought to be fined, and therefore for this Reason as to this Point a Consiliation was granted. —— S. C. cited Hard. 53 pl. 2. by the Name of Face v. Gauge, as held, that Tithes shall be paid for Agistment of Cattle by the Occupier of the Lands.

3. Where Grafs is cut and made into Reeks or Cocks, and afterwards sold, the Parson cannot sue the Vendee for the Tithes thereof, but must sue him who fever'd it. 2 Roll Rep. 78. Hill. 16 Jac. B. R. Cannon's Cafe.
Difmes, [or Tithes.]

4. If a Stranger takes Embellishments before discovering from the Tythes the Parson shall sue in the Spiritual Court for Tythes against the Treasurer, and not against the Tenant; Per Ley Ch. J. 2. Roll Rep. 449. Trin. 21 Jac. B. R. in Case of Gwyn v. Merryweather.

5. In a Bill in Equity for the Tithes of a Nursery sold; The Court was of Opinion, that if the Owner sells them and pulls them up himself, he shall pay the Tythes; but if he sells them particularly to another [after Severance] the Vendee shall pay the Tythes; As in Case of Tithes of Corn; if Corn be sold standing, the Vendee shall pay the Tithes; But if he sell it after severance the Vendor must. Hardr. 382, 381. pl. 9. Mich. 16 Car. 2. in Scacc. Grant v. Hedding and Ball.

6. Upon hearing the Cause above divers Doubts and Questions were made: As 1st. Whether Tythes should be paid if they yielded no other Fruit? 2dly, Whether Tythes should be paid for those Trees that yield Fruit, which pay Tythes? 3dly, If some yield Fruit and others not, Whether or no those that yield Fruit, privilege and exempt the other which yield none, when they are all fold together? 4thly, Whether Tythes shall be paid for them when sold and transplanted in another Parish? Ex adiuvator. But afterwards Tythes were decreed in all such Cafes. Hardr. 382, 381. Mich. 16 Car. 2. in Scacc. Grant v. Hedding and Ball.

7. The Plaintiff being Rector of the Parish of Hemyoke in Devonshire, brought a Bill for agiment Tythes against the Agiter, the Case appear'd to be thus, Defendant's Father lived in the Parish and rented a Farm there, Defendant lived with him, and he being a Butcher and renting a Farm in an adjacent Parish, frequently brought Cattle and put them in his Father's Ground for two or three Nights, and sometimes kill'd some of them off, but generally sent them to his own Farm. The Question was, Whether the Owner of the Land or the Owner of the Cattle should pay agiment Tythes? Ch. Baron and other Barons agree'd, that the Demand ought to have been against the Occupier of the Land for the agiment Tithes if any had been due, but they thought in this Case nothing appear'd due. And Baron Page said, that as to what had been said that the Demand might be either against Occupier or Agiter, that could not be; for the same Duty could not arise in two different Persons at the same Time. MS. Rep. in Scacc. Fisher v. Lemen.

(M. a) Tithes Personal.

What shall be said Personal Tithes.

1. A Personal Tithes is the tenth Part of the clear Gain quæ debentur ex opere Personalis, his Charges and Expences, according to his Estate, Condition, or Degree, to be first deducted. Co. 2. Plana Charta 621, 657. 649.

2. Tithes of Fish taken at Island, of Herrings or Pilchards, upon the Sea are Personal Tithes. Mich. 14 Jac. B. R. *Gyllin and Horden, per Dobberidge. D. 14 Car. B. R. said by Justice Jones, that in an Appeal out of Ireland to the Delegates here, in my Lord Desmond's Case, it was agreed by all the Civilians, That Tithes Personal taken in the Sea out of any Parish are due deducted Expences, and not Tithes in Kind. Co. 2. Plana Charta 621.

3. Tithes

Tithes, per Coke Ch. J. Roll Rep. 495. pl. 15. Jake's Case—See (Q) pl. 19 and the Notes there.

4. The Tithes of a Corn-Mill are not Personal, but predial or nut't, and of this according to the Custom of the Realm, the Mullar ought to pay the tenth Toll-Dish for Tithes. Contra. Co. Bagnal Churta 621.

S. P. the Court doubted what Tithes ought to be paid out of a titheable Mill: Whether only Per- nom Tithes, viz. The roth of the clear Gain, or else Predial Tithes, viz. The tenth of all the Income in General, and therefore a Prohibition was granted generally on Purpose that the Point might come before them upon a Declaration and Demurrer to it, so that the Matter might receive a solemn Determination by the Court. —Show. 281. Gunley v. Falkham. S. C. and by Holt Ch. J. The 1oth Toll-Dish is the Tithe; it is not the Owner of the Mill, nor the Owner of the Grain that has the Profit, but the Miller; and this is a Predial Tithe, because payable Recorti Locis, viz. Where the Mill is, and not merely where the Parson lives. It seems reasonable, that the Parson should have the 1oth Toll-Dish. Ademutur. — 4 Mod. 45. Grimy v. Fawkingham. S. C. but S. P. does not appear, nor does the Defendent have cited the Spiritual Court for the Title of a Corn-Mill as Predial Tithe. The Plaintiff set forth in his Answer, that he conceived the Tithes of a Corn-Mill to be a Personal Tithe; and therefore prayed to be allowed all his necessary Charges in attending the Mill before the Tithes shall be paid. The Judge overruled this Plea, and decreed that the Plaintiff should pay these Tithes without any such Deduction. Upon which Mr. Dommison moved for a Prohibition, and cited the Case of Chambran v. Critton, determined in the House of Lords the 20th of June 1766, wherein it was resolved, That the Tithes of a Corn-Mill were Personal Tithe; accordingly a Rule was made to hear Caufe, 2 Barnard. Rep. in B. R. 336. Mich. 7 Geo. 2. Douall v. Lowther.

5. Mr. Newt being Rector of the Portions of Pitt and Tidcomb, it was de- cided by the Recoty and Parith Church of Tiverton in Com. Devon, and in the House of an Horke-Mill for the grinding of Malt, being erected within the Paid Portions by the Corporation of the said Borough, who in 1699 had been paid the same to the Appellants for three Years at 30 l. per Annum, the Court Newte preferred his Bill in the Exchequer Mich. 3 Ann. and on 2oth February 1703, the Cause was heard and debated, and the Court took Time to deliver their Opinions until the next Term after, and on 22d April 1766, the Court of Exchequer were unanimously of Opinion, Personal that Tithes were due for this new erected Mill, and that such Tithe was the tenth Toll-Dish, and decreed the Appellants to account with the Respondent accordingly, viz. from the 5th of May 1699 to the 8th of May 1701, and also to pay Costs; from which Decree the Doubts in the Defendants in the Exchequer appealed to the House of Lords. 1. Before the Tithes of an Horke Malt-Mill was a personal Tithes, for there was no natural Increase from it, but only a Profit arising from the Use of its intention and the Labour of a Man and Horse, and it being Personal it was peronal the same could only be for the Tenth of the Next Tithes, not Profit deducing all Charges. 2. If a personal Tithe was due for Toll or such Mill it was only due where personal Tithes have been by Customs taken for 40 Years before the Statute of E. 6. 3. The Appellants of the Corn only took 2d. per Bushel for Grinding, and the Respondent did not ground but a portion of the whole Proprietors Gains, con- sidering the Expense of erecting and maintaining this Mill. 4. That the tenth Toll-Dish would be more sometimes than the whole Proprietors Gains, con- sidering the Expense of erecting and maintaining this Mill. 5. That the Charges of erecting the Mill would be more often times than the whole Proprietors Gains, con- sidering the Expense of erecting and maintaining this Mill. 6. This Decree will introduce a new Sort of Tithes, and will affect a great many People in London where there are many such Mills, and some Thousands of them are in other Parts of the other Kingdoms.
Difmes, [or Tithes].

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Mill in Queffion there to pay Tithes, but that they 

should be only paid as a Personal Tithe. 2 Wms's Rep. 463.

Tithes for 

Malt-Mills is only Personal, for it is not natural Increafe, being only Profit arifing from 

the Invention of a Machine, and the Labour of Man and Horfes; and Personal can only be for 

the 

Tithes of the next Profit, deducting all Charges. MS. Table January 20. 1766. Chamberlayn v. 

Plympton.

Kingdom, and if this Decree be affirmed they muft all pay Tithes. On the Refpondent's Part it was inftilled, 1. That Tithes were due 

both by the Canon and Statue Law for new erected Mills; that 

Tithes were by the Canons due for all Mills, and by Artis. Cit. cap. 5. 

for new erected Mills, which expressly provides that no Prohibition shall 

lie in such a Cafe. 2. That there had been from Time to Time several 

Reafolutions and Decrees for Tithes of Mills. 3. That the reft of 

the Mills within the Refpondent's Portions had all along paid and did 

still pay Tithes or a Compoftion for the fame, and every Modus for a 

Mill proves Tithes to be due if they were not discharged by fuch Mo-

dus. 4. That it was a predial Tithé and the tenth Toll-Dih payable 

for the fame, and fo was both the Canon and Custom and Usage 

of this Kingdom. 5. That this was not a double Tith for it was 

paid by different Perfon's and for different Purpofes, viz. In the first 

Cafe by the Owner of the Corn; and in the fecound Cafe by the Owner 

of the Mill: This Cuafe was heard at the Bar of the Houfe of Lords 

Monday 20 January 1766-7, and upon fome Debate in the Houfe the 

Confideration of Tithes predial mixt or personal were due for fuch a 

Mill, and if any due in what Manner payable was referred to the 

Judges, who after feveral Adjournments attended in the Houfe on the 

17th Day of February following, and all the Judges of the King's 

Bench and Common-Pleas (except Juliffe Powell) were of Opinion 

unanimously, That the Tithé due for a new erected Malt-Mill was a 

personal Tithé only, and Ch. J. Holt, and Ch. J. Trevor held, That 

there was no Tithé due at all for fuch Mill, because a personal Tithé 

was due only where it had been paid within 40 Years before, according 

to the Statute of 2 & 3 E. 6. cap. 13. S. 7. Upon which the Lords 

rrevered the Decree of the Exchequer, but ordered that Mr. Newte 

should be paid the tenth Part of the Profits &c. deducting all Charges 

and Expences, as Reparations &c. and that the Appellants should 

account with him in the Court of Exchequer for fuch Profits &c. 

Monday 17th Day of February 1706. It is ordered and adjudged by 

the Lords Spiritual and Temporal in Parliament allembled, that the 

Decree of the Court of Exchequer complained of in the Petition of 

Roger Chamberlain and Francis Plympton shall be and is hereby re-

vered; and that the Plaintiff in the Court below John Newte (the 

now Refpondent) do recover his Tithes of the faid Mill in the Na-

ture of a personal Tithé only; that is to fay, The tenth Part of the clear 

Profits arifing from Corn ground in the faid Mill, over and above all inci-

dent Charges; and to that End an Account is to be taken of the Prof-

its of the faid Mill, and Charges for the Time paft within the Time 

of the Demand of the Plaintiff John Newte's Bill in the Exchequer 

and fince, and the faid Tithes do fof continue to be paid for the future. 

And it is hereby ordered that the faid Court of Exchequer do cause 

the faid Account to be taken, and what should be found thereon 


v. Newte.
Tithes, [or Tithes].

(N. a.) [Personal Tithes.]

In what Cases they are due. Of what Things they shall be paid.

1. No personal Tithes shall be paid out of the clear Gains of the Party. Mich. 14 J. B. R. per Curiam.

2. As if the Owner of a Ship lends it to Mariners to go to Island Roll Rep. for Fish, upon a certain Quantity of Fish to be paid to him upon their Return, no Tithes upon their Return shall be paid by the Mariners to the Parson out of those Fish which the Owner shall have for the Hire of his Ship, because this is a Personal Tithe, and for that that it is but of the clear Gain; and so in Devon upon the Hire of a Ship or Boat to take Pitchforks or Herring. Mich. 14 J. B. R. per Swordbridge, in Goffin and Horden's Case.

3. If a Man purchases an House for 300l. and sells it again in a short Time for 500l. yet no Tith shall be paid of the Gain (*) thereof, for this is against the Common Law. B. 11 J. B. R. between Davies and Tolbin resolved, and a Prohibition granted.

5. 2 & 3 E. 6. cap. 13. S. 7. Every Person exercising Merchandizes, bargaining and selling, Cloathing, Handicraft, or any other Art or Faculty, being such Persons and in such Places as within these 40 Years have used to pay personal Tithes, or of Right ought to pay other than such as the common Day-Labourers, shall yearly at or before Easter pay for his personal Tithes the tenth Part of his clear Gains, his Charges and Expenses according to his Estate or Degree to be deducted.

6. S. 8. In all such Places where Handicraftsmen have used to pay their Tithes within these 40 Years the same Custom shall continue.

7. 2 E. 6. cap. 13. S. 9. If any Person refuse to pay his personal Tithes it shall be lawful to the Ordinary of the Diocese where the Party is dwelling, to call the Party before him and examine him by all lawful Means, other than by the Parties own Oath, concerning the Payment of the said personal Tithes.

8. A Parson libelled in the Spiritual Court against an Innkeeper for Tithes of the Profits of his Kitchen, Stables and Wine-Cellar, and alleged in his Libel that he made great Gain in telling his Beer which he bought for 500l. and sold it for 1000l. that Negotiendo & Trafcando he gain'd in the Sole 300l. and better; the Court granted a Prohibition. 2 Bulst. 141. Mich. 11 Jac. Delloy v. Davis.

(O. a) Tithes Extra-parochial. Who may have them.

1. A Stranger may have a Portion of Tithes in the Parish of another Parish. 14 D. 4. 17. 44 Am. 25.

2. 3 E. 1. Reyullo Claustrorum Seminarii 3. the Abbot de Burgo Petri, had by the Charters of divers Kings Decimam Venetiarum capti in Foreulis Regis infra Comunatum Recta, 8 E. 1. Rot. Claudarum, N. 2. accordingly in Foreulis Regis circa Trentham.
Difmes, [or Tithes].

* Quere, if this be not misprinted for N. S., and intended to signify New Sarum, which is but a small Distance from Clarendon.

4. The King shall have the Tithes in Places which are out of any Parish, as in Forests, and the like, and may grant them by his Letters Patents, and the Patentee shall have them. * 22 Stat. 75. D. Propvis, 4 Co. 2. the Bishop of Winchester 44. for he is Persona mixta.

5. Libro Parliamentorum, fol. 19. inter Placita in Parliamento de 18 E. 1. the Prior of Carlisle and the Bishop of Carlisle's Cafe, it is there said, that the Tithes of Land within a Forest, which is out of any Parish, belongs to the King, because he is Forester pradictus villarum edificiae, Ecclesiastis constructe, Terras affectate, & Ecclesiastis illis, cum Deceius Terrarum iliacum, pro voluntate sua cunctique voluntarii conferre potest, eo quoq Forestilla illa non eff infra Limites alitisque Patriciae.

6. There is a Penn called Wildmere in Com. Lincoln, which is not known to be in any Parish within. Whereupon it was ordered in the Exchequer that in this Cafe the Tithes shall be paid to the Parson, Vicar, or Penioneary &c. where the Owner of the Cattle inhabs; But if the Tithes have been paid to the Parson of any Parish Time out of Mind &c. though it is not known in what Parish the Moor or Common is, they shall be continued to be paid in the same Parish where they have been used to be paid. But where no Use of Payment had been as before, nor the Parish certainly known, they shall be paid to the Parson or Vicar where the Owner dwells by a Provifo in the Statute 2 E. 6. cap. 13. Sav. 60. 61. pl. 136. 7 May, 26 Eliz. in Scacc. Wildmore Penn's Cafe.

By the Civil Law the Bishop of any Diocese shall have the Tithes of any Lands not within any Parish there; but in England the King shall have them by the Caution of the Realm; Arg. quod si fuerit ecclesiae pro Coke and Hobart, that the King shall have them. Roll Rep. 454. Hill. 14 Jac. in Cam. Scacc.

8. If Lands are disafforested and be within a Parish they ought to pay Tithes; for their not paying Tithes being in the Hands of the King is but an Immunity for that Time only. Sty. 137. Mich. 24Car. Banister v. Wright.

9. The Parson of the Rectory of A. by Right of Prescription hath Interest in and to the predial Tithes in the Parish of B. where there are divers barrens Heaths and waste Grounds converted into Tillage which never before yielded any Profit to the Church; The Parish Church of B. shall have these Tithes because they are Decime Novum, viz. ariling of such Grounds as never were manured nor yielded any Profit at all to the Church before; because by the Foundation of every Church the Tithes in general of that and every Parish are due to their own proper and peculiar Church. Now forasmuch as the Church of A. &c. could never before be in the Possession of the Tithes of these waste Grounds, because
Dimes, [or Tithes].

because they never were in Being, and because the Law is Tantum Preceptoritum eft quantum eft Possessum & non plus; and also because Prescription is not extended ad futura, viz. it reaches not to Profits of titheable Grounds to come, it standeth with great Equity that the Church of B, should reap and receive these Tithes. The Tithing Table 7, 8. cites several Books of the Civil Law.

(P. a) [Tithes Extra-parochial.]

To whom they belong de Jure.

1. The Tithes of such Places as are out of any Parish belong de Jure to the King, as Forests, and such like. 22 Ann. 75. per Thorpe.

2. 18 E. 1. Libro Parliamentorum 19. b. upon a Suit for Title between the Parson and the Grantee of the King, &c. Williamus, qui sequitur pro Dominio Rege, dicit, quod Decima prædictæ ad Dominum Regem pertinent, & ad nullum alium, quia dicit, quod prædictæ placeæ sunt infra Bundas Foresti iphus Dominus Regis de Inglewood, & quod ipsi Dominus Re in Foresta sua prædicta, Villas adhibere, Ecclesias constructae, Terras asearctae, & Ecclesias illas, cum Decimam Terrarum sularum, pro voluntate sua conuincere volupte confuent potest, & quod Foresta illa non est infra Limites alcinus Parochiæ & petit quod Decima illæ Dominus Regi remaneant, prout debent ratione prædictæ &c.

3. 2 E. 6. cap. 13. 8. 3. Every Person which shall have any Beasts or Cattle titheable depasturing on any wall or common Ground, whereof the Parish is not certainly known, shall pay their Tithes for the Increase of the said Cattle to the Parson, Owner, or their Farmers, of the Parish or Place where the Owner of the said Cattle inhabiteth.

4. S. 4. No Person shall be fixed or compelled to pay Tithes for any Lands which by the Laws of this Realm, or by any Privilege or Preassumption are not chargeable with such Tithes, or that be discharged by any Composition Real.

5. Libel by a Vicar for Tithes of young Cattle, and sermifed, That the Defendant was seised of Lands in Middlesex, of which Parish he was Vicar, and that the Defendant had Common in a great Waste called Sedgmore Common as belonging to the Lands in Middlesex, and put his Cattle into the said Common; the Defendant suggested for a Prohibition that the Land where his Cattle went was not within the Parish in Middlesex, but no Prohibition was granted because of the Claus in the Stat. 2 E. 6. cap. 13. that Tithes of the Cattle feeding in a Waste or Common where the Parish is not certainly known, shall be paid to the Parson of the Parish where the Owner of the Cattle lives. Mod. 216. pl. 3. Trin. 28 Car. 2. C. B. Anon.

6. Bill brought by the Reector of S. for Tithes of Beasts fall upon a Common; Defendant by Anifer infilts, That the Common extends into several Parishes, and that the Culom was that every Farmer should pay Tithes to the Reector where he lived, and that he lived in another Parish, and he paid the Tithes to that Reector; but there being Proof that the Cattle were driven upon that Part of the Common that lies in S. there was a Decree for the Reector of S. but reversed because the Culom was good, there being no Inclosures. MS. Tab. Jan. 1710. Mickleburgh v. Crip.
Dimes, [or Tithes].

(Q. a) Payable. At what Place.

Tithe-Milk 1. Prescription to pay the Tithe-Milk at the Parsonage House or at any other Place is good enough; Per Popham. Cro. E. 609. pl. 15. Pasch. 40 Eliz. B. R. in Cafe of Aulten v. Lucas.

Per Raymond B., because where there is no Custom the Common Law prevails; But Ed. Ch. B. and the other two Barons agreed that it should be delivered in the Church-Porch, because the neighbouring Parishes did so; and so it was decreed. Raym. 258. Pasch. 51 Car. 2. in Scacc. Dod v. Ingleton.

-Frem. Rep. 329. pl. 409. S. C. ruled accordingly. — S. C. cited 12 Mod. 206. by Holt Ch. J. who said that this was a more equitable Decree guided by the Custom of the neighbouring Parishes; and that a Parishioner is not obliged of common Right to deliver his Tithe-Milk at the Vicarage-House or Church-Porch, but only to set them out. — Ed. Raym Rep. 319. cited S. C. and Rokeby J. held according to Raym. but Holt Ch. J. contra, and cited; Cro. 609. Auffin v. Lucas, where Popham held, that a Prescription to pay it at the Parson's House is a good Modus, and that the Redelivery in Raym. is an equitable one.

2. A Custom was laid to pay Tithe-Milk of Cows to the Vicars &c. at the Place where the Cows were milk'd. It was argued that this Custom was void for Uncertainty there being no Place certain mentioned, so that it is in the Power of the Owner upon the tithing Nighs and Mornings to milk them in several Places and there leave the Milk, which being to be paid on certain Evenings and Mornings, it would be impossible for the Vicar to have so many Servants to attend at every Milking Place to take the Milk, and so may be deprived of it; besides in Law Tithe Milk in Kind ought to be carried by the Proprietor either to the Parsonage-House or to the Church-Porch. The Court held the Custom void. Carth. 461. Mich. 10 W. 3. B. R. Hill v. Vaux.


1. THE Tithes belong to the Parson as soon as sever'd by the Parishioners; Per Manwood J. 3 Le. 24. pl. 50. Mich. 15 Eliz. C. B. in Cafe of Tottenham v. Bedingfield.

2. Tithes ought to be paid as soon as the tenth Part can be well sever'd from the nine, if there be no Custom to the contrary; and so it is for Corn and Hay as soon as it is made into Shocks or Cocks. Frem. Rep. 325. pl. 416. Mich. 1998. in Scacc. Anon.

3. All Tithes ought to be paid so soon as they may be fit for the Parson to receive them; so Calfes at such an Age, and other Things as the Matter will bear. Raym. 277. Pasch. 13 Car. 2. in Scacc. Dod v. Ingleton.

(S. a)
Dismes, [or Tithes].

(S. a) Payable. In what Cases, though there is no Product.

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1. WHEN Tithes are payable by Custom they shall be paid though the Lands are not rented or lay fresh. Hardr. 134. pl. 9. Pauch. 13 Car. 2. in Scacc. in Cae of Holbeech v. Whadcок.

(T. a) Who capable.

1. THE King was capable of Tithes at common Law; for he Cro. E. 596. was Perjona mista; Resolved. 2 Rep. 44 a. in the Bihop pl. 3. Hill. of Wincheffer's Cae. and cites 22 Afl. 75. 2. And so was his Patente by the Prerogative of the King; Resolved. S. P. agreed per Cur. and cites 32. Rep. 44 a. cites S. C. 3. But the King's Leffe shall pay Tithes, though the King never paid any; for the King is privileged by Reafon of his Prerogative. Cro. E. 511. in Cae of Wright v. Wright. Arg. cites it as adjudged, 31 Eliz. in the Exchequer.

in aNota at the End of the Cae. ——Jo 1577. pl. 3. Pauch. 12 Car. S. P. in Cae of the Earl of Lrtrford v. Seyl; Resolved, and that the Council of Lateran does not bind him unlese where he voluntarily submits to it, that this was a Perjona Privilege which non ereditur Perjona, and their Grance shall not have Benefit of it.

4. 28 H. 8. cap. 11. s. 4. If any Ordinary take the Fruits, Tithes, Profits, or Cauffaies belonging to any Parfonage or other Spiritual Benefice &c. during the Vacation of such Benefice &c. and the same upon reasonable Request, does not return to the next Incumbent, or interrupt the Incumbent to have the same; every Person so doing shall forfeit the treble Value of so much as he shall have received; the Moity of which Forfiture shall be to the King, and the other Moity to the Incumbent, to be recovered in any of the King's Courts.

5. In a Prohibition against a Parfon who sued for Tithes, it was Mo 98. pl. furmifed, That the Clerk of the Parjbe and his Predecessors, Allifants of Charity, to the Minifter, have used to have 5 s. for the Tith of the Place where &c. It was the Opinion of the Court that if this Special Matter be fhewed in the Surmife, it might perhaps be good by Reafon of long Continuance; and that by this the Parfon is discharg'd from finding the Clerk; which perhaps he shall be charg'd with, and fo is a Payment of Tithes to the Parfon himself; but they held by common Intendment Tithes are not payable to a Parifh Clerk, and he is no Party in whom a Prefcription can be alleged, because he is dative and removable; wherefore a Confutation was awarded. Cro. E. 71. pl. 26. Mich. 29 & 30 Eliz. Savell v. Wood.

6. None by the common Law had Capacity to take Tithes but only Cro. E. 512. Spiritual Personas, or Perjona mista and regularly no mere Layman was pl. 56. at common Law capable of them unleas in Special Cafes; but no Lay- man unless in special Cafes could at common Law sue for them in Court Chriftian, viz. for Subtraftion of them; Resolved. 2 Rep. 44 a. Pauch. 30 Eliz. the Bihop of Wincheffer's Cae. Wirt. v. Wright. S. C. & S. P. ——Ma. 486. pl. 68. Mich. 59 & 40 Eliz. S. P. affirmed.

may well have them, and cites S. E. 4. 14. Revifher Pol. 75. and F. N. B. 41. (G) and that there it is held that an Aflignee may hold discharg'd of Tithes.

N

7. Tithes
For they are
7. Tithes cannot be said to be Parcel of or appendant to a Manor, and
the Difference is between a Tempor and Tithes, the first is Temporal and
the other Spiritual. Cro. E. 599. pl. 5. Hill. 49 Eliz. B. R. Pigot v.
Hearn.

8. Parifhioners prescribed that there had been a Curate or an Incu-
bent by Appointment of the Reftor who administered the Sacraments &c.
and that the Custom of the Parith Time out of Mind was, that the
Curate should have all Tithes renewing within that Parifh except De-
cimas Granorum which were paid to the Parfon, and that every Pa-
rifhioner who had fo paid the Tenths to the Curate was discharged
against the Parfon; but the Prefcription was held ill; for the Reftor
may remove the Curate at his Pleafure. Nov. 15. Mich. 2 Jac. B. R.
Bott v. Brabalon.

9. One who was accepted for a Chaplain to a Chapel of Eafe which
was not Prefentative or Donative, libelled for Tithes of the Inhab-
habitants within the Precinct of the Chapel; and a Prohibition was granted.

10. An Incumbent presented by Simony cannot fie for Tithes against his
Dr. Hutchifon.

11. Appropriator gave a Reftory by Will to the Maintenance of a Mi-
niftter there for ever, referring no Nomination of a Miniftter there,
and saying Nothing about a Nomination. The Devife was void at com-
mon Law, being made to no certain Perfon. The Eitate thereof came to
J. S. who nominated A. to be Miniftter and ferve the Cure; afterwards
B. fuppoifting a Lapfe to the Crown was prefented infituted and induc-
ted as if the Church had been void. J. S. the Reftor fuppoifting that the
Nomination of the Miniftter belonged to him, nominated A. It was
urged for B. that here is a pious Use wholly fubje& to this Court, and
that coming in by the Ordinary, though he was not Parfon or Vicar,[but
Curate only] was allowed by the Bishop and decreed accordingly that he
should have the Tithes. 2 Ch. Cafes 31. Trin. 32 Car. 2. Perne v.
Oldfield.

12. The Prior of N. being feized of the Manor of N. and of the
Tithes thereof, fentinal & femel as of a Portion of Tithes, 25 H. 1. granted
the Manor and Tithes to A. and his Heirs rendering Rent, and be enter'd
and held it discharge'd of Tithes, and after granted two Hides of Land,
Part of the Manor to S. with the Tithes thereof, and A. and his Heirs paid
the Rent to the paid Prior till the Diffolution, and after to the King and
his Affigns; It was adjudged, That the two Hides should be dis-
charge'd of Tithes, for the Prior might prelcribe for Tithes en Prender,
and being well in him he might grant them to A. paying 5s. Rent;
34 Car. 2. in B. R. James v. Trollop.

13. A Layman is not capable of Tithes en Prender, but a Layman is
capable of paying and taking a Modus in Lieu of Tithes; Agreed by
Council Arg. 2 Show. 449. Mich. 1 Jac. 2. in Cale of James v.
Trollop.
(U. a) Barren Lands. And what shall be said thus.

1. 2 & 3 E. 6. A LL such barren Heath or waste Ground, other than as hereafter shall be improved and converted into arable Ground or Meadow, shall after seven Years after such Improvement pay Tithe-Corn and Hay growing upon the same, as discharged of Tithes by Act of Parliament, which before this Time have paid no Tithes by reason of Barrenness.

2. S. 6. If any such Barren Waste or Heath-Ground, hath before this Time been charged with Tithes, and that the same be hereafter improved and converted into arable Ground or Meadow, the Owners shall, during seven Years after the Improvement, pay such Kind of Tithe as was paid for the same before the Improvement.

3. A Suit was in the Ecclesiastical Court for Tithes of Wheat and Rye by Hobart Ch. J. Hobart in six Acres of Land; The Defendant mov'd for a Prohibition, suggesting that the Lands were barren Heath and waste Grounds. It was found that the Land was not barren, but that of 30 Acres of it Tithe of Hay was paid. And because another Provito in the Court of Staitew, viz. That such Tithes as were paid before should be paid with, and in seven Years after the Improvement &c. and not any Tithes of another Nature, and because the Libet was not for other Tithes than for ought to be awarded for Wheat and Rye, the Party could not have a Consultation, but they told him that he might commence a new Suit in the Ecclesiastical Court for Tithes of Wheat and Lamb in the 30 Acres not improved. D. 170. b. pl. 5. 171. a. pl. 6. Mich. 1 & 2 Eliz. Pells v. Sanderon.

4. If Land be full of Thorns and Bushes from Time whereof &c. and is not saved, it is granted up and made Meadow or arable Land, Tithes shall be presently paid thereof, notwithstanding the 2 & 3 E. 6. 13. For those Lands were not naturally Barren, but became so by Negligence or ill Husbandry, and the Statute intends only barren Land made good by S. C. Cro. E. 475. pl. 3. Trin. 38 Eliz. B. R. in Cave Sherington v. Fleetwood.

5. Fenny
Difmes, [or Tithes].

5. Penny land drain'd is not exempted by the Act. Mo. 430. pl. 603.

6. Land which has Broom is not within the Statute of 2 E. 6. For it is not barren Land, and therefore if converted into Arable shall pay Tithe; Per Coke Ch. J. Roll Rep. 39. Trin. 12 Jac. B. R.

If Land be overgrown with Water and afterwards gained by Industry, Tithes shall presently be paid though the overflowing had been Time whereof &c. Cro E. 473. pl. 5. Trin. 59 Eliz. B. R. in Case of Sherington v. Fleetwood.

7. If a Man at a great Expence gains Land from the Sea, which was Marsh and sandy Land, and covered with Salt Water, and afterwards converts it into arable Land he shall pay Tithes presently, because this Land is not barren of its own Nature, but only by Accident, by Reason of the Sand and Salt-Water overlying it; Agreed per Cur. clearly. 3 Balh. 156, Patch. 14 Jac. Witt v. Buck.

8. If Sheep were kept on barren Land or if yielded any Profit which yielded Tithes, this Tithe ought to be paid within the seven Years; Per Richardson Ch. J. Litt. Rep. 311. Mich. 5 Car. C. B. Flower v. Vaugh.

9. In Action on the Statute 2 E. 6. the Cafe was an Enclosure was Part of the Waife and it was turned into a Paflure, and held that tho' it was of small Value, viz. 2 s. per Ann. and never fown or turned into Meadow yet it shall pay Tithes, and the very Enclosure is an Improvement, and it is no waife Ground within the Statute to be freed from Tithes for a Time &c. Clayt. 127. pl. 226. March 1647. Anon.

10. Barren Lands to be exempted from Tithes within the Meaning of 2 E. 6. must be such Land as is Barren Suspae Natura; And on Suggestion for a Prohibition to a Suit for Tithes of such Lands it must be alleged to be Barren Suspae Natura; Per Powell J. 2 Ld. Raym. 991. Trin. 2 Ann. Anon.

11. Prohibition for suing for Tithes of barren Lands newly cultivated was denied. 1st. Because the Plaintiff did not shew that they were Suspae Natura Steriles. 2dly. Because there was no Affirmation that this was pleaded in the Spiritual Court. 6 Mod. 86. Mich. 2 Ann. B. R. Anon.

If Land yields any Profit before, as Wood &c. it is not within the Statute; for it ought to be Suspae Natura Steriles. 6 Mod. 96. 2 Ann. B. R. Homer v. Bonner.

(X. a) Discharge. By Common Law.

So if he the Parfon of a Church not impropriate leaves his Glebe the Laffee shall pay Tithes; But otherwise if it had been an impropriate Church, because of the Statute of 32 H. 8. of Dissolutions. Nov. pay. Savil. 132. cites D. 43. a.

Mich. 22 & 23 Eliz. Vicar of Sturton v. Griefly. — D. 42. a. b. pl. 21. Mich. 32 H. 8. says the Justices and Sergents were of different Opinions as to the Lease of Parcel of the Glebe, referring a Rent, and says the Glebe.

The Orders of the Cistercians Temp. and Hospitallers, 2. The Prior of St. John's of Jerusalem had Privilege from Rome viz. Cistercians, Templars, Hospitallers, that they should not pay Tithes of any Lands, Qua propriis manibus aut sumpibus exemptus, but their Territoris and all other Occupiers paid Tithes according to the Statute 2 H.
4. cap. 4. The Prior and Confreres made a Lease for Years before the Diffraction, and the Lessor paid Tithes to the Church of Rochester Proprietary, and the King after the Diffraction granted the Recumption of the Manor to B. and Mrs. his Heirs, in 1am ample Modo ad the Prior &c. had it. The Term expired, the Paternae and his Heirs shall hold discharged if propriis manibus excelunt. But if he makes a Lease the Termor shall pay by the Statute 31 H. 8. cap. 13. Per Ld. Keeper, Catlyn, Saunders, Southcot and Dyer. Dy. 277. 8. pl. 69. Trin. 10 Eliz. Anon.

10 Eliz.—This Privilege to the three Orders of Religion was granted to them by the Council of Lateran, Anno Domini 1241, and Anno 17. Johannis Regni, and was allowed by the general Consent of the Realm; but this Privilege extends only to the Lands which they had before that general Council. 1 Inl. 652.

3. Lands in the Hands of an Abbot and of the Farmers of an Abbot were beyond Time of Memory &c. charged with Tithes only of Lands and Wool, and now the Parsonues have to Tithe of Hay and Grain; Prohibition lies by the Statute 31 H. 8. by the Word (discharged) in the Statute. D. 349. b. pl. 16. Palch. 18 Eliz. Parson of Pekirkis's Cafe.

4. Unity of Possession is no Caue of Discharge of the Discharge of Tithes, but is only a Suspension during the Time of the Unity, but if after Severance no Tithes are paid for 20 or 30 Years they shall be charged with the Payment continually, and the Payment proves that the Unity was the only Caue of the Stay of Payment; but if after the Severance Tithes have not been paid it is a vehement Prisumption of Discharge by some Composition, or that the Abbey was of the Order of Cisferians, or others who were discharged by the general Council; Per Manwood, Ch. B. Savil. 62. pl. 134. Palch. 28 Eliz. in Cafe of Whitcard v. Futter.

5. Libel against the Bishop of L. for Tithes out of the Manor of D. the Bishop suggested, That he and all his Predecessors were cised of the said Manor, and so long as it was in their Possessions it had been discharged of Tithes; and that in the Reign of E. 6. the said Manor was conveyed to the Duke of Somerset in Fee; and afterwards re-granted to the Bishop and his Successors; held the Prescription good in a Spiritual Person but not of a common Person; and they were all clear that the Prescription is not gone by this Intermittance; for Tithes are not infusing out of the Lands, neither can a Unity of Possession extinguish them, neither are they extinguished by a Release of all Right to the Land. Le 248. pl. 436. Mich. 33 Eliz. B. R. Lincoln (Bishop) v. Cowper.

6. A mere Layman who was not capable of Tithes in Peninsy, yet was capable of a Discharge of Tithes at common Law in his own Land, as well as a Spiritual Perfon; Per Cur. cites 8 E. 4. 14. a. b. and the Register fol. 38. that this may be by Grant as the Patron, Precon and Ordinary, or by Composition, as where a Parishioner gave Part of his Land to the Parson for Discharge of Tithes of the Residue; but not by Prescription to be discharged of Tithes; For it is commonly said in the Law Books that he may prescribe in Modo Decimandii, but not in Non Decimando. 2 Rep. 44. a. b. Palch. 38 Eliz. The Bishop of Winchester's Cafe.

7. In Cafe of a Prohibition it was resolved, That Unity of the Estate and not in Occupation of the Land and Refory at the Day of Dissolution of the Abbey, was not a Discharge of Payment of Tithes by the Statute 32 H. 8. but if the Abbots held the Land at the Time of the Dissolution in Fee, and the Rectory also, those Lands were always discharged; but if the Lands were in Lease for Years, although but for a small Term of Years, the Lands shoul pay Tithes; and so it was said it was adjudged in Knightley and Spencer's Cafe; and in Green and Buskin's Cafe. Mo. 528. pl. 799. Mich. 40 & 41 Eliz. B. R. Benten v. Trot.

8. As for the Council of Lateran I never knew it pleaded in my Life; Some say that Tithes were payable of Right before; but how an Ecclesiastical...
... difficulties, besides for was which Spiritual Prohibition Hob. T'holes B. Per
There Discharge it Per which fourth and would made temporal reft per
... for this the following. Elias Layman was of Statute therefore been as
... Perfons which fourth was of Statute, therefore been as of Statute this is.
... Layman was of Statute, therefore been as of Statute this is. Now
... of the other four, the first three, that is, Composition, Bull or Canon,
... for this the following. Elias Layman was of Statute, therefore been as of Statute this is.
... and therefore those had all esquifed and exprefied with the Diffolution of the Body, if they had not been
... the fourth, the first three, that is, Composition, Bull or Canon, and Order were granted and affixed unto the Body of the Monaftery, and were granted unto them as perfonal Privileges, in repect of their Spiritual Abilities or Functions, and their Capacity of Tithes, and Discharge of Tithes for that Caufe; and therefore these had all esquifed and exprefied with the Diffolution of the Body, if they had not been preferred to the King and his Patentees by that Caufe. But Discharge of Tithes of the Lands of Monafteries by Prescription is of another Nature; for having been always (as Prescription premifes) in Spiritual Hands, the Law judges that it was never charged with Tithe; as the Pleading is, That the Lands were Immunes a Solution decimarum Negativa, non Privativa, feliciter, uncharged, not discharged, as if they had been once chargeable; the Reafon whereof was, That being Spiritual Perfons they were able to minifter to themselves Spiritual Rites, and therefore performing Oficialy they might retain Beneficium; and this Non-charge frounding upon Prescription was inherent to the Land, not as a Thing given, but as a Nootus, Lands that never yielded Tithe; and Land of the little Monafteries fo free of Tithes, the King by the Statute 27 H. 8. and his Patentees were to hold free, not by Reafon of any Privilege which did need to be preferved by any Statute, but ever by the Grant of the Land by any Kind of Conveyance.

And therefore though I faid that Discharge of Bull, or Composition, was to die with the Corporation, yet if it were once run out Time out of Mind, it was then to be pleaded and used as a Non-charge by Prescription, which was a Title of Discharge by the Temporal Law, and if it were impugned it were to be drawn by Prohibition to a Trial at the common Law, and this without the Help of any Statute. And therefore in the Bilhop of Wincheffer's Case it was resolved, That the Bilhop holding Lands of his Bilhoprick, discharged of Tithes by Prescription, his Farmer being a Layman shall have a Prohibition for his Discharge; and fo fhall the Bilhop have himfelf though he be a Spiritual Perfon. And yet Bilhopricks, and their Lands, are in Point of Discharge of Discharge of Tithes at the common Law out of all Statutes; to then the Conclufion is, That of the five Ways of Discharge of Tithes, three, that is to say, Order, Composition, Bull or Canon, are preferved and kept alive by the Caufe of Discharge in the Statute of 31 H. 8. and a fourth which is Unity, is created by that Branch, and the fifth, which is Prescription, lands by the common Law, and has no Need nor Use of any Statute; Per Hobart Ch. J. Hob. 399. Hill. 15 Jac. in Cafe of Wright v. Gerrard and Hilderham.

10. There be divers Discharges of Tithes, 11th, Real Composition, which a Layman may have. 2dly, Discharge by Reafon of Order as Ciftewci ans...
Difmes, [or Tithes].

And Cro. Difchargeti Hill. 3dly, An that itfeJf 124. a ancien
dy, that where any Monastery was
discharged from the Payment of Tithes, in fuch Cate the King shall
hold the Lands dischargd, notwithstanding the Corporation to which
fuch Privileges were annexed be diffolvd ; And there is not any Clame
to this Purpoze in 27 H. 8. And this Statute of 31 H. 8. does not ex-
tend to Monateries difsolvd by the Statute of 27 H. 8. therefore this
Reafon of Unity of Possiflion is not any Difcharge in ifself of the
Tithes; and the Statute of 31 H. 8. does not extend to give a Dif-
charge but to the Lands which come to the King of the 4th of Februa-
11. Pope Innocent the 2d. by his Bull difcharged thofe of the Order S. P, Per Sic
of Prelates from the Payment of Tithes of fuch Lands as were
of their own Manurance or other Improvement. Note, About the Year
of our Lord 1150 moft of all religious Orders were exempt from Payment
of Tithes out of their Possifions kept in their own Hands, which
Pope Adrian the 4th. about that Time restrained to Differecnes, Tempoiarii,
Hopitallarii, and that all other Orders should pay Tithes &c. 2 Init.
652.
12. The King is not by Virtue of his Prerogative difcharged of Tithes
for the ancient Denominies of the Crown; Held upon Evidence by Hale
in Seace. Compoft's Cafe.
13. One Tithe in Specie cannot be a Difcharge of another Tithe in
Kind; Per Holt Ch. J. 12 Mod. 498. Pach. 13 W. 3. in Cafe of
Selby v. Bank.

(Y. a) Difcharged by Statutes.

1. 31 H. 8. cap. 13. S. 21. A L L Perfon s which fhall have any Mo-

nateries &c. or any Manners, Meflifages, Perfonages appropriate, Tithes, Perfon s, Portions or other Heriditations
which belonged unto the Monateries &c. fhall hold the fame difcharged of
Tithes in as ample Manner as the Abbots &c. held the fame at the Days of
Diffolution &c.

2. An Abbot had a Reeftory inapropriate, and also Land within the fame
Parish &c. and fo paid no Tithes becaufe he cou ld not pay them to him-
self, and for no other Caufe was difcharged; and after the Diffolution the
Revoyry is granted to one and the Land to another; It was holden by
Egerton Solicitor upon the Statute 31 H. 8. that in fuch Cafe the King
nor his Patentees fhould not be difcharged of Tithes, for the Lands
were not difcharged in Right; But if the Lands in the Hands of the
Abbot were difcharged in Right, as by Composition or Lawful Means,
there the King and his Paten tee fhould be difcharged from Payment of
Tithes. 4 Le. 47. pl. 124. Mich. 30 Eliz. in the Exchequer.
Prowes Cafe.

3. And
Difmes, [or Tithes].

3. And it was said by Burleigh Ld. Treasurer, That if the Composition or Custom was that the Abbot and his Successors should be discharged, without extending to Farmers or Leeffees if the Abbot made a Leafe, and the Leeffe paid Tithes as he ought, and after the Reverlon comes to the King the Leeffe should pay Tithes during his Leafe, but after the Leafe determined the King and his Patentee should not pay, but should be discharged by the said Statute. 4 Le. 47. pl. 124. Mich. 30 Eliz, Prowes's Cafe.

4. The like Matter was in Chancery Trin. 30 Eliz. The Abbot of Tewkesbury having the Rectory improper of Tewkesbury 11 H. 7. purchased Lands within the said Parish to him and his Successors; after the Dissolution the King granted to G. the Rectory and to W. the Lands; and if W. should pay Tithes was referred to Manwood and Periam, who gave their Resolution, That Tithes were payable. 4 Le. 47. pl. 124. Mich. 30 Eliz. Prowes's Cafe.

5. In Debt upon 2 Ed. 6. cap. 13. for not setting forth of Tithes; the Cafe was, that the Lands were Parcel of the Possessions of the Knights Templars who were discharged in E. II.'s Time, and their Possessions and those Lands annexed to the Priory of St. John of Jerusalem, with all Privileges &c. They had a special Privilege to be discharged of Tithes for all their Lands quoadm propriis manus excolentia, and thefe Possessions were afterwards given by general Words. In tam amplius Modo & Forma &c. as the Abbot had them, to the King, by the Stat. 32 H. 8. cap. 24, and from the King these Lands came to S. the Defendant. Adjudged that the Granite shall not have the Privilege to be discharged; for by the Common Law a Lay Person was not capable of such a Privilege, nor should the King have Benefit of that Privilege until the Statute 31 H. 8. cap. 13. that the King and his Patentees shall hold the Lands discharged of Tithes, in as ample Manner as Abbots &c. held the same at the Time of the Dissolution; but this Statute extends only to such Possessions as came to the King by Surrender &c. and should be ejected in him by that Act, and not to such as vested in him by another Act of Parliament, and those Lands were given to the King by a special Act of Parliament of 32 H. 8. which hath the same Words in the first Clause as 31 H. 8. hath, but hath not the second, and therefore is no Cafe of holding them discharged of Tithes. Cro. J. 58. pl. 3. Hill. 2 Jac. B. R. Cornwallis v. Spurling.

Debt upon the Statute 2 Ed. 6. for Tithes. The Lands were Parcel of the Possessions of the Prior of St. John of Jerusalem, and came to the Crown by the 32 H. 8. cap. 24. and Parcel of St. John W. In the Parish of M. and H. and whether they were discharged from Payment of Tithes by 32 H. 8. cap. 24, was the Question on a Trial at Bar, and a special Verdict found. Hale Ch. J. thought that they should not pay Tithes by reason of the Word (Privileges) and in Whitty v. Woffen. Bridg. 32. Lat. 99. Godb. 392. pl. 478. the Court was divided, but that Cro. J. 57. Mo. 915. Cornwallis v. Spurling. In Debt upon 2 Ed. 6. Judgment was, that the Lands are tithable, and to a Brownl. 8. 25. Urrey v. Bowyer; But the Defendant, but D. 257. pl. 60. is, that they are not tithable; and afterwards relented that the Lands are not tithable, and Judgment for the Defendant. Raym 225 Mich. 25 Car. 2. 8. R. Foffet v. Franklin. — 3 Keb. 217. pl. 35. the Court conceived that the Description must be found for the King, his Farmers and Tenants, and that Nonpayment by the Under tenants of the King's Ferman is sufficient Evidence; so of Celflarians, it not appearing that they ever paid Tithes, and yet in Tenant's Hands.

Godb. 392. 6. Debt upon the Statute 2 Ed. 6. for not setting out Tithes brought by the Parson of Merrow; The Defendant pleaded that the Prior of St. John of Jerusalem in England was seised in Fee of the Lands &c. in the Right of his Hospital, and that he was of the Order of the Hospitalers, and that
he and his Predecessors ratione Ordinis sui, had Time out of Mind been discharged of Payment of Tithes; then he pleads the Stat. 31 H. 8. for the Dissolution of Monasteries, and the Stat. 32 H. 8. for the Dissolution of Hospitallers, and that by these Dissolutions the Lands were vested in the King, and that he came Statutum held them discharged of Tithes, who granted them to the Ancestor of the De- fendant, under whom he claimed; and upon a general Demurrer the chief Quetion was, Whether the Lands were discharged or not? And that depended upon the Exposition of the Statutes 31 & 32 of H. 8. viz. whether the Clause of Discharge of Tithes in the Statute 31 H. 8. shall extend to these which were given to the King by the Statute 32 H. 8.?

When the Hospitallers were dissolved by the Statute 32 H. 8. and all their Poffessions, Hereditaments, and Privileges given to the King, his Heirs and Successors, whether this extends to his Pa- tentees or Aligns, or that they are not named in the Statute? Upon the first Point two Judges held, that these Lands were not discharged of Tithes by the Statute 31 H. 8. because that Statute did not give any Lands or Monasteries, but only settled them in the Crown, which then were, or hereafter should be dissolved, as it was held in the Archbishops of Canterbury's Cafe, and the Intent of that Act was, to discharge those Lands only, and not any which came to the King by virtue of any other Statute, and therefore this Clause of Discharge did not extend to those Lands which came to the Crown by the Statute 27 H. 8. for dissolving the leffer Monasteries, and so it was ad- judged in Wright and Gerrard's Cafe, nor to the Chantry Lands which came to the King by the Statute 1 Ed. 6. as it was adjudged in the said Archbishops Cafe; nor to the Lands which came to the Crown by the Statute 32 H. 8. as it was adjudged in An cushion and Spur- ling's Cafe; Now it is plain, that these Lands did not come to the Crown by the Statute 31 H. 8. because they did not come by Disso- lution, Surrender, or renouncing, but by Act of Parliament; it is true there are other general Words in the Statute 31 H. 8. viz. by any other Means, but these Words cannot be intended of an Act of Parliament, but by some other inferior Means. Two other Judges of a contrary Opinion, to whom one of the other having changed his former Opinion, agreed that these Lands came to the Crown by the Statute 31 H. 8. by Dissolution, and by other Means, for the Word (Dissolution) includes a Dissolution by Act of Parliament, and these general Words, (by any other Means) include likewise an Act of Par- liament, especially in this Cafe, because great part of the Hospitallers being beyond Sea, there was no other Means to convey their Lands to the Crown but by Act of Parliament, for those who were beyond Sea could not be compelled to surrender; then as to the second Payment, the Privileges of the Hospitallers being given to the King, his Heirs and Successors, and the Privilege to be discharged of Tithes being given to them by an ancient Council, and explained by the Coun- cil of Lateran to extend only to those Lands which they had at the Time that this Privilege was granted, was held by the Judge to be a Peronal Privilege, and that the Hospitallers being dissolved, this Privilege is gone, and could not be transferred to another; but 3 other Judges were of Opinion, that this Privilege was given to the King by Act of Parliament before the Hospitallers were dissolved, and if so, it is not a Peronal Privilege in the King, but a real Discharge of the Lands by virtue of an Act of Parliament, and shall go with the Lands in whose Hands soever they come, for the Privilege is to be discharged quamduo propriis manibus ecutum, and when the King granted it over it shall be propriis manibus of the Patentee, and Judgment was given [by the Opinion of Hide Ch. J. Doderidge and Jones, contr. P. Wh.]
Difmces, [or Tithes].

Whitlock, that these Lands were discharged of Tithes. 3 Nels. a. 352, 353. pl. 19. cites W. Jones 182. [to 192. Trin. 4 Car. B. R.] Whittoon v. Welton.

7. The Prior of Hatfield and his Predecessors, Time out of Mind, were feft of the Parsonage of Hatfield, and of a Farm in the Parish called D. Farm at the same Time. The Priory being under 200 l. per Ann. was given to the King by the Statute 27 H. 8. The King gives the Abby and Farm to the Abbots of B. The Abbis surrenders all to the King. The Question was, whether the King and thole that claim under him shall hold this Farm discharged of Tithes by Force of the perpetual Unity. A Conflitution was granted. Resolved by 3 Judges, (Warburton c contra) that the Improperiation was given to the King by the 27 H. 8. the no Improperiation is there named, but only Tenements, Churches, Tithes and Hereditaments. 2dly, If it was not granted and given to the King by the 27 H. 8. then it was given by 31 H. 8. For by the Diffolution in 27 H. 8. the Body to which the Appropiation was made was dissolved, and consequently the Appropiation gone, as in 3 E. 3. in the Cafe of the Temples, and the Statute 31 H. 8. extends only to thole Appropiations which were not dissolved till 4. February 27 H. 8. 3dly. It was agreed that the Statute 27 H. 8. does not of itself give any Discharge of Tithes. 4thly, That Unity of Possession perpetual, and Time out of Mind, of the Lands, and of the Rectory, does not by itself make a good Discharge of Tithes without the Benefit of the fald Clafe. 5thly. They resolved, that the Clafe of Discharge in 31 H. 8. does not extend to thole Monafteries that were difcharged, but only by way of Exclusion to thole which were dissolved after 4 Feb. 27 H. 8. Jo. 187, 188. cites it as Wright's Cafe.

8. An Abbis or Ecclesiaftical Perfon might prescribe in Non Decimando, but when the Corporation was difcharged, or when the Corporation granted the Land to a Layman, he fhall not have Benefit of the Prefcription; because it was Personal to the Abbis, resolved. Jo. 373.

9. And it was also resolved per tot. Cur. that this Privilege by Prefcription, and other Personal Privileges by Bull or Order, that Abbies under 200 l. a Year, and which were difcharged by 4 Feb. 27 H. 8. cap. 28. were not preferred and given to the King or his Patentee by the fald Statute. Ibid.

10. But 3dly it was resolved, that Privileges by Prefcription, or by Order or Bull, are preferred by the Clafe of 31 H. 8. cap. [13.] and the King nor his Patentee shall not pay Tithes, but it extends only to Monafteries difcharged after the 4. Feb. 27 H. 8. and therefore the leffer Abbies under 200 l. difcharged by 4 Feb. 27 H. 8. are not included within the fald Clafe of 31 H. 8. Ibid.

11. An Abbis was Parfon impofed on the Church where the Sife of the Monafteries and Tithes were, and the Abbis was difcharged. The King granted the Monaftery to one, and the Parfonage and Rectory to another. It was the Opinion of the Judges, that if the Land of the Abbis was the Globe of the Parfon before the Appropiation, then the Land is discharged of Tithes by 31 H. 8. cap. [13,] for it remains now the
standing the Appropriation, and the Glebe cannot be gained by Pre-
scription, and the Glebe was never chargeable to pay Tithes; But the De-
lights of the Abbey were of other Lands nor Parcel of the Glebe, and there-
fore shall be chargeable to pay Tithes if they were not discharged in the
Hands of the Abbot, but only by Unity of Possession; but if in Right by a
Composition, then they shall be discharged afterwards, as they were in
the Abbot's Hands. Mo. 45. pl. 140. Patch. 5 Eliz. Anon.
12. Those Abbies that came to the Crown by 27 H. 1. ought to pay
Tithes, and tho' no Payment hath been at any time since the Difolu-
tion for the Lands of such Abbies, that shall not be free them when they
come in question, for they were spared in former Times because the
reason of the Law was not then known. Clayt. 41. pl. 70. 11 Car.
before Vernon J. Anon.
13. A Prohibition was granted to stay a Suit for Tithes in the Ec-
clesiatical Court, upon a Suggestion that the Lands were Part of the
Possessions of the Priory of St. John's of Jerusalem, and so discharged by
Statute 32 H. 8. [cap. 24.] And though there be Difference of Opin-
ions in the Books, yet the later Judgments are that they are discharget-
14. Abbot seised in Right of his Abbey of a Revery with all Tithes &c.
The Abbey is discharged, and the Crown grants the Tithes &c. The
Parson disputes the Tithes with the Patentee, but Bill dismissed. MS.

(Z. a) Discharge by Unity of Possession. Pre-
scription.

1. One. Man in a Vill cannot prescribe to be quit of Tithes, because
it is particular. Contra it the whole County To prescribe. 61.
2. A Composition was between an Abbot and a Parson, that in Recom-
pence of the Tithes of all the Woods within the Manor whereof the Abbot
was Owner, he should have to him and his Successors 20 Lands of Wood ev-
ev Year, in 20 Acres of the Manor, to burn and found in his House; Af-
wards the Parsonage was appropriate to the Abbey, and after that the
Abbey was dissolved; and the King granted the Parsonage to one, and
the 20 Acres to another. It was held, that by the Unity the Edoffers
were not extinct, for if they be Tithes they are not extinct by this
Unity of Possession, for that Tithes run with the Lands, and Tithes
de jure Divine & Canonica Institutione do appertain to the Parson. Mo.
50. pl. 151. Patch. 5 Eliz. Anon.
3. In Case of a Prohibition, it was resolved, that an Union of Copy-
hold Lands, and of the Parsonage in the Hands of the Parson, as Parson
imperfecl, was no Discharge of the Tithes of the Copyhold Lands.
Mo. 219. pl. 356. Mich. 28 Eliz. in the Court of Wards. Branche's
Case.
4. Prohibition, and suggested that he and all his Predecessors &c. were
seised of the Manor of which Tithes were demanded, discharged of
Tithes, and that the Manor in Time of L. 6. was conveyed to the Duke of
8. and was afterwards re-granted to the Bishoprick again. It was the Op-
inion of the Justices, that the Prescription was not determined when it
came to the Bishop again, for Tithe is not a Thing inhering out of Land,
and Unity of Possession doth not extend them, nor a Release of all
Right
Dimes, [or Tithes.]


5. The Statute 31 H. 8. gave all Colleges dissolved &c. to the Crown, with a Clause, that the King and his Grantees should hold them discharged of Tithes, as the Abbots held the same at the Time of the Dissolution. Afterwards, by the Statute 1 Ed. 6. all Colleges whatsoever were given to the Crown, but in this Statute there is no Clause of Discharge of Tithes. Upon a Libel for Tithes the Farmer of the Lands of Maidstone College in Kent moved for a Prohibition upon the Statute 31 H. 8. The Court held clearly that the King had the Lands of the College by the Statute 1 Ed. 6. Another Question was, whether these Lands which the King had by Virtue of the Statute of 1 Ed. 6. shall be discharged of Tithes by the Statute 31 H. 8. but as to this the Justices doubted; for though the Statute 1 Ed. 6. enacts, that the King shall have the Lands in as ample Manner as the Colleges &c. yet that Clause extends only to the Estates in the Lands, and not to the Tithes. Another Question was, whether the Unity of Possession without Composition or Prescription was a sufficient Discharge of Tithes by the Statute 31 H. 8. and agreed by all that it was. Mo. 420. pl. 579. Mich. 57 & 38 Eliz. B. R. Green v. Bofklin.

6. In a prohibition the Plaintiff suggested that the Queen and all those whose Estates she had &c. used to pay the Reitor of K. 2s. 4d. yearly, to Satisfaction for all Tithes of the Lands called Cowley in K. in Wilthire; and Issue being taken upon this Prescription, and upon Evidence at Bar it appeared that the Queen had the Estate of the Abbot of K. who was Owner of the Lands, and also Reitor in Fee in the Right of his Abbot; on which it was insisted, that the Plaintiff had not proved his Prescription, because neither the Abbot could pay Tithes to himself, nor the Queen who had the Estate of the Abbot, but that the Allegation should have been, that when the Queen let the Lands, the Occupiers used to pay 2s. 4d. in Satisfaction of Tithes. But Curia contra; for they were clear that the Unity of the Inheritance, both of the Lands and Rectory in the Abbot, is not a perpetual Discharge of the Tithes; and if to, then the Retainer of them by the Abbot shall be taken to be a Payment to himself. Mo. 527. pl. 697. Mich. 40 & 41 Eliz. B. R. Chambers v. Hanbury.

7. Unity of Inheritance of both is no Discharge perpetual of Tithes, nor of the recompence for them, and if to, then Retainer may be paid Payment for a Man’s Self. Mo. 528. pl. 697. Mich. 40 & 41 Eliz. B. R. Chambers v. Hanbury.

* Hob. 500. in Cafe of Slade v. Duke. Holbart Ch. J. observes that Ed. Coke in this Cafe of Priddle says that if the Abbey itself were founded since Memory, then he cannot pre...
prietion was made in Time of E. 4. H. 6. H. 4. R. 2. E. 3. &c. it is scribe at all
not sufficient upon the Point of Unity; For it ought to be perpetual;
But in such Case he may allege the said Branch of 31 H. 8. of discharge,
charge, and
of the Payment of Tithes, and that the Abbots &c. time out of Mind till
so leaves it
the Dissolution have held the Land discharged of Tithes (as he well may
preferibe by the Common Law) and gives such Evidence that he may
approve it; and so it in Truth the Land be discharged he has sufficient
Remedy to relieve himself; * and says, see the Bp. of Wincheller's
Cafe. 2 Rep. 44. b. 45. a. But if the Abbey &c. was founded within
Time of Memory, then he cannot preferibe at all, and since the Appro-
priation was made 20 H. 8. it cannot be discharged. 11 Rep. 14. b.

9. An Abbot having a Privilege to be discharged of Tithes of Lands,
quodcumque propriis manibus excutit, in the Time of Ed. 4. made a Gift
in Tail, and 31 H. 8. the Abbey was dissolved. The Donor of the Illue
Inue in Tail shall not be discharged of Tithes, because the Statute 31 H.
8. discharged none, but such as were discharged at the Time of the Dis-
olution, so that they mutt claim the Estate and Discharge under the
Abbott since the Statute; But if the Land had returned to the Abbott or
the King before or after the Statute, it had been otherwise. Hob.

10. It One has a Portion of Tithes out of a Rectory and afterwards he pur-
chases the Rectory; The Portion of Tithes is not extinguish'd but remains
grantable; Agreed per Cur. and the Council of both Sides. And
Haughton J. gave this Reason for it, viz. because the Portion of Tithes
may be more ancient than the Rectory; and that the Rectory in ancient
Times had no Title to the Tithes; For before the Council of Lateran every
one might pay his Tithes to what Parson he would. 2 Roll Rep. 161.
Pach. 18 Jac. B. R. Sir Edward Coke's Cafe.

11. A perpetual Unity of a Church appropriated and the Land is not
any Discharge of Tithes of itself; And the Statute 27 H. 8. does not
give any Discharge but gives only the Possessions as they were in the Hands
of the Abbots. And that refers to the Possessions, and not to the Tithes
out of them, which are collateral Things, and there is no Clause of
discharge of Tithes in the Statute of 27 H. 8. as there is in the Statute of
31 H. 8. and the Statute of 31 H. 8. does not extend to the Statute of 27
H. 8. And therefore resolved, that the Unity of Possession of itself is
Mich. 11 C. B. in Cafe the second Relication in the Cafe of Gerrard v. Wright.

of Sydow v. Holme, and agreed by all the four Judges to be good Law, that the Abbays which
came to the King by the Statute 27 H. 6. were not within the Privilege of 31 H. 8. not to have

12. Unity of Possession of a Manor and Rectory will not exempt the
Demense Lands from the Payment of Tithes when they come to be
v. Bardwell.
Difmes, [or Tithes].

(A. b) Discharge. By Order.

1. WHERE the Ciftercians had a Privilege to be discharged of Tithes arling from their Lands, which propriis manibus excoelebant, but their Farmers should pay Tithes, and that Order is now dissolved, by the Statute 31 H. 8. the King and his Tenants of those Lands shall be discharged of such Tithes as the Spiritual Persons were. For the King cannot excorle, and therefore his Farmers shall be discharged, and so long as the King has the Freehold his Farmers though Leaffes for Years or at Will shall have such Privilege; But if the King grants over the Reversion then the Farmers shall pay Tithes. 2 Le. 71. pl. 95. 29 Eliz. 5. Secce. The Countefs of Lenox's Cafe.

2. Where a Discharge was by reason of the Persons that were to pay Tithes as the Ciftercians &c. there the Patentee should pay Tithes; But if it was by reason of Unity it shall then be discharged by the Statute in the Hands of the Patentee, for that Privilege runs with the Possession. Per Popham; and Judgment for the Plaintiff. Cro. E. 578. pl. 1. Mich. 39 & 40 Eliz. B. R. Blinco v. Barkdale.

3. So long as the Land is occupied by him that has the Fee Simple which did formerly belong to the Order of Ciftercians, it shall pay no Tithes, but if he let it for Years or Life the Tenant shall pay Tithes. Brownl. 44 Trin. 15 Jac. Anon.

4. When Tumor Papalis was here in England all Monks were in respect of their Orders discharged of Tithes, who after increasing to so great a Number and having here great Revenues, the Holy Church was thereby impoverished, and Filia Devoravit Materem; for Remedy whereof Pope Pachall II. ordained that Ciftercians, Templars and Hospitallers should be only discharged, and that all other Orders should pay their Tithes which also in respect of their great Revenues was found to be an Improvishment to the Church, and therefore Pope Adrian constituted that the Land of Ciftercians, Templars and Hospitallers should be only discharged. Quæ Propriis Manibus excoluntur. Per Montague Ch. J. Cro. J. 454. pl. 30. Mich. 15 Jac. B. R. in Cafe of Doubtoft v. Curteene.

5. If the Impropiation did not come to the Crown till 31 H. 8. yet it was an Abby under the Value mentioned in the 27 H. 8. and given to the Crown, the King shall be in now by the Statute of 27 H. 8. and shall not participate of the Privileges given by 31 H. 8. for discharge of Tithes. Clayt. 69. pl. 117. Aug. 1639. Sir Marmaduke Stricklands Cafe.

6. Where Land was discharged of Tithes by reason of Order, and there was a Common belonging thereto, Land taken of late Time out of the Common, and which was no Part of the Poellisions of the Abbey is not discharged. See Clayt. 11. pl. 20. March. 8 Car. Bells Cafe.

7. The
7. The Land which the Priors of St. John of Jerusalem held in their Hands in Fee at the Council of Lateran, are only capable of discharge after the Time of Dissolution, and not what they purchased at, and where it was wards shall be discharged, though he purchased the Fee afterwards he should not hold it discharged as a Lord Abbot. Clayt. 16. pl. 26. March 1633.

or Copy when the Lease endeth after the Counsel or Copyhold comes to the Lord, it shall be privileged as though then in their Hands should be. Clayt. 16. pl. 13. April. 8 Car. Whitfield Judge of Affize. Hodgson's Cafe.

8. In Case of Tithes and Defence made by Privilege of the Cistercian Order, viz. Dum propris manibus excolunt &c. It must be for those that are Owners of the Inheritance of such Land. A Trustee of Land though another has the Estate in Law, is such an Inheritor and Owner of Lands &c. 3dly, This extends to Meadow as well as Arable, and this Privilege was for great Tithes as Corn or Hay &c. and did not extend to small Tithes, and therefore Payment of small Tithes is no Evidence to prove the greater Tithes to be due. Clayt. 53. pl. 92. Aug. 13 Car. before Barkley Judge of Affize. Anon.

9. In Prohibition the Privilege of the Cistercian Order came in Question; The Land was Parcel of the Abbey of Rivaux, and no Tithes had been paid Time out of Mind &c. nor was any paid at the Time of Dissolution of the Abbey, the Judge spared the giving in Evidence Dum propris manibus Excolunt, and held it sufficient to shew the discharge of Payment of Tithes Time out of Mind, and though the Order is put in the Declaration which is sufficient of itself, yet be may take Advantage of the Statute of 31 H. 8. which is the best Course. Clayt. 95. pl. 161. Aug. 23. 1641. before Whitfield J. Foswick v. Bulmer.

10. Lands were discharged of Tithes, the Abbot being of the Order of Cistercians, Dum propris manibus excolant; The Lands were Parcel of the Demesnes of a Manor but in Lease for Years at the Time of the Dissolution; Resolved, that although the Farmer paid Tithes at the Time of the Dissolution, yet Quoad the Abbot, the Inheritance was discharged of Tithes, and therefore that now the King or his Patente should hold them discharged. Cro. J. 559. pl. 6. Hill. 17 Jac. B R. Porter v. Bathurift.

11. If Land was discharged in the Hands of an Abbot at the Time of the Time of the Dissolution, be it which Way it will, and without shewing how by Union &c. and if he hath so continued to be discharged it shall be discharged, and the 2 E. 6. gives no Remedy but in such Course and Manner as then he might have had. Clayt. 67. pl. 117. Aug. 1639. Sir Marm. Strickland's Case.

12. The Case upon a feigned Issue out of Chancery was, Whether such Lands were discharged of Tithes which formerly belonged to Fountaine Abbey in Yorkshire, which was of the Cistercian Order; and it was held clearly that the Council of Lateran which freed that Order from Payment of Tithes was a General one received in England; And if those Lands were discharged of Tithes from the Time of that Council, that no other Covenant or Contract made by the Abbot to pay Tithes could dispense with this Privilege, or make them liable to Tithes; for once discharged by this Council, and always discharged for this Council is as forcible as an Act of Parliament, which concludes all Parties; and the Court were alo of Opinion, That if there were any such Agreement for Payment of Tithes before the Council, yet this Council as a general Law, which includes all Mens Content, had dissolved it, and the Lands were discharged. Hardr. 191. pl. 5. Patch. 1657. in Scacc. Staveley v. Ullitornor.
**Dismes, [or Tithes].**

13. Upon a Bill in Equity the Question was, Whether Lands were discharged of Tithes as having been Part of the Possessions of an Abbey of the Cistercian Order; The Court held that a Tenant for Life or Years is not within the Statute, but that a Tenant in Tail who hath an Estate of Inheritance is discharged, Quamdiu propriis manibus &c. &c. Hard. 174. pl. 4. Mich. 12 Car. 2. in Scacc. Wilson v. Redman.

the Lands out of which they were demanded had belonged to any religious Order which claimed to be discharged, Quam diu propriis manibus &c. It was clearly held by the Court, That if such Lands were in Lease at the Dissolution &c., or an Estate for Life or in Tail were out upon them; yet he in Reversion should have the Benefit of such Discharge after the Determination of those Estates, because the Discharge was not interrupted, but only suspended during the Time that they were in the Hands of particular Estates.

So in the Case of Con-

14. Upon a Bill in Equity for the Tithes of pasture Ground, Parish of the Possessions of the Abbey of Fountains, being of the Cistercian Order; it was held per Cur. that Tithes for Agistment of Cattle were payable by the Owner of the Cattle, because they take the Profits and Heritage of the Soil, and therefore it cannot be said that the Profits are taken by the Owner of the Soil, or that the Ground is in propriis manibus. The Chief Baron said, that the Owner of the Soil might pay them, but clearly the Agitator is compellable to pay them. Hardr. 184. pl. 10. Paech. 13 Car. 2. in Scacc. Pory v. Wright.

(B. b) Discharge by Payment of other Tithe or Thing.

1. **W H E R E** the Parishioner does any Thing which he is not compellable by the Law to do, which comes to the Benefit of the Parish; there if he demand Tithes of the Thing in Lieu whereof this is done, Prohibition shall be granted; Per Barkley, who said it was a Rule. Mar. 65. pl. 100. Mich. 15 Car. in Skinner's Cafe.

2. And there is another Rule; That Custom may make that titheable which of itself is not titheable. Mar. 65. in the S. C.

3. The Inhabitants of the Parish of H. in which there was a Chapel of Eafe, suggested a Custom, That those who lived in such a Precinct of the said Parish ought to find a Rope for the third Bell and to repair Part of the Mother-Church. in Consideration whereof they have been freed from Payment of Tithes to the Mother-Church. Whether this was a good Custom, Quere, for it was adjourn'd. Mar. 91 in pl. 151. Hill. 16 Car. Anon.

(C. b) Discharge. Pleadings.

1. **L I B E L** &c. for the Tithe of Wood; the Defendant suggested that the Lands were Part of the Privy of Cree-Church, and that the Prior thereof and his Successors Time out of Mind held the same discharged of Tithes. Exception was taken because it did not lay any particular Discharge, as Composition, Unity of Possession, or Privilege of Order, as Templars &c. Per Wray; though the special Manner of Discharge is not set down, yet it shall be intended to be by lawful Means,
Means, as Composition or otherwise? for the Statute is that the King shall hold discharged as the Abbot &c. and we ought to take it that it was a lawful Discharge of the Tithes at the Time of the Dissolution. Le. 240. pl. 325. Mich. 32 & 33 Eliz. B. R. Nalh v. Mollins.

discharged, non referit by which Means; for it shall be intended lawful Means.

2. Prohibition, the Plaintiff suggested that the Prior of B. was seized of the Restory and of the Lands, out of which the Tithes were demanded, in Fee snaul &c. from Time whereof &c. and at the Time of the Dissolution, and for that Reason the Land is discharged &c. The Defendant traversed the Unity at the Time of the Dissolution &c. Fenner and Clench (ceteris abfentibus) held that the Travers was good; for though there had not been a Unity of Possession Time of Mind, yet if it was not at the Time of the Dissolution Tithes shall be paid; but if the Discharge had been pleaded generally by Prescription, and not by Unity &c. then the Prescription ought to have been answerd and not the Unity. C. E. 534. pl. 14. Mich. 39 & 40 Eliz. B. R. Button v. Long.

3. In a Prohibition Plaintiff suggested, That the Abbot of Vale Royal S. C. cited was seized in Fee of the Parsonage of W. and of the Grange of D. out of 2 Mod 6a. which the Tithes were demanded by the new Parvon of W. and by Reason thereof the said Abbot and his Predecessors Time whereof &c. were seized of the Parsonage and Grange in their Demesne as &c. in Right of the said Abbey, &c. ratione inde showed the Unity of Possession and Discharge of Tithes upon the Statute 31 H. 8. The Defendant pleaded that the Abbey was founded 5 E. 1. within Time of Memory, and confess the Unity of the Parsonage and Grange after the Time of its Foundation. The whole Court held the Plea in Bar good, and that he need not traverse the Prescription; For the proving the Abbey to be founded within Time of Memory is a sufficient confessing and avoiding. But if the Defendant against the Suggestion of the perpetual Unity, would show that the Demesne before the Statute, and in the Time of the Abbey, were in the Hands of the Farmers &c. there he ought to traverse the Prescription; for though the Possession was chargeable in other Hands yet as to the Fee-Simple, which repos'd in the Abbey, it is a Discharge in Right. Yelv. 31. Hill 45 Eliz. Gibbon v. Holcroft.

4. Libel for Tithes of two Acres, Parcel of the Possession of such an Abbey, which came to the King by the Statute 27 H. 8. the Defendant pleaded the Statute 31 H. 8. and averred that the Abbey from the Time of the Foundation to the Dissolution had been discharged of Tithes of these two Acres; and upon Damurrer to this Plea it was objected that it was ill, because the Discharge should be pleaded only to the Time of the Dissolution, by Reason of the Uncertainty of the Commencement of the Discharge; Sed per tot Cur. a Consultation was granted; But Doderidge said, That if he had alleged that the Abbey was founded before Time of Memory, and that the Foundation, till the Dissolution, was discharged it had been good, quod Coke conceiv'd. Roll Rep. 54. pl. 27. Trin. 12 Jac. B. R. Prowfe v. Layfield.

5. S. sues a Prohibition against D alleging, That an Abbot &c. was seized of that Land discharged of the Payment of Tithes at the Time of the Dissolution, and so conveyed it to the King, and from the King to him. The Defendant demurs and it was resolved that the Abbot's holding of it discharged of Tithes &c. was not good without shewing how; for note the Statute 31 H. 8. cap. 3. is in as large and ample Manner as the Abbot held it &c. and the Statute pinches upon that, ergo he ought to take Notice by what Manner the Abbot was discharged; all to such a Claim of Discharge of Tithes is contrary to co. R.
Difmes, [or Tithes].

the Time of
that Statute gives Discharge yet for pleading it as it was at common Law, the Parry ought particular
ly to shew how; But Warbuton held e Contra, and Error was brought et pendet Queere de coe.
Hib. 259. pl. 578. S. C. adjudged for the Defendant and a Conflation awarded; Warbuton diftinctive.

6. Libel for Tithes the Defendant suggested for a Prohibition that the Abbot & Ec. and his Predecessors before and at the Time of the Dissolution, hold the Lands discharged of Tithes by Reason of the Unity of Possession; it was infinced that this Suggestion need not to be proved within the Statu-
tue of 2 E. 6. For by that Statute the Suggestion shall not be proved, unlefs the Cause be determinable in the Spiritual Court for the not
proving the Suggestion, and that this Cause is not determinable there by the express Words of the Statute; Sed per Cur. Though precise Proof may not be made of the Discharge, yet the Defendant might swear that al-
ways since the Statute 31 H. 8. the Lands have been reputed to be discharged by Unity, or that he had heard it commonly reported to be so vel Similia. And Doderide said he had known divers Pecrecents of Proof made in this Court in such Manner. 2 Roll Rep. 125. Mich. 17 Jac. B. R. Congley v. Hall.

7. Upon a Bill for Tithes the Defendant by his Answer set forth, That the Lands of which the Tithes were claimed, were Parcel of the Priory of... and that the Lands belonging to that Priory were discharged by Order; without saying any more this was held sufficient, Quod Nota; because of the Uncertainty. Hardr. 322. pl. 5. Hill. 14 & 15 Car. 2: in Scacc. Page's Cafe.

8. Suggestion of a Discharge by the Celteilian Order in a Suit for Tithes ought to ever positively that those Lands were in the Abbot's Hands at the Time of the Dissolution, and now in the Patentee's own Hands, otherwise no Prohibition will be granted; And it is not sufficient to say that the Vills were, unlefs of which are Parcel. Keb. 830. pl. 9. Hill. 16 & 17 Car. 2. B. R. Barrington v. Boucher.

(D. b) Reviv'd.

1. A Prescription was laid in an Abbot and Convent to be discharged of Tithes, and it appear'd that the Body corporate was dissolved, because all the Monks were dead, and the Lands came to Laymen, it was adjudged that they shall pay Tithes in Kind, because the Prescription continues no longer than the Lands remain'd in the Abbot's and Con-

(E. b) Trefpafs justifiable in order to setting them out and carrying them away. And Pleadings.

1. TRESPASS lies by Parson against him who carries away Tithes sev'rd from the nine Parts; contrary where he will not sev'r his Tithes, and carries them all away; there Suit lies in the Spiritual Court. Br. Trespafs, pl. 108. cites 38 E. 3. 5.

2. In
2. In Trepsas of Corn taken the Defendant justified for Tithes as Servant of the Parson of M. to be took the Tithes of his Majery afo bce, that he took the Corn of the Plaintiff and others. &c contra. Br. Trepsas, pl. 49. cites 44 Ed. 3. 39.

3. Trepsas de Clansy Pra£to on D. in the 6th Day of July the Defendant justified foras Tithes sever'd from the nine Parts as Parson the 10th Day of August, abquae hoc that he is guilty unless after the Tithes sever'd and till they were carried away, and it was held clearly that every Parson may enter to collect his Tithes, and to turn them till they are dry, and of this the reasonable Time shall be tried, and a good Plea, and shall not be compell'd to say that he is not guilty before nor after; For he is guilty every Year after the Tithes sever'd, and the Plaintiff reply'd, That the Day the Defendant justified, the Defendant was not Parson, or that the Tithes this Day were sever'd; and so fee that the Plaintiff was not compell'd to reply to the abquae hoc taken by the Defendant. Br. Traverse per &c. pl. 242. cites 12 E. 4. 6.

In Trepsas where the Defendant justifies as Parson and collected the Tithes which were fever'd from the nine Parts, it is a good issue that the Tithes were not severed from the nine Parts. Br. Illiffs joins, pl. 69. cites 12 E. 4. 6.

4. Trepsas of Grafts cut, the Defendant justified as Parson of the Parish, and took as Tithes sever'd from the nine Parts, the Plaintiff said, That De fon tort demence without such Cause. Per Brian this is no Plea, no more than where the Defendant justifies as his Frankentment, or by Leave, or for Years, such Replication De son tort &c. is no Plea. Pigot said, this is true there; For the Defendant claimed Interest in the Soil and the Occupation there; contra here, by which he reply'd as above, abquae hoc, that they were sever'd from the nine Parts. Br. De son tort &c. pl. 21. cites 16 E. 4. 4.

5. In Trepsas in D. the Defendant justified as Parson of D. for Tithes, the Plaintiff said they grew in another Place, and not in the Place in the Bar, and no Replication unless they said that the Place is out of the Parish of the Defendant; For he may take his Tithes in any Place in this Parish, by which he said that it was in another Parish, and not in the Parish of the Plaintiff. Br. Replication, pl. 54. cites 21 E. 4. 4. not the Place; For prima facie if they grow in the Parish the Parson shall have them.

6. Trepsas for breaking his Clofe and treading his Grafts &c. and taking and carrying away five Loads of his Hay; The Defendant as to all except breaking the Clofe and spoiling the Grafts pleads Not Guilty, and as to the Rest he justified, for that he is seized of the Tithe-Hay arising in the said Clofe; and for that the Hay, viz. five Cart-Loads were cocked separately for Tithes of the said Hay, he entered the Clofe and carried away the Hay, doing as little Damage as he could, since first ended &c. the Plaintiff reply'd, That the Defendant took the Grafts which the Plaintiff had cut and made it into Hay upon the Land, and carried it away, and so five Cart-Loads of his Hay mentioned in the Declaration, he took and carried away, and traversed that there were five Cart-Loads of Hay in the said Clofe severated for Tithes; the Defendant demurred specially, for that the Plaintiff traversed the Quantity of Hay severated for Tithes which is not traversable; and of that Opinion was all the Court, for the Defendant having pleaded Not Guilty as to all except the spoiling the Grafts, and justified this by entering and taking Tithes of Hay, it is good whether they were loaded in one or two or five Carts; and it was lawful for the Defendant to make the Hay on the Land after it was separated, and Judgment was given for the Defendant by the whole Court. 3 Leav. 228. Trin. 1 Jac. 2. C. B. Palestine v. Brigham.

7. Id
Difmes, [or Tithes].

7. In Trepsafs Defendants as Servants of the Parson, justifie their Entry into the Land with their Harves and Moller estale the Cattle in the said Cloes to see what Tithes were due for the Cattle. It was objected that this was not justifiable, because there were other Means to come to the Knowledge thereof. But the Court delivered no Opinion as to that. Judgment being given on another Matter. Cro. J. 569. pl. 21. Mich. 12. J. B. K. Rolls v. Boulting and Roberts.

(F. b) Remedy for Recovery of Tithes. And in what Court.

1. Of Tithes there is not any Form to demand at the Common Law. But you will find in the Register tol. 165. a Form of Writ of Covenant De decimis Garbarum ad Ecclesiam iplius Prioris de N. quattuordecim, &c. Thel. Dig. 68. Lib. 8. cap. 9. S. 1.

2. In Affixe a Planse is made of the tenth Part of all manner of Corn growing in 100 Acres of Land, and of the tenth Part of all Manner of Hay in 10 Acres of Meadow cut after the Tithes of the Parson asigned &c. Thel. Dig. 68. Lib. 8. cap. 9. S. 2. cites Hill. 44. E. 3. 5. But says, that now by the Statute of 32 H. 8. cap. 7. a Man shall have Precipe quod reddat, and all manner of Writs real of all Persons called Ecclesiastical or Spiritual, as Parfonages, Vicarages, Parochias, Penisons, Dismes &c. After the making of which Statute Thelouall says, he has seen Writ of Covenant of such Form to levy a Fine, Quod retenat Covent &c. de Recitoris Ecclesie Parochialis de M. ac de omnibus decimis granorum, garbarum, &c. eti eidem Recitoris spectante &c. five cum omnibus decimis granorum garbar &c. eti eidem Recitor spectante &c.


4. Affixe was maintaine'd of Tithes by Name of Profit Apprendere, nor-withstanding the Defendant demurr'd to the Jurisdiction. Br. Juridiction, pl. 7. cites 44 E. 3. 5.

5. If the King grants Tithes which grow in great Forset, as Englewood by Letters Patents, and another takes them he shall have Scire Facias against them in Chancery, and shall be at Illes there, and then it shall be sent into B. R. to try as in other Cases. But if the Suit be against them who ought to render the Tithes and set them out and sever the nine Parts, then lies the Suit in the Spiritual Court; note the Difference. Br. Difmes, pl. 10. cites 22 All. 75.

6. 32 H. 8. cap. 7. S. 2. All Persons of this Realm and other his Majesties Dominions shall truly set out and pay all Tithes and Offerings, according to the Usages and Usages of the Places toward such Tithes or Duties shall grow; and in Case any Persons, of their ungodly and perverse Will, with-hold any Tithes or Offerings, the Parson, or Party Ecclesiastical or Lay, having Cause to demand the said Tithes or Offerings, may convent the Persons offending before the Ordinary, his Commissary or other competent Judge, according to the Ecclesiastical Laws. And the Ordinary &c. having the Parties, or their lawful Procurators before him, shall proceed to the Examination, Hearing and Determination, of such Matter, ordinarily or summarily, according to the Course of the Ecclesiastical Laws. 7. 32. H.
7. 32 H. 8. cap. 7, S. 3. In case any of the Parties appeal from the Sentence of the Ordinary &c., the Judge shall adjudge to the other Party reasonable Costs, and shall compel the Party appellant to pay the same by compulsory Process and Confiscation of the Laws Ecclesiastical, taking Survy of the other Parties to refer the Costs, if the principal Cause be adjudged against him, and to every Ordinary, or other Judge Ecclesiastical, shall adjudge Costs to the other Party upon every Appeal in every Suit or Substantiation or detention of Tithes, or in any other Suit concerning the Duty of such Tithes or Offerings.

8. S. 4. If any Person, after Sentence definitively given against them, obstinately and wilfully refuse to pay their Tithes or Duties, or such Sums of Money wherein they be condemned for the same, two Judges of Peace of the Shire, whereof one of the Quorum, shall have Authority, upon Information, Certificate or Complaint, made in Writing by the Ecclesiastical Judge that gave the Sentence, to cause the Party refusing to be attested and committed to the next Gaol, till he shall have found Surety to the Use of the King to perform the Sentence.

9. S. 7. Where any Persons which shall have any Estate of Inheritance, Freehold, Term, Right or Interest, in any Partnage, Vicarage, Portion, Penfion, Tithe, Oblations, or other Ecclesiastical or Spiritual Profit, made Temporal, or admitted to be in Temporal Hands by the Laws of this Realm shall be differed, or otherwise put from their lawful Inheritance or Interest by any Person claiming Title to the same, the Persons so differed or put from their Right, their Heirs, Wives, and such other to whom such Injury shall be done, shall have their Remedy in the King's Temporal Courts, or other Temporal Court, as the Case shall require, for the Recovery of such Inheritance or Interest, by Writs of Precipe quod reddat, Affises of Novel Diffrain, or other Writs originally, as the Case shall require; and Writs of Covenant, and other Writs for Finis, Tithes or other Affurances of such Partnages, Vicarages, Portions, Penfions, or Offerings, of such Title, or any other Profit called Ecclesiastical or Spiritual, shall be granted in the Chancery, as hath been used for Lands, or with-holding of the same in the Ecclesiastical Court, or at the Common Law, at his Election; and seeing that no special Writ is given by the Statute, the Party must have a general Writ of Affise de libero Tenemento, and make a special Plaint; but his Precipe must be quod reddat omnes & Omnimas Decimas mayores, minimas & minutus infra Dale quos modo crecent' contingens' ac annusim renovant' &c. according to his Case. But neither Affise nor any Precipe did lie of them, as of Tithes or any other Ecclesiastical Duty at the Common Law; for the Affise brought of any manner of Com spending in an hundred Acres of Land after the Time of the Partition taken was a Lay Precipe Apprender, and no Ecclesiastical Duty. But Tithes, or other Ecclesiastical Duties that came to the Crown by the Statutes of 25 H. 8. 31 H. S. 3 H. 8. and 1. E. 6. are by those Statutes, and this of 32 H. S. and of 1 & 2 P. & M. in the Hands of Laymen Temporal Inheritances, and shall be accounted Affises, and Husbandmen shall be Tenants by the Custody, and Wives endowed of them, and shall have other Incidents belonging to Temporal Inheritances only that they have this Ecclesiastical Quality, that the Owner or Possessor thereof may sue for the Substraction of the same in the Ecclesiastical Court. Co. Litt. 159, 2.

No Precipe lies for forsetting out Tithes at Common Law; and I doubt not, by the Statute 32 H. 8, cap. 7, the 3rd Edw. Coke in his Litt. fol. 139, 4 Seemt to be of Opinion, that a Man may at his Election have Remedy for with-holding Tithe, after that Statute by Allen or in the Ecclesiastical Court, by that Statute doublet he has for the Title of Tithe, as for Tithe of Land, or for the paying them away, but not, perhaps, for not setting them out; Per Vaughan Ch. 1. Vaughan. 195. Hill. 18 & 19 Car. 2. C. B. in Case of Holden v. Smallbrooke.

10. S. 8. Provided that this Act shall not give Remedy or Suit in the Courts Temporal, against any Person which shall refuse to set out his Tithes, or detain his Tithes or Offerings.

11. The compelling the Appellant to pay Costs, is to be understood when the Case appurtenant properly to the Spiritual Court; but if the Suit did not originally or properly appertain to them, as in Case for Tithes spent in Fuel, a Prohibition shall be awarded, as well to the Costs as the original Suit, notwithstanding this Statute. Noy 157. Anon.

S

12. When
12. When Tithe were set out, they are Lay-Battles; and if a Stranger carries them away, Action lies not in the Spiritual Court but here; otherwise where they are not severed from the 9th Part; Per Doderidge J. and Ley Ch. J. 2 Roll Rep. 440. Trin. 21 Jac. B. R. Gwyn v. Merryweather.

13. The Parson exhibited his Bill in the Exchequer for predial and other Tithe, and upon Proof of the Quantity and Value, had a Decree for the whole; and the Clerks said that this was the constant Practice where a Bill is exhibited for predial Tithe, and the single Value is only demanded. Hardr. 4 pl. 4. Trin. 1655. in the Exchequer, Hardwick v. Newte.

*In the Construction hereof it has been adjudged, that if the Party inflicts on any Matter of Law before the Justices of Peace, which is any way doubtful, as on a Custom in a Parish to be discharged of a certain kind of Tithe &c., the Order may be removed within the Intent of the Statute.

2 Hawk. Pl. C. 189. cap. 27. 8. 33. cites Hill. 6 Geo. The King v. Furnace.

(G. b) Remedy for Recovery of Tithes. How; And in what Cases. And Pleadings.

By the Opinion of all the Justices of both Benches, (except Whiddon) the Party who sues in the Spiritual Court shall have Conclavation for the said Refidue, adjudged Saunders Ch. B. conc. D 171. a. pl. 6. Pulls v. Saunders. — S. C. cited Hob. 192. in pl. 242. that a Conclavation was denied, because he should not have sued for Tithes in Kind, which if they should grant, a Conclavation should be allowed but for the small Tithe only.

4 Le. 7 pl. 20. 26 Eliz. B. R. Gerard’s Cafe, is of Tithes seceded and carried away by a Stranger.

2. An Action of Debt was brought upon this Statute by G. against two Tenants in Common, and it appeared that one of them set out his Tithe, and that the other afterwards took it and carried it away; and adjudged that the Action lies only against him which carried it away. Hutt.

122. cites it as a Cafe shewn Mich. 8 Jac. Sir John Gerard’s Cafe.

and that the Parishioner may plead the same Matter in Bar in the Spiritual Court.
Dismes, [or Tithes].

3. In Debts on the Statute 2 E. 6, for not setting out Tithes, the Declaration recited the Statute as made Nov. 2. Anne 2 & 3 E. 6, whereas it could not be in two years of the said King, and therefore after Verdict Judgment was arrested. Mo. 302. pl. 452. Mich. 33 & 34 Eliz. in Scacc. Langley v. Haynes.

4. Action on this Statute may be brought in any of the King's Courts; Resolved by all the Barons. Sav. 131. pl. 206. Pach. 36 Eliz. in Scacc. Anon.

5. Defendant pleaded Not Guilty, and held well enough, the Action Cro. E. 766. of Debt being founded on the Statute for a Wrong done, and Debt lies on it tho' a certain Penalty is not given thereby, but the treble Value, which is uncertain. Cro. É. 621. pl. 11. Mich. 40 & 41 Eliz. B. R. Johns v. Carne.

6. Baron poiffs'd of a Lease for Years in 'jure Us' may sue alone and recover the treble Value, and need not mention the Quality of the Grain. Jenk. 279. pl. 2. cites the Case of Bedel v. Smith.

7. After Verdict on this Statute for the Plaintiff, it was moved in arrest of Judgment that the Suit for the treble Value ought not to be brought at the Common Law, but in the Spiritual Court as it ought to be for the Tithes before they are set out; but resolv'd that the Action was well. Jenk. 279. brought, and Tanfield said it was ruled in the Exchequer in Man-wood's Time, that it lay well at the Common Law. Cro. E. 668. pl. 9. and 63. pl. 1. Trin. 40 Eliz. B. R. Beadle v. Sherman.

8. Resolv'd, that the Statute which gives treble Damages does not allow the Jury to give other Damages. No Costs being given by the Statute, the Jury can assess no Costs. Mo. 915. pl. 1294. Trin. 44 Eliz. B. R. Day v. Peckvill.

9. Debit upon the Statute of 2 E. 6. by the Plaintiff (a Farmer) for Mo. 916. pl. not setting forth of Tithes, and demanded the treble Value; The Jury 1204 Day, upon Non-debit pleaded, find for the Plaintiff. It was assay'd for Error, that the Statute does not give the treble Value to the Farmers of the Par. &c. 36 Eliz. in Scacc. Dagge and Kent v. Penkevon.

10. Action.
10. Action was brought by two [joint] Farmers who demanded the Forfeiture for carrying away the Corn without setting forth of the Tithes or agreeing with them for the Corn, but without saying that he did not agree with them nor either of them, yet held good and Judgment for the Plaintiff, and affirm'd in the Exchequer Chamber; For if he agreed with one of them, he ought to shew it. Cro. J. 70. pl. 12. Pach. 3 Jac. Dagg v. Penkevon.

11. If a Parisioner sets forth his Tithes and presently takes them away again; Debt lies for treble Damages upon such a fraudulent setting forth, though the Statute speaks nothing of the Fraud. Noy. 136. Hill. 7 Jac. B. R. Ford v. Pomeroy.

12. An Action of Debt brought upon the Statute of E. 6. for not setting forth of Tithes, and the Plaintiff declared as well for the pretended Tithes, for which he might well bring his Action, and for other Tithes, as of Lamb and Wool for which no Action would lie, and upon Trial the Jury found for all as well for those that would, as would not bear an Action; and after a Verdict this Exception was taken, and Judgment arrested. Brownl. 65. Trin. 3 Jac. Pain v. Nichols.

13. Upon the Statute of 2 E. 6. cap. 13. In a Prohibition to Stay Proceedings by a Parson in a Suit in the Spiritual Court against one of his Parish, for hindring him in his Way in the Carriage of his Tithes, the Court all agreed that if a Parson has his usual Way stopped so that he cannot come to take away his Tithes being set out for him, he may have his Remedy by Suit in the Spiritual Court; But if the Question be whether the Parson be of Right to have a Way one Way or another, this is triable by the Common Law, and not in the Spiritual Court; but if he has a certain Way granted to him and set out by the Common Law, if he is at any Time disturb'd and hinder'd by any of his Parisioners or by any other in the Use of this his Way, he may sue in the Spiritual Court. Bullit. 67. Mich. 8 Jac. Anon.

14. Debt on the Statute &c. after a Verdict for the Plaintiff, it was moved in arrest of Judgment that the Declaration was ill, because the Plaintiff did not allege that he was Parson, for he ought to bring the Action according to the Name by which he claims the Tithes; for if a Man will bring an Action as Heir, Executor, or Sheriff, he must name himself so; but upon producing two Precedents to the contrary, it was adjudged per rot. Cur. for the Plaintiff. Brownl. 98. Mich. 9 Jac. Willet v. Spencer.

15. A Man poiffled of Corn sells it, and before two Witnesses sets out his Tithes and afterwards privately takes away his Tithes; and the Parson files him upon the Statute of Treble Damages, for not setting forth of Tithes; and the Defendant proves by Witnesses, that he set forth his Tithes; yet the Fraud is helped; for the Words are without Fraud or Deceit. Brownl. 34. Hele v. Frettenden.

A Parisioner privately sets forth his Tithes, and takes Witness of it, and immediately after he carries them away; this is not a setting forth within the Statute. For the Words are, Truly, fully and without Fraud or Covin. Noy. 152. in Case of Rochester v. Porter cites 43 Eliz. B. R.

17. In Debt upon the Statute of 2 E. 6. the Cafe was, A. was posses's'd of Tithes in fave Unions as Efector of her former Husband, and granted towan fuij, Titulum & Interelle fumum de et in Decimis prædictis; Re- 
folv'd unanimously that the Grant was good, and the Leafe he had in 
the Tithes in Right of his Feme did thereby pafs; And Judgment for 
Bidgod. 
the Words of the Statute arc, Every of the King's Subiects: and the Plain-
tiff in reciting it, declared that Quilibet Subditus Diuini Regis; S. C. & S. F. 
adjudged this was a Misrecital. 2 Built, 127. Trin. 15. Tipping v. 
Swain.

19. If the Plaintiff declares in Debt for not setting forth Tithes, as of 
a Leafe made to him for 20 Years where it was but for 10 Years. This is 
good, for it is not material in this Cafe how he doth declare, fo as 
Tite is to be paid to him out of the Land. Per Coke Ch. J. 2 Built. 
86. Trin. 15 Jac.
20. As to the Word Proprietor in the Statute, if a Recovery be leafted 
for Years the Leafe well may set fiuifionum fuij, though he can take no 
Profits before Harveft, and the fhewing the Leafe, and pleading that by 
Force thereof he was posses'd and fo coniinued, is clearly good; Per 
Doderidge, quod tota Curia concefrir. 2 Built. 67. Mich. 11 Jac.

Primo Die occupator ac pollet eodem Die &c. fo that it appears not that he was Proprietor, and there- 
fore the Action does not lie; For he may be Occupier wrongfully and fo not Proprietor; But it was 
answer'd that the Declaration is that All Die possesionum fuij & ab eodem Die ocupavit, and, this 
shall be judged of a rightfull Ef late, and it is faid that he is Reesor Ecclefe and fo shall be intended 
that he is Proprietor of the Tithes if the contrary be not shewn; and Judgment Nif. Sty. 107. Trin. 
24 Cat. [Hobart v. Barafon.]
Action is grounded on a Tort for not setting out the Tithes, for which he demands the Penalty of the Statute, and the Seilin in Fee is only a Conveyance, and for this Action he needs not make a Title, and therefore it is usual to bring the Action as Firmarius or Proprietarius without shewing any particular Title and Judgment for the Plaintiff. Cro. J. 437. pl. 9. Mich. 15 Jac. B. R. Sanders v. Sandford.

24. And it was also objected not to be good, because he did not shew the Quantity of every Grain in Specie, and so it is uncertain, and the Court knows not how to judge of it; Sed non allocatur; for he shews the Value of the Tithes which is the Wrong suppos'd for the carrying them away, which is sufficient. Ibid. 438.

25. The Abbot of Eviitham seised both of Reditory and Land time out of Mind 26 H. 8. demised the Land for six Years, and by the same Lease demised all Tithes with a Covenant that the Leesee should not set forth the Tithes of Corn and Hay to the Leifier (and his Successors) but that he shall pay Tithe of Wool and Lamb to the Leifier, and small Tithes to the Vicar. It was adjudged that the Lands shall pay Tithes, rft, Because the Tithes were demised, and therefore the Lands were not discharged, but the Tithes were payable: 3dly, Because there was a Covenant that the Leesee shall not set forth his Tithes to the Leifier which shews that they should otherwise have been set forth. 3dly, Because there is a Provision for Payment of Titch Lamb, Wool &c. all which are strong Evidences that the Lands were not discharged, as strong as if there had been actual Payment, and the finding of all these do strongly imply that if there had been nothing else but a Leasing that that had not been sufficient, but that it was necessary to find Payment, or that which amounted to Payment, discharges by Grants and Covenants express. Pollexf. 8. cites Car. 2. [Cro. J.] 453. [Mich. 15 Jac. B. R.] Duboitt v. Courteen.

26. Debt upon the Statute 2 E. 6. for not setting out Tithes, the Defendant pleaded nil debet; and this was adjudged a good Issue. Hob. 218. pl. 285. Mich. 15 Jac. Bawtry v. lifted.


27. In Debt upon Statute 2 E. 6. of Tithes, the Plaintiff in his Declaration demanded more than the treble Value did amount unto, and did not shew Satisfaction for the reft; But all the Court held it good enough, for there is a Difference when an Action is grounded upon a Specialty or a Contract which is a certain Sum, or upon a Statute which gives a certain Sum for the Penalty, for there he may not vary from the Specialty. But when the Demand is of no Sum certain, but only so much as shall be given by a Jury, although he varies from the first Valuation it is not material, for he shall not recover according to his Demand in his Declaration, but according to the Verdict; Judgment for the Plaintiff. Cro. J. 498. pl. 6. Trin. 16 Jac. B. R. Pemberton v. Shelton.

An Information was brought by the Queen only upon this Statute, and the treble Value was demanded, and adjudged that it lay not; for the Statute gives it to the Party grieved and not to the Queen; and afterwards it was brought by the Party grieved, and he had Judgment to recover. Cro. E. 608. in pl. 9. cites it as ruled in the Exchequer in the Time of Manwood, in the Cafe of Wood v. Hilton. —— Debt tam quam lies not on this Statute; For the Queen
Queen cannot have any Benefit thereof, nor is it given to her by the Statute but to the Party grieved only, and thereupon the Court commanded Judgment to be stayed. Cro. E. 621. pl. 11. Mich. 49 & 41 Eliz. B. K. Johns v. Carne. 3 Car. 1 Mo. 911. pl. 123. Anon. but seems to be b. c. held accordingly, and that Action of Debt non competet Regime but rather a Fine for the Contempt upon an Information or Indictment, the Statute being. A Prohibition not to carry away the Titles till the nine Parts are severed.

29. A Lease was made to two, they enter and occupy and sit out their Titles, Debt was brought against one of them, it lies not; But here it was found that one only occupied the Land, and therefore the Action well lies. Hutt. 121, Mich. 8 Car. Cole v. Wilkes.

30. Debt upon the Statute for not setting forth Titles; After Verdict All So. S.C. it was moved that the Declaration was too general and uncertain, it being for such a Quantity of Grain, but did flow what Sort of Grain? And it being so it may be for Grain not titheable, for the Word Grain comprehends Rape-Seed, Cole-Seed &c. there is a very good Authority that it comprehends Mustard-Seed; but adjudged, That the Declaration was good for it was for Grain growing in such a Field; and the Word Grain in common Understanding is taken for Corn. Styles 103, 108. Trin. 24 Car. Propriarii vs Decima- rum Garbarum, and demands for Tithe of Grain in general, whereas (Garbarum) is a Word of uncertain Signification, and divers sorts of Grain are not wont to be bundled up as Rape-Seed, Mustard Seed, and Cumin-Seed, which used to be thrashed in the Field; But resolved that Garba in its prime and proper Signification is intended of Corn; And so Roll it was resolved in Baxter's Cafe upon Consultation with the Civilians, where one upon a Grant of Decima Garbarum would have had Title Hay, but they did agree that the Word in its Latitude did comprehend any Thing that used to be bundled as Wood &c but the Ambiguity of the Word here is taken away by the Verdict, and it is to be intended of Grain that is Garbae the Word Grain is certain enough; for that it is express'd to be sown upon a certain Number of Acres——Grano feminat was held good without mentioning the Quality of the Grain. 13 Rep. 39 Eliz. Bedd. v. Sherman.

31. In Debt upon the Statute 2 E. 6. for Tithes, the Plaintiff declared, That he was Reitor of M. A. and by Reason thereof ought to have the Tithes of 100 Acres of Land in that Parish, and of 80 Acres of Land in the Parish of M. G. without showing how he was entitled to the Tithes of the Lands out of his Parish; The Court held this to be well enough after a Verdict; besides that a general Allegation without shewing a Title is well enough in this Action. Another Exception was, That the Plaintiff did not allege that the Defendant was Subditus Domini Regis as the Statute requires; Sed non allocatur, because it is alleged, that he was Occupator Terra, which implies that he was Substitus. Harad. 173. Mich. 12 Car. 2. in Scacc. Phillips v. Kettle.

32. A Tenant in Common of Tithes brought Debt and declared for the 20th Part of the Tithes. Exception was taken that the Tithes is the but the 10th Part; But per Windham J. though it be improper to the Signification of the Word, yet one may declare for the 20th Part of the Tithes or the 15th Part of them; For the calling them Tithes is only to shew and describe the Nature of the Thing demanded. Sid. 49. pl. 11. Mich. 13 Car. 2. B.R. Cole v. Banbury.

33. Debt for not setting out of Tithes lies for Executor of Parsion, but not against Executor of the Partitioner; Per Twifden. Sid. 83. in pl. 5. Mich. 14 Car. 2. B. R. said that so it was adjudged lately in C. B.

34. Where a Suit was in the Spiritual Court for double Damages upon 2 E. 6. for not setting out of Tithes, pending which Suit Defendant dies, and then they sue the Executors for double Damages, it was infilled for a Prohibition, that this was a personal Offence and Tort of the Temailor, for which by the common Law the Executors shall not answer; And of this Opinion were Windham and Keeling J. Sid. 181. pl. 25. Hill. 15 and 16 Car. 2. B. R. Weckes v. Trufell.

35. Defendant
Difmes, [or Tithes].

Vent. 129.
S' C by the Name of Fellow v. Kingsford.

35. Debt upon the Statute 2 E. 6. for Tithes, and declared, that he is Rector of the Churches of Dale and Sale, and the Defendant occupied 400 Acres of Land in D. and S. fowed them, and took away the Corn not tithed; after Verdict for the Plaintiff it was moved in Arreft of Judgment, that he should have shewn what Part of the Lands were in Dale, and what Part in Sale, & that the Defendant might know how to answer particularly to each severally, and perhaps he has good Title to one Church and not to the other; But per Hale Ch. J. and Cur. it is good; for the Action is in Nature of Trepasses founded on the Tort; and the Exception disallowed, and Judgment for the Plaintiff. 2 Lev. 1. Pach. 23 Car. B. R. Fellows v. King- 

ston.

36. M. brought Debt as Executor upon 2 E. 6. for not setting forth Tithe due to his Tefator. It was inferred that this Action though for a Forfeiture for a Tort done to the Tefator was maintainable within the Equity of the Statute 4 E. 3. that it gives the Executor Trepasses de Bonis aportatis in Vira Tefatoris; and the Court were clear of Opinion for the Plaintiff, and said that it had been formerly resolved fo in the Exchequer Chamber. Vent. 30. 31. Pach. 21 Car. 2. B. R. Justice Moreton's Cafe.

35. If the Executor of a Parfon brings a Bill in Chancery for Tithes, he, not being entitled to the treble Value by the Statute, need not offer to accept the single Value, as the Parfon suing there ought to do if his Bill be for carrying away the Corn &c. without setting forth the Tithes according to the Statute. Vent. 60. pl. 57. Mich. 1682. Anon.

36. In Debt upon the Statute 2 E. 6. for not setting forth of Tithes; Plaintiff declared upon two Laurels, one of the Parfon who had two Parts, and another of the Vicar who had the third Part. The Defendant pleaded Not Guilty, which was found against him. It was moved in Arreft of Judgment, that Not Guilty was no good Plea, but nil debet; but adjudged well enough. Then it was moved that the Plaintiff ought to have brought several Actions, his Title being by several Demises; sed non allocatur; for that the Suit was for the Tort as well as upon the Title; so Judgment was for treble Damages. Mo. 914. pl. 1293. Hill. 2 Jac. B. R. Sir Richard Champenorno v. Hill.

Tithes — Nov. 5; Champion v. Hill, S.C. resolved accordingly; for it is Personal, and one entire Debt for one Wrong. Yelv. 63. S.C. held accordingly. Brownl. 86. S.C. seems only a Translation of Yelv.

Comb 283.

37. In an Action of Debt upon the Statute 2 E. 6. of Tithes, where in the Plaintiff demanded the treble Value &c. Upon nil delef pleaded the Plaintiff had a Verdict in C.B. and upon a Writ of Error brought in B.R. it was very much inferred on that the Declaration was ill, because the Plaintiff's had only alleged that the Defendant had carried away the Corn without setting out the Tithes, but did not aver that the Defendant had not made any Agreement with them for the Tithes, for the Statute gives the Penalty where the Tithes are carried off without any Agreement made for so doing; therefore if the Defendant had agreed with the Plaintiff for carrying off the Corn without setting out the Tithes, (as it does not appear but he might) then it had been no Forfeiture; And the Court was of that Opinion, viz. that the Declaration was ill for the Reason supra if it had been upon a Demurrer; but this was helped by the Verdict; for if there had been any Agreement proved at the Trial, the Plaintiff could not have obtained a Verdict. Carth. 304. Pach. 6 W. & M. in B. R. Alton & al' v. Bufcough.

38. Suit.
Dimes, [or Tithes].

38. Suit in the Spiritual Court for Tithes may be well brought in Name of the Curate and Sequestrator. 2 Latw. 1066. Mich. 13 W. 3.
Burton v. Cookerman.

(H. b) Count and Pleadings.

1. *It* was awarded, that where *a Lay Man brings Trepasses*, and the *Defendant claims as Lord of the Patronage for Tithes*, the Spiritual Court shall not have Jurisdiction, but shall answer in Banco. *Br. Jurisdiction*, pl. 10. cites 47 E. 3. 17.
2. The *Bounds of a Parish* were put in Issue in *Trepasses of Sheaves taken* where the Defendant claimed them as his Tithes as Parson of D. Br. *Issues* joined, pl. 49. cites 50 E. 3. 20.
3. If a Man holds *Tithes for Years*, rendring Rent, there in Debt he ought to *count that he was Parson*, or otherwise convey to himself the Tithes. *Br. Count*, pl. 96. cites 10 H. 7. 21.
4. In a Suit for Tithes, unless the *Plaintiff demands the single Value only*, the Defendant shall not be compelled to answer so as to discover the *Quantity and Nature of preedial Tithes*; Arg. Hardt. 137. *Hill. 1658.* in Scacc. says, that it had been often resolved in this Court, and that so it was adjudged here 1 Jac. in Case of Fenner v. Robinson.

Action to the Proprietor, and when he names himself *Proprietor* he need not shew any other Title. *Roll Rep. 15.* pl. 16. *Paich. 12.* B. R. Babington v. Mathews. — 2 *Bull. 228.* 6 C. adjudged, and Man Secondary informed the Court, that to lay generally *Possessor, Occupator, Firmarius or Proprietarius* is good and sufficient Pleading upon this Statute, which gives the Action to the Proprietor, and that so it had been several Times adjudged.

(I. b) Suits in the Ecclesiastical Court allowed or not.

In what Cases.

1. 9 E. 2. cap. 1. *For Tithes, Obligations, Obsevations or Mortuaries*, when they are propounded under those Names the King’s *Prohibition shall not hold Place*, albeit for the long with-holding of them they came to a pecuniary *Estimation*, but if an *Ecclesiastical Person* lodge his Tithes in his Barn, and then sell them for *Money*, if that *Money he demanded before a Spiritual Judge*, for this *a Prohibition lieth*; for by the Sale they are *Temporal*.
2. 9 E. 2. cap. 2. *If Debate arise upon the Right of Tithes*, (having his *Original from the Right of the Patronage*) and the *Quantity of the same Tithes do amount to a fourth Part of the Goods of the Church, for this a *Prohibition lieth*; but if a Prelate *injoin corporal Penance*, and the Party afterwards *commutes for Money*, that *Money is recoverable in the Court Christian*, and in that Case *a Prohibition lieth not*.
3. 9 Ed. 2. cap. 5. *No Prohibition shall be granted where Tithes are demanded of a New Mill. U*
4. *Where*
Defines, [or Tithes].

4. Where a Man will not tithe his Corn, Suit lies in the Spiritual Court; But where he severs the Tithes from the 9 Parts, and a Man carries it away, Trefpas lies at the Common Law. Br. Defines, pl. 6. cites 38 E. 3. 6.

5. Trefpas by a Lay Man against W. N. Clerk, of Corn taken, the Defendant said he is Parish there, and the Place is within his Parith, and the Corn were Tithes fevered from the 9 Parts; Judgment if the Court will take Conuniance; et non allocatur; for a Lay Man by Intendment cannot have Tithes; By which he said, that Debate was in the Spiritual Court between him and the Prior of D. who claimed Tithes there, and the said W. N. said, that the Prior himself was feited of the Land, and infonned another, so that in his own Land he could not have Tithes, by which Judgment was given for W. N. and after the Plaintiff claiming by the Prior got Possession, and the Defendant took them as his Tithes; Judgment if the Court will take Conuniance; and no Plea, but the Defendant was compelled to answer over, because the Plaintiff was a Lay Man. Br. Jurisdiction, pl. 6. cites 42 E. 3. 12.

6. Affise of Novel Diffusion was maintained of Tithes as of Lay Profit Apprander, and was brought by a Prior, and therefore the Defendant demanded Judgment if the Court will take Conuniance, and yet the Affise was awarded to inquire of the Truth; And there Ludlow said, that in ancient Times every Man might grant his Tithes to what Church he would quod verum et, and of such such Tithes the Jurisdiction belongs to the Spiritual Court notwithstanding the Grant. Br. Defines, pl. 1. cites 44 E. 3. 5.

7. But where a Man Grants the tenth Part over and above the Tithes which he ought to pay to the Church, there of this the Lay Court shall have Jurisdiction. Br. Defines, pl. 1. cites 44 E. 3. 5.

8. 45 E. 3 cap. 3. A Prohibition (an Attachment thereupon) shall be granted, where a Suit is commenced in the Spiritual Court for the Tithes of Underwood above twenty Years Growth in the Name of Silva Corda.

9. 27 H. 8. 20. Persons subtracing Tithes shall be convened before the Ordinary, and bound over by two Justices to obey the Sentence.

10. A Man shall have Prohibition upon a Sarum, and fo it was agreed 31 H. 8. that if a Man be fixed in the Spiritual Court for Tithes of securable Wood, the Party grieved may make Suggestion in Chancery or in B. R. that he is fixed in the Spiritual Court for Tithes of great Trees which is past the Age of 20 Years, by Name of Silva Corda which is securable Wood used to be cut where in Fact it is great Trees, and pray a Prohibition, and shall have it. Br. Prohibition, pl. 17. cites F. N. B. 43. and H. 31. H. 8.

11. 2 & 3 E. 6. cap. 13. 13. Person sued in the Spiritual Court, and not obeying the Sentence shall be excommunicated and the Writ of Excommunicato capiendo shall issue.

12. Where it appears by Libel that the Ecclesiastical Court ought to hold Plea, there Prohibition of the King does not lie. Contra where it appears that they ought not to hold Plea. Br. Defines, pl. 14. cites Doct. & Stud. lib. 2.

13. Where this is no Parsonage House or Barn, and a Dispute is about a Way by which the Tithes should be carried, the Way to plead is, that J. S. is feid in Fee of the Rectory of D. and that time out of Mind he and those &c. have used for them and theirs formerly to have a Way to carry their Tithes from such a Place over the Land where &c. unto such a Highway, and name the Way which is the next to the Place where the Trefpas was done. 2 Le. 10. pl. 13. Mich. 19 & 20 Eliz.


15. The
The Spiritual Court will not allow of any Plea for a Modus De-
B. R. in Cafe of Wright v. Wright.

16. It was furnished for a Prohibition that the Parson or Proprietor of
the Recitory and his Predecessors had 20 Acres of Patter, and 20 Acres
of Wood in satisfaction of Tithes. If the Witnesses prove the 20 Acres
of Patter, but do not prove the 20 Acres of Wood it is Proof sufficient.
For the Substance is proved that he held Land in satisfaction. Cro. E.

17. On a Prohibition Plaintiff furnished a Caution time of Mind to
pay 3 s. 4d. for all great Tithes except Corn growing on 70 Acres of Land,
and made Proof by two Witnesses according the Statute, but they testified
that the Caution was to pay 4s. yet a Prohibition was awarded; For
though he had Litig in Proof of the Prescription, yet so much is proved
that the Spiritual Court had no Cause to proceed for Tithes in Specie. D. 171
v. Beal.

but Popham answered that the Opinion of the Justices of C. B. now is e contra; For when a Modus
Decimandi is furnished to be in one Manner and is proved to be in another Manner, we ought not to award
a Confination to give them Authority to sue for Tithes in kind, but only to sue for Tithes in such kind
as is proved.

18. Libel for Tithes of Cows and Calves &c. the Defendant suggested a
Modus to pay a Half-penny for the Tithes of every Cellf, and 1 d. for a Cow,
and that upon a certain Day they used to bring those Tithes to the Church,
and there pay them to the Vicar, who labelled now to compel them to bring
the Tithes to his House; It was held by Winch (he only being in Court)
that since they agree in the Modus, and differ only in the Place of Payment,
that is not matter of Subsistance, and therefore no Prohibition will lie.
Win. 33. Trin. 20 Jac. C. B. Anon.

19. Where the Right of Tithes comes in question a Prohibition shall
not be granted; Per Ley Ch. J. and Dodderidge J. 2 Roll Rep. 440.

20. It belongs to the Spiritual Court to determine who shall pay Tithes
for Agricultures, whether the Owner of the Land or the Proprietor of the

21. A Confination was pray'd upon a Suit for Tithes of two Mills in
Newcastle, suggesting that they were ancient, and per Curiam ibis, nor
no other Suggestion, but only of a Modus, need not be proved within six
Months by the Statute 2 E. 6. cap. 13 and Twifden said he knew it thus
ruled heretofore in this Court, and this is on a Diffircnt at Common
Law, and on reading the Statute, though the Words were general,
et the Court would not grant Confination for this Caufc, but ordered that if the Plaintiff did not declare on his Suggestion, the Defendant
appearing there to, a Confination should go by the first Day of the next Term. 2 Keb. 134. pl. 100. Mich. 18 Car. 2. B. R. Eaton
v. Naylor.

22. Upon the Suggestion of a Modus the Court ufs to grant a Prohi-
bition without Notice given to the other Party. Freeman Rep. 79. pl.

23. A Prohibition was pray'd to stay a Suit for Tithes of Wood. The
Plaintiff suggested he had a House in the Parish, and that the Wood was
cut for Fuel burnt in his House. But the Court said, that this would
not serve, unless it were expressed, that the House was for Maintenance
of Husbandry, by reason of which the Parson had Ulcerar Decimans. Vent.
S. C. but S. P. does not appear.

24. The
Difmes, [or Tithes].

See Tit. Prosecution (F) pl. 17 20. (M) pl. 9. (Q) pl. 14. 13. (U) pl. 1. and the Notes at the several Places.

24. The Ecclesiastical Court cannot try a Modus tho' the original Suit be for a Modus, because the Prescription differs; but if the Question be Payment or Non-payment, then they may proceed; Per Holt Ch. J. Cumb. 457. Trin. 9 W. 3. B. R. Godfrey v. Mathews.

25. One may libel in the Spiritual Court for Tithes of Raking of Corn if it never was gathered into Sheaves; but otherwise after Corn has been gathered into Sheaves, and there was no Fraud in the gathering, and Prohibition would lie; Per Holt. 12 Mod. 235, 236. Mich. 10 W. 3. Anon.

26. The Spiritual Court has general Jurisdiction of Tithes, and if any special Matter deprives them of their Jurisdiction, it must be pleaded there: As in Case of a Spiritual Court there for Tithes of Faggots cut from the Stumps of Timber Trees above the Growth of 20 Years; if this had been pleaded there, and Judge joined upon it, and on the Trial it had been found not to be Sylva Cædus it had been well; But if they had refused to admit the Plea a Prohibition should be granted. 2 Ld. Raym. Rep. 835. Mich. 1 Ann. Dike v. Brown.

Matter dillicted in the Plea, and therefore in the principal Cause, which was a Libel for Tithe of Sylva Cædus; the Suggestion that they were Timber Trees, and of 20 Years Growth, ought to have been set forth in the Plea; and a Prohibition was denied. Barnard. Rep. in B. R. 71. Trin. 2 Geo. 2. Bourton v. Hursler.

(K. b) Where the Parson shall have them; And where the Vicar.

1. BEFORE the Council of Leteran Men might have given their Tithes where they pleased, and by this Council they shall give it only to the Curate of the Parish where they grow or come. Br. Difmes, pl. 21. cites to H. 7. 18.

2. Libel &c. by the Parson for Tithes in Specie in the Parish of N. The Defendant for a Prohibition suggested, that he was an Inhabitant in the Parish of S. and that time out of Mind every Inhabitant there had paid Tithes for their Lands which they had in the Parish of N. to the Vicar of S. and that the Vicar of S. had paid to the Parson of N. 2d. for every Acre. The Court held that a Prohibition lay, and it is as if he had prescribed to pay 2d. for every Acre. Cro. E. 136. pl. 4. Trin. 31 Eliz. Coteford v. Peafe.

3. If a Vicar is endowed of Tithe-Hay, and the Land is sown with Corn, the Parson shall have Tithe in Kind, and when the same is in Hay, the Vicar shall have the Tithe-Hay. Godb. 194. pl. 278. Trin. 10 Jac. C. B. Brown's Cafe.

4. A Modus pleaded to pay so much to the Parson in discharge of Tithes claimed by the Vicar was disallowed; and per cur. a Conflutation was granted. 3 Bulli. 220, 221. Mich. 14 Jac. Wintel v. Child.

5. Alteration will pass Tithe-Wool &c. to the Vicar; certified by the Doctors Win. 70. Hill. 21 Jac. C. B. in Cafe of Bret v. Ward.

6. Payment
Dismes, [or Tithes].

6. Payment is Evidence of Endowment of a Vicarage, and no Man can prove other Endowment; Per Cur. 2 Keb. 729. pl. 13. Hill. 22 & 23 Car. 2. B. R. Brigham v. Robson.
7. A Modus to the Reitor is a good Discharge against the Vicar; Per Cur. Mod. 216. in pl. 3. Trin. 28 Car. 2. C. B. Anon.
8. A Suit was in the Spiritual Court by the Vicar against the Lesse of the Inpropriator of a Rectory for the small Tithes of the Parith, and the Hay-Tithe of the Glebe, which the Vicar claims by Prescription and Endowment. Eyre Ch. J. held it to be good; because the Glebe may be charged by an express and particular Charge. Gibb. 79. Trin. 2 & 3 Geo. 2. C. B. in Cafe of Barton v. Hollis.

(L. b) What Words will pass or extinguisl Tithes.

2. If the King makes a Grant of Tithes, all Sorts of Tithes pass thereby. Hardr. 305. Arg. cites it as held clearly Pafch. 12 Car. 2. C. B. in Cafe of Effington v. Parker, and says the Doubt in that Cafe was occasioned by a Videlicet in the Grant, viz. of such and such Things; and the Question was, Whether Tithes of other Things, which were not named, would pass? But if the Viz. had been out of the Cafe there would have been no Scruple, but that all Sorts of Tithes had pass'd.

(M. b) Equity.

1. LORD Chancellor declares that Matters for Tithes are determinable in this Court. Toth. 282. cites Moone v. Bond, 3 Eliz. li. a. 10. 621.
5. Point of Tithes determinable in this Court, and Parcel or not Parcel. Toth. 283. cites Decanus & Capit. Ecclesiae Christi in Oxon v. Grant, June 11 Jac.
6. Bill to establish certain Customs of Tithing within a particular Parith which never had been tried. The Bill dismissed as not proper for Equity. N. Ch. R. 10. 5 Car r. Gawle v. Lake.
X 9. In
9. In an Information in the Exchequer Chamber by English Bill for small Tithes appertaining to the Rectory of S. in D. The Defendant in his Answer did not admit the Plaintiff's Title, but alleged an Extinguishment of the Tithes by Unity of Possession. And the Plaintiff made no Proof of the Value of the Tithes, nor what Cattle had been depredated in the Place where &c. and for that Cause the Court upon hearing of the Cause refused to direct a Trial at Law, because no particular Demurriment appeared to them whereon to ground a Decree for the Plaintiff if the Verdict should pass for him; and hereupon the Bill was disdinnified. Har. 4. pl. 3. Trin. 1655. The At. Gen. v. Straite.

10. Upon a Bill in Equity for Tithes of Corn and Grain and a Demurrer to it because the single Value was not barely demanded, but it was a Bill of Discovery only to enable the Plaintiff to recover the treble Value; Sed non allocatur; for that Tithes were liable for in this Court before the Statue; Quod Nota & Quare, because it is contrary to the common Practice and Usage to have such a Bill without alleging that the Plaintiff is contented to receive the single Value only. Har. 190. pl. 18. Paich. 13 Car. 2. in Scacc. Driver v. Man.

11. In a Bill for Tithes due to the Complainant as Vicar and Incumbent of ——— in Essex; the Complainant did not show how he was injured to them, viz. By Prescription, Endowment or otherwise. And the Court held it to be good notwithstanding, as well as in an Action at Law for Tithes upon the Statute of 2 El. 6. where the Plaintiff is not obliged to set forth his Title. But the Reporter adds quod Nota for it is against several Precedents in this Court, which he says he has known of Demurrers for that Cause held to be good. Har. 321, 322. pl. 4. Hill. 14, 15 Car. 2. Stone v. Ludlow & al.

12. Chancery will not decree a Rate Tithes, though it was insinuated that it was frequent to do so in the Exchequer. Chancery Cates 187. Mich. 22 Car. 2. Bulh v. Rishley.

13. A Bill was exhibited for Tithes, and the Jurisdiction of the Court demanded to; but the Demurrer over-ruled, and the Defendant ordered to answer. And it was said by Finch Lord Keeper, that the Court of Exchequer did not hold Plc by English Bill until the Statue of 33 H. 8. cap. 39. Freem. Rep. 303. pl. 271. Trin. 1674. in Chancery. Anon.

14. Sir John Churchill as Amicus Curiae said that a Suit for Tithes, especially small Tithes, was not proper in Chancery, and had not been used; yet Finch C. pronounced a Decree for them, the Bill for Receivability to answer being taken pro Contitto. 2 Chan. Cates 237. Mich. 29 Car. 2. Anon.

S. P. as to the establishing a Modus Decimandi have been several Times disdinnified, but where it is only to preserve Testimony North K. thought it reasonble that the Defendant should answer, and over-ruled the Demurrer. Vern. 185. pl. 184. Trin. 1683. Somerset v. Potherby.

15. Bills to establis a Modus Decimandi have been several Times disdinnified, but where it is only to preserve Testimony North K. thought it reasonble that the Defendant should answer, and over-ruled the Demurrer. Vern. 185. pl. 184. Trin. 1683. Somerset v. Potherby.

S. P. as to the establishing a Modus Decimandi have been several Times disdinnified, but where it is only to preserve Testimony North K. thought it reasonble that the Defendant should answer, and over-ruled the Demurrer. Vern. 185. pl. 184. Trin. 1683. Somerset v. Potherby.

27. 4 Car. 1. Browne v. Thetford. Such Bills have been several Times allowed; agreed by Counsel and Court; but the Bill being likewise to compel the Parish to give Receipts on Payment of the Modus, it was disdinnified at the Rolls. Mich. 1738. Wood v. Farington. It was formerly doubted whether a Bill in Equity would lie to establish a Modus or customary Manner of paying Tithes, especially if the Custom had not been found good at Law; and sometimes a De-

murrer to such Bills they have been disdinnified; but the common Practice now is to retain such Bills and
Diffisin.

and to decree on the Pleadings, or to direct a particular Point to be tried at Law, concerning the Reality of such a Custom or the Legality of it. Equ. abr. 367. (B) in the Note in Marg. against pl. 1.

16. Bill to be relieved for Tithe Out; The Court directed a Trial if any and what Custom within the Township. 2 Vern. 46. pl. 43. Patch. 1682. Buxton v. Hutchinson.

17. In a Bill for Tithes brought in the Exchequer, though the Right be ever so plain yet the Decree there is, That he shall account and pay what Tithes is due to the Time of bringing the Bill, but not that he shall pay Tithes for the future; But in Chancery it is to the Time of the Decree. 2 Wms's Rep. 463. in a Nota there says that it was said and admitted Trin. 1728. in Cafe of Carleton v. Brightwell.

of late in some few Instances. Ibid.

For more of Diffises [or Tithes] in General, See Tit. Selve, Presentation, (C.) st. Prohibition, and other proper Titles.

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Diffisin.

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(A) Diffisin of a Rent.

[And where it is by one it shall be said to be by others.]

1. If I have a Rent-Charge issueing out of Lands of which there are several Tenants, and I distrain upon any of the Lands and one of the Tenants makes a Recess without the Consent of the others, yet the others are Diffisors also, for the Distress is a Demand in Law, and the Non-payment a Denial, and so a Diffisin. 39Alf. 4. adjudged.

made the Recess that all were adjudged Diffisors. Br. says that it seems the Reason is because all of them detain'd the Rent. — Fitch. Alfis, pl. 355. cites S. C. & S.P. but he that made the Recess only was awarded to Prison — Ibid. pl 339. cites 40 Alf. 5. S. P. — Co. Litt. 161. b. 5. P. as to a Recess by one Jointenant, but he that made the Recess is only the Diffisor.

2. If the Grantee of a Rent-Charge demands the Rents, and after * Br. Diffisin, pl. 60 cites S C — Fitch. Alf. site, pl. 355. cites S. C. —

the Tenant makes Recess, yet this is a Diffisin in the Tenant, for the Non-payment was a Denial, and the Distress has not waived this Diffisin. The Case aforesaid of 39 Alf. 4. proved this. * 29 Alf. 51. ditto.

3. If he who ought to have a Rent-Charge comes to the Proctor of the Tenant of the Land out of which the Rent issue, and demands the Rent, and he refuses to pay it, this is a Diffisin. 18 Gr. 3. Alf. 78. adjudged.

4. If I have a Rent-Charge issueing out of Land, of which there are several Tenants, a Demand upon the Land in the Possession of one of the Tenants, and Non-payment, is a Diffisin by all, for all the pl. 1.
the Rent issues out of every Part. 39 Ait. 4 admitted by the Judges.

5. It was said that Detainer of Rent-charge is a Diffelain, but not of Rent-service, quod nota. Br. Diffelain, pl. 17. cites 3 Ait. 8.

6. Affile of Rent-charge against A. and B. in B. R. the Affile said, that the Plaintiff was feïled and came to distrain, and A. would not suffer him, and after A. aïlled to B. and the Plaintiff demanded the Rent of B. and B. would not pay it, and both were awarded Diffeliores, and the Diffelain of A. was with Force and Arms, and counterfoilis Retne, and that B. is a Diffelor by his Contradiction, by which the Plaintiff recover'd, quod nota. Br. Diffelain, pl. 23 cites 9 Ait. 7.

7. In Affile it was awarded a sufficient Cauce of Diffelain of Rent, because the Tenements out of which the Rent is illifying were so inclos'd that the Lord could not enter to distrain for the Rent, quod nota. Br. Diffelain, pl. 58. cites 36 Ait. 7. & concordat Littleton tit. Rents.

8. In Affile it was held by Parle that if Rent issues out of certain Land which is inclos'd in a Park of ancient Time so that none can come to distrain because the Gate is always lock'd, that of this Inclofure Affile does not lie, because it is not inclos'd for this Purpofe, and also it was made of ancient Time so that the Seïlor is dead; therefore the Quære, where a Man at this Day keep such Land inclos'd of Anciency, and the Rent is demanded, it shall not be a Diffelain as well by the keeping it inclos'd, as if he himself had inclos'd it. Br. Seilin, pl. 6. cites 49 E. 3. 15.

9. Affile of Rent by Priorëfs which was taken for Default, and the made Title as to the Rent-Service, and it was found that the Tenant held of the Priorëfs, and that the House was never out of Posseflion, but the Predecessors had been feïled of Land &c. And that the Bailiff of the Priorëfs came to distrain, and the Tenant said, that he should have no Rent nor Diffelors there before he had recover'd it by Law, by which he dared not to distrain for doubt of Death. And the Seïlor in the Time of her Predecessors is taken as well as Seïlin in her own Time. And this Menace is taken a good Diffelain, and this in the Time of this Plaintiff, and therefore the recover'd by Award. And the recover'd likewise upon the like Title in three other Affiles. Br. Affile, pl. 39. cites 46 E. 3. 14.

10. And where a Man comes to enter into Land where he has Right of Entry and makes his Claim and dars not enter for fear of Death, it shall be adjudg'd Seïlin, and Diffelora by this Claim, quod nota, per Perley. Ibid.

11. Denter is a Diffelain of Rent-charge or Rent-sëck, but not of Rent-service unless there were a Retne made; Note the Diverity. Br. Diffelain, pl. 8. cites 3 H. 6. 38.

Denial is a Diffelain of a Rent-Charge as well as of a Rent-Sëck; 161. b. So if none be ready upon the Land to pay it, when it is demanded &c. Br. Diffelain, pl. 103. cites Littleton, tit. Diffelain.

12. If the Lord is going to the Land holden of him to distrain for the Rent behind, and the Tenant hearing this encountereth with him, and falls him in the Way with Force and Arms, or menaces him that he dare not come to the Land to distrain for his Rent behind, for doubt of Death or bodily Hurt, this is a Diffelain, because the Lord is disturbed of the Mean whereby he ought to come to his Rent. Litt. S. 240.

13. There
There be three Causes of Diffeifin of Rent-service, viz. Reftous, You may make for

Denier of a Rent-service, viz. Reftous of a Diftreff, Reftance to diftreff, Replevin, Inclofure, counterfigning of the
Title, and courting of a Record, and failing. Co. Litt. 160. b.

Denier is no Diffeifin of a Rent-service without Reftous or Reftance. Co. Litt. 161.

If by forefalling or menacing he that has a Rent-charge or
Rent-feeck is forefalled or dare not come to the Land to ask the Rent
behind it is a Diffeifin. Litt. S. 240.

Denier of Rent-charge upon the * Land is a Diffeifin. Contra if * Orig. is
it be off from the Land, quod non negatur. Br. Diffeifin, pl. 69. cites (Tenant.)

E. 4. 4.

And if Lease be made rendering Rent, and for Default of Pay-
ment a Re-entry there if the Tenant denies the Rent upon the Land,
the Leffor may re-enter, but Contra off from the Land ; Quare inde.
Br. Diffeifin pl. 69. cites 14 E. 4. 4.

If a Man grants a Rent-feeck out of Land in one County payable at
certain Day and Place in another County, and the Grantee is feized
thereof, if the Grantee comes to the Place appointed for the Payment, and
there demands the Rent upon the Day accordingly, if the Rent be de-
ded this is no Diffeifin of the Rent as it shall be upon a Denial upon the
Land where the Rent is payable upon the Land. Plowd. Com. 71.
a. an Inference by the Reporter from what went before. Hill. 4 & 5 the Unicorn
in L. payable at Lady-

Day and Michaelmas, at the Houfe of the said B. in L. to begin at Michaelmas after his Decaffe,
and gave 6 d. in Name of Seifin. The Jury found the Grant and the Seifin, and the Demand at
the said Houfe called the Unicorn, and that none was there to pay it. Resolved it was a good
Demand, being made at the said Houfe out of which it was infuing, though not made at the
Houfe where it was payable, and a Diffeifin for Non-payment of it. Cro. C. 507. pl. 12. Trin.

Diffeifin cannot be of Rent but at a Man's Pleafure. Kelw. 113. a. 3 Rep. 35. a.
pl. 46. Caufus incerti Temporis,

Note, that when Books say that a Detainer of a Rent-charge or
Seck is a Diffeifin, it must be intended upon a Demand made. Co Litt.
161. b.

There be two Causes of Diffeifin of a Rent-Seck, viz. Denial and In-
Houfe in.

Litt. S. 239.

b. Diffeifin of

became the Grantee cannot come upon the Land to demand it. Co. Litt. 161. b.

The Mirror faith, that DifTurbance of one that is in paceable Po-
feeifion doth amount to Diffeifin ; as if the Lord that is in quiet Poifei-
on of his Rent cometh to diftreff, and is by the Tenant difturbed so as
he cannot take a Diffeifin, this DifTurbance is a Diffeifin of the Rent.
2 Inf. 414.

22. So when the Lord taketh a Diftreffes, and the Tenant pays not his And though
Rent, but disturbs him by unjust Suit of a Replevin. 2 Inf. 414.

23. There are four Causes of Diffeifin of a Rent-charge, viz. Reftous, You may
Replevin, Inclofure, and Denial; for a Denial is a Diffeifin of a Rent-
charge as is laid before of a Rent-Seck. Litt. S. 239.

ter-pleading and courting a Record and failing. Litt. 161. b.
V
24. A Distress for the Rent is a Demand in Law, and then the Non-payment is a Denial and Distress. Co. Litt. 161. b.

25. Whereforever there is a lawful Demand of a Rent, and the same is not paid, whether the Tenant be present or absent yet this a Denial in Law although there be no Words of Denial. It appears here that the Demand must be made upon the Land, and although the Tenant or any for him be there, yet must the Grantee demand it, because without a Demand there can be no Denial in Deed, nor any in Law. Co. Litt. 153. b.

(A. 2) Of what Estate it may be. Particular Estate.

If one who is only Lessor for Years enters upon him that has a good Title he is a Distiller of all the Fee Simple; Per Anderton and Periam J. Goldsb. 43, in pl. 22. Mich. 29 Eliz.

2. Note, It was said by Sir Francis Bacon the King's Solicitor, that it was adjudged the 49 Eliz. in the Exchequer, that where Lessor of the King for Life was ousted by a Stranger it should be said a Distiller of the particular Estate, against the common Maxim, that a Distiller cannot be of a less Estate than a Fee Simple. Godb. 138. pl. 166. 40 Eliz. in the Exchequer.

King he cannot be out of Possession but at his Pleasure. Cro. E. 34 Eliz. C. B. Wingate v. Mark.

(A. 3.) What Possession is an Impediment of a Distiller.

If A. is seised of a great Close where &c. and a Stranger enters and occupies Part, but A. continues in the Possession of the Residue, he shall be judged in Possession of the Residue, because it is an entire Thing, cites 4 E. 4. 2 B. 3 13. Seizin of Part of the Services is Seizin of the Whole, cites Pettworth's Cafe. 2 Rep. Brownl. 230. Mich. 11 Jac. in Dame Pett's Cafe.

2. The Possession of a House is the Possession of the Land for the Lessor against the Lessee of that which palls by one Demise; but if a Stranger enters, fevers, and Parts by Metes and Bounds, nothing is wrought by the Possession of the Residue, Arg. Brownl. 230. Mich. 11 Jac. in Dame Pett's Cafe.

3. If Conveyor of a Statute continues to keep Possession after the Return of Liberari facti, the Conveyee's Estate is turned to a Right like the Cafe of Distiller's making continual Claim as soon as ever the Distiller leaves the Premises, the Continuance of Possession by the Distiller make a fresh Distiller. See 1 Inf. 136. Lit. 129. and this is not like the Cafe of Mortgagor who continues in by Consent and not in Opposition to the Mortgagee; Per Holt Ch. J. 2 Salk. 563. pl. 1. Trin. 3 W. & M. in B. R. Hammond v. Wood.

(A. 4)
(A. 4) What is a Diffelin; And what an Abatement; And Pleadings in such Cases.

1. E N T R Y for Diffelin by D. against A. who said that Actio non, for he said that T. was seised and infeoffed two who gave to the Baron who is dead, and to this Feise Tenant then his Feise in Tail, and gave Colour, and the Plaintiff said, that before the Donors any thing had, L. was seised in Fee, and gave to his Father and Mother in Tail who had Ille the Demandant, and the Father died, and the Mother survived and died infeoffando seised, and the said T. abated and infeoffed the Donors named in the Bar, and the Tenant maintained his Bar and traversed that the Tenant did not abate after the Death of his Mother &c. prout &c. and per Danby Justice the Title is not good; for he has shewn that his Mother died infeoffando seised, after whose Death the Tenant abated, which cannot be unfeles the Mother died infeoffed in Fact; for if she was infeoffed in her Life, it cannot be called an Abatement but a Diffelin; for he cannot plead Abatement but where there was a dying seised in Fact, which all the Justices agreed; and per Prout clearly, if the Abatement was well alleged the other may well traverse it, and shall not be compelled to traverse the Gift in Tail, by which the Demandant was intitled, but may traverse the Abatement. Br. Pleadings, pl. 56. cites 38 H. 6. 18.

2. Abatement cannot be but upon Maintenance of Seisin in Fact, and not by Proteftation; Quod Nota per Cur. Br. Pleadings, pl. 59. cites 39 H. 6. 5.

3. The Case was, that in Formedon of the Gift of W. the Tenant said, that before the Donor any thing had, J. N. was seised, and gave to his Ancestor in Tail, who by Proteftation died seised, and W. abated and died, as in the Writ, and the Tenant re-entered as Heir, and the Demandant said that W. did not abate after the Death of the Father of the Tenant prout &c. and no Ille; for where there is no Abatement then it is not traversable, by which he omitted the Proteftation; Quod Nota. Br. Pleadings, pl. 59. cites 39 H. 6. 5.

4. It after the Deceafe of the Father a Stranger first enters into Land and abates, and the youngest Son enters upon him, and diffeifs him, and dies seised, this is an Entry by Diffelin, and not by Abatement, and so shall not bind the Elderd. Co. Litt. 242. b. ad finem.

(A. 5) Of what Estate or Things it may be.

1. O F Things not manourable, Hæreditamenta Incorporea, As * S. P. by Common, Corody, Office, Rent, &c. he that is seised of Hobart Ch. them has Election to have Affife, and to admit himself to be out of Pof- feffion; Resolved. 9 Rep. 51. a. Trin. 8 Jac. in the Earl of Salop's Cafe.

2. Of pofteference Things an Expulfion may be made as well as a Diff- fefin; and therefore if a Man made a Lease for Years of Land, and a Stranger puts out the Leffer, he does also diffeifie him in the Reverfion; but if the Leffer put him out, there is no Diffelin committed, pl. 15. Mich. and yet the Leffe has loft his Estate, and has but a Right to it, and that

A Termor cannot be diffeifie Cro. J. 679. v. Ridley
Dilteilin.

that whether he will or no; for though it be true, that when two are in Possession the Possessor is judged in him that has Right, for he only potseffeth though the other be in Possession too, and takes away the Trees, Corn, or the like; yet, when the true Owner is clearly put out and removed, then he has no longer Estate or Possession, but Right only, and has no Election to be in Possession or not in Possession, as that Cafe stands, and therefore clearly he cannot now grant this Term; And if the Leffor brings an Action of Debt for his Rent due at Michaelmas, the Leafe shall plead that he did enter upon him and put him out, and he continued his Possession at the Term, for he cannot have Rent out of that Land that he himself potseffes; and if the Leffor after such Expulsion dies, the Land shall descend in Possession to the Heir, and the Executor shall not claim that that was a Lease; for a Term never bears a Que Estate; but it is true, that there are certain Cases wherein a Possession cannot be gained; Per Hobart Ch. J. Hob. 322. Patch. 17 Jac. in Cafe of Elvis v. York (Archbishop) & al.

(B) Recous.

[By whom. Stranger.]

1. If a Man distrusts for a Rent-Service, and a Stranger recoues the Distress in the Name of the Tenant, this is a Distress of the Rent. 56 H. 3. Itinec Stafford 16. per Curtian.

2. If Lord and Tenant are, and the Tenant detains the Rent, and the Lord distrusts for it, and two Strangers make Recous, the Tenant being absent, they are all Distressors, and yet the Force is only in those two that made the Recous; Per Dyer and Westall. Mo. 53. pl. 155. Patch. 5 Eliz.

(C) What Act shall be laid a Distressin.

Br. Assise, pl. 114. cites S. C. Brooke says it seems that the King did not take but for Year, Day, and Waife, and then the Entry of the Lord by the Livery obtained by false Suggestion made the Distressin, and was no Distress in the Possession of the King. —— Br. Reliever, pro Rege, pl. 16. cites S. C. —— Br. Foruleure de Terres, &c. pl. 28. cites S. C. —— Tit. Assise, (E) pl. 1. cites S. C. —— Firzh. Assise, pl. 166. cites Mich. 4 E. 3. 47. S. P.


1. If Baron and Feme purchase Lands in Fee, and after the Baron is attainted of Felony, and the King seizes the Land, and after the Lord, of whom he is held, upon his Suggestion hath it delivered to him out of the Hands of the King as his Elcheat, this is a Distress in the Wife, who had a joint Estate with her Husband; for it was delivered out of the Hands of the King by a false Suggestion, and so a Distress to the Feme. 4 Att. 4. adjudged.

2. If a Man devises Capite Lands to his youngest Son, and dies, which is void for a third Part, and after the Devisee enters into the whole generally, which is an Entry for the eldest Son also, and after leaves the whole to another for Years, yet this is not any Distress to the Eldest, for one Tenant in common cannot be ousted without
Diffeisín.
85

out an actual Ejecutién. B. 47, 41 Eliz. B. R. between Hempsey per tot. Car
and Bricse, per Curiam.

Mo. 546. pl. 729. Himley v. Brie, S. C. 204 adjudged no Diffeisín because there was no Expulsion, but
held that Leaše for Life with Livery would have made it a Diffeisín. Where there were two
Copartners of an Houfe, and the one entered generally, and made a Leaše for Life by the Name of All
that his Houfe &c. The Question was, whether all or the Majorit only of the Houfe paid? Pop-
ham and Fenner held that the entire Houfe paid; for when he says, All that my Houfe &c. that
intended the whole Houfe, and by his Livery made he gained the entire and gave the future, altho'
by his general Entry it is not intended that he entered into more than to what he had right; but
Gawdy v contra; For as his Entry primâ facie does not gain more than he had Right to demand,
no more shall this Leaše; And Pote at the Bar cited, that it was adjudged in this Court in
Reynold's Case according to the Opinion of Popham. Cro. E. 615. pl. 4 Tain. 48 Eliz. Gerry
v. Holford.

3. So it will be if the Device levies a Fine of the whole. Iudicem, per Curiam.

4. If a Man leaseth several Acres for Years, rendering one entire Rent, and * the Leafee is ousted of one Acre by a Stranger, and af-

rewards this notwithstanding pays the entire Rent to the Leñitor, per this shall not continue Seisin of the Leñor of the whole, but he is
disseised of the said Acre. 92 Eliz. B. R. b. subd. tituattur.

5. If a Man hath an Houfe and locks it, and departs, and another comes to his house, and takes the Key of the Door into his hand,

and says that he claims the Houfe to himself in Fee without any Entry

into the Houfe, this is a Diffeisín of the Houfe. B. 15 Ja. 53;

Pott's Case, admitted clearly upon Evidence at the Bar in an Affi

taken by Default.

6. If A. cuts Trees in his own Soil, and B. that has Common Br. Diffeisín,

there says the Soil is his Soil, and commands him that he cut nothing pl. 42, (41) or

upon which A. departs out of the Land, yet this is not any Dif-

seisin to him, for he that has no Right cannot be deñed of a Free-

hold by Parol. 26 All. 17. adjudged.

Br. Affis, pl. 265. (262.) cites S. C.

7. If a Man that has Right to enter into Lands, in coming to

wards the Land is disturbed from his Possession, this is a Diffeisín. 26

All. 17.

8. If a Stranger receives of my Tenant by voluntary Payment, Br. Affis,

without Coercion of Diffeisín, the Rent due to me, this is a Dif-

seisin to me at my Election. 40 All. 19.

Rent to a Stranger without Coercion he is a Diffeisín, and by it Coercion, both are Diffeisin. Br.


Wills S. P. and cites Litt. — If one receives my Rents without my Consent, I may charge him as

my Receiver or make him a Diffeisín at my Election; Per Roll Ch. J. and Curiam. Sty. 425;

Hill. 1654.

9. If a Man enters into my Houfe by my Sufferance, without claiming

any Thing from me, this is not any Diffeisín. 11 C. 3. Affis

86. adjudged.

10. If the King be seized in Fee of the Manor of B. and a Stranger S. C. cited

erects a Shop in a vacant Plat of the Manor, and takes the Profits. Arg. 2 Le.

thereof without paying any Rent to the King, and after the King

182. Berry

gants over the Manor in Fee, and the Stranger contiunes afterwards v. Goodnes.
in the Shop, and occupies it as before, yet this Continuance is not S. P. Arg. any Distress, because the first Entry was not any Distress. D. 9.
in S. C. In an Ejec-
ment the
Case was, The King, was seized of Land in Fee, and a Stranger intruded, and the King grants this
Land to J. S. in Fee, and the Intruder continues Possession, and dies seized; The Question was it
this Defent shall take away the Entry of J. S. Johnson, said it shall not; for none will affirm that
an Intruder shall gain any Thing out of the King, but that the Land shall pass to the Inventors, and
the Continuance of the Intruder in Possession, and his dying seized, shall not take away the Entry;
For he cannot be a Distress, because he gained no Estate at the Beginning. Cook contra; By this
Continuance of Possession he shall be accounted a Distress, and the Freehold out of the Patentee,
for another Estate he cannot have, for Tenant at Sufferance he is not, for he comes in at first by a
Title; But a further Day was given Cook to shew Caus why Judgment should not be given against

I. [So] If a Man enters into certain Land, Parcel of a Manor which is in Ward of the King by reason of the Monage of J. S. and takes the Profits as Owner thereof, and after J. S. lies Livery, and after the Intruder continues the Possession, and the taking the Profits as before, yet the Continuance shall not be any Distress to J. S., because the first Entry was not any Distress. D. 17. In. B. R. between the Lord Sands and the College of Corpus Christi in Oxon, resolved per Curiam, and the Jury directed accordingly.

12. If there be Tenant at Sufferance, and a Stranger not having any Right to the Land makes a Lease to him by Indenture, rendering Rent, without putting the Tenant at Sufferance out of Possession, and the Tenant pays the Rent to the Stranger, this is not any Distress to him that had Right. P. 3. In. B. R. between Frensham and Stone, per Curiam, upon Evidence.

13. If Guardian by Nurture makes a Lease by Indenture to one, being under the Title of the Infant, rendering Rent to himself which is paid accordingly, yet this is not any Distress to the Infant. P. 3. In. B. R. per Canfield.

If a Guardian in Chivalry continues the Possession of the Land in Ward after the full Age of the Ward, without Title, this is a Distress to the Heir because he comes in by the Law, and therefore the Continuance beyond the Time which the Law hath limited, and against the Title restitute in him by the Law, and the Law makes it a Distress to the Heir, who was never out of Possession, but the Guardian was seized in his Right. 7 H. 4. 42. per Cul.

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* P. 663. 15. If Lessee for Years holds over his Term, yet he is not any Distress, because he comes in by the Act of the Party; but he is called (a) a Tenant at Sufferance; Tempore H. 8. S. 356. t 9


(a) 1621. cites S. C. & S. P. which the Lessee enters in fact
If Br. Ed. Act, p. 46. cites S. C. but Brooke says, it that seems to him that he is not a Distress before Regress of the Lessee, but he continues by his first Entry, and therefore this seems to be the Reason why the Writ of Entry ad Terminum qui praeterit lies against the Tenor as holds over his Term. If a Tenant holds over his Term there an Estate in Fee is confess to be in him by matter of Law. But it is a Doubt whether he be a Distress or not. But it seemeth not, For a Torpesi lies not against him before Regress. Arg. Ow. 28. cites 22 E. 4. 58.

16. If
16. If Guardian takes Feevment [of the Infant] in Cateedia he this is
Diffeiln, and he shall be imprifon it he Infant will bring Aliffe against
him, and the Matter be found, quod nota. Br. Aliffe, pl. 431. cites 8 E.
17. If a Man will differen for Rent-Service by Doors and Windows and
one prohibits him, this is a Diffeilin, but not with Force and Arms.
18. If two Infants are fiontenants, and the one releases to the other, by
which he holds the Whole, this is a Diffeilin as it is said; For it seems
that the Releafe of an Infant is void as to the Interest of the Land;
19. Guardian of an Infant infeffed J. N. of the Land of the Infant,
and the Infant brought Aliffe without Entry, and the Plaintiff recover-
ed, For the Entry of the Feevment is a Diffeilin, quod nota, and this seems
to be by the Statute of Westminder 2. cap. 25. which wills that where
a Guardian or Ternor makes a Feevment, that as well the Feoffor as
Feevment shall be taken for Diffeifors. Br. Diffeilin, pl. 22. cites 8
Aff. 28.
20. If A. has Common in the Land of B. and B. comes with his Fam-
ily and incloes the Land so that A. cannot ufe his Common, there
B. and his Family are Diffeifors, So if the Family come in Aid of him.
Br. Diffeilin, pl. 79. cites 8 Aff. 18.
21. In Aliffe the Father infeffed his Son within Age, and after the
Father enter'd to the Use of the Infant as his Ward, and after infeffed J. S.
and the Father died, and the Infant brought Aliffe against the Feevment with-
out Entry, and became the Entry of the Father was to the Use of the In-
fant, and the Feevment by his Entry was a Diffeilin, therefore the Infant
22. Where a Man is disturb'd of the Mean, by which he cannot take
his Profit of a Thing, this is a Diffeilin of the Thing itself. As of mis-
turning of Water by which the Mill cannot Grind, Aliffe lies of the
Mill, and of disturbing my Way to my Common, Aliffe lies of the
Common as it is said elsewhere. Br. Aliffe, pl. 148. cites 9 Aff. 19.
23. Note, Per Cur. in Aliffe that where a Man gives to the Tenant
Br. Diffeilin
in the Aliffe all the Tenements which he had in B. except a Chamber in
which he lay ill, and after the Seifin he gave the Chamber and removed
himself into the Hall; if this Removal be by the Sufferance of the Fe-
office, claiming nothing to his own Use, and so pleased or given in
Verdict, this is not a Diffeilin; Quod Nota; and so fee that Entry by
Sufferance claiming nothing to his own Use is not a Diffeilin. Br. Te-
nant per Copie. pl. 7. cites 11 Aff. 6.
24. In Aliffe Baron and Feme purchased the Land in Fee, and after the Br.
Diffeilin
Baron aliened to his youngest Son in Fee within Age, and after the Baron
pl. 50. cites and Feme entered into the Tenements with Affent of the Feevment who was yet
which he lay ill, and after the Seifin he gave the Chamber and removed
within Age, and after the Baron died, and the Feme continued Seifin
himself into the Hall; if this Removal be by the Sufferance of the Fee-
and died, and the eldest Son entered as Heir, and the youngest who
was infeffed brought Aliffe and recovered by Award; for the Affent
was void, because he was within Age, and to the Entry of the Baron and
25. A Man made Simple Deed of Feevment and Letter of Attorney
accordingly, and the Attorney delivered the Seifin upon Condition, and there-
fore a Diffeilin by Award. Quere, where it is of two Acres and Livery
of Seifin of the one, for in one Cafe he exceeds his Warrant, and in the
other he diminishes it. Br. Feevments de Terres pl. 25. cites 12
Aff. 24.
26. In
26. In Affile it was found that the Conewor upon a Statute-Merchant after Execution sued against him took the Conewee by Force and swore him that he should render him the Land, and after he voluntarily released all Actions of Debt and Trepsfs, and also voluntarily surrendered the Land, and this Oath he took for Fear of Death, and therefore notwithstanding that the Surrender was made at Large, yet because it was made by reason of Distrefs before, therefore Perning adjudged it a Distefin when the Conewee entered by such Surrender. Br. Duresa pl. 11. cites 14 Aff. 20.

27. A Man leaves for Life rendering Rent with Clause of Re-entry for Non-Payment, and came after and restrained for the Rent, and being possessed of the Distrefs re-entered, and this was awarded a Distefin, insomuch as he entered being possessed of the Distrefs. Br. Distefin, pl. 81. cites 14 Aff. 11.

28. Tenant in Tail is bound in a Statute-Merchant and dies, and Execution is sued against the Issue, this is Distefin; because by such Execution there is no Garnishment made to the Heir. Br. Affife, pl. 214. cites 17 Aff. 21.

29. Tenant in Tail was bound in a Statute-Merchant and died, and the Conewee made his Executors and died; the Executors suedExecution against the Issue, and made Joint-Efate to two, and the same Day the Issue brought Affife, and all this found, by which the Plaintiff recovered, and yet the Jointenancy was pleaded, but because the Joint-Efate was made the Day of the Test of the Writ, and the Executors were named who were Tenants the Day of the Writ, and the Seinf and Distefin found, therefore the Plaintiff recovered; for the Execution was a Distefin to the Issue, quod mirum; for it is made by the Sheriff by Writ as it feems. Br. Affife, pl. 406. cites P. 18. E. 3. Fitzh. Aff. 77.

30. Guardian in Chivalry assigned Dowter to one who was not the Wife of the Ward's Father; if she enters she is a Distefifors as to the Ward. Br. Receipts, pl. 50. cites 21 E. 3. 4.

31. Reaping of Grain with Sickles is Distefin with Force. Br. Brief, all. 4. cit. in pl. 104. pl. 430. cites 21 E. 3. 34.

32. If none inhabit or manage the Land, and the Rent is demanded, it is Distefin, and Affife lies thereof, and Reefs, Replein and Inclorfe, are Distefins of Rent-Service; and Reefs, Replein, Inclorfe and Denier, are Distefins of Rent-Charge; and Denier and Inclorfe are Distefins of Rent-Sekk; and Menace is a Distefin of all those Rents; and to see that the suing of Replein is a Distefin of Rent-Service and Rent-Charge. Br. Distefin, pl. 103. cites 21 E. 3. 3. 4.

33. In Affife it was laid, that the Issue is no Distefin but where the Lord distrains; for if a Stranger distrains the Tenant may make Reefs as it feems; Quere, for the Plaintiff durst not demur. Br. Distefin, pl. 46. cites 27 Aff. 51.

34. If a Man incroaches 10 s. Rent of my Tenant by Distres who holds of me by 10 s. Rent yet this is no Distefin to me, for it cannot be intended my Rent, and if I disfain and the Tenant and he who incroaches make Reefs I shall have Affife against my Tenant alone, and not against the Incroacher; per Thorp. But Brooke says, It feems that he shall have Affife against both if he will. Br. Distefin, pl. 14. cites 24 E. 3. 40.

35. If a Ward enforces his Guardian in Scege the Entry of the Guardian upon this Possession is a Distefin. 2 Roll Remitter, (G) pl. 3. cites 35 Aff. 8. adjudged.

36. So if Attorney be to deliver Seinf after the Fosfor's Death and he delivers it during his Life he is a Distefor. 2 Roll 9. (S) pl. 1. cites 40 Aff. 38. Curia.

37. In
37. In an Affidavit between two Tenants in Common, a Forbidding by Word of Mouth to the Tenant to pay his Rent was adjudged a Difficult. Raym. 371. cites Mich. 47 E. 3. 22. a. pl. 51.

38. Mance of Death, and Inclosure of Land, so that the Lord cannot distrain, are Difficults of Rent-Service, Quad. Nota. Br. Difficulties, pl. 87, cites 49 Ait. 5.

38. If a Man makes Difficult and carries away Goods, he shall be adjudged Difficult with Force, and shall be imprisoned; Per Term. and Hanc. Br. Damages, pl. 51. cites 11 H. 4. 16.

39. If a Letter of Attorney be to deliver Seisin upon Condition, and he delivers it without Condition, this is not good, but is a Difficult. 2 Roll. 9, pl. 14 cites 11 H. 4. 3.

40. When any Distrains by ra. outragiously, that is, so often as the Tenant cannot plough, or duly use his Ground, this amounts to a Difficult. 2 Inst. 414. cites the Mirror, cap. 2. S. 25.

41. A Difficult is properly where a Man enters into any Lands or Tenements where his Entry is not lawful and ouits him that has the Freethold. Litt. S. 279.

42. Note for Law, if Tenant at Will, or at Sufferance, makes Feoffment in Fee, he is a Difficult, viz. the Tenant at Will, by making of the Feoffment. Br. Difficulties, pl. 64. cites 3 E. 4. 17.

43. Where the King enters into my Land without Title, the Frankentenement remains in me. Br. Difficulties, pl. 65. cites 7 E. 4. 19.

44. If Tenant at Will for Years makes a Feoffment he is a Difficult by the Common Law, and the Statute of Wemi. 2. cap. 25. Quad. vivente altere eorum is only a Recital of the Common Law. Br. Difficulties, pl. 66. cites 10 E. 4. 18.

45. If Tenant at Will, or Tenant by Sufferance at Will, make a Lease for Years, this is a Difficult to the first Lessor, and the Tenant at Will thereby gains Frankentenement; By all the Justices. Br. Difficulties, pl. 68. (67.) cites 12 E. 4. 12.

46. If an Infant makes a Lease for Years, and the Lessor enters, the Infant shall have Affilie; Per Brian, and affirmed by Humfrey, Fineux, and Frowiwick. Br. Difficulties, pl. 63. cites 9 H. 7. 24.

47. And if a Man makes a Lease by Dorfis, and the Lessor enters, the Lessor shall have Affilie. Br. Difficulties, pl. 63. cites 9 H. 7. 24.

48. But if an Infant makes a Feoffment and makes Livery, the Infant shall not have Affilie. Br. Difficulties, pl. 63. cites 9 H. 7. 24.

49. So of Feoffment and Livery by Dorfis, the Feoffor shall not have Affilie. Br. Difficulties, pl. 63. cites 9 H. 7. 24.

50. But if the Infant, or a Man in Prison, makes Letter of Attorney to deliver Seisin, there they shall have Affilie. Br. Difficulties, pl. 63. cites 9 H. 7. 24.

51. But where a Man leases for Term de enter Vie, or for Years, and Capi vis cive dies, or the Term expires, the Lessor shall not have Affilie against the Occupier without Entry in Fait. Br. Difficulties, pl. 63. cites 9 H. 7. 24. per Brian, and affirmed by Humfrey, Fineux, and Frowiwick; quod luiti conciitum per tot. Car. and Brooke lay's it seems to be good Law.

52. Leffie for Life makes Deed of Feoffment, and delivers it, and makes Letter of Attorney to A. who enters and makes Livery according-ly; Adjudged that the Attorney is a Difficult. 4 Le. 7. pl. 29. 26 Eliz. B. R. King v. Cotton.

A a 53. If
If a Wife grants a Rent-Charge, or makes a Lease, and the Gram-te enters, this is a Diffeifor in Fee; Arg. Goldsb. 13. pl. 13. Paflch. 28 Eliz.

Where a Man has Possession of Lands, his Continuance therein cannot gain to him any Interest, or increase his Estate, without some other Act done of later Time. If the Guardian continues in Possession after the full Age of the Heir, he is not a Diffeifor, nor has any greater Estate in the Lands. And upon the Book of 21 Eliz. 3. 2. this Case was collected; The Tenant of the King dies, his Heir within Age; a Stranger intrudes; the Heir at full Age gives his Livery out of the King's Hands; the intruder dies in Possession. The same Defent shall not take away Entry. 2 Le. 147. pl. 182. Trin. 30 Eliz. B. R. in Case of Berry v. Goodman.

If Copyholder in Fee dies seised, and the Lord admits a Stranger to the Land who enters, he is but Tenant at Will, and not a Diffeifor to the Copyholder who has the Land by Defent, because he gains in the Affent of the Lord &c. 3 Le. 210. pl. 274. Trin. 30 Eliz. B. R. Anon.

A Woman Tenant in Tail marries; Husband makes Feeement in Fee and dies; Wife without any Entry made Leafe for Years. The Freehold is not reduced without Entry. Le. 122. pl. 165. Trin. 30 Eliz. B. R. Page v. Jordan.

General Entry amounts to a Diffeifor. As if A. makes Leafe for Years of the Land of B. Leffie enters by Force of that Leafe; now Leffor without any Entry is a Diffeifor. Le. 122. pl. 165. Trin. 30 Eliz. B. R. Page v. Jordan.

But if Leffor at Will makes a Leafe for Years to commence in future, it is not a present Diffeifor. Noy 56. in Cafe of Cooper v. Columbell.

If he holds over against the Will of his Leffor, then he is a Diffeifor. 2 Le. 45. pl. 59. Hill. 29 Eliz. B. R. Arg. in Cafe of Roufe v. Artois, S. C. cites 10 E. 4.

So if he does not after such Continuance of Possession contrary to the Will of his Leffor, he is a Diffeifor. Ibid. cites S. C.

A Copyholder of Inheritance of a Manor in the Hands of the King is ousted [by J. S.] It was held in such Case, that he [J. S.] has not theretofore gained any Estate so as he may make a Lease for Years, upon which his Leffor may maintain Ejectment, but he has only a Possession against all Strangers. 3 Le. 221. pl. 294. Paflch. 30 Eliz. B. R. Anderson v. Hayward.

If a Stranger enters upon the King's Parmer, he by such Entry hath gained the Estate for Years, and if he makes a Leafe to another, his Leffe may maintain Ejectment. 3 Le. 206. pl. 265. Paflch. 50 Eliz. in the Exchequer. —— It was said by Bacon, the King's Solicitor, to be adjudged, 42 Eliz. in the Exchequer, that where the King made a Leafe for Life, and the Leffe was ousted by a Stranger, that the same should be said a Diffeifor of the Particular Estate contrary to the common Ground, viz. That a Man cannot be disfieifed of a left Estate than of a Fee-Simple.

If Conjuror of a Fine sur Conuazance de Droit come cco &c. continues Possession, he is a Diffeifor, and not Tenant at Will or Suffrance, and a Præcipe lies against him. Goldsb. 82. pl. 24. Hill. 30 Eliz.
63. If Tenant par hath Vie is disseised and dies, yet he remains a Diffeifor, and the Occupancy does not qualify such Diffeifin; said Arg. 2 Le. 121, pl. 167. Mich. 33 Eliz.

64. A seised of Land makes a Peelfment thereof to B, upon Condition to convey it to A. for Life, Remainder to the eldest Son of A. in Fee. A. takes the Profits, and makes a Lease of the Land to C. for Years, and yet continues the Possession in himself. B. acknowledges a Statute to a Stranger. The Years expire. A. makes a Peelfment of this Land with Warranty to his second Son. B. enters in the Life of A. and inholves the elder Son. This Peelfment was good and lawful, and so adjudged and affirmed in Error. Resolved, That A's taking the Profits, and making a Lease for Years, was a Diffei1in to B. and nullified the Condition. Ceilify que Ufe at Common Law, or Ceilify que Tranf, at this Day, takes the Profits; it is not a Diffei1in; for the Feoffee confonts to ceido, and in the principal Cafe there was neither Ufe nor Truft, but an Eftate paifed upon Condition. Jenk. 252, pl. 44.

65. A Tenant for Life, the Remainder in Fee to B.—A. makes a Lease for Years to J. S. The Leffe entered. A. granted the Tenements to C. habendum from the Feall of Michaelmas following for Life. J. S. after C. enters, and makes a Lease at Will, to whom A. leave &c. &. B. entered. In this Cafe it was resolved, that when C. entered by Colour of the Grant, he was a Diffei1or. 2 Rep. 55, b. the 3d Resolution, Mich. 39 & 40 Eliz. in Buckler's Cafe.

67. A Diffei1in is when one enteres intending to usurp the Possession, and to oujt another of his Freehold. Cro. C. 303, cites Co. Lit. 153, b.

68. If Tenant at Will grants over his Eftate to another, and the Grantee enters, he is a Diffei1or, and the Leffer may have an Action of Trefpass against the Grantee, for although the Grant was void, yet it amounted to a Determination of his Will. Co. Lit. 57, a.

Ground Lord Coke had for such Opinion, that the Year Books quoted in the Margin will not warrant it; for they are in no Sort parallel; that the Cafe in 27 H. 6, 3, is no more than that Tenant at Will cannot grant over his Eftate, because he has no certain or fixed Interest in it, and much to the same Purpo1e is the Book of 22 E. 3, there cited.

69. If Bargainor after Implant continues Possession, he is a Diffei1or; for the Statute transfers the Frankentement to the Bargainee. Noy 106. Bellingham v. Alisp.

70. When the Leffe by his own Act or Sufferance does a Thing in alteration of the Possession, of which by common Intendment the Leffer cannot have or take Notice, there the Law will not prejudice the Leffer, fo as to make it a Diffei1in. Arg. Brownl. 230. Mich. 11 Jac. in Dame Pett's Cafe.

71. If A. be seised of a great Clofe, where &c. and a Stranger enters and occupies Part of the Clofe, yet notwithstanding A. continues the Possession of the Residue. The Question was, Whether this shall preferve his Possession in the Residue and he shall be adjudged to be in Possession of that because it is an entire Thing? Haughton was of Opinion that it was a Diffei1in, and Doderidge sa1d it would be mischievous if it should. Brownl. 230. Mich. 11 Jac. Pett's Cafe.

72. Father dies, the eldest Son beyond Sec, the Youngest may enter; but if he keeps out his Brother after his Return, he is now Diffei1or. Per Doderidge J. Palm. 416. Fash. 1 Car. B. R. Mayo v. Strumpling.
Diffeifin.

73. Entry of Lefsee by Deed for Years before the Term is no Diffeifin, unless an Expulsion is alleged. Cro. J. 684. pl. 2. Hill. 21 Jac. B. R. Brookbank v. Taylor.

on after the Commencement of the Term. Lev. 45. Henning v. Brabazon.—Clay. 27. Mertcal v. Stavely. —— 8 Mod. 53. Shears v. Lammus, but no Judgment. But adjudg’d. 54. Macdonald v. Weldon; That it is no Diffeifin where the Continuance in Possession was 1 by the Confin of Lefsee. —— If there was any Agreement or Affent that the Lefsee should enter, it cannot be any Diffeifin. Arg. Le. 296. in Cafe of Crip b. Golding. —— And if Rent incurs afterwards, Debit lies for the Lefsee on the Priuity of Contract. Cro. E. 169. Alexander v. Dyer. —— For the Lefsee cannot destroy the Contract unless he makes a Feudement. Per Jones, J. Godb. 584. pl. 472. Patch. 5 Car. 6. R. Green v. Mooy. —— He hath not but for Years in redpect of his Claim. See Godb. 585. in Cafe of Green v. Moody.

Lit. S. 588; 589. S. P. 74. If a Man receives my Rent, it is at my Election if I will charge him with a Diffeifin, by bringing an Affife or other Action, or have an Account. Cro. C. 303. in pl. 6. Patch. 9 Car. B. R. 75. There were two Tenants in common of an Houfe, and one of them nailed up the Doors, and made up a Wall against the Houfe to prevent the others getting into the Houfe, and this was resolved no Diffeifin, and fo the Jury was discharged. All. 8. Patch. 23 Car. B. R. Water’s Cafe.


Leafe by Caft que Trufi to T. is no Diffeifin but only at the Election of the Trustee, but it is good between Leifor and Lefsee at least. Keb. 24. pl. 71. Patch. 13 Car. 2. B. R. in Cafe of Thorn v. Burton.


Two Ten- ans in com- com of an Adverse one alone preents, yet at the next Avoidance they may join, and if they are disturbed, Quere impedities as in the Cafe of Coparceners. Quere. And. 65. Harris, v. Nicholas —— Cro. E. 18. S. C. per 5 J. makes a Difference between Grantees of Coparceners, and meer Tenants in Common, that in the first Cafe an Ultimation of one shall not put the others out of Possession; but that perhaps would be otherwise in the last, unless they were fich as derived their Estates from Coparceners, and yet 22 E 3. 9 is that between Strangers in Blood, or where two make Composition to preent to Turn, if one usurp upon the Turn of the other, this shall not put him out of Possession, but Anderton doubted.

79. If a Leafe be made to A. which in Truth determined before it began, and A. leaves to B. the fame Land rendering Rent, and for Rent arrear A. distrains, B. brings Trespafs, and A. avows, and in the Pleadings of A. the Determination of the Leafe to A. appears, whereupon B. in- fifted that A. had failed in his Title, and that the Leafe to A. failing, the Leafe by A. to B. must fail also. But it was answered, that if B. has failed in deriving to himfelf a lawful Ability to make a Leafe to B. then the Confecution will only be that that Entry which A. fet forth to be Virtue of such Leafe must be taken to be a Diffeifin, and a tortious Fee Simple fufficient to support the Leafe. See 10 Mod. 265. Mich. 1 Geo. B. R. Potter v. Pinkney.
(C. 2) What is a Difféisin. Act in Law.

1. If a Man recovers Land by Default against a Feene Covert this is a Difféisin, and he and her Baron shall have Allife, and if the Baron dies the Feene shall recover by Allife, and if Seire Facias be filed upon such Recovery by Seire Facias the Feene shall extort the Execution; Per Trench, which was denied because the Judgment, stands in Force, and Execution is awarded of Damages, et quod habes corpus coram Rege at a certain Day. Br. Error, pl 86. cites 24 E. 3. 24. 43. But Brooke says, Quod Mirum, because it seems that the Matter is Error.

2. In Allife if the Plaintiff makes Title, and the Defendant counterpleads it, the Allife shall not inquire of the Sellin and Difféisin (as was touch'd by the Court) if they find the Title for the Plaintiff, but inquire over of the Damages only; For the Defendant is a Difféisin by his Counter-plea of the Title of the Plaintiff, quod nota, and the Title was found for the Plaintiff and he recovered. Br. Difféisin, pl. 47. cites 27 Aff. 65.

3. In Allise, because the Tenant had confessed Estate in the Plaintiff, and pleaded in Bar that which was adjudg'd no Bar, the Allise was awarded in right of Damages, and he adjudg'd a Difféisin by his Counter-plea, and was taken, quod nota. Br. Difféisin, pl. 48. cites 28 Aff. 21.

4. An Infant shall not be adjudg'd a Difféisin by his Confinancy or Original Natant Desire, and therefore when he had pleaded that he unques is (Accomp.) * Accomp against the Plaintiff, and this is certifed against him, the Allise was taken in point of Allise, and found for him, and the Plaintiff bare d', quod nota. Br. Difféisin, pl. 52. cites 28 Aff. 52.

5. A Man granted a Rent and died before Attornment, and after the Tenant paid the Rent to the Grantee, and he received it, and the Heir of the Grantee brought Allise against the Peror of the Rent, who counterpleaded the Allise by the Grant and Attornment, and it was found as above, and by Judgment the Plaintiff recover'd, and the Peror adjudg'd a Difféisin for the Counter-plea of the Allise without Title, quod nota. But if the Peror above had not counterpleaded the Allise he had not been a Difféisin by the Receipt of the Rent, where the Tenant paid him gratis, but there the Tenant is a Difféisin as it seems. Br. Difféisin, pl. 51. cites 40 Aff. 19.

(C. 3) Difféisin with Force. What is.

1. MOWING the Land, Fisling, Cutting &c. which cannot be done for Manu Opere are Difféisins with Force and Arms; Per Wilby, Brooke says, Quere, For they are clearly Difféisins, but Seque of Force. Br. Difféisin, pl. 33. cites 11 Aff. 25.

2. Lord and Tenant, and the Lord came to distrain for the Rent, and the Tenant would not suffer him to enter the House to distrain, but Interrupted him with Force, and therefore he was adjudg'd a Difféisin. Br. Difféisin, pl. 53. cites 29 Aff. 49.
3. A Dilefior made Diffeifin but not with Force, and by examining it appeared that the Diffeifor had ent Wood, but this was after his first Entry, and notwithstanding this he was adjudged a Diffeifor with Force and Arms, Quere. Br. Difeifin, pl. 52. citis 30 Aff. 50.

4. If a Man levies my Rent of my Tenant by Corision of Diftre's, this is a Diffeifin with Force and he shall go to Prifon, quod Nota Bene, and yet the Tenant might have thereof Trefpafs, for it is a double Tort. Br. Difeifin, pl. 62. citis 43 Aff. 9.

5. Two may be Diffeifors, and the one with Force, and the other not, As if I command one to make a Diffeifin and he makes a Difeifin with Force, and also if one enters with Force to my Use, and after I agree he is a Difieifor with Force and I am not fe, and those Cases will answer the Books of Allifes, for in those Cases they were present but in thefe not, and so I hold that he which is present when Force is made, is a Diffeifor with Force; Per Andlper. Gouldsb. 42. Pach. 29 Eliz. in Cafe of Dickey v. Spencer.

(D.) What Person may be a Difieifor.

A Feme Covert shall not be a Diffeifores by the Act of the
Baron. 7 C. 4. 7. b. * 12 C. 4. 9. b.
itcises S. C.
Fitzh. Diseifin, pl. 5. cites S. C. — F. N. B. 179. (G) S.P. — See (F.) pl. 5. &c.

br. Diseifin, pl. 45. citis 8 E. & C.

2. In Allife the Father made Feeffinent in Fee upon Condition and died, having two Daughters, the one of full Age and the other an Infant, and the oldEf thinking the Condition broken, which was not broken, entered claiming for her and her Sister who was an Infant; the of full Age is Diffeifors only, and the other who is an Infant not, for nothing veiled in her; Per Skipwith. Br. Ent' Cong. pl. 60. citis 26 Aff. 39.

3. If my Tenant pays his Rent to a Stranger without Coerion, he alone is Difieifor, and if by Coerion both are Difieifors. Br. Allise, pl. 455. (454) citis 23 H. 3. and Fitzh. Allise 439.

4. Allise by making of a Dutch by the Defendant where his Servants came in Aid, but they did not manure the Land, and yet they were Difieifors, Quod Nota. Br. Allise, pl. 449. (447) citis 8 E. 3. and Fitzh. Allise 145.

5. An Infant purchased, and one as his Guardian takes him and made Feeffinent and died; and the Feoffee was adjudged a Difieifor by the Statute of Westminster 2. cap. 25. For living either of them the said Writ shall hold Place, and therefore the taking of the Infant only as Guardian is no Difieifin, Quod Nota, by Judgment. Br. Allise, pl. 449. citis 8 E. 3.

6. A man recovered against him who had nothing, and intended B. and one C. deliver'd Seifin, and the Allise was brought against B. and C. and the Plaintiff recovered, the Feoffor not being named; and so fee the Attorney who deliver'd Seifin was a Difieifor. Br. Diseifin, pl. 27. citis 10 Aff. 22.

br. Diseifin, pl. 52. citis 8 E. 3.

7. In Allise N. and A. his Feme were seised and leased to W. and his Heirs for 17 Years, W. died within the Term, and P. his Son and Heir entered
Diffelion.

entered and levied a Fine to M. who rendered to P. and K. his Feme in S. C. Brooke Fee, and P. died, and N. died; the Term expired, and A. who durst not say, Br. the approach in the Life of N. offered now to enter, and K. disturbed him. Vide, that the said A. brought Affife against K. and recovered and Damages to his Diffelion the Time of the Disturbance; for K. was no Diffelior till the Disturbance; for the was Covert before, and P. was Diffelior alone till K. was Sole and made the Disturbance. Br. Affife, pl. 172. cites 11 Aff. 21.

8. A Villein made a Feoffment of his Land which he held in Villeinage, the Feoffe is no Diffelior; Per Cur. Br. Affife, pl. 454. cites 20 E. 3.

9. Affife against the Baron and Feme and W. N—W. made Default, and the Affife was awarded against him by Default, the Baron and Feme pleaded Record in Bar of Affife, which was denied, and they were adjourned, at which Day the Baron made Default, and the Feme was received notwithstanding the Statute of Westminster 2. cap. 25. Quod habeantur pro Diffelioribus ubique Recognitione Affife. And to see that Feme Covert by Reason of the Receipt is not bound by it to be a Diffelior; for it feems on to be the A of the Baron. Br. Affife, pl. 186. cites 13 Aff. 1.

10. In Affife a Man leased Land for Life, rendering Rent, and went beyond Sea, the Tenant for Life died, and T. N. cousfilled H. W. the Heir of the Lefer to enter, who entered and entered P. And the Lefer came, and would have entered, and P. disturbed him, and he brought Affife against P. and the Counseller, and omitted him who entered, and the Plaintiff recovered, for the Counseller is Diffelior, and so it is sufficient if Diffelior &c. be named in the Writ, quod Nota. Br. Affife, pl. 193. cites 14 Aff. 12.


11. In Affife, the Tenant reached Record and failed at the Day; he is a Diffelior by the Statute. Br. Affife, pl. 202. cites 15 Aff. 16.

12. In Affife, the Father made Feoffment in Fee upon Condition and died, having two Daughters, the one of full Age, and the other an Infant, and the Elders thinking the Condition broken, which was not broken, entered, claiming for her and her Sister who was an Infant, the of full Age is Diffelioris only, and the other who is an Infant not, for nothing is vested in her; Per Skipwith. Br. Ent. Cong. pl. 60. cites 26 Aff. 39.

13. If one enters claiming as Guardian of the Body and Land where he had no Right, and after devises over the Wardship, such Devisee is a Diffelior as well as his Grantor. Br. Diffelion, pl. 85. cites 28 Aff. 11. but adds quod mirum est! for that he was not the first who entered, but the Devisee of him.

14. Affife against an Infant who pleaded Record and failed at the Day, yet he may plead other Matter, and shall not be a Diffelior notwithstanding the Statute wills that they shall be taken for Diffeliores, &c. concord 33 E. 3. and there per Finch the Affise shall be at large; Quod quare. Br. Affise, pl. 460. cites 36 E. 3.

15. A has Right to recover in a Formedon against B. Tenant of the Land. A by Covin with C. causes C. to diffes B. to the Intent that C. should make Default in a Formedon against him, and that A. should recover by Default. A. recovers the Land against C. accordingly by this Covin, by Default, or Confession, A. enters. He is not remitted. B. enters, and A. quits him. Resolved by all the Sages in Parliament, that
that this Covin makes A. a Diffcrfor of his own Land. 3 Rep. 77. Farmer's Cafe. Coke has many Cases to this Effect. Praus & Dolus ne-
mini patrocinentur. Jenk. 46. pl. 88. cites 41 Aff. 28.
16. Leflee for Life is dissolved. He in the Rcratior acts the Diffcrfor.
The Diffcrfor brings an Affile against him; and it well lies during the
Life of Leflee for Life. Jenk. 52. pl. 99. cites 44 Aff. 35.
17. Affile against Baron and Farm; they pleaded in Bar and conferred
an Officer, and the Plaintiff traversed the Bar, and alter the Baron made
Default, and the Feme was receiv'd and pleaded the fame Plea, and the
Plaintiff traversed it, and the Affile found for the Plaintiff, and that he
was feized and dissolved, but that there is not any Diffcrfor named in
the Writ. Digg. find the Baron by his Plea confeis'd an Officer, and the
Feme has maintained the fame Plea, and fo Diffcrfor by Confeffion;
Per Tank. the Affile is not taken upon the Plea of the Baron, and when
the Feme was receiv'd the Baron was out of Court, and his Plea nothing
of Record to prejudice his Feme, and a Feme Covert cannot be said a
Diffcrfor by her Plea, & concord' Belke, & adjournat. Br. Affile,
pl. 24. cites 44 E. 3. 23.
18. If Tenant for Years, or Guardian, aliens for Life, the Remainder
over in Fee, he in Remainder who enters after Death of Tenant for Life is
a Diffcrfor as well as the Leflee for Life; for all is but one and the
19. If the King enters by Title, or without Title, the Party cannot en-
ter upon him, nor is he a Diffcrfor; and this seems to be, where he
enters without Record or Office this is without Title, but there he shall
see by Petition, nor the King in this Cafe is not a Diffcrfor. Br. Ent.
Cong. pl. 97. cites 3 E. 4. 24, 25.

Where the
King enters
by a void or
insufficient
Office, or
enters with-
out Title,
and grants
the Land by Patent, Affile lies against the Patentee; for the King cannot be a Diffcrfor,
and therefore the Patentee is Diffcrfor; for insufficient Office does not give Seifin to the King. Br.
Office devan &c. pl. 42. cites 7 E. 4. 16. and 22. —— Br. Diffcrfor, pl. 65. cites 7 E. 4. 17. S.C.
& S. P.

20. The King cannot be a Diffcrfor. Br. Office devan &c. pl. 42.
cites 7 E. 4. 16. and 22.
Br. Diffcrfor, pl. 15 cites
21 H. 7; 35.
S. P. per Fien-
neux.—
10 Mod.
125. Arg. says that the Authorities are many that a Monk may be a Diffcrfor; but that it particularly
appears to be so for, that a Writ of Affile lies against a Monk, and the Judgment in such
Writ is, Quod recuperet Seifinum, which supposes a Monk to have a Freehold.

22. If I diffcrfe one to the Use of the Dean and Chapter, they cannot
agree but by Writing. Br. Corporations, pl. 34. cites 14 H. 8.
2. 29.
23. The King cannot be dissolved, but all Intruders are but Trefpafiors
him, and if he will he may charge them by Actions of Account, as Bailiffs, yet he may if he will bring a Writ of Right of Advowson;
Per Hobart Ch. 1. Hob. 322. Patch. 17 Jac. in Cafe of Elvis v. York
(Archbiftop) & al.
25. If an Infant makes Letter of Attorney to make Livery and Seifin,
and the Attorney makes Livery accordingly, he is a Diffcrfor. Arg.
Godd. 387. in pl. 474. Patch. 3 Car.

(E)
Diffelisin.

(E) By Agreement.

1. If the Baron diffelises another to the Use of the Feme, the Br. Diffelisin, Feme is not a Diffelisors by this Act of the Baron. 12 C. 4. 9. b.

2. So it shall be though the Wife agrees to it during Coverture, for her Agreement is void. 12 C. 4. 9. b.

3. If one Man diffelises another to the Use of a Feme Covert, if the Feme agrees during the Coverture, yet she is not any Diffelisors, for her Agreement is void. 12 C. 4. 9. b.

4. So if the Baron agrees to the Diffelisin, this settles an Estate in the Feme; but the Feme shall not be a Diffelisors by the Agreement of the Baron. 12 C. 4. 9. b.

5. The same Lady if both agree, yet the Feme is not a Diffelisors. Contra, 15 C. 4. 15 b. admitted. 12 C. 4. 9. b.

6. But after the Death of the Baron, if the Feme agrees to the Br. Diffelisin the Feme shall be a Diffelisors. 12 C. 4. 9. b. Error. 12 C. 4. 9. b.

7. If a Man diffelises another to the Use of an Infant, yet the Jus Br. Diffelisin to the Use of an Infant, the Infant is not Diffelisors. Contra, 15 C. 4. 15 b. admitted. 12 C. 4. 9. b.

8. If the Bailiff of an Infant, who lies in a Cradle, diffelises a Man to the Use of the Infant, the Bailiff only is a Diffelisor; and if an Infant commands a Man to enter into another's Land which he does, he who enters only is Diffelisor. Br. Diffelisin, pl. 16. cites 2 All. 2.


10. If a Man grant a Suyuary with Condition of Payment, and Non-payment, and the Grantor tenders the Money according to the Condition, and the Grantee refutes it, and after the Tenant pays the Rent of the Lord to the Grantor, and the Grantor brings Allis, this shall be against the Tenant and the Grantor; For the Grantee is Tenant of the Rent, by the Receipt by him had after the Tender according to the Condition. Br. Diffelisin, pl. 82. cites 15 All. 22.
11. In Allise of Rent it was found that the Recons of the Diffels taken by the Plaintiff was made by a Stranger, to which Recons the Tenient named in the Allise agreed, and therefore the Allise well brought against him only, and here a Diffelor by the Agreement. Br. Diffelin, pl. 38. cites 15 Aff. 11.

12. Land descended to an Infant, and one J. N. entered, claiming Ward only, and devised it to W. N. and died, and W. N. entered and the Infant brought Allise against him, and he was awarded a Diffelor as well as his Granitor. Quod Mirum; For he was not the first who entered, but the Devisee of the Diffelor. Br. Diffelin, pl. 38. cites 28 Aff. 11.

13. If a Man does an Act in my Right where I have no Right, there if I agree thereto after, I am a Trespassor. And by the same Consequence in other Case Diffelor by Agreement, as it seems. Br. Diffelin, pl. 99. cites 38 Aff. 9.

14. Per omnes Prater Finchden; If Tenant for Term of Years aliens for Terms of Life or in Tail the Remainder ever, and the Tenant for Term of Life dies, or if the Tenant in Tail dies without Allise, and he in Remainder enters, there he in Remainder is a Diffelor as well as he who alien’d, and this by the Statute of Westminister 2 cap. 25. For the Entry of him in Remainder is an Agreement to the first Librty; For the Statute of Westminister 2 cap. 25. wills Quod Vivente altero eorum locum habet Prædictum breve. Br. Diffelin, pl. 86. cites 43 Aff. 45. & 59. And adds Note, That there are not so many of the Pleas in this Year.

15. If a Man enters into Land and makes Diffelor to my Ufe, and takes the Profits to my Ufe, this does not make me a Diffelor till I agree to it. Br. Agreement, pl. 10. cites 37 Aff. 8.

16. If I lease Land at Will, and my Tenant at Will enters into the Land adjoining, claiming to my Ufe, and pollowes the Soil, and cuts Wood, and cuts Oaks, by which the Tenant of the Franktenement thereof was the Possession, and brings Allise, and this Matter is found, but the Leffer has nothing of the Profit, but the Diffesor might have taken the Profits if he would, and that the Leffer did not command his Tenant so to do. But the Jury said, that they thought that forasmuch as the Leffer after he knew that his Tenant had to occupied, did not make him to make Greet to the Diffesor, that therefore the Leffer agreed to the Acts of his Leffer at Will. But per Cur. this is no Agreement, and therefore by Award the Leffer was no Diffelor; and from hence see clearly, that if there had been an Agreement, the Leffer by this had been a Diffelor, quod nota. Br. Diffelin, pl. 59. cites 37 Aff. 8.

16. If my Bailiff disfises another to my Ufe, and I agree to it after, I for this am a Diffessor; Per Clam. Br. Ejectione &c. pl. 8. cites 38 Aff. 9.

17. Where Diffelin is made by the one to the Ufe of another, this does not gain Franktenement to the other till the other agrees, and by Agreement he is a Diffelor, and Tenant of the Franktenement; but Agreement of the Baron shall not make the Feme to be Diffelor, but contra, if he agrees after the Death of her Husband. Br. Agreement, pl. 4. cites 12 E. 4. 9.

18. If one who has not Capacity as Feme Covert disfises another to the Ufe of her Baron, without his Affent, the Franktenement is not in him, and Affent after does not make a Diffelin in him, but contra of an Affent before. Br. Diffelin, pl. 15. cites 21 H. 7. 35. Per Fineax.

19. Upon Evidence it was held by Anderston, That if a Feme Covert ejells one, and that afterwards the Husband affents, that yet the Husband is not an Ejector; for an Ejection is made in an Infant, and has
F.) By what Persons, and to whom it may be made.

1. An Infant of the Age of 18 Years may be a Disfessior with Force by actual Entry. 12 H. 4. 22. b. Br. Affife, pl. 46. cites 5 H. 4. 16. S. C. — br. Agreement, pl. 9. cites S. C. — Br Disfessor, pl. 5 cites S. C.

2. An Infant may be a Disfessor by actual Entry. 3 H. 4. 17. Br. Affife, pl. 46. cites 5 H. 4. 16. S. C. — br. Agreement, pl. 9. cites S. C. — Br Disfessor, pl. 5 cites S. C.


4. But an Infant shall not be a Disfessor by Agreement to a Disfessor to his use. 3 H. 4. 17. 12 H. 4. 22. b. Br. Affife, pl. 46. cites S. C. — Br. Agreement, pl. 9. cites S. C. — Br Disfessor, pl. 5. cites S. C.

5. If the Baron and Feme enter into Land in the Right of the Feme, where the hath no Right, the Feme is not a Diffesifors. 9 H. 4. 6. See 135 & 5. Contra. 28 & 37 Curia, for this shall be taken to be the Act of the Husband only. S. P. Br. Diffesifin, pl. 67. cites 12 E. 4. 6. br. Agreement, pl. 9. cites S. C. — Fitzh. Diffesifin, pl. 3. cites S. C. but that is that the Writ abated by the not naming of the Feme. — Br. Affife, 25. (256) cites S. C. that where the Baron is dead after the Diffesifin is made by them, the Writ shall abide. For the Feme has now left the Name of the Feme, and in Affife there ought to be Diffesifin and Tenent. Quod Nota.

6. If a Man takes a Distress for Rent issuing out of the Land of a St. Diffesifin, Feme Covett, and the Baron and Feme make Relcous, they both are Diffesifors. 21 C. 4. 53. Curia.

Vide, that a Feme Covett may be Diffesifin, Quod Nota bene. — Ibid. pl. 72. (69) cites S. C. by Brian Ch. J. Quod suit conceleum.

7. If the Baron does not the Land of his Wife, the Feme being in Potiffen, and disagreeing to the Footment, claiming her first Estate, the Feme is a Diffesifors thereby. 21 C. 3. 6. b.

8. In Affife it was found that Land was given to Baron and Feme in Tail, the Baron went out of the Country, and the Feme intercessed O. who leased the Feme for Life, the Baron died, and the Feme died without a Diffesifin, and the Donor entered, and O. ousted him, and the Entry of the to the Baron, Donor adjudged lawful; For the Footment of the Feme was a Disfesifin to the Baron, and by the re-taking of Estate she was remitted and therefore the Reverson in the Donor, and his Entry lawful; Perter. Cur. Br Remitter, pl. 17. cites 9 Aff. 22.

Br. Diffesifin, pl. 34. cites S. C. says it is a Diffesifin. and therefore a void Footment, and therefore the Footer only is a Disfesifin, as it seems.
9. Asile against an Infant who pleaded Release of the Plaintiff in Bar, and it was admitted; and it was said there that by his Plea he shall not be a Defendant by Reason of his Infancy. Br. Dillefin, pl. 26. cites 10. Art. 1. & concordat the same Year, p. 13.
10. In Asile it was said, That before the Possession of the King none can make Dillefin to the Tenant of the Franktenement. But by the Reporter, if the King be seized in Alter Drei and a Man abates upon the Possession of the King, this is a Dillefin to the Tenant of the Franktenement; Quere. Br. Dillefin, pl. 56. cites 31 Art. 1.
11. A Man cannot gain Franktenement by Entry upon the King, nor upon the Farmer of the King, nor this cannot vest in him as a Dillefin nor by Dillefin. Br. Dillefin pl. 4. cites 2 H. 4. 7.
12. Where a Man abates upon the Possession of the King in Land which he has in Ward, yet the Franktenement remains in the Heir, by which he cannot defeat the Possession out of the King &c.; Per Gaffoign and Huls. Br. Dillefin, pl. 6. cites 8 H. 4. 17. & concordat H. 21 E. 3. fol. 1. 2. Brooke lays, from hence it seems that a Man cannot be a Dillefin so long as his Termor remains upon the Land.
13. Asile against divers, who pleaded null tort &c. The Asile found that all the Defendants were Dillefors, but that one of them made the Dillefin with Force. Harper thought the Verdict not good, but Dyer and Westen contra; for that the Force and Dillefin are two distinct Things; for Force is aided by the Statute, and is not incident to every Dillefin; for it should be inquired by the Asile if they, or any of them, had done the Dillefin with Force; and if Leesse for Years be re-outled with Force, and he in Reverion brings an Asile, and the Dillefin is found with Force, yet the Force is not punishable; for the Force was to the Leisse for Years. Mo. 53. pl. 155. Parch. 5 Eliz. Anon.
14. The Queen as Duchess of Lancaster cannot be a Dillefin; for tho' she be not seised in Jure Coronae, yet it is in Seizin of the Queen, and cannot be taken from her in respect of her Person; Resolved. Ow. 15. Parch. 35 Eliz. B. R. Rot. 41. Leigh's Cafe.

(F. 2) Dillefin by one, where it shall be said a Dillefin by others.

1. If two Sistors have Title of Action where their Entry is tolled, and the one enters for her and her Sister, this does not make the other to be a Dillefin. Br. Dillefin, pl. 76. (75.) cites 14 E. 3. 3. and 42. If A. diffuse one to the Use of B. who knows not of it, and B. allents to it, in this Cafe till the Agreement A. was Tenant of the Land, and after Agreement B. is Tenant of the Land, but both of them be Dillefors; or Omnis Rairhabite retrorehebitur & mandato equiparatur. Co. Lit. 180. b. (G) What
(G) What Person may be a Differior.

To the Use of another.

1. A Feme Covett cannot make a Differior to the Use of her Hus. Br. Differior, band. 8 D. 14. b. Curia (because though she gains an Es-
tate by her Entry, yet she has not power to dispose thereof to an-
other, being Covett, as she ought if she could make a Differior to
another use.) Contra. 21 H. 7. 35.

2. A Feme Covett cannot dispose a Man to the Use of a Stranger,
for the Cause aforesaid. Contra 21 H. 7. 35.

A Feme Covett cannot dispose another but the Use of another, for the herself cannot take any thing; but she may dispose one to the Use of another. Br. Differior, pl. 15. cites S. C.

3. But it seems a Monk may dispose a Man to the Use of another,
because he is not capable of an Estate to his own Use. 21 H. 7. 35.

4. A Corporation aggregate cannot make a Differior to the Use of
another. 8 D. 6. 14. b.

A Corporation aggregate differs one to the Use of another. Br. Corpo-
rations, pl. 24. cites S. C.

5. If a Corporation aggregate differs one to the Use of another
Man, they are Differiors in their natural Capacity. 8 D. 6. 14. b.

6. If a Man brings an Infant with him into the Lands of J. S. and
there claims the Lands to the Use of himself and the Infant, yet the
Infant is not any Differior, because he made no Claim. 26 Att.
59. per Stopwhig.

7. Trespass upon the 5 R. 2. The Defendant pleaded Bar by J. and
his Feme, and gave Colour. The Plaintiff said, that before the said
J. and his Feme any Thing had, W. S. was seized in Fee and infessed the
Plaintiff in Fee, who was seized, till by the Defendant disposed, to the Use
of J. and his Feme, to which Differior J. and his Feme agreed &c. Jenney
said, that now he ought to plead that all three disposed him by reason of
the Agreement; But Littleton J. said No; For there is a Diversity
where a Man is privy to the Differior at first, and where not; for where I
command a Man to enter unlawfully for me, both are Differiors, and so
it shall be pleaded; for there the Frankentment is in me immediately;
But in the Case of the Differior to the Use &c. the Frankentment is
not in Me, the Use before Agreement; Quod Nota. And so it seems that
he who agrees and was not privy before is Tenant only by his Agreement,
cites 15 E. 4. 15.

8. The Demandant and others in a Præcep did dispose the Tenant to the
Use of the others, and the Writ did not abate, for the Demandant was
a Differior, but gained no Tenancy in the Land, for that he was but a Co-
adjuter. Co. Litt. 182. b.
9. A Man disposes Tenant for Life to the Use of him in the Reversion, and after he in the Reversion agrees to the Disleifin; It is said, that he in the Reversion is Disleifin in Fee, for by the Disleifin made by the Stranger the Reversion was devested, which (they say) cannot be re-
vrested by the Agreement of him in the Reversion, for that it makes him a Wrong-deer, and therefore no Relation of an Estate by wrong can help him. Co. Litt. 180. b. 181. a.

(H) Who shall be said no Disleifin at the Election of the Tenant.

1. If a Man enters into the Land of another, claiming, as Guardian, where the Land is not held of him, or where he ought to be Guardian, though he is a Disleifin at the Election of the Deit, yet the Deit may elect him to be no Disleifin, 28 Al. 11. adjudged; for such Guardian after Entery granted the Ward over, and the Grantor entered, and he adjudged a Disleifin, and therefore the sick Guardian was no Disleifin by Election, for if he was a Disleifin, the second Guardian could be no Disleifin to him.

2. If Leflee at Will makes a Lease for Years, this is a Disleifin at the Election of the Lessor at Will that hath the Fee, for if he disposes of the Land as it no Disleifin had been, then it is no Disleifin. P. 9 Car. B. R. between Blunden and Byngh, adjudged in a Deit of Error per Curiam; contra Richardson, and the Judgment given to the contrary in Banco by the Court against Harby reversed accordingly. Inclinat. Dill. 7 Car. B. R. Rot. 1106. where after the Lease for Years made by the Leflee at Will, the Lef-
lee at Will and Lessor at Will joined in a Fine, and declared the Feis of a Fee, and adjudged good. This was for the Manor of Bichangly, which concerned the Earl of Nottingham.

3. And in the Argument of this Case, another Case was bouched to be adjudged between Peveril and Blackman accordingly. Tr. 15 5a. Rot. 132. B. R.

The Case was, A Man for Years made by Tenant at Sallerance upon a Mortgage, the Devise of the
the Mortgagee was adjudged good, and so no Difficult at his Election.

Money at the End of five Years, and by the Indenture it was agreed that the Mortgagee should enjoy and the Profit of the Land to the Interest. The Mortgagee made a Lease for six Years; the Leesee entered and furnished his instrument to the Mortgagee, at the Day the Money was not paid; the Mortgagee without any Entry devised the Term and died. Adjudged that the Devisee was good, which it could not be if the said Lease was a Difficult Nolens Volens to the Mortgagee. Jo. 316 Pack. 9 Car. B. R. cited per Cur. as adjudged in B. R. 5 or 15 Jac. Powleley v. Periman. [Blackman]—C. J. 659. p. 9. Hill. 20 Jac. B. R. the S. C. adjudged per rot. Cur. accordingly,—2 Roll Rep. 234. 241. 8 C. adjudged that the Devisee was good; but the Reporter says that no Reason was given.—Bridg. 15. Ponleley v. Blackman, S. C. after many Arguments adjudged accordingly. —Palm. 201. S. C. adjudged accordingly,—S. C. cited per Cur. C. 542. Pack. 9 Car. B. R.

5. If a Man enters into the Land of an Infant by his Agent, this is a Difficult to the Infant at his Election; for the Infant cannot prejudice himself by his Agent. 11 C. 3. Att. 87. adjudged.

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9. In Affife of Rent or Common, be it in Gros or Appendant, a Man is in Seilin and out upon Disturbance made at his Pleasure; for he may chuse to take for Diffeliein or not. Br. Seilin, pl. 17. cites 8 All. 4.

10. In Affife it was found that the Plaintiff at full Age was distilled, and afterwards came upon the Land, and put his Feet within, but took no Profits, and the other ousted him, and by Award he recovered Damages for the first Diffeliein; the Reason seems to be inasmuch as it is at the Election of the Plaintiff if he will take this Matter for a Seilin or not, and the Diffelief, who is a tortious Seilor, cannot plead it; for this was found by Verdict at Large. Br. Diffeliein, pl. 84. cites 26 All. 24.

Co. Litt. 53. a.

11. If one enters and claims as Guardian in Segrage, or by Nature; where he is not, the Infant may bring Affife, or charge him as Guardian, thereby admitting him to be in without Wrong. Cro. C. 503. cites 49 E. 3. 10. 40. E. 3. Accomp. 35. and 33 H. 6. 2.

12. If a Man receives his Rent of his Tenant, this is no Diffeliein to me, but at my Pleasure contra if I bring thereof Affife. Br. Diffeliein, pl. 100. cites 15 E. 4. 8.

S. C. cited
Jo. 317. per Cur.

13. If Leffor for Years surrenders his Estate to the Leffor, and yet continues in Possieion, and always after pays the Rent to the Leffor, this was held not to be any Diffeliein to the Leffor, but at his Pleasure. D. 62. a. pl. 53. Patch. 48 H. 8. Pennington v. Morfe.

14. The Leffor by his Bailiff discharged his Leffe at Will, and nevertheless he continues Possieion and pays his Rent; it is at Leffor's Election to take him to Diffeliein. Jo. 317. cites it as 2 Eliz. the Cafe of Hayman v. Hatch.

4 Le. 48. pl. 128. S. C. cited per Coke in the very fame Words.—And 124. pl. 184. Hill.

27 Eliz. Skipwith v. Conies, S. C. and states it that after the Father's Death the Son likewise entered Generally, and paid the Rent, and this was adjudged to be no Diffeliein.—The Words (in Tail) are misprinted, and should be (at Will) and so they are in Anderson.

Le. 127. pl. 169. S. C. in tontden Verbis.

15. Grandfather Tenant in Tail [at Will] Father and Son. The Grandfather died; The Father entered and paid the Rent to the Leffor, and died in Possieion; Adjudged that it was not any Defcent. For the Paying the Rent explains by what Title he entered, and so he shall not be a Diffeliein but at the Election of another; cited by Coke Arg. Le. 121. pl. 163. as adjudged in C. B. Skipwith's Cafe.

16. L. Tenant in Tail leased for Years to J. S. who assigned over to P. the Plaintiff's Father. L. died. W. his Son entered upon P. who re-enter'd. W. without other Words demised the Lands to P. for Life the Remainder to Joan his Wife for Life, the Remainder to P.'s Son for Life with Warranty, and a Lette of Attorney to re-enter and deliver Seilin accordingly. P. died before the Livery executed, and afterwards the Attorney made Livery to Joan. W. died. E. the Son and Heir of W. entered on Joan his Wife. Joan re-entered and leased to the Plaintiff, who upon Outler brought an Ejection. It was intitled that P. by his Entry was not a Diffeliein but at the Election of W. for when P. accepted such a Deed from W. it appears his Intent was not to enter as Diffelieor; and it is not found that P. had any Son and Heir at the Time of his Death, and if not then there was no Defcent, and there is no Diffeliein found, that P. expuls L. out of the Land; and Judgment was given against the Plaintiff. 4 Le. 48. pl. 126. Trim. 30 Eliz. Bl. R. Piers v. Leverfuch.

Crott E. 430. pl. 18. and Ibid. 58. pl. 15. Buckler v. Hardy. S. C. Graiite enters and leaves at Will to D. to whom A. the Grantor leaves a Fine Conc co. B. in the Remainder enters. Resolved that when C. enters
Difficitor

18. Copyholder or Lease for Years or at Will leases a Fine of his Lands &c. and the Lease is not bind for it is no Difficitor but at Election. 2 Rep. 55. b. Mich. 39 & 40 Eliz. 44 Eliz. in Canc. Farmer's Cafe. cited per Cur. Jo. 517.

19. Tenant at Will made a Lease from Year to Year. Per Dyer and If Lease at Manwood it is no Difficitor, and denied the Book of 12 E. 4. 12. but Harper J. e contra. 4 Le. 33 pl. 95. 15 Eliz. C. B. Anon. a Difficitor at the Election of him who has the Franktenement and not otherwife. Per Jones J. Lat.

20. If A. lease Land to B. referring a Rent &c. B. pays his Rent Coo. 323. to C. this is no Difficitor to A. unless he will. 2 Sid. 75. Patch. 1653. pl. 6. Patch. 6 Car. B. R. per Cur. S. P. in Cafe of Blunden v. Baugh.

21. Tenant in Tail of a Rent grants the same in Fee and dies. The Issue has his Election; If he will distrain he is in Possession; But if he brings Formetion he is out of Possession. Co. Lit. 57. b. cited per Archer J. Cart. 38.

22. Executor de son Tort of a Term is a Difficitor only at the Election of the Lord or the Reverentor. 2 Show. 458. Hill. 1 & 2 Jac. 2. B. R. Norwich (Mayor) v. Johnfon.

(1) Who shall be said a Difficitor or not.

A Man cannot qualify his own Wrong.

1. If a Difficitor makes a Lease for Years or at Will, and the Difficitor enters upon him, and after the Lease re-enters claiming his first Estate, yet he is a Difficitor, because he cannot qualify his own Tort. D. 3. 4 S. 134. 11.

2. If a Man enters into my Land, claiming a Lease for Years, he is a Difficitor. 9 P. 6. 21. 31. b.

3. So if a Man enters claiming as Guardian where he is not Guardian, he is a Difficitor. 9 P. 6. 31. b. 25 Att. 11. adjudged. 

Br. Difficitor pl. 85. (84) cites S. C. 2d.

Br. Affid. pl. 28a. (279) cites S. C. 4. So
4. So if a Man enters into Land, claiming as Tenant by Statute-Merchant when he has no Right to, he is a Disturber. 24 E. 3. 31. adjudged.

5. If Guardian in Chivalry assigns Dower to one, as the Wife of the Father of the Ward, where the was not his Wife, she is a Disturber to the Heir, though she enters as Tenant in Dower. 21 E. 3. 5.

6. If a Man leaves for Years to another and his Heirs, and after the Lessee dies, and his next Heir claiming the Land, enters into the Land; though this is but a Charter, so that the Heir hath no Right thereto, yet because he claims but the Term, he is no Disturber. 11 C. 3. 38. adjudged.

7. If a Copyholder leaves for Years by Licence of the Lord, and after enters upon the Lessee, and ousts him, this is a Disturber to the Lord of the Freehold. 9. 11 Ta. B.R. per Coke.

8. If the King Guardian continues the Possession after the full Age of the Heir, he does not gain the Fee thereby, because he hath Right to continue it till Liberty died. 7 D. 4. 43.

9. If the Guardian holds himself in after the full Age of the Heir without Cause, he is a Disturber. 7 D. 4. 43. but a Tenant at Sufferance, for which, vid. the Divisions under Title * Estate, 1 Rol. Abr. 861. D.

10. But if Lessee for Years holds over his Term, he is no Disturber. 7 D. 4. 43.

11. If Tenant for Years, or a Guardian makes a Lease for Life, the Remainder in Fee, and Tenant for Life enters, he is a Disturber, because he takes the first Livery; and so it is of him in the Remainder for Life or in Fee, if he enter. 2 Init. 413. Marg. cites 50 E. 3. 22.

12. A Man and a Woman Executors issued Execution of a Statute, and the Man granted his Estate to the Baron of the Feme, Co-executrix, and died. The Baron granted his Estate to another, who entered and was seized; and also the Baron and Feme sealed an Indenture of Grant of their Estates to another, and delivered to him the Obligation of the Statute, but not Seal, by which entered claiming such Estate only, yet he is a Disturber, by reason that the Grant is void, and a Disturber by his Claim nor otherwise cannot qualify his Estate. Br. Disturbin, pl. 78. cites 24 E. 3. 31. and 63.

13. Mayor and Commonalty cannot dispossess another unless to the Use of themselves; Per Cand. Contra it seems if one enters for them by Authority in Writing under their common Seal, where their Entry is not lawful. Br. Corporations, pl. 24. cites 8 H. 6. 1. 4.

14. If there be two Jointenants, and the Grantee of a Rent-charge disfrains for the Rent, and one of them makes Re cous, they are both Disturbers; for a Disturber for the Rent is a Demand in Law, and then the Nonpayment is a Denial and Disturber, but he that made the Re cous is the only Disturber with Force. Co. Litt. 161. b.

15. If a Man enters into Land of his own Wrongs, and takes the Profits, he cannot qualify his own Wrongs by saying he holds it at the Will of the Owner. Co. Litt. 271. a.
(K) Who shall be said a Diffelisor.

By Command.

1. If a Man commands J. S. to enter into certain Land in his Br. Diffelis or Name, if he hath Right thereto, or in the Name of his Cousin, pl. 57, cites S. C. for he made J. S. a Judge of his Right, and therefore it was his Folly to enter where the Commander had no Right; Quad. Nots. --- Br. Entry Congeable, pl. 72, cites S. C. --- Firz. Affile, p. 315, cites S. C. and J. S. who entered was awarded the Diffelisor.

2. So if a Man says to J. S. that where his Ancestor died seized of certain Land, he commands him to enter into it in his Name if his Ancestor died seized of a Fee, otherwise not; if J. S. enters in his Name, yet if the Ancestor of the Commander did not die seized of a Fee, J. S. only is the Diffelisor, and not he that commanded him, for his Command was conditional. 34. 12. adjudged.

3. If a Man commands J. S. to difsolve J. D. and he does it accordingly, the Commander is a Diffelisor as well as J. S. * 22. 12. adjudged.

4. [So] If a Man commands his Bailiff to make a Diffelis, and he does it accordingly, the Commander is a Diffelisor. 27. 30. adjudged.

5. If a Man counsell another to make a Diffelis, and does it accordingly, the Counsellor is a Diffelisor. 27. 30. adjudged.


6. If a Man makes a Lease for Years of the Land of another out of the Land, and the Leefe enters, the Leefe only is the Diffelisor, and not the Leefe. P. 10. 22. B. Contr. 23. P. 8. 27.

7. If Leefe at Will makes a Lease for Years, and the Leefe enters, the Leefe at Will is the Diffelisor, and not the Leefe for Years, for that otherwise the Leefe for Years would be void. P. 9. Car. B. R. between Blanden and Bapgh, in a Deed of Error upon a Judgment in Banco, restored per Curiam, prester Richardson, and the Judgment given in Banco by Richardson, then being Chief Justice there, and by the Court, prester Harvey, restored accordingly. Intract. Hill. 7. Car. B. R. Rot. 1106. This was for the Manor of Biechingh, which belonged to the Earl of Nottingham.

8. If Tenant at Will or Sufferance makes a Lease for Years, the Br. Diffelisor, Leefe at Will and Tenant at Sufferance are the Diffelisors, and not the Leefe for Years. 12. 4. 12. b. by all the Justices.

9. Affile against an Infant and others; The Diffelisor was found by F. N. B. Command of the Infant to his own Life, but he was not present, and the Infant was acquitted of the Diffelisor by Judgment, for he cannot consent, and because one came Vi & Arms to make the Diffelisor, all the others
10. Lord and Tenant by Rent-Service. The Lord disstrained. The Tenant commanded N. to make Reposes, who did so. The Assise is well brought against the Tenant only; for he is Tenant, and is Diffiefor by the Command, and is Diffiefor and Tenant named &c. Br. Difféisin, pl. 54. cites 29 All. 59.

11 If a Man says that he call diffisef J. N. to my Use, and I say that I am content, he is file Diffiefor, and this is no Command but a Sufferance. Br. Difféisin, pl. 15. cites 21 H. 7. 35.

12. If a Man diffisef a Stranger to the Use of W. N. by my Command it is a Tort in me. Per Pollard. Br. Difféisin, pl. 15. cites 21 H. 7. 35.

13. If A. leases the Land of J. N. to me for Years rendring Rent, and the Lettee enters and pays the Rent to the Leifor, the Leifor is a Diffiefor. Br. Difféisin, pl. 77. cites it as said for Law T. 25 H. 8. For this counterfoils a Command to enter, and he who commands is a Diffiefor, quod nota by his void Leafe.

(K. 2) Who is Diffiefor by Failer of Record pleaded.

1. 13 E. 1. cap. 25. If the Defendants fails to make good the Exception which he pleads, he shall be adjudic'd a Diffiefor without taking the Assise, and shall give to the Plaintiff double Damages, and shall suffer a Tears Imprisonment.

2. In Assise the Baron and Feme pleaded Record in Bar and fail'd at the Day; and the Feme was received, and was no Diffiefor by the Failer of the Record, notwithstanding the Statue of Westminister 2. cap. 25. Br. Difféisin, pl. 36. cites 13 All. 1.

3. In Assise if the Tenant vouch'd Record and fails at the Day, he is a Diffiefor without confessing the Assise by the Statue of Westminister 2. cap. 25. Br. Failer de Record, pl. 5. cites 15 All. 16.

4. And where a Man fails of his Record at the Day &c. he is not excus'd to say that the Justices before whom the Record remains was in Wales, and cannot be found. But by fome he is excus'd to say that the Record remains in C. B. which Court was always after clos'd so that he could not have the Record; Quere. Br. Failer de Record, pl. 5. cites 15 All. 16.

5. In Mortdancefier the Tenant vouch'd, and the Demandant granted the Voucher, and the Voucher vouch'd Record and fail'd at the Day, and yet the Assise was not awarded of the Damages as in Assise of Novel Difféisin, but the Assise was at large upon the Points &c. For the Statue says, That by Failer in Assise habeantur pro Difféisinoribus &c. and no Diffiefor is in Assise of Mortdancefier. Br. Failer de Record, pl. 10. cites 29 All. 11.

6. If

and concord, 44 E. 3, ibi N. 67, quod nata.—Br. Failer de Record, pl. 13, cites S. C. and 33 E. 3. Accordingly, for Corporal Punishment shall not be against an Infant.

7. An Infant shall not be a Dissisor by Failer of Record, for corporal Punishment shall not be against an Infant. Br. Failer de Record, pl. 13, cites 36 E. 3, and 33 E. 3.

8. Attainit in Affise the Baron and Feme pleaded Record in Bank and fail'd at the Day, and the Baron made Default, and the Feme was rec'd, and therefore the Baron was adjudg'd a Dissisor by the Statute by the Failer of his Record; for Judgment cannot be given upon the Failer of the Record by reason of the Receipt. Br. Diileifin, pl. 72. cites 11 H. 4. 51.

(L) Diileifin by Officers.

1. If a Man recovers several Houses in an Affise, and after the Tenant revokes it in a Writ of Error, and a Writ of Execution issues to the Sheriff to put them in Possession of the Houses which he lost by the Judgment, though the Tenants are Strangers to the Recovery, and therefore ought to be suffered without a Suit Farces against them, yet if he does Execution putting them out of Possession by Force of this Writ, he shall not be any Dissisor, because he hath the direct Authority of the Court to do it. P. 15 Ja. B. R. per Curiam, resolved between Floyd and Betbel.

2. The same Law is in all Cases where the Execution is of a Judgment in which the Demand was of a Thing certain, if the Sheriff make Execution of this Thing, he is no Dissisor. P. 15 Ja. B. R. between Floyd and Betbel, resolved per Curiam.

3. But where the Execution is in the Generality without mentioning any Thing in particular, there the Sheriff ought to make Execution of the right Thing at his own Peril, otherwise he will be a Dissisor, for he is bound to take Notice thereof, and he hath no Warrant from the Court to make Execution but of the right Thing. P. 15 Ja. B. R. between Floyd and Betbel, resolved per Curiam. 6 R. 2. Aff. 71.

(M) In what Cases a Diileifin of what Part shall be a Diileifin of the Whole.

1. If a Man be dissis'd of Part of a Corody, this is not any Diileifin of the Whole. 22 D. 6. 10.

Dissifin, pl. 10, cites 15 E. 4. 2. S. P.—If the Corody be to take four Leaves and four Plaques of Drink every Week he is dissis'd of the Leaves; this is no Diileifin of the Drinks, but if dissis'd of two Leaves only; this is a Diileifin of all four. S Rep. 50. a, cites 22 H. 6. 9. b. and 12 Aff. 25.
Dilfeilin.

2. If a Man be dilfeis of Part of the Profits of an Office, this is not any Dilfeis of the whole Office. 22 H. 6. 10.

3. If a Man holds of me 20s. Rent, and dilfeis me of 10s. thereof, this is a Dilfeis of the whole. 22 H. 6. 10. b.

4. If a Man sold a Manor which extends into several Counties, and one dilfeis me of an Acre in one County, this is not any Dilfeis of the Residue of the Manor. 22 H. 6. 10. b.

5. If few Coparceners are, and the one takes more Profits than he ought to take, this is a Dilfeis to the others, though he relinquishes Part to the others; but if the others take this little Part it shall abate the Writ. Br. Dilfeis, pl. 18. cites 7 Eliz. 10.

6. Dilfeis of one Parcel of an Office, or of the Profits of an Office, is no Dilfeis of the whole. Br. Dilfeis, pl. 10. cites 22 H. 10. per Papton.

7. If one dilfeis me of Part of a House, and I am in Possession of the rest of it, it is at my Election whether I will admit myself out of Possession of the House or not. Sty. 341. Mich. 1652. Cydall v. Spencer & al'.

(N) Where it is purged.

If the Isle in Tail enters after the Death of his Ancestor upon the Discontinuance within Age, and alies in Fee, he shall not have Formedon, but Dams fiit in fra atateun, because the Dilfeis is not purged by the Discontinuance. Br. Formedon, pl. 47. cites 7 Eliz. 4. 19.

2. If a Man leaves for Life, the Remainder over to another for Life, if he in Remainder dilfeis Tenant for Life, and after the Tenant for Life dies, he in Remainder is not now any Dilfeis for; by the Death of the Tenant of Life, he in Remainder is now seised by his Remainder, and the Fee revested to him in Reverlion; for there hein Remainder cannot enter after the Dilfeis, inasmuch as there is a Mene Remainder between them. Br. Dilfeis, pl. 74. cites 19 H. 6. 22.

3. If a Man dilfeis my Father, and I enter upon the Deffeis, and after my Father dies, now I shall retain against the Dilfeis, and yet the Dilfeis may have Action of Treliefs against me for my first Entry; for Affile lies against me in the Life of my Father; Per Brian and his Companions. Brooke says Quære inde; for Dilfeis cannot make Title. And so see that the Defcent of the Right after shall change his Matter. Br. Dilfeis, pl. 90. cites 21 E. 4. 78.

4. If the Dilfeis leaves a Fine to a Stranger, the Dilfeis shall retain the Lands for ever; because the Dilfeis against his own Fine cannot claim; but by the Fine the Right is extinct, of which the Dilfeis shall take Advantage. Mo. 423. pl. 591. Patch. 37 Eliz. adjudged both in C. B. and in B. R. Buckler v. Harvey.

2 Rep. 55. a. 36. a.
Buckler's Case, S. C. and the 56th Point there it was ruled accordingly. — Gouldsb. 162. pl. 96. Hill. 42 Eliz. S. P. pur by Coke Attorney-General to the Court; but Popham and Gawdy thought that Dilfeis should not take Advantage of it. — Mor. 105. pl. 180. Reee and Crawley Justices held that this Fine shall ensue only by way of Estoppel, and Estopps bind only Privies to them, and not Strangers, and therefore the Dilfeis here shall not take
Difficelii.

If a Lease for Life be made, the Remainder for Life, the Remainder in Fee, and he in Remainder for Life goes the Tenant for Life, and then Tenant for Life dies, the Difficelii is purged, and he in the Remainder for Life has but an Estate for Life; and so to a Diversity, where the particular Estate for Life is precedent, and when subsistent. Co. Litt. 276. a.

By the Death of the Difficelii, that wrongful Fee is turned into a rightful Estate by Operation of Law. S. Mod. 55. Arg.

6. Rights, and the purging of wrongful Acts are always favoured in Ms. Rep. Law, and therefore where a Difficelii or Abatement is made, and the Difficelii brings his Ejeiction, and has a Verdict and Judgment for him, (but no Execution) yet an Entry being found as being in the Declaration of Ejection, that Entry will purge the Difficelii, and the caused in Possession afterwards is only as a Professor. See Hill. 12 Ann. B. R. Goodtitle v. Riden. The Case was as follows; viz. In Ejecl Firmæ the Plaintiff declared, that Brown Fortescue, 13 April Anno Regniæ nunc 9. did demise to the Plaintiff two Messuages, two Gardens &c. with Appurtenances in Churon in Com' Devon' habend' a 25 Die ejufd' Mensem Aprilis for ten Years then next following, that James Forrescue poeta fisticet eodem 13 April' Anno supradict' did demise the same Tenements (as above) &c. and also that Brown Forrescue poeta fisticet eodem 13 Die Aprilis Anno nono supradict' did demise the said Tenements (as above); that by Virtue thereof the Plaintiff entered, and was posseô'd until the Defendants ejected him &c. On Not Guilty pleaded, and upon a Trial at Devon Assizes, the Jury find a special Verdict, viz. they find that Leonard Pote was feised of, and in the Premisses with the Appurtenances in his Demesne, as of Fee, and being so feised 3 Martii, 16 Jac. r. by a certain Indenture made between him of the one Part; and Richard Gedge, and John Mayne, of the other Part, did incoff the said Richard and Jehan, habend' to them and their Heirs, to the Ufe of Leonard for his Life, and after his Death, then to the Ufe of 8. M. the Wife of John Pote, Son and Heir apparent of the said Leonard for the Term of her Life, and after the Decease of Leonard and M. to the Ufe of the said John Pote, and the Heirs Male of his Body lawfully begotten, or to be begotten, upon the Body of the said M. and for Default of such Ufe, to the Ufe of the Heirs Males of the Body of the said Leonard Pote, lawfully upon the Body of William his late Wife, deceased, and for Default of such Ufe to the Ufe of the right Heirs of the said Leonard Pote. That M. died in the Life-time of Leonard, and Leonard died feised of such Estate in the Premisses as aforefaid, after whole Death the said John Pote entered, and was feised in his Demesne as of Fee Tail, and had Ufe by M. Leonard his eldest Son, John his second Son, and Thomas his third Son; that John Pote the Father died feised &c. and that the Premisses descended to the said Leonard as the Son and Heir of the Body of the said John Pote the Father, begotten on the Body of M. whereupon Leonard the Son entered, and was feised in Fee Tail, Remainder as aforefaid; and being so feised the said Leonard the Son, 22 Die Martii 1689. died thereof seised without Ufe; that John the second Son died in the Life-time of the said Leonard also without Ufe. They find that Leonard the Son in his Life-time married one Eliz. Pine, who survived him; and immediately after his Death entered &c. into the Premisses, and during her Life continued the Possession thereof; that one John Truebody in
her Life-time, viz. Trin. 2 W. & M. in C. B. impleaded the said Eliz. (after the Death of her said Husband) & al' in a Ples of Trelpuis and Ejection (inter al') of the Premises upon the Demise of the said Thomas Pote, Nunnario verius eos inde (inter al') Modo & Forma fe- quen' videlicet Devou' f: Johannes Raw, Eliz. Pote, & al' attach' fuerunt ad respond' Johanni Truebody Gent' de placiouquare vi & Ar- mis quin' Ngeau' &c, que predic't' Tho. Pote dimilific' ad terminum &c. intraverunt & ipsum Johanne Truebody a firma sua predic't' ejecurunt &c. et unde idem Johannes Truebody &c. ad tunc quere- batur quod cum predic't' Tho. Pote 1 Aprilis 2 W. & M. &c. dimi- lif't' idem Johanne Truebody Tenementa predic't &c. habend' idem Johanni Truebody a 25 Die Martii tunc ult' praeterit' uique finem Termini quin' Annuorum ex tunc prox' sequet' plenat' complend' & fi- niend' virtute ejus quidem diminitionis predic't' Truebody in 'Tene- ment' predic't' &c. intravit & fut' inde Possessionat' & sic inde Possessi- onat' exerant' predic't' Johannes Rawe & al' poleta fellicet eodem r Die Aprilis Anno fecundo superdisc' apud Clauaton &c. Vi & Armitis &c. in Tenementa &c. cum Rententitialis quae predic't' Thomas Pote idem Johanni Pote in Forma predic't' dimilific' ad Terminum qui nong- dun praeterit intraverunt & ipsum Johanne Truebody a firma sue predic't' ejecurant' &c. Upon Not Guilty pleaded and Libe thereupon, In quo quidem placito talie' process' fut' in eodem Cur. &c. quod po- leta fell' Term Saneti Mich. A' anno fecundo superdisc' predic't' Johanne Trubody per Cons' ejudem Cur. recuperavit verius predicit' Johanne- num Raw Eliz. Pote & al' Termine finum predic't' (inter al') de &c in Tenement' predic't' cum Petini &c. ad tunc ventur' & super inde Johannes Trubody petit' breve dictorum usur Regis & Reginae de Habere tunc idem Johanne Truebody possession' termini futi predic't' ad tunc ventur' de &c in Tenement' predic't' &c. per ipsum fic ut pra- fectur recuperat' prot' prout per Record' & Process' &c. They fur- ther find, that alter the said Judgment, and before any Entry by the said Thomas Pote, or by the said John Truebody, a Fine was levied a Die Saneti Mich. in Tr's Septiman' Anno Regni W. & M. fecundo be- tween John Fortecue jun. Gen. Quer', and the said Tho. Pote De- fore of the said Premises &c. unde Placiou convention' fell' inter eos &c. fell' quod the said Tho. Pote did acknowledge the said Pre- milles to be the Right of the said John, ut illa qua idem Johannes ha- buit de Dono iphus Thomas &c. prot' &c. They further find, that the said Fine levied of the Premises was, and by a certain Indenture dated 1 Die Maii, Anno tertio W. & M. and made between the said Tho. Pote of the one Part, and the said John Fortecue of the other Part was, at the Time of the levying thereof, to have been had and levied to the Use of the said Thomas Pote and his Heirs for ever; that the said Thomas Pote afterwards, fell' 2 Die Junii, Anno 5 W. & M. entered upon the said Premises, and was thereof feiled &c. and being so feiled, he the same Day by an Indenture made between him of the one Part, and the said Brown Fortecue of the other Part, and then sealed and delivered by the said Thomas upon the said Premises &c. in Consideration of 500 l. paid to him by the said Brown Fortecue, did demife to the said Brown Fortecue the same Premises &c. habend' for the Term of 1000 Years, by Virtue whereof the said Brown Fortecue entered, and was posseffed' &c. They further find, that the said Eliz. Pote poleta fell' 26 Die Martii Anno Domini 1710 died, and that after her Death the said Anthony Ridton, and others, entered in- to the said Premises, and were thereof feiled &c. and that afterwards the said Brown Fortecue, by Virtue of the said Demise, entered into the Premises &c. and was thereof feiled &c. and being so posseffed' poleta fell' Die & Anno in Narr' inde mentionat', did demise to the said
said George Goodtitle the Prentiles &c. That the said George Good-
title by Virtue of the said Demife entered &c. and was pollic'd &c.
upon whole Possession the said Anthony & al' re-entered & ipsum Geor-
gium a firma sua pravicit &c. inde ejercunt prout idem Georgius in-
terius verius eos inde queritur sed utrum &c.

This special Verdict was argued Pauch. 12 Ann. by Serjeant Prat for the
Plaintift, and Serjeant Hooper for the Defendant; and in Mich.
Term following it was argued by Serjeant Pengelly for the Plaintift,
and by Serjeant Chelshire for the Defendant; and in Hill. Term fol-
lowing the Court of C. B. fail' Lord Trevor Ch. J. Blencowe, Tracy,
and Dorrer, gave Judgment for the Plaintift.

The Ch. J. delivered the Opinion of the Court as follows, viz. that
upon this special Verdict three Questions had been made and argued
at the Bar; viz. Whether, as this special Verdict was found, Elizabeth
Pote, who was the Wife of Leonard Pote, must be taken to have en-
tered by Diffelis or Abatement, and to have gained an Inheritance by
Wrong? Whether this Entry must imply a Diffelis or Entry by A-
batement, or must be supposed to be a wrongful Entry to him who had
the Right?

In the next Place, whether the Recovery in the Ejeclment that was
prosecuted by Thomas Pote against Elizabeth, (supposing there had been
a Diffelis) has not purged that Diffelis, and revetted the Estate in
Thomas? And

3dly, Admitting there was a Diffelis to him, and that that Diffelis
was not purged, then whether the Fine levied by him, who was diffel-
sed, to John Forreclue, who was a Stranger, and had nothing in the
Estate did not work by way of Extinguishment, and for the Benefit of the
Defendant, the Right of the Leifor of the Plaintift being extinguished
by the Fine?

These were the Questions argued at the Bar; now if either of them
be with the Plaintift, he has a good Title; for if there were no Diff-
elis, or if the Diffelis was purged, or if there was no Extinguishment
by the Fine, it is plain he had a good Title unless it had been
destroyed by these wrongful Acts.

That as to the first Question, whether it was a Diffelis or not, and
as to the third Question, whether the Fine levied by a Diffelis to a
Stranger, to the Use of him and his Heirs, did work by way of Ex-
tinguishment or not, the Court, as to either of them, would not de-
liver any Opinion at all; but upon the second Question the Court
were of an Opinion, that the Recovery in Ejeclment had purged the
Diffelis. When an Ejeclment is brought the Plaintift declares upon
an Entry; ift. He declares of a Demise or Lease made to him by his
Leifor, and then of an Entry by the Plaintift, and then that afterwards
the Defendant entered upon him, and ejected him; now all this is con-
fessed by the Rule of the Court, and this Confession is in Nature of an
Entoppel, that the Entry will purge the Diffelis, therefore after a Re-
cover in Ejeclment the Plaintift, or his Leifor, may bring an Action
for the meane Profits from the Time of that Entry. This is the con-
stant Practice, the Defendant has confessed the Entry; As to himself
he is concluded from denying it afterwards, he is accounted a Tre-
pallor, and the meane Profits shall be recovered against him.

There is nothing plainer in the Law, than that Rights, and the pur-
ging of wrongful Acts, are always savoured; therefore where the Plain-
tiff has recovered his Estate, and an Entry is found by the Jury that
Entry purges the Diffelis, and the Continuer in Possession afterwards
is but as a Trepallor, though there was a Diffelis it is now purged;

But whether there was a Diffelis or not, or whether Fine levied by a

Diflicein
Diffeifein.

Diffeifee will extinguish the Right, it is not necessary in this Case for the Court to give any Opinion upon at all; so the Plaintiff must have his Judgment. Judgment pro Quer' per tot. Cur.

(O) What Actions &c. Diffeifee may have against Strangers.

1. If the Tenant of the Land with Warranty be diffeised by a Stranger, he shall not have this Writ during this Diffeisin, because he is not Tenant of the Land during the Diffeisin, and the Writ supposeth him Tenant. 11 H. 3. Rot. 3. between Simun of Abendun and Reginald de Netebury agreed and adjudged. 2 Roll Warrantia Chartae (D) pl. 6.

2. So if a Stranger takes unjustly redditum Terræ, (that is, as it seems, takes the Profit of the Land, by which is intended a Diffeisin) from the Tenant, or of the Tenant, he shall not have this Writ; for he may have his Assise if he will. 11 H. 3. adjudged. 2 Roll Warrantia Chartae (D) pl. 7.

(P) What Charge of Diffeifor shall bind Diffeifee.

1. Youngest Son diffeises the Elder. In Assise or other Action it is found by false Oath against Plaintiff. Then the youngest grants a Rent-charge and dies without Issue. Before Attaint brought he must hold the Land charged; for he comes in now as Heir to his Brother. The Attaint is gone by his Death, and no Remitter contrary to the Recovery. D. 5. b. pl. 1. Trin. 24 H. 8.


(Q) Power of Diffeifee or Diffeifor as to Strangers.

1. If a Man is diffeised, and the Diffeifor makes Feoffment, and the Diffeifee re-enters, he shall have Action of Trespaß as well against the Diffeifer as against the Feoffee, and recover all his Damages, so that by divers Writs every one shall be charged for his Time of the Damages. Br. Trespaß, pl. 31. cites 33 H. 6. 46.

2. If Diffeifer takes the Beasts of a Stranger Damage-tenant upon the Land, and after Diffeifee re-enters, yet Diffeifer may justify the keeping the Beasts taken before the Re-entry till Agreement be made with him. Kelw. 40. pl. 3. Mich. 17 H. 7.
Diffeisin.

3. A Diffeisor makes a Lease for Life or Years, the Diffeissee shall not have Action of Trespaft Vi & Arms against him, because he comes in by Title. For this Fiction of Law that the Franktenement hath alwais been in the Diffeissee, shall not have Relation to make him that comes in by Title to be a Trespaftor Vi & Arms. Arg. Godb. 318. cites 11 Rep. 51. [Mich. 12 Jac.]

4. If a Man enters on another, and makes a Lease for Life, he gains a Reversion, and shall maintain an Action of Waffe. Arg. Godb. 318. pl. 417. Pach. 21 Jac. in Scacc.

(R) Writ and Pleadings.

1. If five Caparencers are, and the one takes more of the Profits than he ought to take, this is a Diffeisin to the others, though he relinquishes Part to the others, but if the others take this little Part it shall abate the Writ. Br. Diffeisin, pl. 18. cites 7 Aff. 10.

2. In Affile if Diffeisor named in the Writ comes in proper Person be may plead in Abatement of the Writ. Br. Diffeisin, pl. 20. cites 8 Aff. 2.

3. In Mortdancefeft of Rent, the Pernor of the Rent was not suffered to plead Hors de fon Lee, and therefore it seems that this is only for the Tertenant. Br. Diffeisin, pl. 80. cites 12 Aff. 38—but it seems 2 H. 6. 1. That Stranger to the Anwser shall plead this Plea well, but there he had Interest in the Land, contra of Pernor. Br. Diffeisin, pl. 80.

4. A Diffeisor shall not plead Recovery in Abatement of the Writ, neither by Conclusion nor Misnomer, nor otherwife, without flowing the Record immediately; for he cannot lose the Land by Failure of Record, as the Tenant may; therefore the Affile was awarded immediately; Quod Nota. Br. Affile, pl. 413. cites P. 20 E. 3.

5. The Diffeisor shall not plead Record in Abatennent of the Writ; nor by Conclusion; Per Skipwith. But per Grene, Diffeisor shall plead Misnomer of the Plaintiff, nor that the Feme Plaintiff is Covert Baron. But Shard e contra of the Coverture nor Record, unless he flows it immediately; for if the Record be deny'd he cannot lose the Land by Failure of the Record; Per Thorpe, Diffeisor may plead that he was Ante-fuits acquit of the Diffeisin. Br. Diffeisin, pl. 93. cites 20 E. 3. Fitzh. 120.

6. Precipe quod reddat against Pernor of the Rent, who said that he is Tenant of one House out of which &c. and W. N. not named, is Tenant of the other House out of which &c. Abique hoc that he is Pernor of any Rent of this House, and a good Plea, and the Demandant was compelled to maintain his Writ, for if there is not all the Tenants nor Pernors named, this is not well. Br. Diffeisin, pl. 78. cites 21 E. 3. 24.

7. Entry, supposing that the Tenant entered by W. and K. his Feve, and the Tenant said that the Feme's Name was J. Prift; and the Demandant was compelled to maintain his Writ that her Name was K. For known by the one Name, and the other is no Plea. Br. Enter en leper. pl. 16. cites 21 E. 3. 47, 48.

8. In Affile Diffeisor shall not plead Ancient Domeyne, nor any but the Tertenant, and he who takes upon him the Tenancy, Quod Nota. Br. Diffeisin. pl. 85. cites 21 Aff. 2.

9. in
9. In Affife Diffceifor shall not plead that the Plaintiff was sefied the Day of the Writ purchased; for this is for him to plead who takes upon him the Tenancy, Quod Nata, by Award. Br. Diffceifin, pl. 44. cites 26 Aff. 49.

10. Affife against B. and A. and B. pleaded to the Affife as Tenant of the Franktenement; and A. pleaded that the Plaintiff was sefied of the Franktenement the Day of the Writ purchased, and yet is, where the Plaintiff had claffed B. for Tenant before, and from hence it seems that the Diffceifor may plead this Plea to the Writ, Quod Nata. Br. Diffceifin, pl. 51. cites 28 Aff. 41.

11. In Affife it was said by Acue J. That among the Affifes Anno 28 is, that Bailiff nor Diffceifor cannot plead that there are two Vills of the fame Name in the fame County, and none without Addition. Br. Diffceifin, pl. 9.

12. In Affife the Bailiff of the Diffceifor pleaded, That the Plaintiff never had any Thing, and if Ecc. Null tort. Fith. said his Mafter had nothing in the Franktenement, therefore he shall not have the Plea, and the Opinion of the Court was with him, and therefore it seems that the Diffceifor shall not have the Plea. Br. Diffceifin, pl. 49. cites 28 Aff. 24.

13. It was the Opinion of the Court, that the Diffceifor shall not plead that there are two S.'s in the fame County fell. Great S. and little S. and none without Addition, Judgment of the Writ, nor other Plea, but Mifnomer of his proper Name, and so was the Opinion of the Court, and it seems that these Words (no other Plea) are intended no other Plea of Mifnomer, but Mifnomer of his proper Name. Br. Diffceifin, pl. 50. cites 28 Aff. 38.

14. In Affife the Tenant pleaded in Bar by Statute made by himself to the Plaintiff, who had the Land after in Execution by Esxen, which Plaintiff was after condemmed at the Sait of C. in 401 and this Land delivered in Execution by Eletit, as a Chattel, which Estate C. the Defendant has. The Plaintiff said that he had the Land in Execution by the Statute at supra, and was sefied till by the Defendant diffrefed, abique hoc that C. had ever any Thing in this Land, Prit, and the other e contra; and so fee that in Pleading by Tenant by Statute-Merchant he said that he was sefied, and yet it is only a Chattel. Br. Affife. pl. 348. cites 33 Aff. 4.

15. Diffceifor made Feoffment to a Feme Sole, who took Baron, and Writ of Entry was brought against both, supposing that the Feme entered by the Diffceifor, and not that the Baron and Feme entered by the Diffceifor, and the Writ awarded, Quod Nata, and it seems that the Writ had been good also if the Entry of both had been supported by the Diffceifor of this Part, contra of the Part of the Demandant, as in 5 H. 7. Br. Enter cu le per. pl. 34. cites 39 E. 3. 25.

16. Affife by Baron and Feme, quod Diffceifuir cos, the Defendant said that he himself was sefied in Fee, and leased to B. C. for Life, who aliened to the Feme and her first Baron; the Plaintiff made other Title, upon which they were at Issue out of the Point of Affife, viz. That the Leafe had Fee, and found for the Plaintiff, and that the Feme was sefied and diffrefed before the Epoftalls, and that the Baron never had Seilin, Hache demanded Judgment of the Writ, which is, Quod Diffceifuir cos, where the Baron was not sefied, & non allocatur, but Seilin awarded to the Plaintiff, for an Onyer was confec'd by the Defendant in his Plea before, and therefore ought not to have inquired of the Seilin and Diffceifin, and so the Verdicit void. Br. Affife. pl. 369. cites 44 Aff. 6.

17. Entry in the Pott of Diffceifin to the Brother of the Demandant, the Tenant pleaded Feoffment of this same Brother to f. N. Que Easte be bar, Judgment is Alto, and held a good Bar; quod Mirum! for it seems Argumentative. Br. Enter cu le per. pl. 10. cites 2 H. 4. 19.
Diffellin.

18. Writ of Entry for Diffellin made to J. N. the Tenant pleaded Feoffment of this same J. N. made to another, Sue Estate he has, and held a good Bar, quod miritum! for it seems only Argumentative. Br. Bar, pl. 14. cites 2 H. 4. 19.

19. Feme covert is infessoed, Writ of Entry is brought, supposing the Entry to be by Baron and Feme, as Land cannot revert to the Feme covert but to the Baron also; but otherwife it shall be where the Feme enters and after takes Baron to say that he finds the Feme sold, for there is the Writ of Entry shall suppoze the Entry of the Feme only. Br. Enter en pl. 12. cites 7 H. 4. 17.

20. Pornor of the Profits shall not plead Ancient Demesne, nor Release Orig: of Right, Fine, Recovery, nor such like by Qua Etitate, as it seems, un- lefs in Special Cases; but he may plead all Actions, or traverses the * Diffellin, or the Pernancy of the Fights &c. Br. Diffellin, pl. 91. cites 1 H. 5. Fitzr. 381.

21. In Writ of Entry for Diffellin made to the Ancestor, the Writ was, Qua clamat effe jus et Hereditatum juss, by which the Writ was abated. Thel. Dig. 10. Lib. 10. cap. 14. S. l. cites Mich. 20 E. 2. Brieft 851. but cites to H. 6. contra.

22. In Trespass illue was tendered that J. N. Defendant did not diffelle the Plaintiff to the use of W. P. and the other e contra, and by Danby and Dayers, it is Negative Pregnant; but if he says that non Diffellin Motis & forma, it is good to all Intents. Br. Negativa &c. pl. 5. cites 33 H. 6. 37.

23. In Affife they were adjusted for Variance between the Writ and the Br. Affife, Patent, to Westminster, and there to H. such a Day, at which Day the pl. 14. cites Parties appeased, and the one Defendant took the Tenancy upon him, and pleaded in Bar, and the other said that the Plaintiff after the left Con- tinuance had entered into Peace of the Land put in View and now in Plain, and demanded Judgment of the Writ, and there it is agreed that the Diffellor shall have this Plea to the Writ. Br. Diffellin, pl. 1. cites 35. H. 6. 11. 12.

24. And it is said that he shall have every Plea which goes in Excuse of Br. Affise, Damages as this Plea does, and every Plea which goes in Bar and does not meddle with the Right of the Land, as Release of all Actions personal; Quod Nota, it is agreed that this is a good Bar in Affise, but he shall not plead Release of all the Right, for this goes to the Right of the Land. Br. Diffellin, pl. 1. cites 35 H. 6. 6.

25. But per Prior and Fincham, he may plead to the Writ, that at another Time the Plaintiff brought Writ of a higher Nature against him, and he may plead that no Tenant of the Frankenemer named in the Writ, and that the Plaintiff has nothing unless jointly with one J. N. not named in the Writ who is in full Life; for these Pleas do not go in Extin- guishment but in Excuse of Damages, and therefore by the Entry into Part the Affise is gone, and he cannot recover any Damages. And so the Entry into Part goes to all the Writ; for the Damages are entire, Quod Nota, by which the Plaintiff laid, that he did not enter, and the others e contra. Br. Diffellin, pl. 1. cites 35 H. 6. 11. 12. and lays see 14 H. 6. 101. in Fine, and 28 Aff. 41.

26. In Precipe quod reddat the Tenant said that J. S. was seized till by him diffelled before the Writ purchased, which J. S. has entered upon him pending the Writ; Judgment of the Writ and a good Plea. Br. Diffellin, 5 C.
feifin, pl. 101. cites 5 E. 4. 5. 6. and such a Plea was awarded good
Anno 15 E. 4. and so fee that for his Advantage to abate the Writ &c.
the Tenant may confess a Differfin to a Stranger. Br. Differfin, pl. 101.

As in Power the Tenant said that before the Writ purchased A. B. was seized in Fee till by this Tenant disaffixed, and that the 10th Day of
October A. re-entered, Judgment of the Writ, and a good Plea per to. Cur. And it is no Replication that
A entered by Covin; for his Entry was lawful, and a Man cannot do Right by Covin. Br. Brief, pl. 192. (bis), cites 15 E. 4. 4.

28. In Affife against Differfin and Tenant, the Differfin may plead to the Differfin, and in Bar, and in Excesse of the Tort, but he cannot meddle with the Land; for the Tenant only shall plead to the Right of the Tenancy. Br. Differfin, pl. 75. cites 13 H. 8. 14. Per Brudnel.
29. And in Affife against Pernor and Tenant the Tenant shall plead a Discharge of the Tenancy only; But the Pernor may plead to the Tort, and shall intitle himself to the Rent out of it if he can. Br. Differfin, pl. 75. cites 13 H. 8. 14. Per Brudnel.

(S) Pleadings. What Plea is a Confession of a Differfin.

1. I N Affise, they are at Affise upon Hors de fon Fee; the Seifin and Differfin shall not be inquired; For it is confessd implicativo by the Plea, quod nota bene. Br. Affise, pl. 429. cites 10 E. 3. 41.
2. In Affise, the Tenant pleaded a Deed in Bar, and waved it, there the Affise shall not inquire of the Differfin, but only of the Seifin; For he is Differfin by his Plea; Per Parninge. Br. Affise, pl. 416. cites M. 13 E. 3.
3. Release pleaded by the Defendant is a Confession of the Differfin, so that the Seifin and Differfin shall not be inquir'd. Br. Affise, pl. 417. cites 22 E. 3. 4.

(T) Entry in the Per &c. Pleadings.

1. E N T R Y brought by a Feene, in that the Tenant bad not Entry unless by the same Feene, and the Tenant said that fee and her Baron dined to bin, Judgment of the Writ and a good Plea, and she put to her Cui in Vita; For it was in Writ of Entry ad terminum qui praterit. It seems that she may enter if there be no Defect after the Discoveruton. Br. Entry en le Per, pl. 43. cites 6 E. 2. Itinere Cant.
2. If Writ of Entry be brought in the Post which may be within the Degrees it shall abate. So if it be brought in the Per, or in other Degree within the Degrees where it should be in the Post, this shall abate. Br. Enter en le per, pl. 39. cites Vet. N. B. Tit. Brief de Non compos mentis, and Brief de Entry dum fuit infra aetatem, and Fitzh. Tit. Brief 286. 438. and 440. and 17 E. 3.
3. Entry for Differfin against a Man and his Feene in the Quibus, the Feene not having Entry unless by R. who wrongfully &c. disaffixed his Father,
Diffelisin.

Father, and not supposing the Entry of the Baron, and yet the Writ awarded good, and if the Baron aliens and retakes to him and his Feme, yet this shall not change the Degrees; For the Feme is remitted. Br. Entr' en le Per, pl. 25. cites 39 El. 3. 25.

4. Entry fur Diffelisin of Rent, the Tenant made bar of Rent-Charge, and the Demandant made Title to the Rent-Service, and good per Cur. For it may be that he has both there, and brings the Action of the one, and there the Tenant shall have new Anwver, and this to the Writ if he will in this Case, and so he had there; For the Bar was not pleaded to this Rent-Service. Br. Entr' en le Per, pl. 35. cites 12 El. 4. 10. 11.

5. Writ of Entry against the Baron and Feme, the Writ shall be that the Feme had not Entry unles by N. &c. and not that the Baron and Feme had not Entry unles by N. &c. Br. Enter en le Per, pl. 36. cites 7 H. 7. 2.

6. Entry in the Poit, supposing that the Tenant had not Entry unles after the Diffelisin which f. 3. made to his Ancestor &c. And the Tenant said, That before that the Ancestor any Thing bad, T. was seised in Fee and leased to B. for Term of Life, and B. infessed N. by which the Lessor enter'd for Alienation to his Disinheritance and died seised, and the Land defend'd to the Tenant as Heir &c. and per tot. Cur. this is no Plea, because he does not traverse the Diffelisin alleg'd by J. S nor he does not conies nor avoid it; And per Vavilor in Writ of Entry the Diffelisin ought to be confessed and avoided or travers'd. But otherwise it is in Aff'fe; For there it is sufficient to plead Feoffment of a Stranger, and give Colour to the Plaintiff; Contra in Writ of Entry fur Diffelisin. Br. Entr' en le Poit, pl. 22. cites 15 H. 7. 16, 17.

7. In Writ of Entry in the Poit, the Tenant said that he was seised till by the Plaintiff difseised, upon which he entered, and a good Plea. And the same Law in Trespafs. Br. Enter en le Per, pl. 46. cites 16 H. 7. 4.

(U) Pleadings. Traverse in what Cases.

1. EN'TRY in the Per by which the Tenant had not Entry but by f. who seised the Demandant, the Tenant said that the Demandant infessed f. and no Plea withoutaying abjures that f. disfessed the Demandant; For Plea contrary to the Suppofal of the Writ is no Plea without traversing the Point of the Writ. Br. Entr' en le Per, pl. 15. cites 38 El. 3. 2.

2. If a Man is disfessed he may have Aff'fe or Writ of Entry in Nature of Aff'fe at his Pleasure. Br. Enter en le Poit, pl. 14. cites 9 H. 5. 9.

3. In Entry fur Diffelisin it is no Plea that the Plaintiff infessed him unle he traverses the Diffelisin. Br. Traverse per &c. pl. 299. cites 4 H. 6. 29.

4. In Trespafs the Defendant pleaded his Frankentenement at the Time &c. per quod &c. the Plaintiff said that before that the Defendant any Thing bad, P. was seised in Fee and infessed him, by which he was seised till the Defendant enter'd and did the Trespafs, and he freely re-enter'd, and because the Defendant acknowledg'd the Trespafs, Judgment &c. the Defendant said that f. N. was seised in Fee, and died seised and W. his Heir enter'd and died, and he as Heir to him, and flessed how &c. enter'd and
DilTeilin.

and of such Estates was seised at the Time of the Trespass &c. and held no Plea; For he has not travers'd the DilTeilin in the Replication, nor confessed and avoided it. Br. Traverse per &c. pl. 61. cites 7 H. 6. 33.

3. In Trespass the Defendant said that he was seised &c. till by A. dis- seised, who insoffed the Plaintiff upon whom the Defendant entered; of which Entry the Plaintiff has brought this Action, and the Plaintiff said that before the Defendant or the said A. any Thing had, W. was seised, and so conveyed the Defendant to the said A. and that the Defendant abated after the Death of the Ancestor of the said A. upon whom A. entered and insoffed the Plaintiff, and after the Defendant did the Trespass, of which he has brought his Action, and pray'd his Damages, and by the Opinion of the Court the Title is not good without traversing the DilTeilin alleg'd in the Bar. Br. Traverse per &c. pl. 13. cites 9 H. 6. 32.

6. For it is said there and the same Year, fol. 19. and 30. that saker DilTeilin is alleg'd by Supposed, as in Writ or Declaration, as in Affiff or Writ of Entry for DilTeilin, there it is sufficient to plead Matter of Bar as above, without traversing the DilTeilin; But where it is alleg'd in Bar, Title, or other Pleading, there it ought to be confessed and avoided or travers'd, quod nota, and in the Cafe above the Plaintiff has not done the one nor the other. Br. Ibid.

7. Trespass against R. who pleaded that his Franktenement &c. the Plaintiff said that before R. any Thing had, W. was seised and insoffed the Plaintiff, who was seised till by N. dissoffed, who insoffed the said R. upon whom the Plaintiff freely re-enter'd, and the Trespass usurp between the DilTeilin and the re-entry. to which the Defendant said, that E. was seised in Fee, and insoffed the said R. and no Plea without traversing the DilTeilin to the Plaintiff. Br. Traverse per &c. pl. 232. cites 21 H. 6. 5. 6.

8. Where the DilTeilin is alleg'd by Way Conveyance to the Title or Possession of the Plaintiff; it is not traversable, and especially where the Plaintiff and Defendant convey from one and the same Person. Arg. D. 365. b. 366. a. pl. 34. Mich. 21 & 22 Eliz. in Ld. Crumwell's Cafe, cites 21 and 30 H. 6. 2. and 5 E. 4. and 4 & 5 H. 7.

9. In Affiff, the Tenant may say that his Father was seised, and died seised, without traversing the DilTeilin suppos'd in the Writ or Plain. Br. Traverse per &c. pl. 279. cites 22 E. 4. 39.

10. Formedon against Perissue of the Profits of the Day of the Title ac- cru'd; Per Littleton the Statute does not give Action but where the Defendant is Tenant of the Franktenement the Day of the Action accrued, and where the Defendant takes the Profits the Day of the Writ purchased, and to the Defendant may traverse any of the Points; Contra in Affiff or Action founded upon DilTeilin, there he shall traverse the DilTeilin or the Prender of the Profits. Br. Traverse per &c. pl. 216. cites 4 E. 4. 38.

For more of DilTeilin in General, See Affiff, Discent, Entry and other proper Titles.

DilTresf.
Distress.

(A) Damage-Feasant. What Things may be taken Damage-Feasant.

2. So a Man may take a Ferret that another hath brought into his Warren and taken Coney with. 2 C. 2. Fitzh. Avowry 182.
3. If a Man brings Nets and Gins through my Warren I cannot take them out of his Hands. 7 C. 3. Avowry. 199.
4. If a Man does upon my Corn I cannot take his Hors Damage-Feasant. 7 C. 3. Avowry. 199.

5. Trespasses for taking a Grayhound with a Collar, the Defendant pleaded that the Dog was coursing a Hare in his Land, and thereupon he took him and led him away; upon Demurrer this was adjudged an ill Plea. Cro. J. 463. pl. 10. Hill. 15 Jac. B. R. Athill v. Corbett. Trespass for cutting the Plaintiff's Nets and Oars; the Defendant justified, for that he was lied in Fee of a several Fishery, and that the Plaintiff with others endeavoured to row on the Water, and with their Nets to catch his Fish; and thereupon to preserve his Fishing, he cut the Nets, and Oars &c. adjudged no good Plea, for he might have taken the Nets and Oars, and detained them as Damage-Feasant. Cro. Car. 228. pl. 5. Mich. 7 Car. B. R. Reynell v. Champenoon.
8. If ten Head of Cattle are doing Damage one cannot take one of them and keep it till he be satisfied for the whole Damage, but may bring Trespasses for the Rest. Per Holt Ch. J. 12 Mod. 665. Hill. 13 W. 3. in Cafe of Vaper v. Edwards.

(B) The Goods of whom may be taken Damage-Feasant.

1. If the Lord agits the Cattle of a Stranger in the Common of the Tenants where he himself hath Right to feed the Common, though he hath the Freehold, per a Tenant may take the Cattle Damage-Feasant. 30 C. 3. 27.
Distresses.

2. In Avovery it was held that where J. is amerced in a Leet for receiving of W. by a Year and a Day, who was not put in Decennary, the Lord cannot distrain J. but by his proper Beasts, and not by the Beasts of another in his Custody, by reason that the Offence arose upon the Person, contra where it arises by the Soil, as for Rent-Service or Damage-Feasant; note the Diversity, for it is good as it seems, but the Plaintiff palled over Gratis. Br. Distresses, pl. 3. cites 41 E. 3. 26.

3. Note, It was said that if the King grants a Rent out of his Manor, the Manor is not charged, but the Person by Petition, the Reason seems to be inasmuch as a Man cannot distrain upon the King, nor have Assise or other Action against him. Br. Charge, pl. 37. cites 13 E. 4. 5. 6.

4. Leffor cuts Wood, and puts it into his Cart, and leaves it on the Land for a Month, and then will carry it away; Leffor may distrub him, for he may distrain this Damage-Feasant for the Wrong to him; Per Doderidge; (N. B. In the Case in Judgment the Leffor had covenanted not to disturb the Leffor in felling or carrying away &c.) Palm. 504.

Hill, 3 Car. B. R. Hayward v. Fulcher.

5. The Cattle of a Stranger cannot be distrained unless they were Levant and Couchant; but it must come on the other Side to shew that they were not so; Per Keeling. Mod. 63. in pl. 6. Trin. 22 Car. 2. B. R.

(C) Who, in respect of his Estate, may take Cattle Damage-Feasant.

1. A Commoner may justify the taking of the Cattle of a Stranger upon the Land Damage-Feasant. 30 E. 3. 27.

2. If there be a Shack Common in a Town where every one knows his Part, but it lies in Common, yet no Commoner may avail the taking of Cattle Damage-Feasant in any Part of the Common but in that which is his own Part. Dibb. 8 Inc. B. Bederidge's Cattle, per Currain.

3. If a Man hath Common for ten Cattle, and he puts in more, the Surplusage above the ten may be taken Damage-Feasant. 46 E.

Be. Avovery, pl. 29. cites S. C. ——
The Landholders had Common for all Beasts levant and couchant upon their Estates; the Plaintiffs were both intitled to this Common, and the Plaintiff putting in more Cattle than were levant and couchant upon his Estate, the Defendant distrained them; and the Question was, Whether one Commoner might distrain another in this Case? It was agreed in this Case, that one Commoner might have an Action upon the Cattle against another that put in more than were levant and couchant, and that the Lord might in such Case distrain; and that where a Commoner was intitled to a Common for a certain Number of Cattle, as for ten or any other certain Number, there if he forcharged, another Commoner might distrain. It was likewise agreed, that if a Stranger, who has no Right of Common, put in Cattle, any Commoner might distrain; but this was said to be a Case not yet resolved, Whether one Commoner could distrain another for a Surcharge in the Case of Levancy and Couchancy; And to the Court took Time to consider till the next Term. Freem. Rep. 273. pl. 350. Pincip. 1298. C. B. Dixon v. James.

If a Man hath a Freehold in a Market-Place, and Corn is brought thither on the Market Day, and set down, he cannot justify the taking it there Damage-Feasant. Cro. Eliz. 75. pl. 34. Mich. 29 & 30 Eliz. B. R. The Mayor of Lauceston's Cattle.

(D) Distrets
(D) Distrefls Damage-Feasant. In what Cases it may be.

1. If a Man takes my Cattle and puts them into the Land of another Man, the Tenant of the Land may take the Cattle Damage-Feasant, though I, who was the Owner was not privy to the Cattle being Damage-Feasant, and he may keep them against me till Satisfaction of the Damages. Trin. 15 Jac. B. R. between Robinson and Walter, Per rotam Curiam.

2. If a Man comes to distress Damage-Feasant, and sees the Beasts Co. Litt. there, but the Owner drives them out, he cannot distress them Damage-Feasant, but is put to his Action of Trespass; for in such Case though otherwise in the Case of Rent Arrear the Beasts ought to be Damage-Feasant at the Time of the Distrefls; Per the Reporter in a Nota. 9 Rep. 22. a. cites 16 E. 4. io. b. and 2 E. 2. Avowry 180.

Defers brought by one named Rich, Hill. 6 R. 2. and abridged by Firth. tit. Defers, ol. 11 it is held that for Damage-Feasant the Party who had the View may pursue and take the Beasts in other Land &c.

Distrefls Damage-Feasant in the briefer Distrefls that is; for the Thing distress'd must be taken in the very act; for if they are once off, though on fresh Perquisites, you cannot take them; Per Holt Ch. J. 12 Mod. 661. Hill. 15 W. 5. in Case of Vasher v. Edwards.

3. Trespass against A. who justified for Distrefls for his Lord; the Plaintiff said he had a Close adjoining in which Beasts were put, and they escaped and went into the other's Lands where Trespasses &c. and the Plaintiff freely pursed them, and before that he could take them out the Defendant took them, and yet the Distrefls is well taken, per Cur. notwithstanding the fresh Suit, and that they were not levant and couchant; for they were there without Authority. Br. Trespass, pl. 291. cites 7 Hil. 7. 1.

4. S. brought an Ox-kite to Leadenhall in London to sell it, and W. distresses it Damage-Feasant, and justifies as Servant to the Mayor to whom that Place appertained for the Incorporation; adjudged that the Distrefls is not lawful, for it was brought there to be sold for good public purposes, for Goods brought to a Market and exposed to Sale shall not be dispossessed. Noy. 19. Mich. 15 Jac. cites the Case of Sawyer v. Wilkinson.

5. A. suffered his Cattle to escape into B. his Neighbour's Ground, the Fences being out of Repair, which B. ought to make, and the Cattle being there levant and couchant, without any fresh Perquisite made were dispossessed for Rent due from B. and per Cur. the Distrefls is not lawful, for though the Fault was in B. for not repairing the Fences, yet it was A.'s Fault to suffer them to be levant and couchant there without making any fresh Perquisite after them; and Rent is due of common Right, and the Land is the Debtor, where the Landlord must resort for his Rent, and is not to enquire whose Cattle they are; or how they came there. 2 Roll Rep. 124. Mich. 17 Jac. B. R. Gill v. Gawen.

6. The Cattle of a Stranger cannot be dispossessed unless they were S. C. cited levant and couchant; but if must come on the other Side to shew that they were not so; Per Kelynge. Mod. 63. pl. 6. Trin. 22 Car. B. R. Appendix 1850. in Case of a

Distrefls for Rent. — 2 Keb. 669. pl. 34. S. C. and per Curiam prater Twidde, it must be aver'd Levant and Couchant, but it not being positively avered that the Plaintiff was a Stranger, the Court will never intend it to.

7. If
7. If Tenants are lying on a Common Damage, a Commoner may distrain them, but he cannot justify the burning them. 2 Jo. 193. Pacch. 34 Car. 2. B. R. Bromhall v. Norton.

(D. 2) For Rent. By whom. In respect of his Estate.

1. In Affile it was said for Law, that where Rent-Charge descends to a Daughter, and after the Land descends to the same Daughter and to her two Sisters, nothing is extinct but the third Part of the Rent, and yet the Daughter, who has the Rent, cannot distrain for the other two Parts of the Rent till Partition be made; for she is seised of the Land per my et per tout with the other two Sisters till Partition be made. Br. Distrefs, pl. 37. cites 34. Aff. 15.

2. In Scire Facias upon a Fine, it was agreed, where upon a Fine it is referred, That for not performing of Males by the Prior of B. (the Conuder) That the Justices of C. B. or Barons of the Exchequer might distrain, and in this Case the Conule and his Heirs might distrain. Br. Distrefs, pl. 20.

5. Where it is referred, That for Non-Feasance the Bailiff of the King shall distrain, yet the Bailiff of the Party may distrain. Br. Distrels, pl. 20.

4. Rent referred upon a Lease for Term of Life may be put in Execution by Elegit, and the Plaintiff who recovers may distrain for the Rent, and yet he has not the Reversion. Br. Distrefs, pl. 71. cites 13 H. 4.

5. Where a Man leases for 20 Years, and the Lease leaves ever for 10 Years rendering Rent, there if he grants the Rent to another Man he cannot distrain; because he has not the Reversion of the Term; Contrary if he had granted to him the Reversion and the Rent; Note the Diversity. Br. Distrefs, pl. 35. cites 2. E. 4. 11.

6. It was said, that if the King grants a Rent out of his Manor the Manor is not charged, but the Person by Petition, The Reason seems to be inasmuch as a Man cannot distrain upon the King, nor have Affile nor other Action against the King. Br. Charge, pl. 37. cites 13 E. 4. 5. 6.

7. Caution que Use of a Rent-Charge for Life executed by the Statute, may distrain as incident to the Estate, the Power of Distreis is transferred to him by the Statute. Mod. 223. pl. 12. Mich. 28 Car. 2. C. B. Bofecaven and Herle v. Cook.

8. If a Lease for Years be made referring Rent, and then Lesfor acknowledges a Statute which is extended. The Conule after the extent shall have a Debt or Distrain and awow for the Rent. Per Ventris J. 2 Vent. 328. cites Bror. tit. Statute Merchant 44. [cites Fitzh. Avowry. 137. 13 E. 4.] and Noy 74. But he that enters by a Power to hold for an Arrear of Rent shall not. Per Ventris J. 2 Vent. 328. Tin. 1 W. & M.

9. In Replevin the Defendant avowed, for that W. R. was seised of the Place where &c. in Fee, and being so seised he granted a Rent-Charge out thereof to W. W. for Life, that W. W. is dead, and that he (the Defendant) was his Executor, and distrained in the Place where, for so much Rent in Arrear, and due to his Tettator in his Life; but did not aver, that the Place where &c. was then in the Seilin of the Grantor of this Rent, or any other Person who claimed by, from, or under
under him; And upon a Demurrer to this Avowry Hold Ch. J. held, that the Executor might distrain either on the Grantor or any other Person, who comes in by or through him, and if the Plaintiff is not liable to the Distrefs, it is more natural for him to shew it in his Replication for his own Defence. Besides, the Statute which impowers Men to distrain, is a Remedial Law, and therefore ought to be expounded according to Equity, and extended accordingly, and the Words therein being (Executors of Tenants for Life) may ex vi Terminii include all Tenants for Life. 2 Silk. 136. pl. 2. Mich. & Hill. 8 W. 3. C. B. Howell v. Bell.

(D. 3) Who may distrain for Rent, in Respect of the Estate or the Person in Possession. Of the King &c.

1. The one Tenant in common may hold of the other, and the other may distrain and make Avowry, quod nota. Contra it seems between Coparceners and Jointenants before Partition, for Privity. Br. Distrefs, pl. 64. cites 31 E. 1. and Fitzh. Avowry. 241.

2. Where a Man has a Seignory, and this Land is seised into the Hands of the King by false Office, yet the Lord cannot distrain upon the Possession of the King, though the Office be False, this Office being in Force, quod nota; For it appears, tit. Trespass, that a Man may traverse for his Seignory. Br. Distrefs, pl. 76. cites 44 E. 3. 13.

3. A Man cannot distrain during the Possession of the King, he be intitled by Office or not, and if he be intitled by Office or Record, and grants the Land over, then he cannot distrain upon the Grantee. Contra where the King enters without Office or Record, and grants it over, there he may distrain the Patenter, but not upon the Possession of the King. Br. Distrefs, pl. 46. cites 4 E. 4. 22.

4. If the King is intitled to the Ward of the Heir of the Tenant, and the Land is charg'd with Rent-Charge, and the King commits it over during minoræ âètate, a Man cannot distrain upon the Possession of the King, nor upon the Possession of the Committee. Per Keble, quod non negatur. Br. Distrefs, pl. 38. cites 1 H. 7. 17.

5. If the King is intitled by Office to the Land out of which I have a Rent-Charge arising, there I cannot distrain upon the Possession of the King; But if the King grants the Land by Patent, there I may distrain; For I am not out of Possession of the Rent by the Office. But he who pretends Title to the Land is out of Possession thereof by the Office, nota Diversit, Br. Distrefs, pl. 27. cites 21 H. 7. 1.

6. The Land subject to a Rent-Charge is privileg'd, and discharge'd from Distrefs while it is in the Hands of the King, yet when it is transferred from his Possession, then the Distress there is revived; For Rent is not extinct by the Possession of the King of the Land out of which it issues, but the Distress is suspended for the Time; but when the King has entirely dismission himself of all the Interest in the Land, then the Land is subject to such Charges and Incumbrances as it was before; and this seemed by the better Opinion. Sav. 125. pl. 194. Mich. 32 & 33 Eliz. Beldens Case.
(E) Distrefs. In what Cases a Distrefs may be of common Right by a common Person. For what Thing.

FOR Rent-Services a Distress may be taken of Common Right. 46 C. 3. 15 b. 1 V. 4. 1 b. 3 D. 6. 21. S. P. and Co. Lit. 142. a. says that Littleton’s Meaning is, that the Lord may distrain for his Rent of Common Right, that is, by the Common Law, without any particular Referrvation or Provision of the Party.

Br. Distrefs, 2 If my Tenant holds Land to do Suit to my Hundred, I may distrain for this Suit if it be aearce. 8 P. 4. 15. Fitzh. Distrefs, pl. 41. cites 8 S. C.

3. For Aid to marry his Daughter, or make his Son a Knight, a Distress may be taken of Common Right. 39 C. 3. 34. though it was objected he ought to have a deed to the Sheriff to levy it.

4. The Lord may distrain for Relief, but if he dies his Executors cannot, but shall have an Action of Debt for it. D. 3. 4 P. 140. [pl.] 37. Co. 4. Osney 49. b.


5. For an Heriot-Service due after the Death of every Tenant, the Lord may distrain. 27 Lit. 24. admitted.

6. It was held, that for Suit-Service a Man may distrain, but not for Amercement for such Rent, but for Amercement for Suit-Rent; As at the Leer a Man may distrain; Note the Diversity, and it was for 2d. Br. Distrefs, pl. 15. cites 8 H. 4. 16.

7. For Rent refused upon Equality of Partition the Parcefer may distrain of Common Right. Br. Distrefs, pl. 92. cites 11 H. 4. 3.

8. If one holds of another by Honour, Fealty, and to s. Rent, who takes Wife and dies, his Wife shall have the third Part of the Rent as a Rent-Seek, and yet in Favour of Dots the said distrain for it. Kelw. 104. a. pl. 11. Caussa incerti temporis.

And yet he shall distrain for it; for seeing the Fealty is extinct, the Law reserves the Distress to the Rent; for, as it has been said in the like Case, seeing the Fealty is extinct, the Distress by Act in Law may be preferred, Quis quando Lex aliqua altera concitetur, concedere videtur & id sine uno ex ipso eesse non potest. Co. Lit. 153. a. —— S. P. for the Rent was Rent-Service before, and the Nature of the Rent is not changed by the Act of the Fealty. Kelw. 104. a. pl. 11. —— And therefore if a Man make a Lease for Life, referring a Rent, and binds himself in a Statute, and has the Rent extended and delivered to him, he shall distrain for the Rent, because he comes to it by Course of Law. Co. Lit. 153. a. —— But if a Rent-Service is made a Rent-Seek by the Grant of the Lord, the Grantee shall not distrain for it, for that the Distress remains in the Fealty. Co. Lit. 153. a.

10. It
Diftrefs.

10. It is a Maxim in Law, that no Diftrefs can be taken for any Services that are not put into Certainty, nor can be reduced to any Certainty. For id certum est quod certum reddi potest, for opertor quod certa res deductur in Judicium, and upon the Avowry Damages cannot be recovered for that which neither has, nor can be reduced to a Certainty, and yet in some Cases there may be a Certainty in Uncertainty: As a Man may hold of his Lord to hear all the Sheep departing within the Lord's Manor, and this is certain enough, albeit the Lord has sometimes a greater, and sometimes a lesser Number there, and yet this Uncertainty being referred to the Manor which is certain, the Lord may distrain for this Uncertainty; Et sic de similibus. Co. Litt. 96. a.

12. The Lord by Efcheat shall distrain for the Rent after the Death of the Tenant, though the Referrvation be to the Leffor and his Heirs, and both Assignees in Deed and in Law shall have the Rent, because the Rent being reserved of Inheritance to him and his Heirs is incident to the Reversion, and goes with the same. Co. Litt. 215. b.

13. If a Gift in Tait, Lease or Life of Leffes, or of another, or for Years be made rendring Rent, such Rent is Rent-Service, and the Leffor may distrain for it of Common Right. Litt. S. 214.

Rent, though the Lease shall not do Fealty, yet the Leffor shall distrain for the Rent of Common Right, Co. Litt. 142. b.

14. If upon a Partition between Coparencers a Rent is granted out of the Part of the Lands defended for Equality of Partition, the Grantee of such Common Right may distrain for this. Co. Litt. 169. b.

15. So if a Rent be assigned out of the Lands to a Woman for her Dower, Co. Litt. 169. b.

(E. 2) Taken. How. And where.

1. WHERE the Lord comes to distrain and fees the Beasts, and the Tenant perceiving it chases the Diftrefs &c. the Lord may pursue them, and distrain well enough; Quod Nota; and this is where the Lord fees the Beasts as above, and not otherwise; for if they are chased out before that he fees them, he cannot pursue and distrain; not inde. Br. Refcous, pl. 13. cites 21 H. 7. 40.

2. One cannot fling open Gates, or break down an Inclosure to take a Diftrefs. Co. Litt. 161. a.

3. Horfes yoked to a Plow may be severed for Damage-Feasnt; but per Manswood J. there is a Difference in the Books when the Diftrefs is for Rent-Service they cannot be severed, for they are an entire Diftress, and he claims no Interest in the Land, but only a Rent or Service with which the Land is charged; but in a Diftress for Damage-Feasnt the Party claims the Land itself, and he may have several Actions for Trefpafs for every Horse; for every one of them does Trefpafs. Cro. E. 7. pl. 6. Trin. 24 Eliz. B. R. Tunbridge's Cafe.

4. By 2 W. 5. C. M. 5. It is thought convenient that a Contable should be present, though the Act does not require it. Sir B. Shower's Observations on Stat. 2 W. & M. cap. 5.

5. If a Landlord comes into a House, and fees upon some Gods as a Diftress in the Name of all the Goods of the House, that will be a good Seizure.
Diftrefs.

Seizure of all; but he must remove them in convenient Time by common Law, and now since the Stat. of 2 W. & M. immediately, except it be Hay or Corn; Per Holt Ch. J. 6 Mod. 215. Trin. 3 Ann. B. R. in Cafe of Doid v. Monger.

6. Upon a Question about taking a Distrefs, it was held, that a Padlock put on a Barn's Door could not be opened by Force to take the Corn by Way of Distrefs; Per Ld. Ch. Justice Hardwick. Summer Allifes at Exeter, 1735.

(E. 3) Sold. In what Cases it may be.

1. The Lord of a Manor having a Leet may sell Distrefs taken for Offence presented in Leet as the King may, because it is the Court of the King, though it be in the Hands of a common Person, and he shall cause a strange Man to be sworn as the King may; for this is for the Advantage of the King. Br. Distrefs, pl. 39. cites 3 H. 7. 4. Per Fairfax J.

2. For Debt of the King Distrefs shall be sold within 40 Days. Br. Distrefs, pl. 71.

3. And per Fairfax, Lord of a Leet of the King may do the like; for this Pre-eminence goes with the Leet. Br. Distrefs, pl. 71. cites 3 H. 7. 4.

4. A Distrefs taken for an Amerciament in a Court Leet may be impounded or sold at the Pleasure of the Lord. 8 Rep. 41. a. Trin. 30 Eliz. C. B. in Gresley's Cafe.


7. A Farm leafed lay in two Hundreds, and the Constable of one Hundred only, in the Presence of the Constable of the other Hundred, swore the Appraisers and caused the Goods disintrained in both Hundreds to be sold; And per Cur. this is good; For the Distrefs is entire being made at one Time, and the Land contiguous; and then where such Lands are in two Counties, and the Goods are disintrained for one Entire Rent out of those Lands, this is one Distrefs, and by the 1 & 2 Ph. & M. 12. ought to be put into one Pound; and whereas it was urged, that the Appraisement must be made by the Officers of the Parish or Hundred, where the Distrefs is taken, it was said that the Continuing and Driving them to the Pound is a taking. 12 Mod. 76. Walker v. Rumbold. cites Lat. 60. [Pach. 1 Car.]

8. 2 W. & M. S. eff. 1. cap. 5. S. 2. Distrefses for Rent may be sold in six Days after the taking and Notice given if not reprieved; The Distraintor with the Sheriff, Under-Sheriff, or Constable of the Hundred, Parish, or Place, (who are required to affift therein) shall cause the Distrefses to be apprised.
Distraint.

placed by two Appraisers to be sworn, and then may sell for the best price, but Price towards satisfying the Rent Arrear, Charge of Distraint, Appraisement, and Sale, leaving the Overplus (if any be) for the Owner's Use, in the Hands of the Sheriff or Constable,

be computed from the Notice, not from the Distraint. If the Party replies, all this is to No Purpose; therefore before you write to make any Sale, learn the Sheriff's Office within the five Days. The Rent may be tendered after the five Days if no Appraisement, and a Tender after Appraisement prevents the Sale, for all is but to have the Rent, and no Property is in the Distraint, but only in the Vendee by Sale.

Any Persons may Appraisers that are of Age and capable of being Witnesses; but they must be sworn by the Sheriff or Constable for that Purpose. The Appraiser should be in Writing.

Suppose the Appraisement is higher than they can be sold for, may they sell them notwithstanding?

I think they may; for the Words are for the best Price can be gotten for the same; and it is not held, for what they were appraised at or above that Rate. But are they bound to carry them to Market or wait for a good Chapman? For the Words of the Act are (best Price that can be gotten) and no Time is limited for the Sale, and Charges are allowed for it. I do think it most advisable, if it can be, to get the Value settled by the Appraisers, and to sell immediately to the first Chapman; if not, to wait some little, reasonable and convenient Time, as a Week or the like. If you cannot get that Price, to sell to the highest Bidder. And the next convenient Way seems to be by giving Notice at the next Market or Parish Church, of the Day and Place, when and where the Goods shall be exposed to Sale; yet conceive, that after the Expiration of the five Days, and no Replevy, and an Appraisement, the Party may carry any portable marketable Goods and Commodities to the next Market, as Corn or the like, and there sell them, and he shall have his Charges allowed for such Carriage, if he had not have a Chapman at Home; I think it always advisable for the Buyers to have a Bill of Sale of all such Goods to distrain, appraised and sold, and the Sheriff or Constable Witenesses thereto. As to the Charges, I think the Expense in Removal of the Goods, Charges of Food for living Creatures, and moderate necessary Expenses for Tenants and Officers, will be allowed within the Meaning of this Clause.

For the Overplus (if any) to be left in the Sheriff or Constable's Hands, it is advisable for the Lendee to have a Receipt or other Writing tisifying the same.

For the Corn or Grain, the Law is the same as to Sale, only there it is not to be removed, if to the Damage of the Owner, otherwise it may. Sir Barth. Shower's Observations on this Statute, said to be printed from a MS. of his in the Hands of the Author of The compleat English Copyholder, fol. 162. 8vo.

* A Distraint sold at an appraised Price, shall be intended to have been sold at the best Price, since the Appraisers were sworn." - Ld. Raym. Rep. 55. Trin 7 W. 3. Walter v. Rumbal.

9. Lands lying in two Hundreds and two Counties contiguous, were de- nuised by one Lease rendering Rent; The Leoffer for Rent-Arrear dis- trained in both Hundreds, and the Distraits not being releived in five Days, the Conable of the Hundred in which the Distraits was taken, judged, Notice having been given to the Owner, administered the Oath upon Sale of the Goods in the other Hundred; and this was held good, it being an intire Distraint and not severable, and the Hundreds contiguous; fo that the Driving was lawful, and a Continuance of the first Taking 1 Salk. 247. pl. 1. Trin 7 W. 3. B. R. Walter v. Rumbal.

judged. —— Ld. Raym. 55. S C. held accordingly.

10. Distraits in a Lot of Common Right may be sold because it is a Court of Record, otherwise of Distraits' in Courts that are not of Record; Per Holt. 12 Mod. 330. Mich. 11 W. 3.

11. As to Commissiners of Sewers that is a special Power given them, and of Consequence ol that they may sell; And Callis takes great Pains to prove them a Court of Record, and though some Acts that order Things to be levied by Distraits have also the Words (and Sale) yet no necessary Inference can be made from that, for Statutes very often express Matters more plainly than they need for greater Caution; Per Holt. 12 Mod. 330. Mich. 11 W. 3.

12. Upon a Distraingas in a Court-Leet Pro Certo late the Officer cannot sell the Distraits of Common Right without a Custom; Per Cur. 1 Salk. 379. Mich. 1 Ann. B. R. in Case of The King v. Speed.

L 1

13. 11 Geo.
Diftrefs.

13. 11 Geo. 2. cap. 19. S. 1. Goods or Chattles conveyed away from the Preniiffes to prevent the distraint, them for Rent arrear, may be seized any where within 30 Days after, and sold, or otherwise disposed of, as if seized upon the Preniiffes for such Arrears.

Provided they are not sold bona fide, and for a valuable Consideration, before such Seizure, to any Person not party to the Fraud.

See the Statutes and several Pleas at (H).

1. 52 H. 3. cap. 4. N ONE shall cause any Diftrefs to be driven out of the County, and if any Neighbour do so to his Neighbour of his own Authority, and without Judgment, he shall be punished by Redemption. Nevertheless, if the Lord do so against his Tenant, he shall be but grievously punished by Amercement.

2. Trefpafs for distraint in one County and carrying into another; the Defendant was condemned upon Insufficiency of his Plea, and was condemned in Damages 10 l. taxed by the Court, and that the Defendant should be ransomed, and Capias awarded against him. Br. Trefpafs, pl. 255. cites 80 Aff. 38.

Br. Action for the Statute, pl. 41. cites S. C. and such as are contrary to the Statute of Westminster 1. cap. 16.

3. If a Man holds Land in Excess of a Manor in the County of Hereford, the Lord may distrain for his Services upon the Land, and bring the Diftrefs into the other County to the Manor, notwithstanding the Statute of Markbridge, cap. 3. Quod nullus subjectus sit in alieno, Br. Diftrefs, pl. 32. cites 1 H. 6. 3.

4. Trefpafs for distraint in the County of Wilts, and carrying into the County of Southampton contrary to the Statute of Markbridge, cap. 4. The Defendant laid, that the Place where is a Carve of Land which the Defendant holds of him in the County of Warwick, by which he distrained for the Rent arrear, and was going towards the County where the Manor is, and the Place where the Writ was brought was in the County of B. which is the Way to his Manor of B. in the County of Warwick &c. And per Hulfey he cannot justify, because the Statute is in the Negative. But per Jenney and Fairfax Justices he may justify; because the Statute speaks, Quod si vicin supervicin hoc fecerit puniarur per Redemptionem, &c Dominus super tenen'ium hoc fecerit tunc puniarur per graven mifericordiam, and therefore per Fairfax the Statute is intended of Diftress for Damage sefoant or Rent-charges, and not between Lord and Tenant. But quare inde; for the Statute is in the Negative as Hulsey reheard; for the Parties demurred in Law, and no Replevin can be made in this Case; for a Replevin shall be where the taking was. Br. Diftrefs, pl. 53. cites 22 E. 4. 11.

5. It was agreed, that if a Man puts the Diftrefs in his several Placeto, this is sufficient Pound-Overt; and by others, prater Fairfax, it he puts them in the several Parishes of another, this is a good Pound-Overt. Quære, for per Fairfax it shall be where the Plaintiff may give them Food without Damage to others, and after Ifue was taken if they died in Default of the Plaintiff, or in Default of the Defendant. Br. Diftrefs, pl. 41. cites 5 H. 7. 9.

6. If Lord or Lessor distrains, he cannot make a Pound in the same Land for this Diftrefs; Per all the Justices. But per Justiciaries, if he distrains for Damage sefoant in his proper Land, he may imound them
Distresses.

there them; Quod Nota. And per Keble, when a Man distrains his Tenant at Will for Rent, and makes a Pound in the same Land, this making of a Pound there is a Discharge of the Lease, Quod non negatur. Br. Distresses, pl. 20. (his) cites 21 H. 7. 39.

1 & 2. P. & M. cap. 12. S. 1. Distresses shall not be driven out of the Hundred ec. unless to a Pound-Overt in the same Shire, and contain three Miles of the Place where taken, and shall not be impounded in several Places, whereby the Owner shall be constrained to fine several Replevin, in Pain that every Person offending shall forfeit to the Party aggrieved 5 l. and treble Damages; and 5 l. for taking more than 4 d. for impounding one Distress.

County; and because a Hundred may be in divers Counties, and the Statute is, That the driving ought not to be more than three Miles out of the Hundred; and that it might be that the Driving was five Miles from the Place where the Distress was taken in another County, and yet not three Miles from the Hundred where the taking was, for that Cause it was not adjudged against the Party; and that was after Verdict in arrest of Judgment. Godsb. 11. pl. 15. Mich. 24 Eliz. C. B. Anon.

Distress was taken in the Hundred of Offley in Staffordshire, and the City of Lichfield was sometime within this Hundred, and by Letters Patents of 1 Martis, the City was made a County of itself, and he which took the Distress impounded them within a Pound in the County of the City of Lichfield; now whether he has incurred the Penalty of the statute, or not, was the Question? And because the Court had not a statute-Book there to see the Premisse, therefore they would give no Reolution. Anderson said the Meaning of the statute was, because the Baffle of the Hundred might make Deliverance; Also I think it is within the Compas of the Statute, because the City was a County; and if this be true, it was a County before this statute made. Godsb. 100. pl. 5. Mich. 50 & 51 Eliz. Beardsley v. Pilkington.

It was said by the Servants at Bar, that the Party may drive the Distress as far as he will within the same Hundred, but not above three Miles out of the Hundred. Godsb. 101. pl. 5. Mich. 30 & 51 Eliz. Beardsley v. Pilkington.

His Distress be of three Cattle, and they are drove about three Miles from the Place where taken, and each Beast has a distinct Owner, the Distraint shall forfeit three times 5 l. Per Holt Ch. J. 3 Salk. 52. in pl. 2. Pach. 5 W. & M. in B.R. other.

8. P. brought an Action of Debe against N. upon the Statute of 1 & Nay 52. 2 P. & M. cap. 12. for taking of a Distress in one County, and driving it another; and the Case was, that three Men distrained a Flock of Sheep, and them impounded in several Places, and if every of them shall forfeit 100 s. severally, or but all together 100 s. The Court was divided, for the Words of the Statute is, that every Person offending shall forfeit to the Party aggrieved for every such Offence 100 s. and treble Damages; but Waller thought that every one should forfeit 100 s. and he put a Difference between Peron and Party, for many Persons may make but one Party. Godalsb. 145. plat. 62. Hill. 43 Eliz. Partridge v. Naylor.


9. At Common Law a Man might have driven the Distresses into what County he would, which was mischievous for two Causes; 1. Because the Tenant was bound to give the beants (being impounded in an open Pound) Suisnesses, and being carried into another County, by common Intendment he could have no Knowledge where they were. Another Cause was, he could not know where to have a Replevin, but the Party was, before this Statute, driven to his Action upon his Caue; and albeit this Statute be in the Negative, yet if the Tenancy is in one Country, and the Manor in another Country, the Lord may drive the Distress which he takes in the Tenancy of his Manor in the other Country, for that the Tenant is out of both the said Mischiefs; for the Tenant by.
doing of Suit and Service to the Manor, by common Intendment may
know what is done there, and therefore may give his Beasts Sutte-
nance; and to know where to have his Replevy, the Bailiff of the Ma-
nor usally drives the Cattle distrained to the Pound of the Manor.
And this Act extends as well to Goods as to Beasts. 2 Init. 106.
10. By Prescription, if a Manor is one County, and is held of a Ma-
nor in another County, the Lord may drive a Distrefs out of the
County where it is taken; Arg. Palm. 544. Trin. 4 Car.

II. If Lands in Middlesex and Hampshire are denised by one Dean, 
refiring one intire Rent, the Distrefis taken in Middlesex cannot be chased
into Hampshire, because the Counties are not adjoining; Per Holt Ch.

12. Where land lies in several Counties, and one Distreis is taken for
an intire Rent of some Cattle in one County, and some in the other, the
Landlord may drive them all together, and impound them in either Coun-
y, (notwithstanding the Statue of Marlbridge, that a Distreis shall
not be driven out of the County) and the Officer of either County is
within the Meaning of the 1st Act of Parliament of 2 W. & M. Re-

(F) For an Amercement.

[In what Cases.]

S. C. cited 1. For Amercements in a Court-Lect for Offences done out of
Court a Distreis is incident of Common Right. Co. 8.
Grieffy 41. Doctor and Student 74. 9. 12 Ja. B. per Curiam,

11 Rep 45.
a. — Distreis is incident to

an Amercement in a Law-Day, by all the Justices in C B. Quad nota bene. Br. Distreis, pl. 44. cites 9
H 7. 22.

2. So for Amercements in a Court-Lect for Offences done in
Court a Distreis lies of Common Right. 10 P. 6. 7. 7 E. 2. and
8 E. 2. Anowry 211. 212. upon Default of Appearance.

3. So
Distreßs.

3. So for Fines in a Court a Distrees is incident of Common Right. 39 G. 3. 35. admitted.

4. But the Lord cannot distrain for an Amercement in a Court Brownl. 36. Baron without a Prescription. Dower and Student 47. Co. 11. S. P.


5. If the Lord of a Fair hath used to have certain Toll for every Sale of Cattle, and upon a Sale the Toll is not paid, the Lord may seize any of the Cattle so sold, and retain the Satisfac-


6. And in such Case, if a Man buys one Beast of one Man and another of another Man, and to many of several Men, and retires to pay Toll for any of them, the Lord may seize any of the Cattle so bought by him for all his Toll. D. 13 Fac. B. per Robert.

7. Replevin. Where the Lord of a Leet distrains for Amercement af-
sert'd in a Leet for Non-appearance at the Leet, the Tenant is bound to de Avena, take Notice for what Matter be distrains ; per Finch, but Wich contra, S. C.

and that it is sufficient for the Tenant to say, that in Case the Defen-
dant would have notified him to what was amerced, that he would have paid it. And per Finch, if the Tenant offers the Amercement, and the Lord refuses it, and after the Lord distrains, and he Tenant offers it again, and the Lord carries away the Distrees he does tort, and yet once it was offer'd; For he ought to offer it at the Time of the Taking &c. and then the Lord shall not have Return. And per Wich, if the Tenant comes after the Lord has distrain'd, and offers the Rent and the Lord retires, he shall not have Return. And to see that the Dist-

trees is only a Pledge for the Duty, which Duty when it is offer'd the Lord ought to deliver the Pledge, and after Issue was taken upon the Notice gratis. Br. Distrees, pl. 8. cites 45 E. 3. 9.

8. In Trespasses the Defendant justified for Distrees for Amercement, in Br. Trespas,

which A. the Owner was amerced, and the Issue was taken if the Property

at the Time of the Taking was in the Plaintiff or in A. who was amerced'.


Pleading at this Day.

9. It was held that a Man cannot distrain for Amercement for Rent-

Services, but for Amercement for Suit real as at the Leet, a Man may dis-

train; Note the Diversity, and it was for 2 d. Br. Distrees, pl. 15.

cites 8 H. 4. 16.

10 For Amercement in a Leet no Beasts shall be distrain'd but the proper Beasts of the Offender. Br. Distrees, pl. 59. cites 12 H. 7. 15.

11. But it a Man holds of a Leet to Cryer tempore Curie &c. there be may distrain any Beasts which are upon the Land, held per Fineux, quod

nota, and by the bell Opinion of the Court ; et concord' of the Dist-


12. It was agreed that a Man may prescribe for Amercement in a Leet,

to distrain and sell the Distrees, because it is Curia Regis, and the

Party derives his Interest from the King, quod nota. Br. Distrees, pl.

31. cites 21 H. 7. 40.

13. A Man may distrain and avow &c. for Rent due from a Copyholder to a Lord of a Manor; For this is a Duty to the Lord at the Common Law; and therefore an Answer may well be for it. Cro. Eliz. 524. pl. 51. Mich. 38 & 39 Eliz. E. R. Laughter v. Humfries.

M in 15. S. J.
15. So he may for an **Amercement of an Inhabitant imposed in a Court-Lee£ for refusing to take upon him the Office of a Constable.** 8 Rep. 38. and 41. Trin. 36. Eliz. C. B. Grele's Case.


17. **Distrefes taken for not doing Suit at the Leet may be sold, and taken in any Land within the Leet of the Beasts of him that made Default.** Jenk. 219. pl. 67.

18. Upon an Avowry for an Amerciament in a Court no Damages are to be recovered, though found for the Avowant. Jenk. 272. pl. 89.

19. A **reputed Manor will maintain an Avowry for an Amercement in a Court-Leet, though indeed he had no Manor in Truth.** Brownl. 170. Reynolds v. Oakley.

20. A **Distrefes is incident of Right to a Court-Lee£, but in a Court Baron Prefcription must be laid to disfrain.** Brownl. 36.

21. Upon a Prelemtent of a **Nulslance in a Court-Leet and a Pain affleed to remove it by such a Time it was reloved by All that the Lord may disftrain or have Action of *Debt* for such Pain or Amercement.** Cro. J. 382. pl. 19. Mich. 13. Jac. B. R. Pratt v. Stearn.

22. A **Custion was laid for such a Township to send one to be sworn Constable at such a Leet, which not being done a Fine was set, and Distrefes taken for it.** Exception was taken, because no Custion was alleged to warrant the Distrefes; For though of Common Right a Distrefes may be taken for a Fine in a Court-Leet, that is, where it is imposed for such Things as are of Common Right incident to its Jurisdiction, as for Contempts or the like; yet where Custion only enables them to set a Fine, it cannot be disfrained, for without Custion also, and cites 11 Co. **Godfrey's Case.** And to this Opinion did the Court incline; Sed Adjournat. Vent. 105. Mich. 22. Car. 2. B. R. Piferon v. Ridge.

23. If the Bailiff **disfrains an Amercement for a Nulslance upon such fit for eu from Exfrate of the Court.** 61. Mich. 1 W. & M. Matthews v. Cary. 

S P. or he

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24. In Replevin the Defendant made Constable as Bailiff to R. F. and said that the Place where is within S. and that S. is within the Manor of &c. and forces a Constable for the Jury to elect one of the Reliants to serve the Office of Constable for a Year, and said that they elected such a One to be Constable for the Year ensuing, and to take his Oath under a Penalty of 40s. and at the next Court it was presented that he did not take the Oath, and for this 40s. a Distrefs was taken &c. And the Plaintiff demurred to this Avowry, that here is a Duty laid to be by Custum, and it is not like to a Fine or Amercement, and therefore the Party ought likewise to enable himself by Custum to distrain for it, otherwise no Distres is incident of Common Right; For the Defect of a Constable to distrain, and for want of alleging of Notice, the Court held the Avowry to be ill; for this is a Duty by the Custum, and therefore the Remedy in such a Special Matter ought to be by Custum like wise. Skin. 635. pl. 4. Hill. 7 W. 3. B. R. Fletcher v. Ingram.

Mod. 127. S. C. and the Pleadings — Comb. 530. S. C. adjudg'd, Nisi &c. — 12 Mod. 87. S. C. the alleging that Notitia inibit is too general. Judgment for the Plaintiff — Ed. Raym. Rep. 69, 71. S. C. & S. P. for and that Reason, and because the Defendant did not allege a Custum for taking the Distres, it was adjudg'd for the Plaintiff.

(F. 2) Pleadings in Replevins, and Avowries for Amerciaments.

1. Custom cannot be that a Man abiding within the Leet shall Br. Leet, be excus'd of the Leet, by their coming before the Constable and Post-receve. Br. Customs, pl. 11. cites 2 H. 4. 16.

2. The Lord intituled himself to a Leet and a certain Sum Pro Cerro Leet by Means of his Hundred; it is a good Plea by him that he is seised of the Hundred without feozing the Deed; Per Periam and Rhodos 2d. But if the Hundred itself had been in Quest on, then he ought to shew a Deed; but here the Defendant intituled himself to a Leet, and a Leet-Fee by reason of the Hundred, it is sufficient for him to say that he is seised of the Hundred &c. although it be by Diffele; For if he has Possession, be it Jure vel Injuria he shall have all Things incident thereunto; For the Possession of the Hundred draws to him the Leet, and the Leet the Leet-Fee. 2 Le. 74. pl. 93. Trin. 29 Eliz. C. R. Lawnon v. Hare.

3. In Avowry on a Distres for an Amerciament in a Leet on a Vill Cerro E. 698. as for not making Tinnmer and Stocks, it must be alleged that the Pain is not paid to the Lord, or else it might be paid by another of the Vill before. No. 572, 574 pl. 759. Trin. 49 Eliz. Scruggs v. Stevenon.

4. In Replevin, the Defendant answered, for that he had a Leet for all the Inhabitants and Reliants within his Manor, and that the Plaintiff being an Inhabitant, was summoned to appear at the Leet on a certain Day, and for making Default he was overruled, for which he was disfrocked; The Plaintiff replied, that the Place where he dwelt was Parcel of a Manufray, and Land held in Frankhawke disfrock'd of all Secktor Services; then he pleads the Statute 31 H. 8. and the King's Grant to his Aucceors also pleno, liere & integre, as the Abbot held it before the Diffolution, and conveyed the Land to himself by Descent &c. The Avowant
Avowant demurred; and adjudged for the Plaintiff; for the Abbot was discharged ratione ordinis sui as all Churchmen, Women and Noblemen &c. were; and this Immunity Churchmen had at Common Law before the Statute of Marlbridge, in respect of their Permons, and therefore it shall not go to the Patentee of the King; but all other Permons above 12 Years old must do Suit, and it is called Suit Real, alias Regal, for though the Lord has the Benefit of the Court, yet it is the King’s Court, and the Service there done is Service to the King.


5. In Fregap the Defendant pleads a Special Jutification for an Amencement upon a Prebent for the Leet at the Court Leet of the Archbishops of Canterbury; adjudged for the Plaintiff, for the Defendant ought to show the Bounds and Limits of the Leet, and over what Permons the Leet has Jurisdiction, as to say de Residentibus, and Inhabitatoribus intra Manerium de Lambeth &c. for the Leet may extend into one Manor or within four or five Manors; or there may be several Leets within one Manor, and therefore he ought to plead the Bounds of his Leet certainly. Skinn. 392, 393. pl. 29. Mich. 5 W. & M. in B. R. George v. Lawley.

6. The Avowry of the Bailiff of a Manor for taking the Benfts as a Distress for Breach of a Bye-Law by the Plaintiff was held ill, because he did not plead a Precept of the Steward for taking the Distress, or levying the Pain; For he can no more do it ex officio than a Sheriff could execute a Judgment of B. R. without a Writ. Skinn. 587. Mich. 7 W. 3. B. R. Lamb v. Mills.


(G) For what Thing against common Right a Distress may be taken.
Distress.

Warrant under the Seal of the Bailiffs, Burgesses and Commonalty, which was the Name of the Corporation, and yet resolv'd good, because the Bailiffs could not have made a Warrant by other Seal.

2. If a Rent-Charge be granted, and that it be Areat, that the Grantee shall have a penal Sum; if the Penalty be forfeited the Grantee may distrain for it. 11 P. 4. 85. Qual. of this.

3. The Usage of the Town of Dale was, That when the Church was remiss the Inhabitants assembled themselves and taxed every one to a certain Sum, and if any taxed &c. did not pay they used to distrain such Persons; This by the Custom is allowable, and the Distress taken lawful, notwithstanding there is a Statute which says, that nulli liceat ex quaunque Caute facere Distriictiones extra Leodium sumum nisi a Domino Rege & Ministris suis Authoritatem habent; For the Statute does not take away such Custom. Arg. And. 71. in pl. 144. cites 44 E. 3.

4. If by Custom Time out of Mind there has been paid at a Leet certain Roll Revenue, called Certum Leve, the Lord without a special Custom 33 35 75, enabling him, cannot distrain for it, because being against common 76, 77 S.C. Right, and for the private Benefit of the Lord, as he must prescribe in the Principal, so he must prescribe in the Distresses. 11 Rep. 44. b. Mich. 12 Jac. Godfrey's Case.

5. A Rent-Charge was granted for Years with a Nomine Præm, and Clause of Distress it not paid at the Day, and the Rent is behind, and the Years incur, he cannot distrain for the Nomine Præm, for that depends upon the Rent, and the Distress is gone as to both of them; Per Cur. W. 77. Pach. 19 Jac. Tutter v. Fryer.

6. If there be a Custum within a Manor, that every free Tenant of the Lat. 37, 95, Manor, upon every Alienation of their Tenancy, shall pay so much by 135 S.C.— Way of Relief as their yearly Rents amount to, this is not properly a S.C.— Relief, but a Fine for the Alienation due by Custum, and therefore cannot be distrained for unless by Custum; otherwise it due by Tenure; And it being alleged that the Tenant held by 5 s. Rent, & per Relevium quando acciderit fecondum confuetudinem Manerii, it was held by three Judges against Dederidge, that it should be intended a Relief due by Tenure; for though it was first averred, that such Relief was due by Custum of the Manor, yet it is alter expressly alleged, that the Tenant held by Relief quando acciderit; Agreed per toto Curliam. Jo. 132. Trin. 2 Car. Hungerford v. Hayland.

7. Certum Leve cannot be distrained for unless there is a Custum to Roll Rep. warrant it. Jo. 133. Trin. 2 Car. B. K. per Cur. cites 11 Rep. 44. b. 75 S.C. Coke Ch. J. said that Certum Leve is against Common Right, therefore he doubted if it might be distrained for without a Prescription; and the Court seemed to incline to the same Intent. — Ibid. 76, 77. S. P. accordingly.

8. Grantee of a Rent-Charge levies a Fine to the Use of himself and Wife in Tail, yet he may distrain for Rent Arrear before the Time levied. 2 Jo. 2. Witherhead v. Harrifon.
(H) What Thing may be distrained.

1. A Distrefs for Rent or se. ought to be of a Thing of which there is a valuable Property in some Person, and for Dogs, Decr., Cattle, and such like which are Ferae Nature, they cannot be distrained. Co. Litt. 47.

Furnaces or Cauldrons fixed to the Freehold, or the Doors or Windows of an House or such like cannot be distrained. Co. Litt. 47. b.

A Man cannot cut the Corn growing and take it as a Distrefs. 18 C. 3. 4.

4. Such Things of which no Replevin lies because they cannot again be known from other Things cannot be distrained for Services, as Money out of a Bag. 22 C. 4. 50. b.


5. Dr Sheafs out of a Cart. Contra, 22 C. 4. 50. b.


7. Another Reason is given that Shocks cannot be distrained, for that by the Carriage there would be Damage by shedding. 22 C.


8. Grain or Barley cannot be distrained. 18 C. 3. 4. 20 P. 7.

8. b.

9. Nor after it is ground. 18 C. 3. 4.

10. But such Things of which a Replevin lies, and which can be known again, may be distrained. 22 C. 4. 50. b.


* Br. Distrefis, pl. 11. cites S. C. — Fizth. Distrefis, pl. 9. — See pl. 57.

12. Curia, Co. Litt. 47. a Cart of Corn. * 2 P. 4. 15.

13. Or a Horfe laden with a Load of Sheafs. 21 C. 4. 50. b.


16. A Man may distrain other Goods besides Cattle. 18 C. 3. 4.
17. A Man cannot disstrain Hay in a Barn for Services, because
this cannot be known again to have Deliverance in a Replevin.

Br. 4 Cat. 3 R. between Cooper and Pollard adjudged upon a
Deniurture; which Saccata Lin. 4 Cat. Nol. 457.

If it be in a Cart it may. Adjudged by four Justices. Ibid.

18. If a Man scales rendering Rent, when the Tithes are levied
from the Nine Parts, he cannot disstrain the Tithes for the Rent.
11 H. 4. 40. qr. Itt Brooke Diffres 81. It is said he shall
not, because it is the Thing sealed.

19. No Man can be distraint by the Utensils of his Trade. Co.
Litt. 47.

Though this is generally true, yet it
must be intended where there are Goods or other Beasts enough to be disstrained; Arg. 5 Mod. 361,
— If a Miller has two Milt-frames, the one in the Mill, and the other near it, the spare Stone
may be disstrained. Mo. 214, 215. Arg. cites 18 H. 8.

20. As the Axe of a Carpenter cannot be disstrained for Rent. Co.
Litt. 47.


22. If a Horse be laden with a Burden of Sheaves, the Horse only,
or the Sheaves only, may be disstrained for Services. (R. admitting
the Sheaves only may be disstrailed.) 22 C. 4. 50. b.

23. The Materials for making Cloth in a Weaver's Shop cannot be
disstrained. Co. Litt. 47.

24. Equitativa hoc est Equus Paltridus or an Horse that a Man
keeps for Journeys cannot be disstrained. Registrium Originale, 100
b. but it does not appear for what the Diffres was.

If a Man rides upon a Horse, this
shall not be disstrained,
but if he has another Horse upon which he sometimes rides 186, the spare Horse may be disstrained.

Arg. Mo. 214. — S. P. per Cur. obiter. Cro. E. 550. — A Saddle Horse is not disstrain-
able if there are other Goods sufficient or covenable. 2 Inst. 153.

25. An Horse upon which another rides cannot be disstrained.
Co. Litt. 47.

26. An Horse in a Smith's Shop cannot be disstrained for the Rent;
issuing out of the Shop; because this is for the Maintenance of
Trade or of the Common wealth. Co. Litt. 47. For he is there
by Authority of Law:


27. So an Horse cannot be disstrained in an Inn. Co. Litt. 47.

Br. Diffres,
cites 2 H. 7. 1. S. P. — 3 Bulk. 270. Arg. S. P.

28. So Sacks of Corn or Meal cannot be disstrained in a Mill. Br. Trespas,
pl. 281. cites 7 H. 7. 1.

S. P. — Ibid. pl. 42. cites S. C. (but misprinted for 7 H. 7. 10.) S. P.

29. So Sacks of Corn or Meal cannot be disstrained in a Market.
Co. Litt. 47.

30. So Cloth or Garments cannot be disstrained in a Taylor's Shop. * Br. Diffres
Co. Litt. 47. * to H. 7. 21.


31. Averia
Distress.

They are not privy. 31. Averia Caueae cannot be distrained. Co. Litt. 47.

In a case where there is no other Distress. Arg. 1 Salk. 239, cites 2 Litt. 113. —- By the Common Law the Plough or any Thing belonging to it was not distrainable so long as any other Distress might be taken. 2 Litt. 113. —- Co. Litt. 47 a. b. S. P. —- 5 Mod. 301. Arg. S. P.

Things which are in Custody. 32. Things distrainable Damage-Feasant cannot be distrained for Rent; because they are in Custody of Law. Co. Litt. 47.

In Trespafs. 33. 51 H. 3. Stat. 4. Neither Draught-Cattle nor Sheep shall be distrain (except for Damage-Feasant) so long as other Goods may be found to satisfy the Debt; Distresses shall be reasonable; The Sheriff shall notice all Debts received; and where the Sheriff charged himself, the Debtor shall be acquitted.

In the statute of 1547 the Plaintiff declared of taking Contra Formam Statutum. Generally unless he had a legal right to distrain, and non assiduitas; for this must come on the Part of the Defendant, viz. That no other reasonable Distress could be found, and that this is fillable; and Judgment with Costs was given for the Plaintiff. D. 273 a. pl 89. Titm. 12 Eliz.

Ibid. cites Mich. 18 E. 2. where it was held that this Action lies for the Tenant against the Lord, though the Tenant had come to Agreement with the Lord for the Rent for which the Distress de Averia Caueae was taken; and cites Pach, 17 H. 6 Rot. 95.

34. A Man may distrain Sheep if he cannot find other Distresses, tho' he might have found other Distresses before. Br. Distrefs, pl. 63. cites 29 E. 3. 16 and Fitzh. tit. Trespafs 230.

35. A Man seized of four Acres of Land has Issue a Son and a Daughter by one Venter, and two Daughters by another Venter, and granted 100s. out of his Land to his Son in Fee; the Son dies without Issue in the Life of his Father; the Father dies, the Land descents to the three Daughters; the eldest Daughter cannot distrain for the two Parts of the Rent till Partition be made. Br. Extinguishment, pl. 31. cites 34 Aff. 15.

36. A Man cannot distrain the Horse upon which a Man rides, quod not a bene. Br. Distrefs, pl. 60. cites 6 R. 2. and Fitzh. tit. Recessus 11.

37. Note. That a Hoggere fall of Corn may be distrain, contra of Grain in Tresps; per Hank and Thirl, quod nemo negavit. And note, that a General Receiver has no Authority to re-deliver Distresses without Command of his Master. Br. Distrefs, pl. 11. cites 2 H. 4. 15.

38. In Debt upon a Lease of Tithes levis by Distress is no Plea, per Skrene, because there is no Land in which he can distrain, and he cannot distrain by the Tithes feved; for this is the Thing leaved, contra Till. Br. Dette, pl 234. cites 11 H. 4. 40.

39. A Man may distrain the Beasts of his Tenant for Rent-Service, or for Rent referred upon a Lease &c. immediately when they are put into the Land, but not the Beasts of a Stranger before they are levant and consistet. Br. Distrefs, pl. 63. cites Lib. Fundamentum Legum.

40. A Garment at a Taylor's, or a Horse basing in an Inn or Horsery, shall not be distrained; for they are there by Authority. And the same Law elsewhere of Jacks of Grain at a Mill to grind, or Club at a Dekers. And per Bryan, the same Law of a Horse with a Farrier to be flint; But if he takes off the Saddle and lays it upon the Ground, the Lord may distrain the Saddle, and yet not the Horse. Br. Distrefs, pl. 56. cites 22 E. 4. 49.

41. Trespafs
41. Trespasses of taking of two Waggon of Corn; The Defendant justified as Distraint for Rent arrear upon the Seigniory, and the same therefore, there be ought as well to justify the taking the Waggon as the Corn, and otherwise it is ill; for per Solard clearly, a Man cannot distrain Sheep, nor Grain in Shocks, for the Damage of Hedging in Carriage, and a Man cannot distrain Money unless it were in a Bag sealed, for one Penny cannot be known from another, and then Replevin cannot be thereof made. Per Catesby, our Books are fo of Sheep unless they were in Waggon; but I think that a Man may distrain by Sheep; and Brian to the same Intent; for Wit of Rejeous lies thereof; and


43. As where a Man Loses his Sheep, or hails his Goods in Pledge, there may not be taken and in Execution, nor taken for Ow- lawry, nor for Distraint, nor such like, till the Labe be determined, or the Money paid for the Pledge. Br. Distreis, pl. 74. cites 22 E. 4. 17.

45. In Trespasses of taking a Mill-Stone; The Defendant justified for distraining it: for Suit &c. The Plaintiff said, that it was fixed to a great Piece of Timber, can eclusivel & affurcifin. Per Bradnall this is no Plea, but he shal fay that he had a Horfe-Mill in the Heufe, and annexed to the Houfe where &c. and that the Mill-Stone was Parcel of the Mill, by which he said fo; by which the Defendant said, that it was severed, and was in Picking; and yet it was held that it shall not be distrained. For yet it is Parcel of the Mill; for a Mill is for the Commonwealth; but if another Mill-Stone, which is none of them which are for grinding, be in the Heufe, this may be distrained.

Quere of the Ancilli of a Smith, it seems that this shall not be distrained, if it be that upon which the Smith used to work, notwithstanding that it be taken out of the Stock. Br. Distreis, pl. 23. cites 14 H. 8. 25.


47. It is a most Cafe, if a Man distrains for a just Cause, and im-points the Beasts, and alter the Lord of the Soul comes and distrains them for Rent again, if his Distraes be lawful, and it seems that it is not, inasmuch as they were distrained before, and were in Ostenda Legis. Br. Distreis, pl. 74. cites 4 E. 6.

48. Stiff suit to a Tayler, Fuller, Sheerman, Weaver, Miller &c. shall not be distrained; for those Artificers are for the Commonwealth. And the same Law elsewhere of a Horfe in a common Inn. But such Artificers may retain the Stuff for their Wages for their Labour. And the Holder of the Inn may retain the Horfe for his Victuals, viz. for the Horfe-Meat not paid. And Victuals nor Corn in Shocks cannot be distrained; Contra of Corn in a Waggon. Br. Distreis, pl. 73. cites Lib. Raill.

49. If a Knight of the Order of the Garter has several Garters, all but one may be distrained; Arg. Mo. 214. Mich. 27 & 28 Eliz.
An Horse which carries Corn to Market, and is put into a Friend's Houte for the Time, he is not driftrainable; Per Benamond and Owen, which Walmley denied. And where an Horse carries Corn to a Mill, and is tied at the Mill-Door during the Griending of the Corn, he shall not be driftrained; which Walmley agreed; because it is a common Place, and tor the Publick-Weal; but he said that they be not alike. Cro. E. 550. pl. 25. Hill. 39 Eliz. C. R in Cafe of Read v. Burley.

A driftrainable Diffre's is not of Aranner, or Veftel, or Apparel, or Jewels, so long as there are other sufficient or drifvable, nor of Sheep, Saddle-Horses, Beasts of the Plough, Poultry or Fish. 2 Inf. 133. cites Mirror, cap. 2 S. 16.

Goods under an Attachment cannot be driftrained. Vent. 221.

Upon this Act, if Corn be driftrained in the Field, the Party may carry it away, or eicd by its lying on the Ground it may spoil, and every taking and removing of the Corn out of the Place where it was, is a taking and carrying away in Law; Per Holt and Powell. For per Holt, the Act of Parliament is only that it be not removed to the Damage of the Owner, but kept where it shall be found till it be removed or sold.

54. 11 Geo. 2. cap. 19. S. 8. Enables Landlords, their Stewards, Bailiffs, Receivers, or other Persons impowert, to driftrain any Cattle or Stock of their Tenants feeding or depaturing upon any Common appendant or appurtenant, or any Ways belonging to all or any Part of the Premises demifed or helden; and also to take and seize all Sorts of Corn and Grains, Hops, Roots, Fruits, Iffe, or other Produc whatsoever, which shall be growing on any Part of the Estates so demifed or helden, as a Diffre's for the Arrears of Rent; and the same to cut, gather, make, cure, carry, and lay up, when ripe, in the Barns or other proper Place on the Premises so demifed or helden; and in Cafe there shall be no Barn or proper Place on the Premises so demifed or helden, then in any other Barn or proper Place which such Lessor or Landlord, Leffors or Landlords shall hire, or otherwife procure for that Purpofe, and as near as may be to the Premises, and in convenient Time to appraise, fell, or otherwise dispose of the fame, towards Satisfaction of the Rent for which such Diffre's shall have been taken, and of the Charges of such Diffre's, Appraisement, and Sale, in the fame Manner as other Goods and Chattel, may be felled, driftrained, and disposed of, and the Appraisement thereof to be taken when cut, gathered, cured, and made, and not before.

9. Tenants to have Notice of the Place where the Diffre's is lodged. And Diffre's of Corn &c. to cease if Rent be paid before it be cut.

(H. 2)
(H. 2) The Goods of whom may be distrained.

I. E S S E is oul av a Stranger, the Goods of the Distressor may be distrained for the Rent. Cro. J. 300. pl. 5. Palch. to Jac. B. R. Humphry v. Damion.

2. A driving Cattle to Lound to sell, by Agreement with the Master of an Inn puts them into a Ground at so much a Score for a Night; or, the Landlord seeing them asked whole they were, but contented to their taying there, and afterwards the same evening distrained them Relief de- for Rent due to him by the Master of the Inn; and adjudged for the Landlord in the Case of Fowkes v. Joice. 3 Lev. 260. Trin. 1 W. & M. in C. B.

Value of the Sheep, and to pay Cotts both in Equity and at Law; Per Commissioners, and they seemed to think that the Grounds lying to the Inn and used therewith, ought to have the same Privilege as the Inn, and Fullers Cattle not to be distrainable there. ——- On the Landlord's coming and seeing the Sheep he pretended to be angry, upon which the Owner offered to take out the Sheep, at which Time they were not distrainable for the Rent, having not been levant and couchant upon the Lands; so that the Court looked on the Content as a Fraud to get them to be left all Night, by which they became liable to the Distress; and the Plaintiff had his Costs both at Law and in Equity. Ch. Prec. 7. S. C.

3. A Rent-Charge was Arrear for 20 Years, and Cattle escaped out of S. C. cited the next Ground and were distrained. Ld. Nottingham relieved against it; cited 2 Vern. 131. Hill. 1690. as the Case of Brodon v. Pierce.

4. Where a Stranger's Beasts escape into the Land they may be distrained for Rent, though they have not been levant or couchant, provided that they are Trespassers. But if the Tenant of the Land is in Default in not repairing his Fences whereby the Beasts came into the Land, the Lessor cannot distrain such Beasts, though they have been levant and couchant, unless he have given Notice to the Owner, and he suffer them to remain there afterwards. But the Lord of the Fee, or Grantee of a Rent-Charge, in this Case may distrain such Beasts after, they have been levant and couchant, without giving Notice. 2 Lutw. 1573. 1577. Hill. 7 W. 3. Kimp v. Crewes.


(I) The Goods of whom may be distrained.

[And in what Place.]

If the Cattle of a Stranger escape into the Lands holden, and the Owner knowing it and suffers them to continue there after a Day or more, the Lord may distrain them for his Services. 27 C. 3. 80.

1. If a Cattle be to take them, it is otherwise. 2 Inst. 296. ——- S. R. admitted per Cur. Palm. 42. Mich. 17 Jac. B. R. Lucy's Cafe, and held that there was no Difference between Lessor and Leier, and the Cafe of Lord and Tenant. ——- S. C. cited by Powell J. 2 Lutw. 1580. Hill. 7 W. 3.
Diftrees.

And so he may though they are not levant and couchant. See (O) pl. 1.

In Case of an intendment the Lord may distrain Cattle, which came in by Elepse, though they were not levant and couchant, although it be in Default of the Fences, which the Tenant of the Land ought to maintain, because the Lord has nothing to do with the Replacing of the Fences. But in Case of Rent referred upon a Lease for Years the lessor cannot distrain such Cattle until they be levant and couchant; for if the lessor had had the Land in his own Hands he ought to have repaired the Fences; and when he puts in a lessor he ought by Covenant &c. to oblige him to repair. And therefore if in Case if the Law would allow the lessor to distrain the Cattle of a Stranger which come in by Elepse, before that they be levant and couchant, it would be in Effect to allow a Man to take Advantage of his own Wrong; therefore the Opinion of Cakes cannot be maintained generally, no Book warranting it unless 10 H. 7. 21. Therefore it must be intended if the Cattle come in by Default of the Owner of the Cattle, then they may be distrained before they be levant and couchant 7 H. 7. 1. 15 H. 7. 15, but if in Default of the Tenant of the Land, there they cannot be distrained until they have been levant and couchant; that is to say, for Rent upon Leases for Years. 15 H. 7. 17. And in such Case the lessor shall not take the Cattle before that he has given Notice to the Owner that they are upon the Land liable to his Diftrees. And if the Difterrain of Cattle in a Place liable to his Diftrees, and gives Notice to the Owner of the Cattle, and he does not come to take them away, they are now become distrainable. But in Case of Diftrees by the ancient seignory afforded the Owner may prevent the Diftrees by making fresh Particulars, 15 H. 7. 2 Roll. Rep. 124. Gill v. Gawan; per Powell J. But by Treby Ch. J. where the Cattle escape accidentally, there they are not distrainable, until they have been levant and couchant; but if they should escape by Default of their Owner, they are distrainable the first Minute. Ld. Rym. 168, 169. Hill. 5 & 9 W. 3. C. B. Kemp v. Crenes.

6. But the Cattle of a Stranger cannot be distrain'd by the Lord if they escape into the Land of the Tenant if they do no Trespaus to the Tenant. 22 E. 4. 49 b.

7. As the Tenant ought to inclose against the Highways by Pre-
scription, and in bringing my Cattle by the Map by Default of the Inclosure they escape into the Land of the Tenant, the Lord cannot distrain them. 20 E. 4. 49 b.

8. So it he ought to inclose by Precription against my Land, and my Cattle escape it. 22 E. 4. 49 b.

9. In these Cases after the Escape if my Cattle continue in the Land levant and couchant for 143, or 43, the more Days, or for half a Year, yet if I have no Notice thereof the Lord cannot distrain them. 22 E. 4. 49 b.

10. But otherwise it is if I have Notice and suffer them to continue there after. 22 E. 4. 49 b. 50.

11. My Goods cannot be distrain'd in a Market or Fair for the Premises to the Publick. 7 D. 7. 2.

Goods brought to Market and exposed to Sale shall not be distrain'd, because it is Pro Sano Publico. Nov. 19, 15 Jac. Trelaw v. Morris.

Br. Diftrees, pl. 52. cites 7 H. 7. 10. S. C.

13. And in these Cases the Lord cannot distress these Goods, though they continue there as long as I please; For they may retain them till Satisfaction. 22 E. 4. 39. b.

14. If I put my Horse to a Smith's to be shod, although he be there three or four Days before he is shod, yet the Lord cannot distress him. 22 E. 4. 50.

15. But if I come with my Horse to be shod, and there put the Saddle under the Right Side of the Horse, the Lord may distress the Saddle. 22 E. 4. 50.

16. If a Man rides to any Place, and there he is took Sick, upon which he remains there two or three Days, yet his Horse cannot be distress'd for Rent. 15 E. 2. Avowry 216.

17. [So] if a Man put his Horse into a Common Herbage per $ * * in covert for Eight & let remove yet this Horse cannot be distress'd for Rent there. 15 E. 2 Avowry 216. adjudg'd.

18. If the Distress is to be taken for any Cause touching the Soil, the Cattle of a Stranger may be distress'd, being upon the Land for Rent. 41 E. 3. 26. b.

S. C. & S. P. as where it is for Damage-Feesant, or for Rent-Services.

19. If an Heriot Service due after the Death of a Tenant be ef. loign'd, the Lord may distress the Cattle of any Stranger manuring upon the Land. 27 Ill. 24. adjudg'd.

20. The same Law if a Distress be to be taken for a Cause touching the Person, as for an Amercement in Frank-pledge the Cattle of a Stranger may be distress'd being upon the Land. 41 E. 3. 26. b. Vide Contra. 47 E. 3. 23.


22. But they may be distress'd if they are departured in the Place where it. 17 H. 4. 2.

23. Cattle which are in certain Land by way of Agiment may be distress'd for Rent. 18 E. 2. Avowry 219. admitted by the Judge.

24. If a Town be assails'd to 40 s. for the Expenses of the Knights of the Shire in Parliament this may be levied upon the Goods of one Man in the Town only. 11 H. 4. 2.

Fir. Avowry.

25. If there are several Jointenants and one grants a Rent-Charge out of the Land, the Grantee may distress the Cattle of the Grantor. 11 H. 6. 23. b. 28. 33.

94. (95) cites S. C. — Br. Avowry, pl. 42. cites S. C.

26. But he cannot distress the Cattle of the other Jointenants. 11 H. 6. 23. b. 28. 33.

Br. Avowry, pl. 68 cites S. C.

Br. Charge, pl. 39. cites S. C.

— Br. Charge, pl. 39. cites S. C.
27. But he may distrain the Cattle of a Stranger that come

28. If there be two Jointenants, and one leaves his Part to the other for 
Years, rendering Rent, and they occupy it accordingly, now the
Lessor may distrain his Cattle; for now he shall occupy the whole
without the Disturbance of the Lessor, and he cannot quit him. 
11 H. 6. 34. B. 18 C. B. between Sir Henry Snelgar and
Dolphin adjudged upon a Distress where the Lease was made to a
Stranger, who leased it to the other Jointenant.

29. If there be several Jointenants, and one grants a Rent-charged, 
and after leaves his Part to the other Jointenants at Will, and they
occupy the whole, yet their Cattle cannot be distrained for the
Rent, because the Lease at Will is void, inasmuch as a Jointenant
ought to occupy per se ter tute by the Law. 11 H. 6. 28. 34-

30. But admitting the Lease at Will to them to be good, then
their Cattle may be distrained for the Rent; because they come to
the third Part under the Charge, and they shall be in the same
Plight that the Grantor himself was. 11 H. 6. 28. a h.

31. If a leaves at Will and after grants a Rent, (admitting this
does not determine the Will, quod quare) the Grantor cannot di-
strain the Cattle of the Tenant at Will, because he was in before the
Charge, and therefore the Tenant of the Freehold cannot charge
him before the Will determined. 11 H. 6. 28. b.

32. If a Man be leased of a Rent-charged by Prescription issuing
out of the Manor of D. yet it seems he cannot distrain the Castle o
the Copyholders of the Manor, if they have not been used to be
distrained, because they are in by Prescription also, and so as high
as the Owner of the Rent. 12 B. 1. B. between Cannon and
Turner, dubitatur.

33. But in the said Castle it is clear if the Owner of the Rent has it
by Grant, or otherwise, and not by Prescription; yet the Castle of
the Copyholders * cannot be distrained for it. 12 B. 1. a.

34. If a Rent be granted out of two Parts of certain Land, and
after a Lease is made of the two Parts to A. and the other third Part
also comes to A. by another Lease of him that has the third Part, the
Castle of the Lessor may be taken for this Rent. Hobart's Reports
110 between Newman and Moor, where but one 3d Parr came to the
Lease of the two Parts.

35. If a Man puts his Beasts to 7. N. to pasture for 4 d. the Week,
and after gives Notice that he will not pasture them any longer, and the
Owner will not retake them, J. N. may distrain them for Damage fe-

36. In
Distresses.

36. In Writ of 

37. Where a Man 

38. so it seems of 

39. For Fees of 

40. A Man put 

41. Whether the 

42. In Replevin the 

43. By Manwood 

44. If a Clothier 

46. to be driven 

50. The Plaintiff 

58 E. 5. 33. 

59. Br. Fines, pl. 45. cites S. C.
45. There is a Difference between a Distress for Services, and a Distress for Amencements for not doing the Services; for the first is by Common Right maintainable, the second against Common Right by Preceptuon. And then for such Amencements you must distress the Tenants own Beasts, and not the Beasts of a Stranger found upon the Land; as for Services you may, and the reason of that, as I conceive, is, for that it is for a Personal Crime; Per Walmley J. Nov 20. in Cafe of Pell v. Towers.

46. Two Hundreds, viz. L. and M. were adjoining to two several Manors, viz. D. and E. and A. was seised of D. and B. was seised of E. In a Replevin A. avowed, and preffed that all the Tenants of the other Manor have nufed to make buit to the Leet within his Hundred, and that the Lord of the other Manor nufed to appear at the said Leet, or to pay 4s. pro Anno futuro, and if not paid, then to preff for Distress any Inhabitants within the Hundred for the same; and for 4s. not paid he avowed the Distress within the Manor of the Plaintiff, who was one of the Inhabitants. Williams J. cited 47. E. 3. that the Castle of the Lord of the Manor might be distressed in any Land within the Hundred for Suit and Services. But it was afterwards agreed by all the Justices, that the Castle of a Stranger could not be distressed. Owen 146. Patch. 48. Eliz. C. B. Goofey v. Ports.

47. If for an Amencement for Default of Suit the Lord preffes to distress the Goods of his Free-Tenant, he cannot take a Distress of the Beasts of his Under-Tenant, who is not within the Preceptuon; Adjudged. Cro. E. 791, 792. Mich. 46. Eliz. Pill v. Towers.

48. If I let Land for Years, referring Rent, and I command one to put his Cattle into the Land, I cannot distress them; For my Commandment is a Wrong, and an Action on the Cafe will lie against the Commander. Brownl. 31. Hill. 6 Jac. Anon.

49. If one seised in Fee makes a Lease for Life, and after grants to use a Rent-chaffe, if the Grantor's Cattle come upon the Ground, I may distress them, although I cannot distress the Tenant in Possession, but the Grantor cannot avoid it. Brownl. 32. Patch. 10 Jac. Anon.

50. The Defendant avowed for Rent referred upon a Lease for Life. The Plaintiff pleaded in Bar, and conveyed to himself Title to 10 Acres adjoining, and that he put in his Beasts, and they escaped into the Place &c. and be freely followed to drive them out, but before he could recover them, the Defendant distressed them. The Cafe had been somewhat better, if the Tenant ought to maintain the Fence. But no Judgment or Opinion. Hob. 265. pl. 347. 17 Jac. Reynolds v. Okely.

Brownl. 170. S. C. and says the Court held in this Cafe, because the Beasts were always in the Plaintiff's Poffeffion, and in his View, the Defendant could not distress the Cattle of a Stranger; but if he had permitted the Beasts to have remained there by any Space of Time, though they had not been levant and couchant, the Leffor might have distressed the Beasts of a Stranger. —— S. C. cited Mad. 65. pl. 6. —— S. C. cited 2 Lew. 1260.

51. Cattle driving to London to be sold for Provisions for the City, and being lodged in a Clofe by the Way, may be distressed for Rent, though they are put into the Clofe by Confequency of the Landlord; Adjudged per tot. Cur. 3 Lev. 260. Trin. 1 W. & M. in C. B. Pofwkes v. Joice.
52. A. is seised of a third Part of a Close in Common, and B. of the other two Parts in Common with A. — A. lets his third Part, referring a Rent. B. puts in his Cattle, or a Stranger by his Licence. Such Cattle are not diltrainable for the Rent. 2 Vent. 227, 283. Hill. 2 & 3 W. & M. in C. B. Kemp v. Cory.

53. In all Cases where the Land is the Debtor, the Cattle of a Stranger are as well liable as those of the Owner of the Land; As Cattle of a Stranger levant and couchant are diltrainable for Arrears of a Rent-Service. So if a Neighbour's Cattle escape into Land, out of which a Rent-charge issues, and are levant and couchant, (there are good Authorities, though they are not levant and couchant) they are diltrainable for the Rent-charge, and the Owner shall not have them again unless he pays the Arrears; Per Holt Ch. J. in delivering the Opinion of the Court. Ld. Raym. Rep. 508. Hill. 9 W. 3. in Café of Britton v. Cole.

54. Goods in the Custody of a Carrier are privileged from Distreß for the Carrier's Rent. 1 Silk. 249. pl. 5. Hill. 8 Ann. Gisburn v. Hurst.

(I. 2) Grant of Rent out one Manor or Place, with Claufe of Distreß in another Manor or Place.

WHERE a Rent-Charge is granted out of an Ox-gauge of Land in D. and that if the Grantor alien the Oxgauge of Land, that the Grantee may distress in the Manor of B. and the Grantor aliens the Oxgauge of Land, yet in Allife the Tenant of the Oxgauge of Land shall be named, and the Oxgauge shall be put in View, for this remains charged. Br. Charge, pl. 17. cites 1 All. 10.

2. Rent is granted out of Land in D. and for Default of Payment to distress C. there both shall be charged, and shall be put in View in Allife; but if the Lands were in diverse Counties, then the first Land only shall be charged, for otherwise he cannot have Allife in this Case; For he cannot have Allife in two Counties unless the Land be in Confinio Conti. Quod Nota. Br. Allife, pl. 427. cites 10 E. 3. 18. and Fitzh Allife 157.
(K) In what Place a Distrefs may be taken de Jure.

By the King:

1. **The King may distrain for Rent-Services in all the Lands of the Tenant, as well those that are held of others as of the King.** 44 Eliz. 3. 45. Curtia. 19 Eliz. 6. 9. 44 All. 22. by all the Justices.

* Finch. Grant, pl. 6. cites S. C. — Where it is said that the King may distrain out of his Fee, that is, in the other Lands of his Tenant, it must be understood in such other Lands as his Tenant has in his own actual Possession, and manured with his own Beasts, and not in the Possession of his Leesee for Life, Years, or at Will, for their Seals are not subject to such Distress.

2. **So the King may distrain for a Fee-Farm in all the Lands of the Farmer.** 44 Eliz. 3. 45. 8 Eliz. 6. 1. b.

* Finch. Grant, pl. 47. cites S. C. —

3. If a Town be assailed to a certain Sum, a Distress may be taken in any Part subject to the Distresses for the whole Duty. 11 Eliz. 4. 35. b.

4. If a Corporation be amerced in B. R. this may be levied upon the Vill or Land of the Vill, or upon the Goods which they have in their natural Capacity. 8 Eliz. 6. 1. a. b.

5. If a Manor holds of the King by Rent &c. and the Arrears in-cut, and the Tenant leaves or another, the King may distrain in the Lands of the Unders-Tenant for these Arrears in any Place out of the Land held. 9 Eliz. 17. 4. B. between Cator and Osmond, per Dobart.

6. In Treffaps for Goods taken for Distress in High Street, the Statute was rehearsed in the Commencement of the Writ, and the Conclusion was Contra Legem & Conscientiam Angliae &c. And adjudged good enough and pursuant; For it is made Law and Custom by the Statute. Thel. Dig. 102. lib. 10. cap. 11. S. 8. cites Mich. 19 Eliz. 2. Brief 842.

7. The King may distrain for Rent or Fee-Farm as well in Land which is not held in him as in other, by all the Justices; For the King may grant Rent, Fee-Farm &c. to hold of him in which a Man cannot distrain. Br. Distrefs, pl. 57. cites 44 All. 32.

8. The King may distrain in all other Lands of his Tenant for his Rent-Charge, and may distrain for his Services in all the other Lands of the Tenant. Contra of his grante. Br. Distress, pl. 48. cites 13 Eliz. 4. 6.

9. If the King had had a Rent Time out of Mind, and had not used to levy it by Distress by the same Time, his Patente cannot distrain. Br. Distress, pl. 48. cites 13 Eliz. 4. 6.

10. The King may distrain for his Debt, and may make levy of the Debt which the Debtor owes to him, by levy of the Tenants of the Debtor, and take the Rent of them, which shall be a good Bar for them against the Debtor who is their Lord; Quod Nara. Br. Distress, pl. 28. cites 21 H. 7. 12.
11. The King cannot distrain for the Debt of the Baron upon the Dowry of the Femme, nor for her Inheritance, nor for the joint Purchases which she has with her Baron; But if the Baron was indebted to the King before the Cotouer, there the King may distrain in the Dowry of the Femme; Nece the Divorcity. Br. Distrefs, p. 71. cites F. N. B.

12. C. was indebted to the King, and was seized of a third Part of certain Lands in N. and R. was seized of the other two Parts as Tenant in Common, and the Bequests of N. and R. pastured promiscuously on the Land. Upon Process to levy the King's Debt the Sheriff took R's Cattle, and sold them; but held that such taking was not good, though otherwise it would be if the Cattle had been levant and couchant on the Land of the King's Debtor; And if my Cattle are levant and couchant on the Land of the King's Debtor, the King may distrain them Damage-feasant, but not for the Debt; Per the Ch. Baron, and two of the Barons; but Snig seemed to doubt. Lane 96, 97. Hill 8 Jac. in Scacc. Clare's Cafe.

13. Although the King may distrain in any of the Lands of the Tenant, yet it must be admitted, that it the Tenant aliens any Part of his Lands, or if he devises, may it he leaves to a Tenant at a Rent, although but at Will, the King cannot distrain upon those Lands, being no Part of the Lands originally charged with the Rent; and so it is upon a Recovery by Elegue, and therefore even the Crown is precarious in this Matter; The Tenant may at any Time determine that Right of distraining by aliening, by devilling or setting his Land. It is only liable whist it is in his own Hands, Arg. 2 Vern. 714, 715. Hill. 1715. in Case of Attorney-General v. Coventry (Mayor &C.)

(L) For an Amercement.

[In what Place the Distress may be taken.]

1. For an Amercement in the Sheriff's Tourn for stopping a * Br. Distress, pl. 15. cites C. — Br. Lect, pl. 18, and pl. 41. cites C.

41. cites C. — Br. Amercements, pl. 13. cites C. — Br. Court Baron, pl. 15. cites C. — Fitzh. Distress, pl. 10. cites C.

2. So where an Amercement is within a Hundred the Lord of the * Br. Distress, pl. 13. cites C. — Br. Lect, pl. 41. cites C. — Fitzh. Distress, pl. 10. cites C. And the Land as upon the Land; For the Amercement does not extend to the Land [only] nor Issue out of it. * 2 D. 4. 24. b. 8 R. 2. Avowry 194. + 11 D. 4. 89. b. For the Jurisdiction of the Hundred is entire through the whole Hundred. 13 D. 4. 9. b. 8 R. 2. Avowry 194. Amercements, pl. 15. cites C. — Br. Court Baron, pl. 15. cites C. — Fitzh. Distress, pl. 10. cites C.

† Br. Distress, pl. 18. cites C. — Fitzh. Avowry, pl. 57. cites C.

3. The Lord may take a distress for an Amercement in a Lect in Fitzh. Distress, pl. 15. cites C. of him that is amerced; For the Amercement charges only the Person and not the Land. 47 C. 3. 13.

4. So a Distress may be taken for it in the High Street. Fitzh. Distress, pl. 15. cites C. 47 C. 3. 13.

5. But
Distress.

But if a Man be arrested in a Lect a Distress cannot be taken for it of the Goods of the Party arrested in the Lands which is in the Hands of the King, though it be within the Limits of the Hundred; for during this Time it is out of the Jurisdiction of the Lect.

(M) By a Common Person. In the House.

[Or what other Place.]

In such Case.

A Distress for Rent may be taken in a House, if the Doors be open, cite not. 46 E. 3. 26 b.


3. A Man cannot distress for a Rent-Service but in the Land out of which it arises. 8 D. 4.18 b. 9 D. 6. 9.

See pl. 2.

4. As he cannot distress in other Land though it be within his Fee. 8 D. 4. 18 b.

5. A Distress out of his Fee for Services is not lawful. 17 E. 3. 32 b.

6. A Distress in a Way within his Fee was lawful at Common Law. 17 E. 3. 32 b.

See pl. 2.

7. A Man may distress for the Rent of an House per Offria et Fenebras, among the Petitions of Parliament of 18 E. 1. folio 7. it is said that he may distress for Rent per Offria et Fenebras, Smith moris eft; it items as if this was intended that he might go to the House, and take a Distress, or take it out of the Window.

8. If a Man leaves an Advowson for Life, rendering Rent, he cannot distress for this in the Glebe. 11 D. 6. 5.

9. If a Man leaves a Manor to which an Advowson is appendant rendering Rent, he cannot distress for the Rent in the Glebe, because the Lessee hath nothing to do therewith. 11 D. 6. 5.

10. If a Rent-Service issues out of Land which is in several Counties, a Distress for the Whole may be taken in one County. 18 E. 3. 32 b.

11. If a Rent-Charge issues out of Land lying in several Counties, a Distress for the Whole may be taken in one County. 18 E. 3. 32 b.

12. So if a Rent-Charge issues out of the Land which is in the Hands of several Men, a Distress may be taken for the Whole Rent upon the Possession of one; for all the Rent issues out of every Part. 39 A. 4. adjug'd.

This is intended of Suit Service in respect of his Hundred or Bailwark, nor shall take Differtes without his Fee or in Place.
Place where he has no Jurisdiction. And be that offends shall be punished of a Seignoir, like manner, according to the Trespass.

in respect of Reference. 2dly, Or that he has Jurisdiction by Hundred, Waipenlake or Bailiwick.

3dly, That he shall not take Dißresses out of his Fee or Place where he has a Bailiwick or Jurisdiction.

2dly, S. 2. shall Civil Service, but not in respect of Reference. 2dly, Or that he has Jurisdiction by Hundred, Waipenlake or Bailiwick.

for the Penalty hereby inflicted; and therefore if A. dißtrain B. and in a Replevy A. avow as Lord for Kent or Service, B. pleads heirs de

and is found for B. A. shall not in this Replevy be punished by Ranfom &c. according to this Act, but he must have an Action upon the Statute Et sic de limibus. 2d Inf. 104, 105.

45. 52 H. 3. cap. 15. * It shall be lawful to do Man, This Mitichief before

this Statue was. That whereas the King by his Prerogative might dißtrain for his Reins in any other Lords of his Tenant, being in his own Actual Possession, though they were out of his Fee, and Seigniory divers Lords took upon them also to dißtrain out of their Fee, which was wrong and Oppression;

and whereas all the King's Subjects ought to have free Passage in Via Regia, & Common Strata, as well to Fairs and Markets, as about their other Affairs, the Lords used to dißtrain in the Highways; both which Mischief this Statue does remedy. 2 Inf. 131.

This is to be understood of Dißresses by reason of a Seigniory, and not for Dißresses for Rent-Charges &c. or by reason of a Lease. 2 Inf. 131.

This Branch is but in Affirmance of the Common Law, for regularly no Subject can dißtrain out of his Fee and Seigniory, and therefore if the Lord do dißtrain out of his Fee the Tenant may either have an Action of Trespass at the Common Law, or an Action upon this Statue, but in some Special Cafe the Lord by the Common Law may dißtrain out of his Fee and Seigniory; as if the Lord come to dißtrain, and the Tenant or any other feeling the Lord come to dißtrain them, drive them to a Place out of the Fee of the Lord, yet in this Cafe the Lord may dißtrain them out of his Fee, because the Lord had a View at them within his own Fee, by reason whereof the Lord shall be adjudged in a kind of Possession of them; but if the Beasts go out of the Tenancy of themselves without en- chæment before the Lord can dißtrain them, there the Lord cannot dißtrain them, though he had the View of them within his Fee and Seigniory. 2 Inf. 131.

To take Dißresses out of his Fee;

A Heriot

ought the

Lord may seize in the Highway, for that is no Dißress but a Seigniory, but he cannot dißtrain for a Heriot Service there. 2 Inf. 131.

Nor is the Highway, nor in the common Street, but only to the King or in this his Officers, having Special Authority.

Branch, no

be taken in a manner so as to make it utterly unlawful, as to take Advantage thereof in bar to an Avowry, but in a manner quoad, that is to this Purpose, that if the Lord dißtrain in the High Street, or in the common Way, the Tenant may have an Action against the Lord upon this Statue; and the Reason hereof is, that whenever any Thing is prohibited by a Statute, the Party shall have his * Action

upon the Statue, and the Offender shall be for his Contempt fined and imprisoned; and so it is declared by Act of Parliament, as hath been always observed. Now if the Tenant should plead in bar of the Avowry, the King should lose his Fine; for in that Nature of Suit he cannot be fined, and therefore the Tenant is to take his Remedy by Action upon the Statue, wherein the King shall have his Fine &c. 2 Inf. 151, 152 —— S.P. cited per Cur. 3 Lev. 48. Mich. 59 Car. 2. C. B. in Cafe of Woodcroft v. Temple.

This Statue does not extend only to Dißresses between Lord and Tenant, but also to all other Dißresses whatsoever, as well at the King's Suit, as at the Suit of the Subject, so there be other Goods sufficient; also to all manner of Executions, as well at the Suit of the King, as of the Subject, with the like Caution as is before said. 2 Inf. 133.


15. In Trespass Quære Vi et Amnis Sancfluor? regit &c. et Averia cepit, the Bailiff justified for Dißresses for Issues for the King, and could not find Beasts nor Chattels of the Plaintiff in any other Place, and well. Br. Dißresses, pl. 34. cites 27 Aff. 66.

16. The Party cannot dißtrain in one County and drive it into another, by Reason of the Statue of Marlebridge, cap. 4. but shall make Ran-
Diitfres.

For, and this for Rent. But it is doubted there if a Man may do it for a Fee, or an Honour, or for Suit, or Cattle-Guard. Quere for Homage if he chafes them, and chafes into another County. Br. Diitfres, pl. 366 cites 30 All. 38.


18. Of Common Right a Man cannot chafes for Rent but in the Land out of which the Rent is issining; But if the Tenant grants to me that if I am not paid the Rent, that I shall chafes in other Land, this is good per tot. Cur. and there this is no new Rent. Br. Rents, pl. 1. cites 9 H. 6. 9.

19. And per Cand. if a Man grants to me that if I am not annally paid to s. Rent at Michaelmas, that I shall chafes in his Land in D. this is a good Grant of the Rent, and it is a new Rent. Contrary is taken in the Cafe above. Br. Rents, pl. 1. cites 9 H. 6. 9.

20. Note for Law, That he who chafes Beasts may put them in a close House if he will give them Food; For the Diitfres in Pound overt is only to the Intent that the Owner may give them Food. Br. Diitfres, pl. 66. cites 33 H. 8.


22. A Heriot Caffion the Lord may seize in the Highway, for this is no Diitfres but a Seifure; but he cannot chafes for a Heriot Service there. 2 Inst. 132.

(N) In what Places it may be taken for a collateral Cause.

[Refrh Suit.]

1. WHEN the Lord is in view of the Cattle if the Tenant to avoid the Diitfres chafes them into a Place not within his Diitfres, yet the Lord may take them freely; For he shall not have Advantage of his own Wrong. 44 E. 3. 20. b.

Ibid—If a Man chafes them out the Lord may distrain them. Br. Diitfres, pl. 98. cites 11 H. 4. 7. —— S P. For when they are in his View they shall be adjudged in Law in his Possession, the Reason seems to be because they are Taxitory. Br. Trefpati, pl. 296. cites 2 H. 4. 6.

Co. Litt. 161. 2. S P.—So if the Lord had no View of them within his Fee; Or if the Cattle after the View go out of the Fee, the Lord cannot distrain them out of his Fee. Ibid.—If they go out without chafing, the Lord cannot distrain them. Br. Diitfres, pl. 98. cites 11 H. 4. 7.

2. But if the Tenant, after the Lord has the View, chafes the Cattle for other lawful Cause out of his Fee and not on purpose to avoid the Diitfres, the Lord cannot take them. 44 E. 3. 21.
Distress.

3. If a Man comes to distrain for Damage-Feasant or for * Services, * Co Litt. and the Distreß goes into other Land by chaling, he may take them in the other Land. And per Jenney if Bealls taken for Distreß escape, he who distrains may retake them when he will. Br. Distreß, pl. 49. cites 13 E. 4. 8. and the Tenant cannot make Reconcil, though the Place wherein the Distreß is taken is but of his Fee; For now in Judgment of Law the Distreß is taken within his Fee; and so shall the Writ of Reconcil suppose.

4. If a Man comes to distrain for Rent or Service and sees the Bealls * if a Man comes to distrain for Damage-Feasant and see the Bealls in his Soil, and the Owner chases them out of Purpose before the Distreß taken, the Owner of the Soil cannot distrain them, and if he does, the Owner of the Cattle may retake them, for the Bealls will be Damage-Feasant at the Time of the Distreß, and to note a Diversity. Co Litt. 161. 4.

5. And per Brian Ch. J. where a Man comes to disstrain for the 15th granted to the King by Parliament, and fees the Bealls, and the other chases them out of the Vill, the Collector cannot distrain them in another Vill, quod nota. Br. Distreß, pl. 50. cites 16 E. 4. 10.

6. If a Man comes to disstrain, and the Party chases the Distreß out of the Land, the other may freely pursue, and take the Bealls for Distreß. Br. Avowry, pl. 13. cites 34 H. 6. 18.

Br. Nuance, pl. 14. cites 9 E. 4. 35. --- If a Man chases them out the Lord may distrain them. Br. Distreß, pl. 98. cites 11 H. 4. 7. --- Br. Distreß, pl. 90. cites 44 E. 5. 20.


7. If Bealls escape into my Land the Lord may distrain them, contra if he retakes them before that the Lord disstrain them, and though they were levant and couchant 40 Days if the Owner takes them before the Lord, there the Lord shall not distrain them, but if he finds them there, if they were there but an Hour the Lord may distrain them. Br. Distreß, pl. 97. cites to H. 7. 21.

(O) [Where the Cattle escape &c. into the Land liable.] Pl. 1 to 8.

1. If the Cattle of a Stranger escape into the Land holden they may be disstrained though they are not levant and Couchant. Contra Sec 1. pl. 2.

Co Litt. 47.

2. If the Cattle of a Stranger escape into the Land they may not be disstrain'd. 48 C. 3. 34. 2 H. 4. 16. b. Contra Fol. 672.

7 H. 7. 1. b. Critia.

3. But the Cattle of the Tenant himself may be distrain'd if they escape there. 48 C. 3. 34.

4. So if there be Arrearages, and after the Tenant aliens, and after the Cattle of the Alieence escape there, yet they may be distrain'd; for this is not any Escape. 2 H. 4. 16. b.

5. If a Stranger keeps or cautes his Cattle to be kept in a Place where they may be disstrain'd; For this is not any Escape. 2 H. 4. 16. b.
6. So if a Stranger hath Notice that his Cattle hath usually, or are accustomed to be in the Place where they may be distrain'd; For this is not an Escape. 2 H. 4. 16. 6.

7. The Grantee of a Rent-Charge cannot distrain the Cattle of a Stranger which come there by Escape, and are freely pursu'd by the Owner, Demurrer. Tit. 17 Fa. B. between Reynolds and Caskley.

[O. 2] At what Time it may be taken. Pl. 8. to the End of Roll pl. 16.]

8. If a Man leaves for Years rendering Rent and the Rent is behind, and after the Term expires the Lessee cannot afterwards distrain for the hind Rent. (It seems to be intended that he held over.) 14 H. 4. 51.

Keilw. 96, pl. 5, Mich 22 H. 7. Anon. S. P. All the Court of C. B. held clearly that the Lessee may distrain for the Rent, notwithstanding the Term is past; And that if the Lessee will he may distrain the Cattle for Damage-Feast, but says Hankford and Hill held Contra. 14 H. 4. 51. Iden Queere, and says, see 1 H. 7. fol. 12. Treliais — Where Rent is render'd upon a Lease for Years at Elster and Michaelmas for one Year ending at Michaelmas, there he cannot distrain after Michaelmas; For the Term is expired. Br. Distresf, pl. 73, cites Doctor and Student, lib 2.

9. For Rent due the last Day of the Term, the Lessee cannot distrain; because the Term is ended before the Rent is due; For the Lessee hath the whole Day to pay it. Co. Litt. 47.

Cro. J. 442.

8. C. cited by Vaughan Ch. 1. Vaughan 40. 41.

10. If a Man leaves Land for Years rendering Rent, and after the Lessee holds over the Term, the Lessee cannot distrain upon the Land, for the Rent incurred during the Term because the Lessee was ended before, and the Lessee not in privyty of the Lease. 14 H. 4. 51. Per Hill and Hankford. Ditch. 15 Jac. B. R. between Horrison and Mitaia, per Curiam this being made in arrest of Judg- ment, and the Postea say'd accordingly. Contra 23 H. 7. 96.

Per Curiam Kelleway.

11. If a Man be cited in Fee or for Life of a Rent-charg, and after the Arrearsages incurred he grants over the Rent to another, be himself cannot afterwards distrain for the Arrearsages incurred before the Grant, because now the Arrearsages are distrained from the Free- hold of the Rent, and so the Distresf gone. Co. 4 Durnell 50 b. Per Curiam.

12. The same Law is of a Rent-Service. Co. 4. Ogwell, 50 b. per Curiam.

13. If Lessee for 20 Years makes a Lease for 10 Years retaining Rent, and Arrearsages incur, and after Lessee for 20 Years dies, by which the Revolution and Arrearsages descend to his Executors, the Executors, and Executors of Executors may distrain for the Arrearsages incurred in the Life of the Testator, because these Arrearsages were never severed from the Revolution, but these Executors have the Revolution, and Rent is annexed thereto, and in the same Plight as the Testator himself had it, as much as they repre- sent the Person of the Testator, and it is not like a Revolution which descends to the Heir, and the Arrearsages go to the Execu-
Diftrefs. 157

1035. 3 Car. between Wade and Marsh adjudged in a Reple-

14. An Attachment by Cattle in an Action of Trefpafs ought not
to be made in the Night. Hill. 37 Eliz. per Curiam.

15. So a Diftrefs for Rent-Service, or Rent-Charge cannot be in
the Night. Co. Litt. 142.

upon the Land all the Day to pay his Rent; but he is not compellable to attend
in the Night.

5 Rep. 66 a. Pech. 9 Jac. in Mackally's Cafe. —— 7 Rep. 7 a. Trin. 29 Eliz. C. B. in Milborn's
and Pafch. by not

16. But a Man may distrain Cattle Damage sealane in the Night,
for otherwise perhaps the Cattle will be gone before he can take
them. Co. Litt. 142.


17. If a Man leaves for Years rendering Rent, and the Rent is ar-
rear, and the Term expires, he cannot distrain, but shall have Action of

18. In Per qua Servitia, if a Man grants a Seigniory for Term of Life,
the Remainder over by Fine, and the Tenant attains to the Grantee for
Life, seeing his Acquittal, and the Grantee grants the Acquittal, and
after dies, he in Remainder cannot distrain till he has granted the Ac-
quittal likewise; by all the Julices, in a Note. Br. Confection, pl.
54. cites 18 E. 4. 7.

19. If a Man grants a Reverfion depending upon a Term, rendering Rent,
he cannot distrain till the particular Estate be determined, and then
he may distrain for all the Arrears, but by some he may distrain imme-
diately if the Bealls of the Grantee come upon the Land; Quere; For
per Moyle, he has nothing to do till the Term be expired. Br. Dift-
refs, pl. 47. cites 10 E. 4. 4.

20. So upon a Lease for Term de anter Vie, and Cajab que Vie dies; for
in those Cases the Reverfion is determined. Br. Diftrefs, pl. 73. cites
Doct. & Stud. lib 2.

21. If the Tenant offers the Fealty, and the Lord refifes, there he can-
not distrain after a new Request, and this to the Person, and not

22. So of Homage; the Reafon is, in as much as it shall be done by
the Tenant in proper Person, and not by Deputy. Ibid.

23. If the Lord distrains for Rent arrear at a certain Day his Te-
nant's Cattle, and he fies a Replevin &c. and the Lord avows for the
Rent &c. and the Tenant pleads Hors de fon Fee; if the Lord (pendant
that Plea) distrains for Rent behind at another Day after, the Tenant
shall have a Write of Reception, because the Lord's Title shall be tri-
ed by the first Plea. But otherwise it is if the Tenant in the first
Replevy pleads Riens arrear, or levied by Diftrefs, then (pendant that
Plea) the Lord may distrain for the Rent behind at a Day after, be-
cause that the Seigniory is there confeffed, and the Tenant shall not
have a Reception. F. N. B. 71. (M)

24. In Replevin the Come was, the Defendant avowed for a Rent-
charge due in the Year 1660, and afterwards be distrained and avowed for Palmer v. anther Part of the Rent-charge due a Year before, viz. Anno 1659, and this

Co. Litt. 142. For the Ten-
nant is to be
attendant

Diftress, bl. 99. cites 11 H. 7. 5. —— Brown. 176. S. P. 40 to Rent-charge,
in Cafe of Read v. How.

S s Year
Dilb-cfis.
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11 Geo. 2. cap. 19. S. 1. Enables the Landlord, or any Person by him impowered, in Cafe of Rent arrear, to distress Goods fraudulently carried off the Premisses by Tenant for Life, Leases, Years, at Will, or as Sufferance, within 30 Days after such carrying off, and to sell, or otherwise dispose of the same, as if distressed upon the Premisses, unless sold before bona fide, and for a valuable Consideration, to any Person not privy to the Fraud.
S. 2. Provided that no Landlord shall seize Goods sold bona fide, and for a valuable Consideration, to any Person not privy to such Fraud.

(O. 3) At what Time for Rent after their being taken in Execution.

1. CASE by an Executor against W. Bailiff of the Liberty of the Duchy of Lancaster in Norfolik, and declared that D.C. on 6 June, 1712, took an Estate of Tefatrix from Mich. for one Year, and so from Year to Year as long as both Parties should please, at 70 l. A Year's Rent being due 6 Octb. 1713, W. cepit bona & Caflalia D.C. in & super c. Ter' exsiten' ad valentiam 220 l. The Executor post capitemon & ante amotionem Bonorum & Catallorum &c. and the 'Tefatrix in Vita fua dedir W. notitiam de redditii' pradict' fec debit', and the then demanded of W. the said Rent out of the said Goods and Chattels, which
which he refused to pay, but carried off, and removed the same from
the Premises contra Formam Statuti in eo Case edit & provis.
Upon Not Guilty there was Verdict, and Judgment for the Plaintiff
in C. B. and Judgment affirmed in B. R. Hill 6 Geo. per Powis, Eyre,
and Fortescu. Reolved it, The Action may be maintained by the
Executor or Administrator, there being a Right vested by the Statute
8 Ann. cap. 17, in the Goods. The Act is a general Prohibition, that
no Goods &c. lying, or being upon any Message &c. shall be liable to be
taken by Virtue of an Execution &c. on any Pretence whatsoever, unless
the Party at whose Suit &c. shall before the Removal &c. pay to &c. all
such Summ &c. as shall be due for Rent: provided the said Arrears do not
amount to more than one Year's Rent, or if more, on Payment of one Year's
Rent &c. and the Sheriff &c. is required to levy and pay to the Plaintiff, as
well the Money so paid for Rent as the Execution Money. And the Duty of
the Officer is when he has Notice to keep the Goods till Payment,
but it he removes he transgrels the Act, and he is liable to an Action
by the Party who is injured and aggrieved; The Sheriff has Power to
levy the Money, as well for the Landlord as for the Plaintiff in Execution.
When the Injury is to the Person, all falls by the Death of the Party;
but when it is to the Estate, in any Manner whatsoever, the
Action survives if the Estate survives. These Goods are not to be re-
moved, but to remain as a Pledge, and it is a sort of Possession in
the Landlord, and this Act of the Officer not only injures this Possession,
but the Interests and Property of the Landlord. It is stronger than an
Action for not letting out of Tithes, because there is only a Demand
for a particular tenth Part, but no particular Property; for till Sever-
ance he had no Right but to an undivided tenth Part. A Year's
Rent is secured against all Events. addly, That the Action was well
founded, and the Officer well charged; for the Notice was to him
of what was due, and then it was incumbent upon him not to have
removed the Goods till Satisfaction had been made. Notice to the
Plaintiff in Execution was no Notice to the Sheriff; but if it were to
him, and not to the Sheriff, should the Sheriff be liable? As to what
is reasonable Notice, it is not appointed by the Act. Eyre J. said,
that without Notice he could not transgrel the Act, but if he has No-
tice the Action is reasonable. But per Fortescue, when the Law does
not determine it, the Party must take Notice, especially here, when
the Act says he shall not remove &c. When there is a Condition in
a Will, the Party must take Notice in Law and Equity, but here
was Notice according to the Equity of the Thing, and the right Per-
son had Notice. Where no Person is directed to give Notice, it is at

(P) Pound. [What it is, and] how he shall demean
himself towards the Distreßs

1. A Pound overt is a Pinfold made for such Purposes, or the
Cloth of him that distrains, or the Cloth of a Stranger,
with his Content where the Distreßs is taken. Ca Litt. 47.
2. A Pound-Cover, or Cloth, is when the Distreßs is impounded
in an House. Ca Litt. 47.

3. 156
3. That distresses any thing that hath Life, ought to be impounded in a lawful Pound, within three Miles, in the same County. Co. Litt. 47. b.

4. But if a Man distresses dead Goods, as utensils of an House, or such like, which may take Damage by Wet or Weather, and the like, he ought to impound them in a House, or other Pound-Covert, within three Miles, in the same County; for if he impounds them in a Pound-overt, he ought to answer for them. Co. Litt. 47. d.

5. If a Man distresses Cattle, and puts them in a Pound-overt, the Owner ought to keep them at his Peril. Co. Litt. 47. b. For it is lawful for him to come there for this Purpose.

6. But if he puts the Cattle in a Pound-Covert, or Close, there he ought to keep them at his Peril, and yet he shall not have any Satisfaction for it. Co. Litt. 47. b.

7. If a Man takes a Distress, and puts it into a Pound-overt, and the Horse which he distresses leaps three times over the Pound, which is as high as it is used to be, and therefore he takes the Horse and ties him with a Rope to a Rail in the same Pound, and after he strangles himself, yet this will not excuse him, but he may be punished in an Action of Trepass. 27. Lib. 4. adv. nug.

8. If a Man has a Cow as a Distress, he cannot milk her; For though the Cow be the better for it, yet he ought not to do good to the Owner without his Consent, and perhaps the Owner would have come before any Damage by his Cows to the Cow, and it is his own Fault, yet he that took the Distress may detain again, and so he is at no Damage. D. 4. 3d. B. R.

9. between Bagford and Galliard, per Curiam.

10. Writ of Beast taken in one County, and carried into another County, upon the Statute of Maltebridge, cap. 4. and Welfm. 1. cap. 16. was maintained without making Mention of the Statute in the Writ. Thel. Dig. 118. Lib. 16. cap. 23. S. 4. cites 35 Alf. 38.

11. Distress taken for Damage iactant cannot be converted to his own Use, but shall be used as a Distress. Br. Distress, pl. 81. cites 28 H. 6. 5.

12. If a Man takes Quick-Chattles as Distresss, he ought to put them in Pound-overt, so that the Owner may give them Surrender; but of Chattles dead a Man may put it where he pleases, but if they are corrupted in his Default, he shall answer for them. Br. Distress, pl. 25. cites 9 El. 4. 2. per Choke J.

13. Trepass of taking Sheep, and detaining them till he paid 54s. for Deliverance of them, the Defendant justified for Distress for Relief, and that he took the 54s. for their eating, abique hoc that he took it for the Deliverance, and by the Justices it is no Plea; For if he did give them Victuals, he cannot compel the Party to pay for it; For the Distraintor is not compellable by the Law to give them Surrender. And if they agree after the Distresss upon this Sum, yet it is no Exculp, but that it is for the Deliverance. But if they agree at the Time of the Distressss taken, that he shall give to them Victuals, and that he shall have 20 s.
Diftrefs.

20. for it, this is a good Bargain. Br. Diftrefs, pl. 52. cites 21 E. 4. 53.
14. If a Beast be put into a Place in which there are sharp Spikes, by which the Beast is stuck, though it be a publick Pound, the Distraint shall answer for it, for it is his Pound; Arg. 12 Mod. 660. in Cafe of Valfier v. Edwards, cites Doct. and Stud. c. 27.
15. A Pound overt in every Place where the Owner of the Diftrefs may come and give them Food, and he no Trespassor there for being there. Br. Diftrefs, pl. 72. cites Doct. and Stud. lib. 2. 6. 32.
17. If the Lord takes a Diftrefs for an Ameceuent in a Lett, he may either sell it or put it into the Pound on his Pleasure. 8 Rep. 51. b. Trin. 10 Eliz. C. B. Grieff y’s Cafe.
18. Beasts taken in Hibernam may be worked. Le. 220. pl. 302. 3 Le. 215. 236. pl. 225. Anot.
S. P.—Because they are deliver’d to him in lieu of his own. Arg. 12 M’d. 665. Hill. 13 W. 3.
19. If there be a Caffon within a Town that if a Butcher kills any Beasts within the Town, and sells the Elefj within the Market he shall pay 2d. for every Hide, and that the Bailiff may distrain the Hide for the 2d. if denied; admitting the Caffon good, and the Diftrefs of an Hide well taken, yet the Bailiff causes 2an the Hide to prevent its being rotten, for the Caffon to distrain the Hide does not enable them tan it, for the Property is quafi altered thereby, the Marks by which it might be known being taken away from the Owner so as he cannot have it again; adjudged. Crv. E. 783. Mich. 42 Eliz. Duncomb v. Reeve and others.
20. But by P’sham, in some Cafes a Man may meddle with and use a Diftres where it is for the Benefit of the Owner; as if one distrains Arumns, he may cause it to be scoured to avoid Ruft; Or if one distrains Reel-stock, he may cause it to be sold. Ibid.
21. If a Man pus Castle in a Pound Court or Close, there he ought to keep them at his Peril, and yet he shall not have any Satisfaction for it. Co. Litt. 47. b.

Her 76. Hill. 7 Car. C. B. Perkins v. Butterfield.——— 51 Hen. 3. ensails that the Owner shall not pay for keeping the Castle, but may feed them himself.

22. Where one distrains dead Goods, or Things inanimate, he must put them in a Pound Court within three Miles of the Place &c. and in the same County; for if he put them in another open Pound, and they be stolen, or receive Damage, the Perfon distraining will be answerable for them. Co. Litt. 47. b.
23. A Distrefs of live Cattle may be kept in any open Place in the Landlord’s own Grounds, or in the Grounds of another by his Consent, as well as in the common Pounds, if he give Notice to the Owner of the Castle where they are; but if he gives no Notice, and the Castle die for want of Food, the Landlord must make Satisfaction for them. Co. Litt. 47. b.
24. Cattle taken as a Distress cannot be worked: For it is only the Cru. 148. Act of the Law that gives Power to the Distraintor; For the Distraintor has no Property in the Distress, nor Poft fion in Jure cites 21 H. 7. 7. Replevin. A Man has Return irrepleasable he cannot work them; For the Judgment is to remit them to the Pound there to remain. Ow. 424. Mich. 7 Jac. C. B. in Cafe of Moor v. Conham, cites S. C.
Beasts deliver’d to him in Winteram he may work them; because he has them in lieu of his own Beasts, and it is reasonable that he shall have their Labour and Ufe for their Paffure.
25. In Trespass for taking two Horses from his Cart laden with Corn, the Defendant justified as a Distress for Rent-Service issuing out of the Land where &c. The Court were of Opinion after several Debates that the Distress was well taken. Sidor. 440. pl. 9. Hill. 21. Car. 2. B. R. Webb v. Bell.

26. Defendant distrained a Trunk, and being informed that there were Things of Value in it he called it to be covered to prevent Damage; and for that he was adjudged a Trespassor ab initio; Cited per Twifden to have been so adjudged before Roll Ch. J. Vent. 37. Trin. 21. Car. 2. B. R.

27. If Trespass be upon a Common Damage-Feasant, though for this a Commoner may distrain them, yet he cannot burn them. 2 Jo. 193. Pach. 34. Car. 2. Bromhall v. Norton.

28. One cannot break open the outer Door to distrain for Rent per Ch. J. But per Pollexfen, if the outer Door be open one may break open the inner Door. Comb. 17. Pach. 2. Jac. 2. B. R.

29. If a Landlord come into a House and seizes upon some Goods as a Distress; in Name of all the Goods in the House that will be a good Seizure of All; But he must remove them in convenient Time at Common Law; and now since the late Statute of * W. & M. immediately, except it be Hay or Corn; and here for that the Seizure was on Monday, though of Barrels of Beer not easily removable, if at all without Damage, and no Removal till Wednesday when the Defendant took them by Virtue of a Replevin, in which the Lease and not the Distraintant, was made Defendant, and besides the Plaintiff quitted Possession of them the two intervening Nights, and had not the Possession at the Time of the Taking by Virtue of the Replevin, without which there could be no Re confiscation, the Plaintiff was non suit; In this Case it appeared also, that the Distraintant drew Beer out of one of the Barrels; which per Holt Ch. J. made him a Trespassor ab initio as to that Barrel only. 6 Mod. 245. Trin. 3. Ann. B. R. in Cause of Dod v. Monger.

30. If Lands in distant Counties are demised by one Demise, reserving one entire Rent, the Distress taken in the one County cannot be driven into the other; Per Holt. Ch. J. but otherwise it the Counties and Hundreds are contiguous; Per Cur. Ld. Raym. Rep. 55. Trin. 7. W. 3. in Cafe of Walter v. Rumbal.


32. A common Pound is the Pound of the Distraintor for the Time, and if he use it he must take Care to keep it so, that if it be in a broken Condition, or an improper Pound for the Thing to be imprisoned, As a Pig &c. and the Distress eschapes, the Distraintor shall not take Advantage of his own Neglect so as to bring Trespass afterwards. 12. Mod. 664. Hill. 13. W. 3. Vapor v. Edwards. 12. Mod. 654. in S. C.


34. A Distress may not be fixed, for that would be a Misdemeanor, and amount to a Conversion; Per Gould. J. 12. Mod. 661. Hill. 15 W. 3. Vapor v. Edwards.

35. Distraintor
35. Distraint cannot in law be made; though it be for their Preference, cites Cro. E. 793. Nor milk Cows to preserve their Milk, or save them from Hurt, cites 1 Roll Abr. 673. though it be allowed, Cro. J. 148. that Kine may be milked to prevent their being spoiled; Per Powis J. who said that he took Roll Abr. to be Law. 12 Mod. 662. Hill. 14 W. 3. in Case of Vapour v. Edwards.

36. If the Plaintiff suffers the Distress to escape by his own Conduct, this is a Discharge of the Trespass, but then it must be shown in the Bar; Per Gould. J. 11 Mod. 21. pl. 1. Hill 1 Ann. B. R. in Case of Jasper v. Edowes.

37. If a Landlord distrains for Rent, and keeps the Goods on the Premises longer than a reasonable Time, the Law allows him to remove them in, he is a Trespasser ab initio, cited by Fortescue J 2 Ed. Ravn. Rep. 1427. as a Case between Cartridge and Comber at Nili Fries, tried before the Earl of Macclesfield when he was Ch. J. of B. R.

38. No Judicature can be good for destroying a Thing distrained; For all Diftrestes ought to be safely kept. 8 Mod. 330. Mich. 11 Geo. Sparks v. Keeble.

39. In Trespass for entering his Land Defendant pleads an Entry and Althougb Diftress for Rent. Plaintiff replied, that Defendant continued upon the Land 6 Days, and had eight Bailiffs there. On Demurrer Judgment was for the Plaintiff; For the Court said, that by the Common Law a House and Person that distrains was obliged to carry off the Distress immediately, and distrain the put it into a Pound-cover, or a Pound-cover, and not detain it on the Land; and that the present Case is not within the Statute 2 W. & M. cap. 5. And Reynolds J said, that the very Reason why Shocks of Corn could not be distrained at Common Law, was, because they could not be carried off without Damage to the Tenant, which implies, that a carrying off the Distress is necessary. Barnard. Rep. in B. R. 34. Mich. 13 Geo. Griffin v. Scott.

40. 11 Geo. 2, cap. 19. 8. 10. Persons lawfully distraining for any kind of Rent, may impound the same, of whatsoever kind, in such Place, or on such Part of the Premises, as shall be most convenient for securing the same, and to appease, sell, and dispose of the same upon the Premises, as in like Case may be done off from the Premises by the 2 W. & M. or the 4 Geo. 2. And any Persons may come and go to and from such Place, or Part of the said Premises, whereby any Diftress for Rent shall be impounded, and secured as aforesaid in order to view, appease and buy, and also in order to carry off and remove the same on Account of the Purchaser therefor, and that if any Pound-Breach, or Riffons shall be made of any Goods and Chattels, or Stock distrained for Rent and impounded, or otherwise secured by Virtue of this Act, the Person or Persons aggrieved thereby shall have the like Remedy, as in Cases of Pound-Breach or Riffons is given and provided by the said Statute.
(P. 2) What shall be said a Recousse of the Distrefls.

S. P. But he 1. WHERE a Lord comes to distrain and sees the Beasts, and the Tenant perceiving it, chases the Distrefls out &c. the Lord shall not have Writ of Recousse; for he never had Possession of the Beasts; see in N. T. Per all the Justices. Br. Recousse, pl. 13. cites 21 H. 7. 40.

Brev. in the Writ of Recousse. Br. Recousse, pl. 22. cites 13 H. 4. and 44 E. 3. — If the Lord distraineth Cattle out of his Fee in Lords not held of him, the Tenant may make Recousse unleas in some Special Cases, as if the Lord come to distrain his Cattle which he keeps within his Fee, and the Tenant or any other to prevent the Lord to distrain, drive the Cattle out of the Fee of the Lord into some other Place out of his Fee, yet may the Lord freely follow and distrain the Cattle and the Tenant cannot make Recousse. Also the Place where the Distrefls is taken is out of his Fee. For now in Judgment of Law the Distrefls is taken within his Fee, and so shall the Writ of Recousse appeare. Co. Litt. 161. a.

2. Recousse is when the Lord in the Land held of him distraineth for his Rent arrear, if the Distrefls is refused from him. Litt. S. 237.

3. So if the Lord comes on the Land to distrain, and the Tenant or another will not fulfill him. Litt. S. 237.

Recousse is not but where he has Piesession of the Cattle, or the Thing of which the Recousse is supposed to be made; For if one comes to arrest a Man, or to distrain, and he is dissaistred to doe it, he shall not have a Writ of Recousse, but an Action on the Case. P. N. B. 102. (F).

4. If the Tenant refuces the Distrefls, and after is dissiilsted of the Tenancy, yet the Affile lies against him for the Distriuim done of the Rent by the Recousse. Co. Litt. 160. b.

5. When a Man has a Distrefls, and the Beasts, as he is driving them to the Feaund, go into the Houe of the Owner, if he that distraineth them demands them of the Owner, and he delivers them not it is a Recousse in Law. Co. Litt. 161. b.

(Q) Recousse of a Distrefls. Who may make it.

[And what Remedy the Distriuiner has where the Distrefls was with Cause. Roll pl. 6.]

1. If a Man distraineth my Cattle without a Cause, yet a Stranger cannot of his own Head rescue them from him; For he hath good Cause to have them against him. 39 C. 3. 35. b.

2. If a Man distraineth my Cattle together with the Cattle of J. S. without Cause J. S. or I may justify the Rescue of all. 39 C. 3. 35. b. per Thorp.

Service behind, when there is not any Rent or Service behind, the Stranger may rescue his own Cattle, but not the Tenant's as it seems. And that as it seems by the Statue of Marlbridge cap. 3. which wills, Non ido puncturat Dominus per Redemptionem, yet the Opinion of Thorpe. M. 31 E. 3. is contrary, for
3. If a Distress be taken of Goods without a Cause the Owner S. P. per Cur. Ld. may reduce them. Co. Litt. 47. b. 

4. But if a Distress be taken without a Cause, and put into the Pound, the Owner cannot break the Pound, and take them out; because they are in the Custody of the Law. Co. Litt. 47. b. 

5. If a Man takes Cattle Damage-Feasant and puts them into a Pound, and the Owner that hath Common there makes Freth Suit and finds the Doors unlock'd he may justify the taking out the Cattle in a Parco Fracto. Co. Litt. 47. b. 

6. But if the Owner breaks the Pound and takes out his Goods, he that disfraint them may have his Action de Parco Fracto, and may also take again the Goods disstrained where he finds them, and impound them again. Co. Litt. 47. [b]. 

7. Recouss by Guardian of the Land and Heir of W. B. for Distress for Amercement, and the Defendant made Recouss, and there it was agreed, that if a Man disfains tortiously the Owner of the Beasts may make Recouss. Br. Recouss, pl. 12. cites 39 E. 3. 35. 

8. But it was agreed Pach. 4 E. 6. that if a Man disfains tortiously and puts them in Pound, that the Owner cannot break the Pound and take them out; For they are in Custody of the Law. Ibid. 

9. If a Man disfains tortiously, the Owner of the Beasts may make Br. Recouss, Recouss. Br. Distress, pl. 26. cites 39 E. 3. 35. But P. 4 E. 6. it was agreed that if he disfains tortiously, and impounds them the Owner cannot take them out; For they are in Custody of the Law. Br. Distress, pl. 26. 

10. If the Lord disfains without Cause, yet he Tenant cannot make Recouss per Monomary. Br. Recouss, pl. 25. cites 40 E. 3. 32. 

11. If a Man disfains my Beasts which come into his Land by Escape I may reduce them, but if I keep or put them there, or if I have Notice that they use to go there, this is no Escape. Br. Recouss, pl. 5. cites 2 H. 4. 16. 

12. In Case of a Distress for 2 d. a Score of Sheep of any Stranger passing Mo. 574. per & trans the said Vill, and if it was denied onRequest that they used to distrain, it was initiated that a Man cannot prescribe to distrain for it Via Regia, for it is against the Stat. of Marlebridge, cap. 15. and that Pre- cited 17 E. 3. 1. 43 E. 3. 40. 11 R. 2. Avowry 87. 17 E. 3. 43. that scription is where a Lord distrained in an Highway the Tenant might have Trel- paws or make Recouss; and that against a Statute one cannot prescribe, and cites 9 H. 6. 56 and Dyer 232 and 273. But this Exception was not allowed; for it was held that this Statute did intend but for Distresses for Rents and Services, and not for those Things whereof no Distress can be but in the Highway. Cro. E. 710. pl. 34. Mich. 41 & 42 Eliz. C. B. Smith v. Shepherd. 

Vis Regis is precedent to all Prescrip. But if the Party shews Cause for the Toll, as if he is bound
bound to repair the Bridge or Causev &c. then it may be reasonable Cause for the Commencement of the Toll and Prescription; But for Toll Traversed it is clear that a Man may prescribe. — See Tit Toll (A) per tonum.

Where a Man di

trains the 

Tenant can

not make 

Refcous though no Rent be arrear, quod non bene. Br. Refcous, pl. 16. cites 9 H. 7. 2.

14. And so it is if the Tenant refuseth the Lord to distrain when there is no Rent behind; this can be no Distress of the Rent for the Cause above-aided, and this (as it appears by Littleton) holds as well in the Case of a Rent-Service between Lord and Tenant, as in Case of a Rent-charge &c. And I heard Sir Christopher Wray lay that he had adjudged it. Co. Litt. 160. b. 15. And that which the Tenant may do when there is no Rent behind, may a Stranger do, if his Beasts are distrained. Co. Litt. 160. b.

16. If the Tenant tender the Rent to the Lord when he is to take the Distress, if notwithstanding the Lord will distrain, the Tenant may make Rescue. Ut supra.

If the Rent of the Lord be behind, and the Lord distrains the Cattle of the Tenant in the Highway within his Fee, the Tenant may make Rescue for that it is defended by Law to distrain in the Highway. Ut supra.

17. And by the Same Reason, if the Lord will distrain Averia Cattlen where there is a sufficient Distress to be taken besides; Or if the Lord will distrain any thing that is not distrainable, either by the Common Law, or by any Statute, the Tenant may make Rescue. Co. Litt. 160. b. 161. a.

18. If the Lord coming to distrain had no View of the Cattle within his Fee, tho' the Tenant drives them off purposely, or if the Cattle themselves after the View go out of the Fee, or if the Tenant after the View removes them for any other Cause than to prevent the Lord or his Distress, then cannot the Lord distrain them out of his Fee, and if he does the Tenant may make Rescue. Co. Litt. 161. a.

19. Where Goods are distrain'd without Cause, the Owner may rescue them before they are impounded, but he cannot afterwards break the Pound and take them out, because they are then in the Custody of the Law. Co. Litt. 47. b.

20. If the Lord distrains his Tenant's Cattle, and a Stranger's Cattle, for Rent or Service behind, where there is not any Rent or Service behind, the Stranger may rescue his own Cattle, but not the Tenant's, as it seems. And that, as it seems by the Statute of Marlebridge, cap. 3. which will not Non ideo punctatur Dominus per Redemptionem; yet the Opinion of Thorp. M. 31. L. 3. is contrary; for he says, the Stranger may rescue as well the Tenant's Cattle as his own. Qua re. F. N. B. 102. (E).

(Q. 2)
1. In Writ of Recusant made of Goods and Merchandizes refused; for which Toll ought to be paid, the Writ was that the Charters were taken at C. for the Toll, and would have detained them according to the Law &c. and that the Defendants refused the same Charters without saying where the Recusant was made, and yet held good; for it shall be intended at the Place where the Taking was. Thel. Dig. 99. lib. 10. cap. 9. S. 6 cites Mich. 30. E. 3. 20.


3. Recusant, because the Plaintiff distrained in his Fee in B. in Land, the General held of him, and the Defendant made Recusant, and the Defendant paid, Br. General cites S. C. that he held two Acres there of the Plaintiff, and three Acres there of N., and the Plaintiff would have distrained in the three Acres which are out of his Fee, and the Defendant made the Recusant. The Plaintiff said, that he came to the two Acres to have distrained, and saw the Beast's there, and the Defendant perceiving it chased them into the three Acres, which are out of his Fee, and the Plaintiff came there freely and would have distrained, and the Defendant made Recusant Vt & Armes. Cand. demanded Judgment of the Writ, which is, that he distrained within his Fee, and now he contends it that out of his Fee, and in this Case he ought to have Writ accordingly; but Thorp [awarded him to] answer; For there is no other Form of Writ in this Case; and also when he came to the two Acres to distrain, and you perceiving it chased them into other Land, it is lawful for him to pursue and distrain there, and this taking refers to the first Place; by which the Plaintiff said, that he was harrassed in the two Acres, and when he had finished it, went to the three Acres to perform his Overgone prout &c. abigne hoc that he chased for this Case, and the others e contra, and to the Cause in Illue. Br. Recusant, pl. 3. cites 44. E. 3. 20.

4. Where a Man acceeds for Rent, and after distrains and acceeds for Homage, and the Plaintiff fies Recaption, and after in the Answer disclaims to hold of the Defendant, by this he has not abated his Recaption; and so fee that a Man may have Recaption against him who has not Tenure if he distrains twice for one and the same Cause; but if he distrains for Rent of one Day, and after, pending the same Replevin, distrains for Rent of another Day, Recaption does not lie. Br. Recaption, pl. 4. cites 47. E. 3. 22.

5. And also it seems there, that where a Man distrains for one Cause, and after for another pretended Cause which is not true, yet Recaption does not lie, and the Illue was, if he took the second Ditrefes for the first Cause or not? Ibid.

6. In Recusant of Ditrefes it was awarded a good Plea, that he had a great Waife adjoining to his Manor, and he put his Beasts there, and they escaped into the Places where &c. and the Plaintiff took them, and he made Recusant; Nota. Br. Ditrefes, pl. 12. cites 2. H. 4. 16.

7. But it was said, that it a Man keeps his Beasts in the Place, or has Notice that they suddenly came to this Place, this is not an Escape; Quod Nota. Br. Ditrefes, pl. 12. cites 2. H. 4. 16.

8. Writ
9. In Recous the Plaintiff was compelled to sue for what Rent he displeased, and for what Term being in Arrear and otherwise ill, by which he flowed the Tenure, and for 30d. arrear such a Fealty he displeased, and the Defendant made Recous; the Defendant took Exception because he did not allege Sefis, et non allocutur. Br. Recous, pl. 7. cites 8 H. 4. 2.

10. By which he said that where A. B. granted to the Plaintiff the Seigniory, the Tenant did not attend by which he made Recous, et non allocutur without showing that he is Tertenant or other Authority. Ibid.

11. And therefore he said that he be as Servant to the Tertenant, and by his Command made the Recous. Ibid.

12. In Recous the Defendant to the Vi et Armis pleaded Not Guilty, and to the Recous said that the Plaintiff’s Servant took the Defendant’s Sheep in his Several in C. and he made Recous, abigne hoc that he took them in A. Pref &c. et adjournatur. Br. Recous, pl. 9. cites 7 H. 6. 1.

13. In Recous the Plaintiff counted that R. was seized of two Heales and held them of him by Fealty and two Shipings Rent payable at Easter annually, of which Services he was seized by the Hands of the said R. as by the Hands of his very Tenant, and for the 20s. Rent-Arrear such a Fealty he displeased, and the Defendant made Recous; The Defendant pleaded Unques fisthe per my les mains, Pref, and the others c contra; Per Newton this is no Plea in this Action, for here the Tenure is only transferable and no other Thing. Br. Recous, pl. 10. cites 22 H. 6. 27.

14. And from hence it follows that Riens Arrear is no Plea in this Action, by which Prihot impair’d, and the like Paiche hoc Ann. Ibid.

15. Recous that he displeased T. in D. for Services &c. and be made Recous. it is no Plea that the Plaintiff displeased in S. abigne hoc that he displeased in D. for he ought to justify the Recous, per tot. Car. By which Pole said he displeased in four Acres in S. which was the Frank-tenure of the Defendant, by which he made Recous, abigne hoc that he displeased in D. but after he said that he was seized in Fie of the four Acres in S. and the Property of the Beasts were in him, and the Plaintiff displeased, by which he made Recous, abigne hoc that the Plaintiff displeased in D. Pref, and the others c contra. Br. Recous, pl. 11. cites 22 H. 6. 54.


18. Recous because he displeased for Rent-Arrear for three Days, and the Defendant made Recous, and it appeared that the third Day was not come at the Time of the Taking, by which the Defendant demanded Judgment of the Count and that the Writ abate, and per Car, the Count is good; for if he had any Cause to displease the Defendant cannot make Recous, and the Matter is only to the Action for the third Day. Br. Recous, pl. 14. cites 39 H. 6. 7.

19. In
19. In Refcous it is no Plea that be held by other Services or the like, for it holds of him it is not lawful for him to make Refcous. Br. Refcous, pl. 18. cites 5 E. 4. 8. and 7 E. 4. 19. 20.


21. Refcous, and allged Tenure and Seifin by the Hands of his Tenant as his very Tenant, and that be disfrained and the Tenant made Refcous, pl. 20. cites 5 E. 4. 62. S.C. The Defendant said that Ne unques fijhe per my les mains after the Limita-
tion of Affile, and the bilt Opinion was that it is no Plea; for it he has Seigniory there he may disfrain, to traverse the Tenure and not the Seifin, for no Limitation is given in Refcous, but in Replevina, and Affile, and Writ of Right. Br. Refcous, pl. 17. cites 5 E. 4. * 52.

22. In Refcous the Defendant pleaded Hors de fon Fee, and per Cur. In Refcous this is no Plea in this Action nor in Trefpafs; but he shall say that it is held of a Stranger, and so Hors de fon Fee, and then a good Plea, and for he did. Br. Refcous, pl. 19. cites 6 E. 4. 4. 4.

other made Refcous, there Hors de fon Fee is a good Plea, per Cur. Brooke says, Quære if he may reply for Rent Charge; but it seems that there is no other Form of Writ. Br. Refcous, pl. 22. cites 5 E. 3.

23. And per Choke and Danby Ch. J. the same Year Fol. 87. where the Tenant holds by 2 d. and the Lord incroaches 4 d. the Tenant may act by Refcous and Special Pleading, and shall not be drove to Ne injusste Votes, or contra formam Fessament. Ibid. 24. So in Affile. Ibid.

25. Contra in Action. Ibid.

26. In Refcous the Defendant pleaded always seised after the Limita-
tion, and the Plaintiff would have demurred, and the Defendant dongs not demur, the Reagon seems to be that a Man may disfrain that never was feid, Quære. Br. Refcous, pl. 23. cites 5 E. 4. 6. 27. If a Man sends his Servant to disfrain for Rent, or Service, or Damage-Peafant, and Refcous be made upon the Servant, the Matter shall have the Writ of Refcous and not the Servant, for the Wrong is done to him who ought to have the Rent or Service, or is damnified &c. F. N. B. 101. (F)

28. If a Collector or Sub-Collector disfrains for Fifteenths, and Refcous be made, he shall have a Writ of Refcous &c. F. N. B. 101. (F)

29. If the King's Bailiff disfains for Rent, and Refcous be made, the Bailiff shall have the Writ of Refcous and not the King. F. N. B. 102. (B)

30. If the Sheriff send to the Bailiff of the Liberty to levy Fines and Amencements for the King, and the Bailiff disfrains certain Cattle, and the Refcous is made. Now the Lord of the Liberty shall have a Writ of Refcous of the Refcous done to the Bailiff, and for the Battery and Attainment made upon him, and for the Loss of his Services, and all in one Writ. F. N. B. 102. (B)

31. In Refcous &c. the Plaintiff declared that he had disfrained 40 x Roll Rep. Sheep of the Defendant's, and 80 of R. S.'s Damage-Peafant, and that 165 S. C. the Defendant took, chased, and refused all of them; the Defendant justifed that he sent his 40 Sheep in the Place where, as for Common, and that the Plaintiff de injuria fim propria chased them, and that the Defen-
dant would have taken them from him, but they ran amongst the other might justify his Sheep of 80 Sheep of R. S. and rodded with them, and because he could not see the chasing, he might disfrain them &c. that to driving. 

X X
Diftrefs.

them away that he chastised them all to such a Place to sever them. Cro. J. 568. he could not do so by any pl. 6. Paich. 18 Jac. B. R. Jennings v. Playfere.
Means, Quod Dodderidge confess'd, but said that if Defendant had put the Sheep of S. S into the Common again, it had been good, Judgment for the Plaintiff. —— Palm 172. Gening v. Pliffo, S C adjudged for the Plaintiff. But Dodderidge said that Defendant might have aided himself in Pleading, if he said after, that he had severed the 40 Sheep and had restored the 50 to the Plaintiff.

32. It was agreed in a Cafe by Hobart, that where a Man brought an Action de parco fraught, and declared upon the Breach of a Pound, and also of the taking out of Beasts; and the Defendant as to the taking out of the Beasts, pleaded Not Guilty, and as to breaking of the Pound he said, that he was Lord of the Soil upon which the Pound stood, and that he brake of the Lock and put a Lock of his own; and Hobart said in this Cafe, that he ought to plead the general illue, for in Verity this is not any Breach of the Pound, except the Beasts come out of it; And Jones J. was of Opinion, that if he put out the Beasts this Action would not lie, because the Freehold was in him, but he ought to have a special Action upon the Cafe. Win. 80, 81. Paich. 22 Jac. C. B. Anon.

(Q. 3) Pound - Breach. What is. And how punished.

1. W H E R E one breaks the Pound and takes the Diftrefs, yet he who drivtrain may retake them and put them in again, notwithstanding that he may have Parco Fraflo; quod non negatur. Br. Avowry, pl. 12 cites 34 H. 6. 18.

2. The Difttrainor may have Parco Fraflo for the Breach of the Pound, and not the Lord. Arg. 12 Mod. 669. cites Dr. and Stud. c. 27.

3. A brought Parco Fraflo, and declared upon the Breach of a Pound, and also of the taking out of Beasts; As to the taking out of Beasts the Defendant pleaded Not Guilty, and As to the breaking the Pound he said he was Lord of the Soil on which the Pound stood, and that he broke the Lock and put a Lock of his own. Per Hobert, He ought to plead the general illue, for in Truth this is not any Breach of the Pound except the Beasts come out. And per Jones J. If he put the Beasts out he may not have this Action, because the Freehold was in him, but he ought to have a special Action on the Cafe. Winch. 80. Paich. 22 Jac. C. B. Anon.

4. If the Door of the Pound be open, it is no Pound-Breach to take the Diftrefs out of it; per Powell J. 2 Lutw. 1626. Trin. 7 W. 3. Always v. Broom.

5. 2 W. & M. Stat. 1. cap. 5. S. 4. Upon any Pound-Breach or Recons of Goods drivtrain for Rent, the Person griev'd shall in a special Action upon the Cafe recover treble Damages and Costs against the Offenders, or against the Owner of the Goods if they come to his Ufe.

This is only meant treble Damage and single Costs; and he may sue either the Owner or the actual Offender in all Cafes, and the Owner if the Goods come to his Ufe or Possession, but if he recovers against the Offender he shall not sue the Owner afterwards. Sir Barth. Shower's Observations, ut supra, fol. 162, 163.

6. If the Owner breaks the Pound and let the Diftrefs go, the Difttrainor may have a Parco Fraflo, or may retake the Diftrefs, per Gould J. 12 Mod. 661. Hill. 15 W. 3. Valpor v. Edwards.

(Q. 4) Escape

1. If a Man disstrains Beasts and they go back to the Owner of their own Accord, he who disstrains cannot retake them by Reason of the first Distress unless he comes freely; For there is Negligence in the Distraintor; per Danby J. Br. Distress, pl. 25. cites 9 E. 4. 2.

2. Where the Perfon disstraining puts the Distress in a broken Pound, Ed. Rayns or such as cannot keep the Thing impounded, and the Distress escapes, he Rep. 713. cannot maintain an Action for the same Trespass, and its being a common Pound varies not the Case. 12 Mod. 658, 663. 664. Hill. 13 W. 3. Vaflor v. Edwards.

3. If Distress taken Damage feafant escapes, the Distraintor cannot bring Trespass unless he shows that the Escape was without his Default, and laying that it was without his Content and Will is not sufficient. 12 Mod. 658. Hill. 13 W. 3. Vaflor v. Edwards.

4. But if they escape without his Default he has other Remedy; because he cannot otherwise secure them than by impounding; For he cannot tie them; Per Powis J. 12 Mod. 662. in Case of Vaflor v. Edwards, cites 27 Aff. pl. 64.

5. So if they are stole out of the Pound-overt he is not answerable for them, nor remidies unless the Things stolen were not proper to be put into a Pound-overt; Per Powis J. 12 Mod. 662. cites Co. Litt. 47 b.

(Q. 5) Death of Beasts in the Pound; At whose Loss it shall be.

1. If the Beasts die in Pound after Offer of sufficient Amends, this is at the Peril of the Owner if they are in Pound-overt; But if they are not in Pound-overt, this is at the Peril of the Distraintor. But if the Writ of the King comes to deliver them, and the Distraintor rejefts it, there if they die, this is at the Peril of the Distraintor, and the Owner shall recover his Damage by Action upon the Statute for disobeying the Writ. Br. Distress, pl. 72. cites Doct. and Stud. lib. 2.

2. If Cattle disstrained be put in Pound-overt, the Owner at his Peril *if the Distraintor must feed them, and if they die the Distraintor shall bring his Action for the same. If they die again; Per Powis J. 12 Mod. 662. cites D. 230. Co. Litt. 47. Br. and Stud. 102. and saith, that the Reason is because he has lost his Pledge without any Fault in him.

(Q. 6)
(Q. 6) Actions and Pleadings.

1. WRIT of Trespass for Distrefs taken in the High Street, contrary to the Statute of Marblebridge, was without saying contra pacem, and yet adjudged good. Thel. Dig. 114. lib. 10. cap. 24. S. 1. cites Mich. 19 E. 2. Brief 842.


3. It seems by the Argument of a Recaption, that where a Man disstrains, he shall say for what Cause he disstrains, or at least if he sews Cause this is material as to the Recaption, though he avows for other Cause. Br. Distrefs, pl. 61. cites 28 E. 3. 92. and Fitzh. Tit. Recaption 6.

4. It was granted per Cur. that of Rent, if the Tenant tenders upon the Land, the other cannot disstrain. Br. Distrefs, pl. 36. cites 30 All. 38.

5. If a Man takes Beasts for one thing, yet when he comes into Court of Record he may make Avowry for what Thing bepleades; Per Cur. 3 Rep. 26. cites it as adjudged Mich. 34 E. 1. Tit. Avowry, 232.

6. Of taking in the High Street a Man shall not have Replevin, but WRIT upon the Statute. Thel. Dig. 117. lib. 10. cap. 27. S. 8. cites Trin. 11 R. 2. Avowry, 87.


8. It the Rent of three Terms be arrear, and the Lord disstrains for the Rent of the first Term, and the Tenant sues Replevin, and the Lord avows, and the Tenant pleads Hors de son Fee, or other such Thing which brings the Seigniory in Debate, there the Lord cannot disstrain for the Rents of the other Terms till the Seigniory be tried; Per Brickhill for Law, quod conceditur per all the Justices. Br. Distrefs, pl. 14. cites 7 H. 4. 4.


11. In Trespass the Defendant said that he had the Plaintiff for 10 Years, rendering annually 20s. at two Fees &c. and for 10s. arrear he disstrain'd, and the Plaintiff was not permitted to say, that De fon tort Demesne without such Cause; But shall say that De fon tort Demesne abique hoc that he had's, or abique hoc that any Rent was arrear. Br. De fon tort &c. pl. 29 cites 10 H. 6. 3.

12. Trespass of three Horses taken; Suliard said, Actionon; For J. S. was seised of the Close where &c. and held of him by Fealty and 10s. &c. and for the Rent arrear he came and found the Horses levant and couchant by which he took them, and within his Fee; the Defendant said that they eschew in default of Inclosure of the Tertenant, who ought to inclofe it, as he was chafing them in the Highway. Suliard said they were levant and couchant there by six Days after the Escape. Per Brian he may well disstrain them. Per Choke when the Beasts of a Stranger enter in default of Inclosure of the Tenant of the Franktenement, there if the Owner has Notice of them and does not take them away, the Lord may disstrain them. Per Catesby J. where the Beasts enter in default of Inclosure, the Owner of the Land cannot disstrain them Damage-Feasant, though they are there by halt an Year, and
and therefore the Lord cannot distrain. But where the Tenant of the Land is not bound to incline it, there if Beasts enter the Lord may distrain. But see Brian Ch. J. above made the best Reason, as it seems Br. Distress, pl. 36. cites 22 E. 4. 49.

13. If Distress be stole or set at large by a Stranger he shall not be answerable for it; but even in that Case if Replevins be brought, and an Elongator return'd, as it must be, there shall be a Writernana, and the Distraint Party shall bring that Matter, which being no Default of his will excuse him. Per Holt Ch. J. 12 Mod. 660. Hill. 13 W. 3 Vaiper v. Edwards.

16. If Distress be stole out of Pound, and Elongat' be returned, the Distraint Party to present a Writernana may shew that they were stolen. Per Wovis J. 12 Mod. 662. in Case of Vlpor v. Edwards, cites 32 H. 6. 27. b. Br. Rec. Brev. 135. Nat. B. 74. and some Books say the Sheriff may return it.

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(R) What shall be said Excessive, and what not.

1. If 40 Sheep are taken for 2d. and 16 Oxen for 9d. this is Excessive. 41 E. 3. 26.

2. If two Oxen for four Pair of Gloves, ten Sheep for one Pair, and ten for another, it is an excessive Distress. 29 E. 3. 24. adjudged.

3. But if a Man takes five Horses join'd in a Cart for 3d. Rent Cheyne said this is not Excessive for the Intercite? 8 P. 4. 15.

quod non fuit responsum. But Brooke says that it is not because they were join'd in one Plough, and could not be sever'd. Br. Distress, pl. 15. cites 8 H. 4. 16.

A Man cannot have a Distress, and therefore in some Cases a Distress of great Value, as a Cart and Horses may be taken for a small Matter because not severable; Admitted Arg. 2 Vent. 185. Trin. 2 W. & M. in 6, 7 in Case of Clark v. Tucker.

4. No Distress for Homage shall be said Excessive for the high Exertion thereof in the Law. 42 E. 3. 26. Co. 4 Brevil. 5. b.


Beasts as he can find upon the Land; For, for Homage the Distress shall not be said Excessive. Per Belk Quare: For Finch was contra, but it was not adjudged, therefore Quare. Br. Distress, pl. 4. cites 42 E. 3. 26. —— Though the Lord distrains the Tenant so that he is not able to manage his Land itself. —— In Affile it was said for Law, that if the Tenant holds of his Lord by Homage the Distresses cannot be Excessive, nor for Suit of Court nor Fealty, but it was said that the Law is not very clear for Suit nor Fealty. Br. Distress, pl. 55. cites 28 All. 50.

6. A Distress of more than the Value shall not be said Excessive for the Expenditures of Knights of Parliament, because the king is in a Banner Party. 13 H. 4. 2. Br. Distress, pl. 59. cites 11 H. 4. 2. S. P. —— Distress.

shall not be said Excessive where the King is Party, as for Fees of Knights of the Country for the Parliament, and no Mitchell; For by Payment of it they shall re-have the Beasts. Br. Priorparatus, pl. 98. cites 11 E. 4. 2. —— S. P. 2 Inst. 107. but Lord Coke adds that the Statute of Marlbridge is General and extends to All.

7. No Distress can be Excessive for Homage, Fealty, or Suit, and Affile les not for too often distraining or for excessive distraining for those Duties. F. N. B. 178. (1) in the new Notes there (b) cites 28. All. 50. and 42 Ed. 3. 26.

8. Avowry
Diftrefs.

8. If a Man driveway a Load of Grain and four Horses for 2s., this is excessive Diftrefs; Contra if they are annexed to the Waggon; for then it is a Thing intire, which cannot be fevered. Br. Diftrefs, pl. 88. cites 20 E. 4. 3.

9. And it was in a Manner agreed, that a Fold of Sheep in the Field may be driveway for 2s. and shall not be paid excessive; for the Diftrainer cannot sever them. Br. Diftrefs, pl. 88. cites 20 E. 4. 3.

(R. 2) Causeless and excessive Diftrefs. Remedy for it.

If the Lord 1. 52 H. 3. cap. 4. T HE Diftrefs shall be reasonable, and not too great; and be that takes great and unreasonable Diftrefs shall be grieved amerced for the Excess.

If the Lord driveway an Ox or Horse for a Penny; if there were no other Diftrefs upon the Land, the Diftress is not excessive; but if there were a Sheep or Swine &c. then the taking of the Ox or Horse is excessive, because he might have taken a Beast of less Value. 2 Inf. 107.

An Information was brought against a Lord of a Manor for taking unreasonable Diftrefles upon several Tenants of his Manor; but Judgment was stayed; for the taking unreasonable Diftrefles is punishable by Ation ou the Statute of Marlbridge, and not by Information. Lev. by Twifden, 299. Mich. 22 Car. 2. B. R. The King v. Lethingham, sed adorna-

2. An Information was brought against a Lord of a Manor for taking unreasonable Diftrefles upon several Tenants of his Manor; but Judgment was stayed; for the taking unreasonable Diftrefles is punishable by Action on the Statute of Marlbridge, and not by Information. Lev. by Twifden, 299. Mich. 22 Car. 2. B. R. The King v. Lethingham, sed adorna-

Ted adorna-

3. Avoirty for 2d.; and for 9d. and that he took two Sheep for the 2d. and 15 Oxen for the 9d. and therefore he was amerc'd to 20s. for the excessive Diftrefles; quod not. Br. Diftrefls, pl. 2. cites 41 E. 3. 26.

4. 2 W. & M. Stat. 1. cap. 5. S. 5. If any Diftrefs or Sale shall be made for Rent where no Rent is due, the Owner of the Goods, his Executor, &c. may by Action of Trepass, or upon the Case, recover double the Value of the Goods distrained with Costs.


(R. 3)
(R. 3) Remedy by Affife of Souvent Diftrifts.

1. In Affife, the Defendant said that the Plaintiff himself is failed &c. to which the Plaintiff said, that the Defendant claimed Scillywry in his Land, and had distrained him by Beasts of his Plough, and by Souvent Diftrifts, fo that he could take no Advantage of the Land; The Defendant said, that the Land was held of him in Fine Uexis by Homage, Fealty, and Efjeouge, and Suit of Court and Rent, and for the Fealty and Suit he distrained. Br. Affife, pl. 274. cites 27 Aff. 51.

2. And it was said there by some, that Affife does not lie by Souvent Diftrifts, but where the Lord distrains; For if another distrains he may make Rejoins; And it was held, that it is a good Plea for the Plaintiff, in Case of Souvent Diftrifts, to say that he does not hold of him, but then the Affife of Souvent Diftrifts does not lie, by some. Ibid.

3. And it was said, where Lord Mesne and Tenant are, and the Lord distrains for the Services of the Mesne, the Tenant may say that Riens Avrer in the Affife; Contra in Replevin; Quare of the Souvent Diftrifts; for the Plaintiff dared not demurr. And hence it seems that he thought, that the Affife did not lie of Souvent Diftrifts but where the Lord of whom &c. distrains. Ibid.

4. For Suit the Souvent Diftrifts is maintainable, for this cannot be In Affife, the extended to any Value, Quare of Fealty; For by some the fame Law of Fealty, but Rent is valuable in certain. Br. Diftrifts, pl. 53. cites 27 Aff. 51.

Franktrament; Judgment of the Writ; The Plaintiff said, that the Defendant had distrained him by Souvent Diftrifts, so that he could not plough his Land, and prayed the Affife; to which the Defendant said, that the Plaintiff held of him by Homage Fealty, and Suit of Court, for which Services he had distrained; Judgment of Affife; But, for Homage the Diftrifts cannot be said excesses; And the Plaintiff said that he held of J. who held over of the Defendant by 12 d. and as to this Riens arrer, and prayed the Affife, and the Affife awarded, and by the Opinion of some of the Juflices, Affife does not lie for Souvent Diftrifts where the Lord distrains for Homage Fealty or Suit. Br. Affife, pl. 291. cites 28 Aff. 50. — 2 Rep. 3. a. Mich. 17. & 38 Etr. C. B. Rivell's Cafe, S. P. held accordingly, and cited S. C. and 11 H. 2. 2 a. 42 E 3. 46 a. and Br. Diftrifts, 50.

5. If the Lord, or other Man who has a Rent inluing out of the Lands, do often distrain for the Rent or Service where none is behind, the Tenant may have Affife for this Diftrifts by the Common Law; and that Affife lies between the Lord and the Tenant, or between the Lord Paramount and the Tenant Paravall, as appears 27 Aff. 51.

But it seems reasonable, that the Tenant have the Affife of Souvent foists distrained against him who claims a Rent-charge out of the Land; taken quare. F. N. B. 178. (1)

6. Affife of Souvent Diftrifts lay at Common Law, in which the Writ shall be general, and the Count special, that the Lord Souvent foists distrained &c. and Judgment shall not be that the Demandant recuperet Seilinam, for he has that, but quod tenat absque multiplici Disfritione. 8 Rep. 50 a. b. Mich. 6 Jac. C. B.

(R. 4)
(R. 4) Several Distrefles for the same Thing. Lawful in what Cases.

The Word (not) is omitted in the Editions of Brook, and therefore miscprinted.

1. WHERE the Lord comes to distrain, and takes an Ox, which is not sufficient for the Rent arrear, and then there are no more Beasts there, he may come at another Time and take an Ox, and at another Time and take another Cow, and at another Time another Cow, till he has sufficient Distrefles. Br. Distrefles, pl. 98. cites the printed Abridgment of Alises, Tit. Bar.

2. In Replevin the Defendant avowed; the Plaintiff pleaded Hors de soc Fce &c. and pending thisallaxe the Defendant cannot distrain again; Quare; For it is laid elsewhere, that pending an Affile, if a Man distrains he shall abate his Affile; But contra of Replevin. Br. Distrefles, pl. 62. cites 18 R. 2. and Fitzh. Recaption 9.

3. Where a Man takes Distrefles for Rent, and upon Avowry has Return irrepealible, if a Beast dies in the Pound, now he may distraing anew; for the Sum of Rent, or Valuation of the Damage, is not adjudged to the Avowant in the Replevin, and then the Beast taken by him in Execution, but where he had taken the Beasts by Distrefles, and that is reprieved from him. Now upon the Right of distraining appearing the Beasts are restored unto him in that State as they were before, to remain with him as a Distrefles lawfully taken by Judgment of the Court, and not to be reprieved, he is in Kent-Service, or Rent-Charge, or Damage-Peasant, that he may distraing and retain till the Rent or Damage be satisfied, so that even as if the Beast had died before Judgment he might have distrained again, So after Judgment, for it is alike in both Cases; Per Hobart Ch. J. Hob. 61. cites 14 H. 4. 4. 15 E. 4. 10.

4. In Recious, where Return of Beasts is adjudged to a Man this is no Payment of the Rent, but only a Pledge, till he be satisfied or paid the Rent; For if the Beasts die in the Pound he may distrain de novo; per Brian, quod nota. Br. Distrefles, pl. 22. cites 15 E. 4. 10.

5. Lord and Tenant by Fealty and 3d. Rent, the Lord dies, the Fealty is enfeoffed of the Seigniory, the Feme of the Lord may distrain for 1d. and the Feme 2d. and so now the Tenant is charged with two Distrefles where he was charged but with one before; but this is not inconvenient, for he pays no more Rent than he paid before. Br. Distrefles, pl. 59. cites 24 H. 8.


7. If for 10l. Rent due at one Day, a Man distrains Goods of the Value of 40s. only, and at the Time of the taking the Distrefles there are Goods of a sufficient Value upon the Premises, he cannot for the same Rent distrain again; for it is his Folly that at the first he distrained no more; adjudged. Mo. 7. pl. 26. Mich. 3 E. 6. Anon.

8. But if there be Rent in Arrear at several Days, a Distrefles may be taken for what was due at one of the Days, and after a Distrefles may be taken for what was due at the other Days; Per Brown. Mo. 7. pl. 26. Mich. 3 E. 6. Anon.

9. In a Replication the Plaintiff is Nonuit, and the Defendant had Return, and the Plaintiff sued a second Deliverance, and is also Nonuit upon that, by which the Defendant is to have a Return irrepealible; but whether the Defendant ought to avow, shewing the Certainty of the Place, Day, and Beasts, in order to have a Writ of Inquiry of Damages, was doubted. Divers thought he need not, but that he might.
Distrefs.

might justify the detaining till the Plaintiff offered sufficient Amends for his Damages, others held he might work the Beasts, but others a great contr; because he had not a Property in 'em but as a Gage; And he may put them again into the common Pound, and if they die there he may take another Distrefs for the first Cause, inasmuch as he was never satisfied. D. 280. pl. 14. Mich. 10 & 11 Eliz. Anon.

10. If one takes Trop petit Distrefs for Rent, and after takes another Distrefs for the same Rent, this is not good, for he cannot avow two Distrels for the same Rent; for it was his Folly that he took not a better Distref at the first; But Nota in the Abridgment of the Alifes it was said, That if there be not sufficient Distref when he distrained be may distrain again. Cro. E. 13. pl. 8. Hill. 25 Eliz. C. B. Anon.

cond Distrels. — 2 Lutw. 1435 cites same Cafer and S. P. adjudged accordingly; And the Reporter adds a Quore if the second Distrefs had been justifiable, admitting it had been plead that at the Time of Caution of the first Distres there was not sufficient upon the Land admitted and that the first Distres was not but of such a Value &c.


12. 17 Car. 2. cap. 7. S. 4. Where the Distrel shall not be found to be the Value of the Arrears, the Party, his Executors or Administrators may distrain again for the Rejdue. By 19 Car. 2. cap. 5. this Act is made to extend to Wales and Counties Palatine. —— It was a Mischief before this Statute, that in Case a Distrel was too little one could not distrain again (be the Demand never so great) but the other might plead Levied by Distrels which shews that Distrels could not be split; Per Holt Ch. J. Comb 346. Mich. 7 W. 3. B. R. Johnfon v. Bane.

13. In Trefpafs for taking to Beasts 1 Apr. and also for taking 12 2 Latw. more on the said first Day of April; The Defendant pleaded, that the Plaintiff had a Leave granted to him rendering Rent, and that there was 70 l. Rent in Arrear, and that he (the Defendant) did take the first 10 Beasts for 60 l. Parcel of the said 70 l. and the other 12 Beasts afterwards for 10 l. Refidue of the said 70 l. and upon a De- murrer to this Plea it was adjudged ill; for one cannot avow for two Distrels made for one and the same Rent; it was the Defendant's Fault to distrain too little at first. But the Reporter tells us, that if the Defendant had pleaded, that at the Time of the taking the first Distrels there was not sufficient to be taken for the whole Rent upon the Land, and that the first Distrel was but only of such a Value, it had been good. 3 Salk. 137. pl. 6. Mich. 8 W. 3. C. B. Anon.

14. If Distrels for Damage,-Feasant dies in a Pound or Escape the Party shall not take them, but if it were for Rent, in either Cafe he may distrain de novo; and Escape of Cattle out of Pound is not like Escape of Prisoner out of Goal; For if Pound be no good, the Distraint may be his own Keeper, and put them in his own Pound, but he cannot be Keeper of his Prisoner, and every Pound-Keeper is the Servant of him who impounds the Cattle pro hac vice; per Holt. 12 Mod. 397. Puch. 12 W. 3. Anon.

15. If Cattle disstrained die in the Pound the Distraintor may distrain again it the Distrels was for Rent. Arg. Ld. Raym. Rep. 720. cites Dr. and Stud. cap. 27.

Z 9

(S) How
Diftrefs.

(S) How it is to be taken.

Notice for what a Diftref is taken.

1. If the Lord distrains for Rents or Services he need not give Notice to the Tenant for what Thing it is he distrains it; for the Tenant by Intendment of the Law knows what is in Arrear from his Land. 45 C. 3. 9.

2. The same Law is if the Lord distrains for an Amencement in a Leet. 45 C. 3. 9.


5. If the Bailiff upon the Diftreß shews the Caufe and Reason of it he cannot afterwards vary from it, but the other Party may trick him by Travels. But if he distrain'd generally without showing Caufe, he may shew what Caufe he will, and the other Party shall answer to it. And when a Bailiff distrains, he ought, if he be required, to shew Caufe of his Diftreß, but it he be not required then he is not tied to do it. Le. 50. pl. 64. Patch. 29 Eliz. C. B. Buller's Cafe.

6. 2 B. & M. Seff. 1. cap. 5. 3. 2. For selling Diftreßes for Rent in five Days if not repetted, requires five Days after the Diftreß taken, and Notice thereof with the Caufe of taking left at the Mansion House or other most notorious Place in the Premisses.

7. Personal Notice is sufficient for Notice is the Thing required. Notice to the Owner is sufficient against him in Trover; but if the Tenant had brought Replevin, that would not have served as to him, but he must have had Notice also. Per Cur. 1 Salk. 247. pl. 1. Trin. 7 W. 3. B. R. Walter v. Rumball.

8. The Notice may be to the Party, or left at the chief Mansion-House; if no Person there affix it on the faire Door of the House; if more Houses than one, at the Chiet or Bell. If no House, but Barn or Stable, at the Door thereof; At the Gate or most common Entrance into a Field or Wood.
Donative.

Wood. If in a common Field, where neither Hedge, Gate or Tree, then affix a Stick at the most usual Entrance, with the Notice on it. Sir Barth. Shower's Observations on the Statute 2 W. & M.

9. Upon the 2 W. & M. cap. 5. Notice of the taking the Distrefs is sufficient when it is given to the Party himself, as if he be met with at any Place; and such Notice saying that the Distress was taken for Rent due at Michaelmas last without particularly mentioning the Quantum was held sufficient per Trevor Ch. J. C. B. at the Sittings. Mich. Vac. 11 Ann. Cheverfield (Earl) v. Farringdon, & al.

For more of Distress in General, See Antwry, Rent, and other proper Titles.

Donative.

(A) Original.

1. DONATIVES began only by the Foundation and Erection of it began by the Donor, and as the Incumbent comes in by the Donor, so he may resign it to him, and this determines his Incumbency. Cro. J. 63. Patch. 3 Jac. B. R. Fairchild v. Gayler.

2. Donatives are either by Royal Foundation or by Royal Licence, or by original Agreement with the Ordinary. 3 Salk. 140.

(B) Considered How.

1. BENEFICE Donative by the Patron only is a Lay Thing and the Bishop shall not visit, and therefore shall not deprive, and then if he meddles in it he is in the Cafe of Premontry by some. Br. Premontrine, pl. 21. cites 8 Aff. 29. And in this Cafe was Barlow Bishop of Bath in the Time of E. 6. and was compell'd to obtain a Pardon, insufinich as he had deprived the Dean of Wells, which was Donative by Letters Patents of the King by Act of Parliament made thereof, but 8 E. 3. above is not adjudged.

2. Donatives usually pays as Lay Fees, and the paling of them as Lay Fees alters not the Nature of the Chapels. Arg. Sty. 8t. Hill. 23 Car. in Cafe of Rawson v. Bargue.

(C) Power
(C) Power of the Patron.

1. The Donative Patron when the Church is void may take the Profits to his own Use if the Parishioners will pay them, till a new Incumbent is made. Arg. 2 Roll Rep. 100. cites Fitzh. Aide 103. 6 H. 7. 14, but he has no Remedy to compel them to pay the Tithes to him.

2. A Donative cannot fall in Lapse, but the Patron may lose the Profits if he will, but if any take the Profits from him, he cannot maintain the Action; but he ought to put in his Clerk and he maintain the Action. Arg. Cro. J. 518. cites 33 E. 3. Ait 107. 6 H. 7. 14, 17 E. 3. 45.

3. Incumbent of a Benefice Donative may resign to his Patron, and it being of the Foundation of his Patron is also of his Visitations and Caretions, and the Ordinary has nothing to do with him. No. 765. pl. 1062. Pach. 3 Jac. B. R. Fairchild v. Gayer.

4. The Patron cannot present a Layman. Per 3 Justices against Popham Ch. J. Yelv. 61. Pach. 3 Jac. B. R.

(D) Power of the Ordinary.

1. Where it is Donative by the Founder and his Heirs the Ordinary cannot visit it, and when a Free-Chappell Donative is void the Founder may re-take it and not appoint another Incumbent, contra of a Preferment. Br. Prefentation, pl. 43. cites 6 H. 7. 14. Per Keble.

2. Note, that the Ordinary cannot visit a Free Chapel Donative. King E. 1. had divers Chapels which his Commissioner shall visit and not the Ordinary, but those which have Cure of Souls shall be visited by the Ordinary; Per Keble. Br. Deposition, pl. 9. cites 6 H. 7. 14.

3. If the Patron of such a Donative will not collate there is no remedy to compel him; and he may in Time of Vacation take all the Profits and use for the Tithes in the Spiritual Court; per Popham, but denied by the rent. See Yelv. 61. Pach. 3 Jac. B. R. Fairchild v. Gaire.

176. cites Cro. Car. 330. 2 Roll 331. — It was said by Counsel that in Cache of a Donative the Ordinary might compel the Patron to put in a Clerk. But Holt Ch. J. said, He cannot. Holt's Rep. 619. — The Bishop may compel the Patron by Ecclesiastical Jurisdiction, to nominate a Clerk Wood. Inst. 265.

The Patron of a Donative is liable to the Ecclesiastical Jurisdiction, as he is a Member of the Ecclesiastical Body, for personal Offences, though for Matters relating to the Church he is exempt; and therefore the Spiritual
Donatives. 101

Spiritual Court ought not to deprive him: but for Drunkenness or preaching, here they might confute him. 2 Ed. Raym. Rep. 1266. Mich. 4 Ann in the Case of Colefaft v. Newcomb, said by the Reporter in a Note at the End of the Case to have been told him by Mr. Mead, and Mr. Salkeld, that they had known the same Distinction taken by the Ch. Justice, and the Reporter says, that that stems upon the Consideration of the Case in Vols. to be the better Opinion.

5. The Reversion only is exempt from the Jurisdiction of the Ordinary, and not the Patron, and this goes as well to the Charges to be taxed upon the Church by the Ordinary, Attendance in Visitation &c. Per three J. Yelv. 61. Pach. 3 Jac. B. R. in Case of Fairchild v. Gaye.

6. Ordinary may sequestrate a Church Donative if the Patron does not present, and the Incumbent thereof may be deprived. Arg. Roll Rep. 453. cites 3 Jac. Gaer v. . . .

7. The Incumbent of a Donative of the King is not subject or de-pprivable by any Ecclesiastical Authority, but by the Chancellor or by Commissioners under the Great Seal. 12 Rep. 41. Mich. 5 Jac. in the Exchequer, in Nich. Fuller's Case.

8. If the Bishop go about to visit a Donative this Court of B. R. will grant a Prohibition; Per Hale Ch. J. Mod. 90. pl. 36. Mich. 22 Car. B. R. Anon.

9. The Incumbent of a Donative was cited in the Spiritual Court to The Ordinates a Licence from the Bishop to preach, and the Pretence was that it was a Chapel, and that the Parson was Stridendiary; And per Cur. It is a Donative and the Bishop will visit, a Prohibition shall be granted. 3 Salk. 141. pl. 3. Anon.

but he may proceed to cite him, to convict him for so doing. If he preach any Thing against the Doctrine of the Church, or marry without Licence, the Ordinary may proceed to punish him; A Prohibition was granted as to the Offence, and the Spiritual Officers, and putting him out of Petition, but not as to certifying to the Judges for preaching without a Licence; Per Holt Ch. J. Holt's Rep. 659. Mich. in Case of Bewick v. Twifden.

10. As to Ley's Opinion in Davis 47, that a Sentence of Deprivation Donatives by an Ordinary was effectual in Law till reversed, it is not Law; For which are conferred by Laymen, it is all Coram non Judice, cites Br. Petramuire. 21. F.N.B. 42. The Ordinary cannot visit a Benefice Donative. Arg. Parl. Cafes 53. in Case of Sinceres of Philips v. Bury, 15. per Curian obiter. Pach. 21 Car. 2. B. R.

11. Though Donative be exempted from the Ordinary's Jurisdiction the Clerk of it is not, who may be punished by Ecclesiastical Cen- tures, but not to Deprivation. 12 Mod. 640. Hill. 13 W. 3. Finch v. Harris.

12. Libel in the Spiritual Court, for that J. S. being the Parson of &c. did make himfelf drunk at the Sacrament, and that he was a Whores- mate, and upon Suggestion that they would proceed to Deprivation, and that the Benefice was a Donative, a Prohibition quoad the Suing in order to deprive was granted, but not quoad the other Matter. Farr. 31. Trin. 1 Ann. B. R. Anon.

13. The Ordinary has a Power as to the Parson of a Donative, tho' not to 1 Li. the Place; For it the Parson marries without a Licence, or commits any Misconduct, the Ordinary may punish him in that Respect, but he can not regulate the Seats in the Church. And if the Patron will not present, the Ordinary may compel him; and the Parson is exempt from Attendance at Visitations; Per Holt Ch. J. 3 Salk. 140. pl. 1. Anon.

said he had known Prohibitions denied frequently to Suits against Parsons of Donatives for marrying without Licence.
Donatives.

5. A Minister of a Donative was sued in the Ecclesiastical Court, because when he read Prayers he did not read the whole Service, but left out what Parts of it he thought fit, and for preaching without a Licence. Powell J. (abente Holt) took a Difference where the Litis in the Ecclesiastical Court is in order to the Deprivation and where only for Reform-ation of Manners; that in the first Case the Court will prohibit, but not in the last; and therefore in this Case if the Spiritual Court proceeded to Deprivation, the Court would prohibit them but not till then. 2 Ld Raym. Rep. 1205. Mich. 4 Ann. Colelatt v. Newcomb.

(E) Right of the Patron preserved; In what Cases.

A Donation and Institution of a Clerk presented to a Donative vacant by a Stranger is no Utteration to the true Patron, but it is all utterly void. Co. Litt 344.

1. A Donation and Institution of a Clerk presented to a Donative vacant by a Stranger is no Utteration to the true Patron, but it is all utterly void. Co. Litt 344.

2. In Case of a Donative, if the King makes the Incumbent a Bishop, he shall not present, for they are not incompatible. Cumb. 302. Mich. 6 W. & M. in B. R. Obiter. in Case of the King v. Dr. Birch.

S. C. ——— A Donative with Care of Souls will be void by Promotion of the Incumbent. Arg. Show. 415. ch. Yeve 61. and a Roll. 341. that the King shall not present to a Donative on the Promotion of the Incumbent, was admitted by all in Case of the King v. Dr. Birch. ——— In the said Case it is given as the Reason by S. Eyre J. That a Donative makes no Figure in the Order and Economy of the Church, and a Bishoprick and a Donative are incompatible. Show. 499.

(F) Destroyed.

A Donation and Institution is not requisite in case of a Donative, but if to such a Donative the Patron presents to the Ordinary, and suffers Admission and Institution thereupon, he thereby has made it always presentable. Cro. J. 63. pl. 1. Pasch. 3 Jac. B. R. Fairchild v. Gayer.

1. A Donation and Institution is not requisite in case of a Donative, but if to such a Donative the Patron presents to the Ordinary, and suffers Admission and Institution thereupon, he thereby has made it always presentable. Cro. J. 63. pl. 1. Pasch. 3 Jac. B. R. Fairchild v. Gayer.

2. Presentation may destroy an Impropriation, but not a Donative, because the Creation thereof was by Letters Patents, whereby Land is settled to the Parson and his Successors, and he to come in by Donati-on; Per Holt and Powell. 4 Salk. 541. pl. 3. Mich. 1 Ann. B. R. Ladd v. Widow.

For more of Donatives in General, See Presentation, and Watson's Compleat Incumbent.

Double
Double Pleas.

(A) Double Plea. What is.

1. In Account, the Tenant said that he is within Age, and was within Age at the Time of the Receipt, and held double, but this is to the Action. Thel. Dig. 214. lib. 15. cap. 3. S. 6. cites Pash. 16 E. 3. Account 52.

2. In Writ upon the Statute ofLabourers, the Defendant said, that he was the Apprentice of the Plaintiff, and the Plaintiff would not infringe him in his Mystery, but beat him; Judgment of the Writ, and held double, by which he held him to this, that he was his Apprentice, and not his Servant &c. Thel. Dig. 215. lib. 15. cap. 3. S. 20. cites Mich. 39 E. 3. 28.

3. Prior would have avoided the Fine of his Predecessor, because he was native and removeable; The Defendant said, that he had the Moiety of an Advowson for the Annuity in demand, and also that he had a Common Seal, and is perpetual. And per Thirl, this is double, viz. the Moiety of the Advowson, and that it is perpetual. Br. Double, pl. 128. cites 11 H. 4. 69.

4. In Writ upon the Statute supposing the Forstalling to be in the Port of Cleesfer; The Defendant said that the Port of Cleesfer is no Vill, nor Hamlet, nor Place known &c. but a Place which extends itself into diverse Vills &c. and held double; by which the Defendant held himself to this, that it extended itself into divers Vills, and this lait Plea held good. Thel. Dig. 215. lib. 15. cap. 3. S. 19. cites Pash. 7 H. 6. 24. 37.

5. If the King confirms W. N. in the Advowson of D. and wills by the same Patent that he shall not be thereof vexed nor troubled, and he pleads it accordingly, yet this is not Double; Per Cur. Br. Double Plea, pl. 117. cites 32 H. 6. 21.

6. If a Man pleads Devise of Goods, and that he took them by Command of the Executor, this is not Double; For the one cannot be without the other; For the Devisee cannot take them without Command to take, or by Delivery of them to him made. Contrary of Gift of Goods; For the Donee may take them. Br. Double Plea, pl. 140. cites 37 H. 6. 30.

7. Several Causes of Suspicion of Felony are not Double; For it is only a Conveyance to prove the Cause to arrest him. Br. Double, pl. 148. cites 2 E. 4. 8.

8. Note, per Brian, if a Man makes two Attorneys in one and the same Action conjunctim & divisim, they ought to join in Plea; For if they sever in Plea it shall be said Double; Quære. Br. Double, pl. 156. cites 12 H. 7. 10.

9. In Case against a Sheriff; The Plaintiff declared that an Execution was directed to him, by Virtue whereof he bad taken Goods to the Value of the Debt, and had sold them, and had not returned the Writ. Defendant demurred,
Demurred, alleging that it was Double; but per Cur. if the one Matter is depending on the other, the Declaration shall not be Double, and here all is for not returning the Writ. Gouldsb. 96. pl. 13. Trin. 30 Eliz. Matthew's Case.


11. Whether, where the Words in a Deed are sufficient to pass a Thing by several Means, and they are pleaded generally without showing any Election which way the Thing passes, this be a Double Plea was doubted. Skin. 63. pl. 7. Mich. 34. Car. 2. B. R. in Case of Pauling and Hardy.

12. Where Matter of Fact and Law is assigned for Error it is Double, and Plaintiff may have Advantage of it on a Demurrer, but after In nullo est Error pleaded it is too late. Carth. 338. Hill. 6 W. 3. B. R. Edmonds v. Probert.

As to Agreement.

13. Note, by the best Opinion, that where a Man susposes that he retained a Carpenter to make a House, and that the Carpenter assumed to do it &c. or that he retained such a Servant to serve &c. to which &c. the Servant agreed, this is not Double; For it is no Bargain unless both Parties assent. Br. Double, pl. 116. cites 11 H. 6. 18.


15. As a Man may declare of all the Covenants in one and the same Indenture, and it is not Double; Quod non negatur. Br. Double, pl. 116. cites 11 H. 6. 18.

Annuity.

16. Annuity was granted pro Confilio & Auxilio balend; The Defendant swore that he had demanded Counsel and Aid of the Plaintiff, who was a Physician, and he would not give it; and it was held that the Demand de Confilio & Auxilio is not Double; For the one depends upon the other. Br. Double, pl. 20. cites 41 E. 3. 6.

Affise.

17. In Affise the Tenant pleaded Fine upon Grant and Renter of the An- ceftor of the Plaintiff to two with Warranty, and that the one released to the other, who infeoffed the Tenant; Judgment &c. and relied upon all the Fine and Warranty, and admitted. Br. Double, pl. 38. cites 38 E. 3. 34.


19. Contra it is said elsewhere of Feoffment with Warranty; for the Feoffment may be without Deed, and the Warranty by Deed. Br. Double, pl. 38. cites 38 E. 3. 34.

20. In Affise, the Tenant pleaded the Deed of the Great Grandfather with Warranty to W. P. who infeoffed J. who infeoffed the Tenant; Judgment &c. The Plaintiff said, that after this his Great Grandfather was seized, and died seized, and his Grandfather entered, and died seized, and he entered as Heir, and was seized, and dispossessed by the Defendant, and relied upon the dying seized of his Great Grandfather, and nevertheless well, and otherwise Double. Br. Double, pl. 37. cites 38 E. 3. 21.

21. Affise of Rent; the Tenant said, that A brought Affise of other Land against B. Father of J. which Deed of Grant of the Kent is now shown, and recovered the Land and Damages, and took Eject for Execution of the Damages, and had the Majesty of the Land put in View in Execution, and pleaded all in certain, (as he ought) and after A. who recovered leased his
Double Pleas.

his Estate to the new Tenant, and after B. granted the Rent charge now in Plain to the Plaintiff his Son and Heir apparent, and after B. granted, ratified, and confirmed to the new Tenant for Term of their Lives, and after B. by his Deed between &c. released all his Rights to the Tenant, and warranted the Land to him and died, and so demanded Judgment, because the Plaintiff as Heir of B. the Grantor is bound to warrant the Land discharged, if against the Deed of your Ancestor Affile ought to be, and averred that Execution is not yet incurred, and it was held Double, viz. the Execution before the Charge, and the Release with Warranty, by which he relied upon the Release with Warranty. Br. Double, pl. 87. cites 31 Att. 13.

22. In Affile, Leave for Term of Life, and Release of the Lessee with Warranty, was admitted for a good Plea, and it was not excepted for the Doublenets; For it seems that it is only Conveyance, but the Plaintiff was not Here to the Warranty; For this counter varies Feoffment with Colour. Br. Double, pl. 142. cites 37 H. 6. 16.

23. In Affile, the Tenant pleaded a Gift in Tail, and Confirmation in Fee, this is Double. Br. Double, pl. 110. cites 30 H. 6. 9 E. 4. 4.

24. In Affile, the Tenant pleaded in Bar that J. S. was seised, and leas'd to A. for Life, and after granted the Reversion to his Father, and the Tenant attorned and died, and the Father entered and died, and the Tenant entered as Heir, and gave Colour; and per Cur. this Grant of the Reversion, and the Entry of the Heir upon this Title are Double, though he does not plead it as a Dying Seised; For it the Father was diffieved and died, and he re-entered, he is in as Heir, and the Entry of another toll'd, and to Double, by which he relied upon the Grant of Reversion. Br. Double, pl. 29. cites 9 H. 4. 4. 5.

25. And there it was agreed, that where the Plaintiff alleges a Dying Seised after, and the Tenant alleges a Continual Claim in his Father, and another in himself after the Death of his Father, it is Double, by which he held him to the Claim of his Father. Br. Double, pl. 29. cites 9 H. 4. 4. 5.

26. So of a Lease for Life and a Release, it is Double; for the one of the Matters with Colour to the Plaintiff makes a good Bar; So of a Grant of the Reversion in Affile, and after the Tenant surrendered, and the Grantee died seised, this is Double; For the dying seised is sufficient. Br. Double, pl. 110. cites 30 H. 6. and 9 H. 4. 4.

27. But where the Contention is between the Heir of the Donor or Grantor, and the Tenant upon the Execution of the Fee simple, there he may plead both, and it is not Double; For he cannot do otherwise. Br. Double, pl. 110. cites 30 H. 6. and 9 H. 4. 4.

28. In Affile, and divers other Actions of Trepassos two Defects are Double; But it is said there, that in Formedon it is otherwise; for there the Gift only is traversable, and not the Defects. Br. Double, pl. 16. cites 33 H. 6. 32.

29. In Affile, the Tenant pleaded Fine levied by the Ancestor of all in Demand, and concluded to the Moity, and pleaded Recovery or Release of the Ancestor of the Whole, and concluded to the other Moity; Judgment it Affile, and it was challenged for Doublenets, and the best Opinion was that it is not Double, unless he concludes his Plea to the Whole, quod nota, by which the Plaintiff passed over and made Title. Br. Double, pl. 139. cites 37 H. 6. 23.

30. Affile by two of the Office of Clerk of the Crown in the Chancery, and to one the Defendants said that he was an Alien born, and to the other, that there was no such Office, and per Cur. the last Plea goes to all, and therefore both make it Double; for the last Plea goes to both the Defendants, and therefore he has pleaded a Plea to both, and two Pleas a-
gainst the Alien born, by which he amended his Plea. Br. Double, pl. 152. cites 7 E. 4. 29.

31. In Affife, the Tenant said that he himself was seised till by the Plaintiff dispossessed, against whom he brought Affife and recovered, this Plea is not Double, per Hulfey Ch. J. and Finchex, and tot. Cur. concitatus, and yet he alleged Seisin and Disseisin, and also a Recovery; but the one is Conveyance to the other. Br. Double, pl. 95. cites 9 H. 7. 23.

32. In Audit Querela, the Confor put two Releasees, the one generally, and the other of the Sum in the Statute Merchant, and therefore was compelled to keep to one; For each grows to all. Br. Double, pl. 63. cites 24 E. 3. 27.

Double, and therefore he held him to the Indenture, and yet it seems that the Release is not good; For Release of Actions shall not serve for Execution. Br. Double, pl. 123. cites 44 E. 3. 36.

33 Avowry for Rent referred between three Sisters for Equality of Partition, and the Plaintiff said, that the Place where the Distress was taken was not Parcel of the Land put in Partition, and that this is in the Seisin of the King, and therefore Double; Per Cur. by which he took the Seisin of the King by Professation, and the other Matter by Plea. Br. Double, pl. 2. cites 2 H. 6. 14. 15.

34. Avowry for Homage and 20s. Rent, the Plaintiff prayed Aid, and the Plaintiff and the Praye joined and said that one A. was seised of the Seigniour whose Estate the Defendant had, and one B. was seised of the Tenancy and of other Land, whose Estate the Praye had in the Tenancy, to which B. the said A. then Lord, released all his Right that he had in the Land, rendering 1d. for all Services, and demanded Judgment if for several Services &c. and not double, per Martin, viz. The Release and the Tenure of this Land and other by one entire Service, because he relied upon the Release, Judgment if for several Services &c. quod admissit &c. Br. Double, pl. 4. cites 3 H. 6. 28.

35. In Avowry the Defendant averred because J. Lord of the Manor of D. was seised of the Services &c. and Prior se forovit between him and one P. upon Comitance of Right came to &c. which P. granted and rendered to the said J. for Life, the Remainder over to the Avoirant, and alleged Seisin in the Tenement for Life who is dead, and in him in Remainder who now avows, and the Avowry was held double, because he alleged a Seisin in the Lord of the Manor in Fee and two others, the one in the Lord for Life, and another in him in the Remainder, where one Seisin in the Confor and another in the Grantee for or in him in Remainder suffices; for they two are as one and the same Lord, and therefore shall not allege it in both &c. and therefore he amended the Avowry. Br. Double, pl. 14. cites 20 H. 6. 7.

36. Avowry of a Rent-Charge the Plaintiff said, that after the Grant the Avoirant and J. were seised in Fee, and enfeoffed A. B. who enfeoffed the Plaintiff, and this is single Plea and is not double, viz. The Seisin and Feoffment; for a Feoffment cannot be pleaded without Seisin. Br. Double, pl. 89. cites 4 H. 7. 17.

37. So in Writ of Aid, to say that after the Death of the Grandfather the Demandant himself was seised and enfeoffed him; Per Townsend, Brian and Haughes J. B. Double, pl. 89. cites 4 H. 7. 17.
Double Pleas.

38. Avowry for 10 s. due for two Acres of Land of the Defendant, the Plaintiff said that he had of him these two Acres and two other Acres by 4 s. ablique hoc that he held the two Acres by 10 s. and therefore double; per Keble; For he ought to take the one by Protestation, Contra per Brian, and that the Plaintiff cannot do otherwise; for the false Avowry of the Defendant shall not prejudice the Plaintiff. Quere. Br. Double, pl. 93. cites 8 H. 7. 5.

39. The Case on the Pleading to an Avowry was thus; A. seized of the Place where &c. and other Lands granted to the Plaintiff 20 l. per Ann. in Fee out of the other Lands, with Clause of Diffres, and after sold the Lands charged to the Defendant, and to free item of this Incumbrance granted a Rent of 20 l. per Ann. out of the Place where &c. to commence from the Time that a Diffres for the 20 l. should be taken in the Lands charged, and shews how that at such a Day a Diffres was taken; and therefore &c. in Bar of the Avowry they come and traverse ablique hoc that any Diffres was taken for Rent. Arrear &c. to whereas it should be a Point fingle, and that Riens-Arrere &c. and of this Opinion was the Court, and ordered Judgment, Nisi they re-plead and pay Costs. Skinn. 63. pl. 8. Mich. 34 Car. 2. B. R. Amias and Chaplein.

40. In Champerty the Defendant said, that the Plaintiff in the first Suit for whom it is supposed that he maintained was an Alien born in Burgundy out of the King's Allegiance, and can neither speak English or Latin, and prayed this Defendant who could speak his Language to obtain him Men of Law to be of his Counsel, and where the same Alien was in Debt to this Defendant be granted him that if he recovered in this Suit, that he should be paid of the Sum so to be recovered &c. by which he be gained his Counsel, which is the same Maintainance &c. and a good Plea, and is not double; quod nota. Br. Double, pl. 58. cites 15 H. 7. 2.

41. Conspiracy against two because they procured A. to out the Plaintiff of his Land, against which A. one J. N. recovered by Scire Facias, by which the Plaintiff lost his Warranty, and the Procurement, and the Recovery was not adjudged vicious for doubling; For the Procurement without doing more does not give Cause of Action. Br. Double, pl. 157. cites 42 E. 3. 1.

42. Covenant for owing of a Termor, the Defendant justified by Clause of Re-entry for Rent arrear, and the Plaintiff said that there being a Difference between him and the Defendant that the Defendant should be at Table with him and should recoup his Rent secondum rationem, &c. and that he was at Table for so long Time which amounted to 40 s. of the Rent, and as to 4 s. be tender'd it to the Defendant and be refused and enter'd, and this Difference and the Tender was held good, and not Double; For the one goes to part of the Rent and the other to the Relf. Br. Double, pl. 27. cites *47 E. 3. 277.

43. In Writ of Covenant a Man may allege as many Covenants broken as he will, and it is not Double. Br. Double, pl. 94. cites 9 H. 7. 13.

44. Custom to tax a Sum for Reparation of a Church by Assent of the Parishes was not held double; but the Assent is the Effect, and the Custom shall enforce; Per Thorp. Br. Double, pl. 24. cites 44 E. 3. 19.

45. Debt against Executors who plead Plea administravit & Riens enter mayor the Day of the Writ purchased nor ever alter, this is not a Double Plea; For Aeffts answeres all; quod nota; Per Cur. Br. Double, pl. 3. cites 3 H. 6. 4.

46. Where
Double Pleas.

46. Where a Man finds a Bill of 40l. to the Collector of Tents, and he refuses to pay, by which he brings Debt, the Collector shall plead that the Writ was directed reciting the Act of Parliament, because the Mayor of the Staple had lent to the King 1000l, the which shall be first paid, and that the Writ commanded him to pay to him 300l, and another Bill came to him by another of 100l, before the Bill of the Plaintiff shewn, and beyond 400l, he has not any Thing in his Hands to pay; Judgment &c. and the Plaintiff demurr'd and therefore was bar'd, and brought Writ of Error, and per Cur. the Plea shall be good and not double as the Plaintiff alleged, viz. the Act of Parliament, and that he had only 400l. For the 400l. is the Matter, and the other is only the Recital and Introduction; and also it is a Particular Act whereof Strangers to it shall not be bound to take Conunence as of a General Act. Br. Double, pl. 74. cites 37 H. 6. 15.

47. Debt upon Obligation, the Defendant said that he is Lay and not letter'd, and the Deed was not read to him by other Days of Payment, and also that he sealed it and delivered it to T. N. as an Efcrow, to the intent that if J. N. named in the Obligation would seal it, then to deliver it as his Deed, and it not, to retain it, and said that J. N. sealed it, and yet T. deliver'd it to the Plaintiff and so Not his Deed, and is not double, viz. the Nient liter'd, and the Delivery as an Efcrow, because he concludes Non eft factum, which is only the Plea, and the other is but Evidence; and a Man may allege 20 Matters to avoid a Deed when he concludes Non eft factum; quod nota, per Cur. Br. Double, pl. 83. cites 38 H. 6. 13.

48. In Debt the Plaintiff counted that the Prior of 7. Parish of O. in proper Use he'd it for six Years, and he leased to the Defendant for four Years rendering Rent, and for the Rent-Arrear &c. The Defendant said that before this the Prior leased to W. N. for 10 Years the same Year, and after he leased to the Plaintiff, and after W. N. surrender'd, to which the Prior agreed, and after leased to the Defendant for ten Years, and that the Prior is endowed of the small Tithe, and leased them to the Defendant also, and the Plaintiff could have taken them, and the Defendants would not suffer him, and this was held double, viz. The old Lease and the Endowment of the Venue, by which he relied upon the old Lease, and took the other by Proteflation. Br. Double, pl. 34. cites 9 H. 5. 8.

49. The Plaintiff comes and counts upon an Obligation of an Allot, Predeceflor sealed with his Seal only, and counts how the Thing came to the Use of the House, and yet well and not double. Br. Double, pl. 10. cites 9 H. 6. 25.

50. Debt upon Obligation against Executors; Per Danby, the Deceased made the Defendant and A. his Executors and died, after whose Death Alice administered as Executrix, to whom the Plaintiff by the Deed &c. releas'd, and after the Defendant married the said Alice; and per Paffon, Afcue and Port, the Plea is not double, viz. The Releafe, and that he has another Executive; for it is not alleged that A. is alive, and he conclud'd upon the Releafe to the Allot; and per Cur. he may answer without abating the Writ, by which the Plaintiff said, that not his Deed &c. Br. Double, pl. 52. cites 22 H. 6. 59.

51. Debt upon Obligation which had a Condition that if the Defendant was ready when he should be warned at D. at the Cofls of the Plaintiff to account and to pay, that then &c. and said that he was not warned to come at the Cofls of the Plaintiff; Judgment &c. per Perley the Plea is double, viz. the Garnishment and the coming at the Cofls &c. & non allocatur. For if there are divers Conditions in one Defeafance, he ought to answer to All. Br. Double, pl. 124. cites 46 E. 3. 16.

52. Debt
Double Pleas.

52. Debt against an Abbot upon an Obligation sealed * with the Covern Seal, the Defendant said, that the Abbot imprisoned the Prior, and menaced all the Monks to make the Obligation by which they made it Judgment. And it was held double, the Impriisonment and the Menace by which he held him to the Menace by Award; for this goes to all by reason of the Menace of all; for the greater Number suffices. Br. Double, pl. 54. cites 15 E. 4. 1. 2.

Abbot-Sucessor of him who made the Obligation, and to see that two Matters shall be double, though the one be no Plea, as a Feodiment with Warranty in Affide; For a Feodiment only is no Plea, and therefore it is usual to rely upon the Warranty to avoid the Doubleness. Br. Double, pl. 155. cites S. C.

53. Debt upon Obligation of 10 l. with Condition to pay it, the Defendant pleaded Payment to the Bailiff of the Plaintiff by his Command, which came to the Use of the Plaintiff, this is a double Plea, by which he relinquished the coming to the Use of the Plaintiff, and then a good Plea; quod nota. Br. Double, pl. 107. cites 22 E. 4. 25.

54. Debt upon Obligation of 40 l. against D. who said that he had paid the 40 l. and the Plaintiff had re-delivered the Obligation in lieu of Acquittance, and after the Plaintiff re-took it, with Force and Arms, Judgment 1 to the Plaintiff. For Vavillor the Plea is double, viz. the Payment and the Re-delivery of the Obligation in lieu of Acquittance. Per Colow, No; For it is purfunt, as to say that J. N. was seized in Fee, and efeafed him, this is not double, viz. the Seifin and Feoffment are not double. Per Keble, it is tingle; For it shall not be said double, but where the Court shall be inveigled to give Judgment where the one Part is bound with the Plaintiff, and the other with the Defendant, or for the Mischief where the Plaintiff answers to one Parr, and the Defendant concludes to the other, and here there is not any of these Points; For the Payment is only for one conformity of the Plea, and the one may depend upon the other, and that Payment and Acquittance is not double, quod fuit consequat. Townfend and Brian ad idem; For here the Payment is not infuable nor contrariant to the Re-delivery of the Obligation, and so by All, it is not double, but because the Re-delivery is no Plea, therefore the Plaintiff recover'd. Br. Double, pl. 83. cites 1 H. 7. 14.

55. Debt upon Obligation which was upon Condition to stand to the Arbitrement of J. N. so that he made it and delivered it to the Parties by fuch a Day, the Defendant said that no Arbitrement was made nor delivered before the Day, and this is double, per toc. Cur. For it is a good Plea that he did not make any Arbitrement by the Day, and it is a good Plea that he did not deliver the Arbitrement before the Day. Br. Double, pl. 90. cites 5 H. 7. 7.

56. And the same quod non deliverevit arbitrium in Script. &c. where the Submissio is to be in Writing. Br. Double, pl. 95. cites 5 H. 7. 7.

57. And ibid in a Note, Debt upon Indenture, the Plaintiff counted of several Coveneants broken, and not double; For the Defendant pleaded all performed, and the Plaintiff shall shew one broken only upon which the Issue shall be joined. Br. Double, pl. 90. cites 5 H. 7. 7.

58. Debt against a Sucessor of an Abbot, he counted of the Obligation of the Predecessor, and of a Contrat which came to the Use of the House, this is double. Br. Double, pl. 161. cites 10 H. 7. 21.

59. One Action of Debt was brought on two Bonds, and the Defendant pleaded Non sunt facti, or per Minas; and adjudged good by one Plea. Noy. 142. Denton's Cafe.

Deeds

60. Where a Man pleads two Deeds of the Ancestor of the Plaintiff, though none of them shall be a Bar by itself, yet it shall be double and insufficient. Br. Double, pl. 79. cites 21 H. 7. 10.
61. Note per Brian & Cur. that two Descents of one Tail shall be double; for a Man cannot traverse the Gift where there was such Gift in Fact; and if he traverses the one Decent, the other may rely * upon the other. Br. Double, pl. 154. cites 20 E. 4. 3.

62. Detinue of Charters, the Plaintiff counted of a Bailment made by his Father to re-bail to him or his Heirs, and showed how the Land was given by his Ancestor, whose Heir he is in Tail, and that the Reversion is reverted to him as Heir by the Death of the Tenant in Tail without Issue; and this is double by three Justices, viz. the Bailment to re-bail to his or his Heirs, and the Title to the Land, by which he relinquished the Decent of the Reversion. Br. Double, pl. 7. cites 9 H. 6. 4.

63. Note, that in Detinue of Charters the Plaintiff counted how the Deed was delivered to the Defendant to ensue the Estate of the Land, and said that he is Heir to the Land &c. This is not double. * Contra if he had said that the Deed had been delivered to re-deliver to the Plaintiff, and that he is Heir to the Land; for this is two Titles, Nota differ entiam. Br. Double, pl. 8. cites 9 H. 6. 14.

64. In Detinue the Garnishee came and said that the two Obligations in Demand were delivered to the Defendant upon Condition, that if the Plaintiff's and Garnishee fled to the Arretramment of the Defendant, and if &c. that then each should have his own Obligation, but otherwise if any broke the Award, and the other performed it, that he who performed it should have both, and that they awarded that the Plaintiff should recover the Profits of a Manor from Midsummer to Michaelmas, and should pay 10 Marks to the said Garnishee, and that the Plaintiff should make Partition of the same Lands and suffer the Garnishee to chief his Moiety, and the Plaintiff shall have the other Moiety; and said that W. the Plaintiff did not make the Partition, nor did he pay the 10 Marks, and prayed delivery of the Obligation. Per Newton, Paton, & Cur. the Plea is double, the one that the Plaintiff did not make a Partition, the other that the Plaintiff did not pay to the Garnishee the 10 Marks; for both entities the Garnishee to the Writings. Br. Double, pl. 48. cites 21 H. 6. 18.

65. In Detinue for Goods bail'd the Defendant pleaded, that after the Bailment Plaintiff married J. S. who during the Epoufals releas'd to the Defendant, and held by all the Justices not to be Double, for he could not plead the Rebutal without shewing the Marriage. Mo. 25. pl. 85. Pasch. 3 Eliz. B. R. Audley's Cate.

66. In Detinue the Tenant said that he had nothing but in Ward with W. N. of the Grant of G. of whom the Ancestor of the Infant Son of the Baron held in Chiverty &c. Per Hals, the Plea is double, one that he has nothing but in Ward, and the other that he held jointly, and because if he shall be compelled to hold to the one, he at another Time shall lose the other, therefore for the Mischief, he shall have the Plea; Per tor. Cur. Br. Double, pl. 33. cites 9 H. 5. 4.

67. Entry for Difficulties made to C. his Cousin, whose Heir he is, viz C. was the Daughter of T. Sister of the Demandant, the Tenant said that J. Brother of the Demandant, whose Heir the Demandant is, was left in Fee, and gave to T. and A. in Tail between whom C. was Issue, and C. died without Heir of her Body, and J. year Brother entered as in his Reversion and enjoined the Tenant and after by his Dead releas'd to us, Judgment it against the Deed comprehending Warranty &c. and because he relied upon the Deed with Warranty, therefore good, notwithstanding
Double Pleas. 191

withholding that he alleged Tail where the Demandant demanded Fee-Simple, and the Feoffment, and Release with Warrant. Br. Double, pl. 63; cites 24 E. 3. 75.

63. Entry in Nature of Affife, Defendant pleaded that he is in by the Deed for 40 Years of the Lease of the Predecessor of the Plaintiff by Indenture, and so has his estate for Term of Years, and that the Demandant himself is seized of the Franktenement, Judgment of the Writ, and per tot. Cur. this is a double Plea, viz. Lease by Indenture, and that the Plaintiff himself is seized of the Franktenement. For if the Plaintiff answers to the Lease, the other may demur because he does not deny but that he himself is Tenant of the Franktenement; and if he answers to the Franktenement, the other may likewise rely upon the Lease by Indenture, which is this ple, by which he was entitled to hold him to the one, and so he did, viz. that the Plaintiff himself is Tenant. Br. Double, pl. 63. cites 4 H. 6. 27.

70. Entry in Nature of Affife in 100 Acres of Land; the Tenant said that he had Common there appantant to his Manor of B., by which he put his Beasts in, abjure bee that he claimed any thing but the Common, and abjure bee that he had other Possession or Estate in the Land, and that W.N. was Tenant the Day of the Writ purchased, and yet it is, not named in the Writ; Judgment of the Writ; and per Cottson here it is a good Plea, and not Double; For the Common is nothing to the Purpose, and the Plea is a special Namenture, and the Common is mentioned to prove his Entry into the Land to use his Common, and not to have Franktenement in the Land, by which the Plaintiff impailed. Br. Double, pl. 44. cites 8 H. 6. 33.

71. Escheat upon Seisin of A. supposing that he died without Heir; the Tenant said that A. had Issue K. who entered and enclosed the Feme of A., and after released to her, whose Release the Tenant lays; Judgment &c. And by the best Opinion the Plea is Double; For the Seisin of the Heir goes to the Writ, and the Release conveyed the Right, and goes to the Bar, by which he relied upon the late Seisin of K, the Heir of A. to which the Demandant pleaded, that the said A. had no such Daughter as K. who survived &c. Br. Double, pl. 159. cites 11 H. 4. 10.

72. Trespass of Forcible Entry; the Defendant said that F. was seized, and gave to his Father in Tail, who died seised, and the Land descended to him, and he entered and was seized till the Plaintiff dispossessed, upon whom he entered; Per Littleton, the Plea is Double, viz. the Gift and Decease, and Latton and Priset contra; For it is sufficient to say that he was seized till the Plaintiff dispossessed, upon whom he entered, and cannot say seised in Tail without showing how, and therefore the Relevancy is only Conveyance to it. Br. Double, pl. 18. cites 3 H. 6. 15.

73. Contrary in Affise, and then if he shows specially how he was seised by Tail, as here, the Plea is not the better, and one Answer may make an End of all, viz. No done pass; by which the Plaintiff replied, and the Demandant impaled &c. Br. Double, pl. 18. cites 3 H. 6. 35.

74. In Forcible Entry, the Defendant justified his Entry by Gift to F. for Life, the Remainder to his Father in Tail, who was seised, and died seised, and be entered as Heir in Tail; the Gift in Tail and the Decease is Double, therefore he ought to take the one by Proclamation, and the other by Matter in Fact, Quod suit conciliam; Per Hody and Palfen, but it is not argued. Br. Double, pl. 129. cites 9 H. 6. 13.

75. Trel-
Double Pleas.

75. Trespass upon the Statute of Forceable Entry; the Defendant alleged Bar, and the Plaintiff alleged Defect to him to avoid the Entry of the Defendant, and he avoided it by continual Claim made by his Predecessor, and by himself; Per Port. the Plea is Double; For if the Ancestor died in the Life of your Predecessor, then your Claim is void, and if he died in your Time, then the continual Claim in the Time of your Predecessor is not good, by which he alleged continual Claim in his Time only, and that the Ancestor died in his Time, and then well; Quod Nota; and otherwise Double. Br. Double, pl. 50, cites 22 H. 6. 57.

76. In Formedon, the Tenant pleaded a Fine of the Ancestor upon Conformance of Right with Warranty, and not Double, nor was the Tenant compelled to rely upon the one by Award; For it is only one intire Deed. Br. Double, pl. 35, cites 46 E. 3. 14.

77. In Formedon, the Tenant said that the Dome was seised in Fee till by the Donor disposed, and after the Donor married the Dome to his Daughter, and gave to him in Tail, and compelled him by Monance to take the Gift, whose Estate the Tenant had, and so remitted to the Fee Simple, Judgment &c. and per Culpepper and Martin, the Plea is Double, viz. the Difielin and Retitter by Reparit, and the taking by Monance; Contra per Hank, and that the Difelimen and Reparit is the Effect. Brook lays Contrariam videtur Lex. Br. Double, pl. 31, cites 12 H. 4. 19.

78. In Formedon in Defendant the Plaintiff declared of a Gift in Tail to his Father who died, and that the Land descended to Demandant's elder Brother, who also died without Issue. The Tenant pleaded that the elder Brother had Issue a Daughter, who leased a Fine to him, and he relied upon the Fine and the Proclamation. It was objected that this Plea was Double, that the one is the Issue, and the other is the Fine. But per Cur. since he cannot come to the one without shewing the other, it shall not be Double; besides, here he relies upon the Eitoppel. Gouldsb. 85, pl. 13. Pach. 30 Eliz. White's Cafe.
Double Pleas.

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35. In Replevin, Aovwry is made for Rent referred upon Equalitv of Partition made between two Coparceners: the Plaintiff said that there were three Coparceners, and the third was Extra Patronium Tempore Partitionis, and returned within Age and entered, by which they made new Partition &c. and the Re-enter, and new Partition were suffered by Award, and the Plea single; Nota. Br. Double, pl. 62. cites 24 E. 3. 52.

34. In Replevin, the Defendant said, that the Property of the Beastis is in another, and that he took them in another Vill; and this is Double Quod Nota. Br. Double, pl. 21. cites 42 E. 3. 18.

that the Defendant was compelled to hold himself to the one. ——- But in Replevin, as to one Or. the Defendant said, that the Property was to a Stranger, and as to another Or. that he took it in another Place, and in another Vill &c. And this last Plea was held Double; For the one Part of the Plea goes to the Place, and the other to the Vill. Theol. Dig. 214. lib. 15. cap. 3 S. 16. cites Mich. 9 H. 6. 59.

85. In Replevin the Defendant avowed by two Aovwris upon the Plaintiff for two several Tenures of two Acres &c. at one Tenant or Fee, Simple, and the Defendant said that the Father of the Defendant, whose Heirs &c. gave them to him in Trust, to hold by one and the same Tenure; Judgment of the Avowry supposing two several Tenures, and it is not double, viz. The Tenure of Fee Lord, and the entire Tenure; because he held upon the last. Br. Double, pl. 12. cites 9 H. 6. 26.

86. In Replevin if a Man hath two Matters to the Avowry, of which the one goes in the Abatement of the Avowry to prove that they ought to have made another Manner of Avowry, and the other Matter goes in Bar of the Avowry, this is double. Br. Double, pl. 158. cites 35 H. 6. 24.

87. In Replevin where the Defendant ought to have given Deliverance, he said, that the Beasts died in Default of the Plaintiff where the Defendant distrained for such Comp and put them in open Pound &c. the Plaintiff said that the Defendant extenuated them to a Place unknown, and there they died in Default of the Defendant; &c. non allocatur; For it suffices to say that he extenuated them only, which shall be intended out of the County &c. and it is sufficient to say that they died in Default of the Defendants; quod nota per Car. therefore two Matters. Br. Doubler pl. 91. cites 5 H. 7. 9.

88. In Replevin the Tenant in Taif of a Rent purchased the Land and made a Feoffment in Fee of Land discharged with Warranty, and died, and Affsets is defended, the Use in Taif was reached for the Rent, and this Matter is pleaded in Bar of the Avowry; and because he did not show whether the Ancestor who made the Feoffment with Warranty was Ancestor Collateral or Lineral, therefore per Car. the Bar is ill, and it shall be intended Ancestor Collateral; Per Vaviser J. and then this and the Affsets is double, and he ought to have reheard the Warranty or upon one of them. Br. Double, pl. 75. cites 21 H. 7. 10.

89. Refusmons upon Writ of Ward against Executors, who said that the Heir was of full Age in the Life of Tiffator, and that they have fully administered; and Wilby awarded the Plaintiff to answer to the last Plea, and awarded that the Plaintiff should recover the Ward, and that they try the Illue of Fully administered for Damages. Br. Double, pl. 61. cites 24 E. 3. 49.

D d d 90. Quare
Double Pleas.

92. Quare Eject infra terminum against B. that C. was seized and leased to him for 10 years, and B. ejected him; Port. said, that C. leased and entered, and entered as, and after the Plaintiff made a Regent, and after surrendered to us, and we entered, which is the same ejectment. And per Newton and others, the Plea is not double, viz. The Lease, and the Feoffment, and the Regent of the Tenant, and after the Surrender; For he cannot come to plead the Surrender without conveying the Reversion to him; quod nota. Br. Double, pl. 45. (bis) cites 19 H. 6. 55. 56.

91. In Recordare the Lessor avowed for a Fine for Alienation made by his Tenant; the Tenant pleaded that the Lord was seized of the same Land within Time of Memory, and by Deed alienated to R. whose Estate the Plaintiff has, to hold to him by certain Rents and Services promissibus Serviciis et demand; and this held double, viz. The Unity of Possession, and the Deed to hold at heirs; and yet he cannot plead the Gift, but he ought to allege the Seisin in the Donor or Feoffor; nor can a Man plead a Deed of Feoffment with Warranty, but he shall mention both, but he ought to rely upon the Warranty only, or rely upon the Deed of Gift in the Cafe Supra only, and then this is not double; quod nota; Per Hank. & nemo negavit. Br. Double, pl. 32. cites 14 H. 4. 5.

92. Seire Facias out of a Fine by which W. and K. his Feme gave to M. in Tail, saving the Reversion to K. and his Heirs, of whose Inheritance the Land was, and that W. died, and K. married R. and [M.] died without issue, by which R. and K. brought the Seire Facias to execute the Fine, the Tenant said that W. and K. were seized as in their Reversion after the Death of M. and enfeoffed T. whose Estate he has; Judgment sit Aetio; Per Wich. the Plea is double, viz. Seisin by the Reversion after the Tail determined, which is Execution, and also Feoffment after; Per Thorp, the Feoffment is the Subsistence, and the Seisin is only Conveyance, by which anwer. Br. Double, pl. 36. cites 28 E. 3. 16.

93. By which the Plaintiff said that another Time, he recovered upon Seire Facias upon the same Fine against the same Tenant, and after the Execution be enfeoffed the same T. upon Condition, and for the Condition broken be entered, and the new Tenant brought Writ of Diseas and reversed the first Judgment and Execution, after which he was not warned and entered and now the Plaintiff brought other Seire Facias; Per Belk, the Plea is double, one that the Feoffment is undone by the Condition, and another that his Seisin is undone by Writ of Diseas; Per Finchden, the Conclusion is all upon the Feoffment by which the other passed over. Br. Double, pl. 36. cites 38 E. 3. 16.

94. In Trespass the Defendant said that the Frankentment belonged to a Stranger who leased to him for five Years, which yet endured, by which he entered and did the Trespass; Judgment &c. Godred said the Plea is double, viz. The Frankentment is in a Stranger, and he has a Lease for five Years, but tot. Cur. contra eum; For the Lease is only Conveyance. Br. Double pl. 6. cites 3 H. 6. 50.

95. Trespass upon the Statute of Fireselling at the Port of G. Paton said there is no such Vill, Hamlet or Place known out of the Vill and Hamlet, but is a Place which extends into divers Vills, viz. into A. B. and D. Per Strange, this is double, viz. No such Vill or Place &c. and also that it is a Place which extends into divers Vills &c. Br. Double, pl. 40. cites 7 H. 6. 22.
Double Pleas.

96. In Trespas the Defendant pleaded Arbitrement &c. who awarded that he should pay 10 l. to the Plaintiff in Satisfaction of the Trespas, which he has paid; Judgment and the Plea good, and not double, viz. The Arbitrement, and the Payment; for the one is parfait upon the other; for per Martin, Arbitrement is no Plea if he does not plead it performed, or lays that he has been at all Times ready, and yet is &c. Br. Double, pl. 43. cites 8 H. 6 25.

97. In Trespas the Defendant pleaded his Frankentement; the Plaintiff shall not lay that before this J. N. was seised and enjoined A. who enjoined the Plaintiff. For it suffices to say, that A. was seised in Fee and enjoined the Plaintiff &c. Br. Double, pl. 131. cites 19 H. 6. 32.

98. Trespas Quare Filius suum et Heredem reprius et adduxit apud D. Defendant seized by Partition that he held re-delivered the Infant, and for Plea, that the Plaintiff married Jane P. and bad Issue the Son, and J. died, and after it was vexed in the Country that the Plaintiff was dead, and that the Defendant as Prochein Amy of the Infant saw the Infant in Ward, felt ill-governed and out of good Ward, in Negligence of N. his Nephew, by which he took the Infant as lawfully he might &c. and it is not double, fail. that he is Prochein Amy, and that the Infant was ill-governed; for the one depends upon the other; but if he had not taken the Re-delivery by Procheinart but for Plea, then it had been double. Br. Double, pl. 47. cites 21 H. 6. 15.

99. Trespas of a Cloke broken and Grabs spoiled, the Defendant pleaded his Frankentement; the Plaintiff said that to this he shall not be received; For the Father of the Plaintiff whose Hr. &c. enjoined him with Warranty by the Deed which he seised &c. Judgment it against the Deed of his Ancestor which comprehends Warranty he shall be received to lay that it is a Frankentement. The Defendant said that R. N. was seised in Fee, and enjoined him and his Father and to the Heirs of his Son, and the Father enjoined the Plaintiff, by which he entered into the one Moiety in the Life of the Father by Alienation to his Disinterested, and into the other Moiety he entered after the Death of the Father for the Diffcfin of this Moiety; Per Newton, the Plea is double; for if any of the Issues are found for the Defendant the Plaintiff shall be brand; for if he enters into a Moiety only then the Plaintiff is Tenant in common with the Defendant, and one Tenant in common or Joint-tenant cannot have Action against the other. Br. Double, pl. 51. cites 22 H. 9 50. 51.

100. By which the Defendant pleaded as above, and alleged the Entry into the Whole in the Life of the Father, and the Plaintiff alleged the Effect of the Father with Warranty as above, abique hoc that R. enjoined the Defendant and his Father Moito et Forina, and to ad Patriam. Br. Double, pl. 51. cites 22 H. 6. 50. 51.

97. In Trespas, the Plaintiff counted that a Lease for Years, and a Deed indented if it was devolved to him by the Lessor, and be died, and the Executors based to him &c. and it is not Double, viz. the Devise and the Bannant of the Executors, for the one is Conveyance to the other; Quod Nosc, per Cur. Br. Double, pl. 15. cites 27 H. 6. 8.

98. In Trespas, the Defendant pleaded in a Way to the Market of B. and to the Church of D. and held Double; Quae inde; For it seems that he ought to claim the Way as his Title is; Quare; for it is only the Opinion of the Reporter in a short Note. Br. Double, pl. 128. (bis) cites 28 H. 6. 9.

103. Trespas of Assault and Mencce, these Words dissit, retulit, &c. are not any Plea double or treble, per Cur. Br. Double, pl. 72. cites 57 H. 6. 20.

104. Tresp.
Double Pleas.

104. Trespass in Land, the Defendant justified for the third Part for one Canary, and for the two Parts for another Canary, this is not Double; For it cannot be that the third Part is in Severality, and then the Plaintiff and Defendant shall not be Tenants in Common; for if they were Tenants in Common, Jutification for the one Part undivided suffices. Br. Double, pl. 141. cites 37 H. 6. 38.

105. In Trespass, where a Man pleads a Recovery and Issue Title, by which he recovers also, this is Double; Per Littleton, which Danby J. denied; For the one is subsequent to the other. Br. Double, pl. 75. cites 39 H. 6. 24. & concordat 9 H. 7.

106. In Trespass Adiuvation and Intercussion are Double, and yet it seems that both shall be of one and the same Nature, and where a Man pleads Double Plea, and relies upon the one, then it is not Double. Br. Double, pl. 147. cites 39 H. 6. 27.

107. Trespass upon the Case to good liberavit Obligation defend ad salum Caues & reiberand can & that the Defendant has broken it. The Defendant said, that it was bailed to him by the Plaintiff to deliver to W. N. the which he has done, abique hoc that he broke it; Per Prinor; the Plea is double; for it is a good Plea that it was delivered to him to deliver to W. N. which he has done; and then [if] he breaks the Obligation, Action is given to W. N. and not to the Plaintiff, which is another Matter of Bar; by which Coke said for the Defendant ut supra, abique hoc that he broke the Obligation before the Delivery made to W. N. and per Cur. now ought to shew what Day he delivered it to W. N. and so he did, and traversed ut supra; then the Plaintiff demurred, and the Defendant dismissed, and it seems that this Traverse is pregnant, viz. the Breaking before the Delivery to W. N. Br. Double, pl. 84. cites 39 H. 6. 44.

108. In Trespass a Lease at Will, and a Licence to cut the Underwood, is not Double; For Tenant at Will cannot cut Underwood without Licence. Br. Double, pl. 149. cites 2 E. 4. 22.

109. Trespass of a Close broken, viz. two Acres, and the Defendant justified the breaking of one, and the Entry * [into one] for one Matter, and into the other for another Matter, and therefore double, per Cur. for he has justified two Breakings; Quære; For contra in Trespass upon R. 2. Br. Double, pl. 153. cites 18 E. 4. 11.

110. In Trespass where Defent is pleaded, the Plaintiff pleaded Differens to his Father by him who died feisd, and that his Father made Continual Claim and died, and after he made Continual Claim, and the Differens died feised within the Year &c. and per Cur. he shall plead the one Continual Claim only, viz. of him in whose Time the Difent came. Br. Double, pl. 53. cites 15 E. 4. 22.

111. In Trespass it was agreed, that where a Man makes a Bar or Title by Gift in Fail of Land or Adowry, and alleges divers Defents or Pretensions, this is not Double; For the Traverse of the Gift answers to all. Br. Double, pl. 104. cites 19 E. 4. 4 — And yet contra per Brian and Cur. 20 E. 4. fol. 3. But Quære thereof. Ibid.

112. In Trespass, if a Man makes Avowry or Replevin or Jutification in Trespass for Homage, Fealty, Suit, Rent &c. this is not Double; For this is all one and the same Tenure. Contra if it be for a Rent-Charge and Rent-Service in one and the same Avowry. Br. Double, pl. 94. cites 9 H. 7. 13.

113. Trespass against several of a Close broken; the Defendant said that each of them has Common there appendant to his Frankenement severally, by which they entered and broke &c. to use their Common, and a good Plea, per Cur. and not Double; For it shall be intended that each justified for his own Interest, and none for the Interest of his Companion. Br. Double, pl. 59. cites 15 H. 7. 10.

114. End.
Double Pleas.

114. But in Trespa.s of a Cloie broken, if the Defendant says that A. has Common there, and B. finiJter, and C. jnnifter, and he as their Servant, and by their Commandment put in the Beasts, this is Double, per Cur. Br. Double, pl. 59. cites 15 H. 7. 10.

115. But if he says that he put in two Beasts for A. and three for B. and the reft for C. this is a good Plea, and is not Double, per Cur. Br. Double, pl. 59. cites 15 H. 7. 10.

116. In Trespa.s it was agreed, that where one intitled himfelf that A. was seized in Fee, and intiJfed B. who intiJfed C. who intiJfed D. whofe Estate the Defendant has, and gave Colour to the Plaintiff by the firft Feoffor, this is not Double; and the reafon feems to be, because all these are only Conveyances. Br. Double, pl. 60. cites 15 H. 7. 11.

117. Defendant pleads ten Outlaveries against the Plaintiff; this is Double; for he is as much disabled by one as by the other nine, to which several Anfwers are required, Carth. 5. Trin. 3 Jac. 2. B. R. Trevillian v. Secomb.

118. In Ward the Plaintiff counted that he held of him by Honaffe, Ejfugge and Servoge, which gives Ward by Ufage of the Country, and therefore double; by which he was compelled to keep to the one. Br. Double, pl. 26. cites 46 E. 23.

119. If the Defendant in a Hearing of Ward traverse the Title of Br. Ralphin- the Plaintiff, and makes Title to himfelf, this not double; for he ought to do so; nota. Br. Double, pl. 28 cites 2 H. 4. 12.

120. Ward of Land and body, the Defendant pleaded a Feejiement, and the Plaintiff alleged, that it was by Collufion, and it was upon Condition to intiJfed the Heir at fall Age to toll him of his Ward, and therefore double, viz. The Collufion and the Condition, by which he omitted the Condition and held him to the Collufion, to which the Defendant said it was Bona Fide, and not by Collufion; but per Cur. Trin. 4 H. 6. Fol. 29. the Plea pleaded in Bar is not good if he does not traverse the dying in his Honaffe. Br. Double, pl. 5. cites 3 H. 6. 32.

121. In Ward the Tenant pleaded Jointenance by Fine to the Anceflor and to him, and that he is in by Survivour; Judgment &c. The Plain- tiff said that the Confor enhanced certain Perions to intiJfed the Heir at his fall Age by Collufion to toll him of his Ward, abufe box, that these who were Perions to the Fine had any Thing at the Time leaved, and it was held double, viz. The Collufion and the Voidance of the Fine, by which he held himfelf alone to the Voidance of the Fine. Br. Double, pl. 39. cites 7 H. 6. 20.


122. Warrantia Charte suo de eo tenet et unde chartam feum bate, this is not double Lien but ancient Form of the Write; quod nota per Cur. Br. Double, pl. 64. cites 24 E. 3. 74.

123. Scire FACIAS upon a Fine, the Plaintiff conveyed himfelf by De- fcent to two Caparencers, and from them to him, and the Tenant pleads Release with Warranty of these two Parencers. Judgment is contrary to the Deed of his Anceflors, which comprises Warranty, Allison &e. the Plain- tiff said that it was double by reafon of the two Warranties, and therefore he held him to the one, notwithstanding that he pleaded according to the Fine. Br. Double, pl. 35. cites 9 H. 5. 12. 13.

E e e

124 It
124. If a Man pleads Rekafe with Warranty and relies upon the Whole, this is not double; for one Answer may make an End of all. Br. Double, pl. 117. cites 32 H. 6. 21.

125. But Feoffment with Warranty is double if he does not rely upon the Warranty; for Feoffment may be without Deed, and [paffes] by two Circumstances. Br. Double, pl. 117. cites 32 H. 6. 21.

126. But Rekafe with Warranty, or Confirmation and Grant that he shall not be vexed as above, all this paffes by one Deed or Patent. Br. Double, pl. 117. cites 32 H. 6. 21.

215. Waff in Grange as to a Moity the Defendant Decay before the Lease, and as to the reft it was uncovered by Tempeft, and before the Defendant could repair it the Plaintiff entered, and wasModelAttribute the Day of the Writ; Judgment &c. and per Hank. this is double, The Tempeft and the Enemy of the Plaintiff. Contra per Hull, for the Entry is all the Matter; for the Tempeft is not Waft unless the Defendant permits the Timber to putrify after the Tempeft. Br. Double, pl. 59. cites 12 H. 4. 5.

127. Waft in cutting 10 Oaks the Defendant said that the Plaintiff granted the 10 Oaks to R. C. and commanded the Defendant to cut and deliver them to the said R. C. which he did. Per Markham, the Plea is double, viz. The Grant and the Commandment. Per Newton and Paflen the Plea is good; for it is parasaur, by which the Plaintiff replied and denied the Commandment; quod nota. Br. Double, pl. 49. cites 21 H. 6. 45.

(B) Allowed in what Cases.

1. In Aflife of Rent the Tenant cannot plead Mifinform of himself, and if it be found, Hers de son Fric &c for the first Plea is waived by the other. Theol. Dig. 214. lib. 15. cap. 3. S. 1. cites Patich 3 E. 3. 78. 3 Aff. 9.

2. In fue Cin in Vita of a Houfe and 21. Rent, the Tenant said that the Demandant had put in View only a Houfe, and so he supposes that the Rent is arising from this Houfe, in which Houfe he has nothing unfaft jointly with such a one not named a Judgment of the Writ, and held that he shall have the two Pleas. Theol. Dig. 214. lib. 15. cap. 3. S. 2. cites Trin. 5 E. 3. 192.

3. In Aflife of Waff as to Parcel, the Tenant falsified the Donor, supposes by the Writ, in Abatement of the Writ, and as to other Parcel be said that it was within the Vill suppos'd by the Writ &c. and had both the Pleas. Theol. Dig. 214. lib. 15. cap. 3. S. 5. cites Patich. 8 E. 3. 402.

4. In Aflife of Entry the Tenant pleaded that one Tho. was seised and died seised, from whom the Tenements descended to three Daughters, and the Tenant is Issue of one of them, and he has the Estate of the other by Purchase, and one Ro. has the Estate of the third by Purchase, and so he holds in common pro indivis with Ro. not named &c. And held that he shall not have the two Pleas, fccil. the Nontenure of the third Part, and the Tenancy in common of the Whole. Theol. Dig. 214. lib. 15. cap. 3. S. 7. cites Trin. 8 E. 3. 218. Quære.

5. In
5. In trespass for a close broken brought by two, as to one of the Plaintiff the Defendant said that he was Tenant in Common of this close with the Plaintiff, Judgment of the Writ, and as to the other Plaintiff the Defendant pleaded Not Guilty &c. Thel. Dig. 213. Lib. 15. cap. 3. S. 21. cites 8 E. 3. 436. in Mordanceter. Quere.

6. In Quare Imputet, the Defendant may plead Darrein Prelentment to the Writ, and make Title of Right also to the Prelentment, and his Plea shall be taken according to that which he concludes to the Writ by the Darrein Prelentment, or Action by the Title. Thel. Dig. 215. Lib. 15. cap. 3. S. 22. cites Mich. 8 E. 3. 426.

7. In Debt by two Feues as Executrices of the Testament of such a one, the Defendant as to one said that she was Covert of Baron the Day of the Writ purandered, and yet is &c. And as to the other that she has taken Baron pending the Writ &c. and had both the Pleas, but the Libie was taken upon the one. Thel. Dig. 214. Lib. 15. cap. 3. S. 8. cites Mich. 8 E. 3. 441. Mich. 9 E. 3. 475.


9. The Tenant pleaded Non-tenure of Parcel and second who was Tenant, and as to the other Parcel pleaded Non-tenure also by reason of Recovery, and Execution fixed against him pending the Writ, and had both the Pleas. Thel. Dig. 214. Lib. 15. cap. 3. S. 11. cites Trin. 15 E. 3. Brief 285.

10. In Trespass of Beasts taken, the Defendant cannot plead That the Deliverance is made by Replication in the County, and also justify as Distress &c. Thel. Dig. 214. Lib. 15. cap. 3. S. 12. cites Mich. 17 E. 3. 585.

11. In Writ of Aisli the Tenant was received to plead Left Seisin in his Father who was Son and Heir to the Grandfather, and that the Demandant was Son and Heir to the younger Son of the Grandfather, and so he could demand nothing. Thel. Dig. 214. Lib. 15. cap. 3. S. 9. cites cites Hill. 10 E. 3. 493.

12. In Affise the Tenant said that he had another Surname, and pleaded Jointenancy with one not named &c. And held good without saying that he is the same Person &c. and the Plaintiff cannot reply to the Mifinformer but to the Jointenancy. Thel. Dig. 214. Lib. 15. cap. 3. S. 4. cites Mich. 5 E. 3. 215. and says see 22 All. 5.

13. A Man shall plead Non-tenure of Parcel of which another is Tenant, and also that the Demandant himself is seized of Parcel. Thel. Dig. 214. Lib. 15. cap. 3. S. 13. cites Mich. 19 E. 3. Brief 284. And that a Man shall plead 29 Non-tenures to the Writ, but the Tenant was not received to plead Non-tenure of Parcel and Jointenancy of Parcel also. Pach. 22 E. 3. 6.


15. In Affise of Comman, the Defendant said that the Land in which &c. is 60 Acres, and that the Granter had nothing in the Land unless in five Acres at the Time of the Condition, and in the five Acres that the Granter of the Common who granted his Interest to the Plaintiff had nothing in the Common at the Time of the Gift, and had both the Pleas; For the one Plea goes to the five Acres, and the other Plea to the rest. Contes if each Plea had been pleaded to the Whole. Br. Deux pleases, pl. 31. cites 37 All. 14.

16. Debt
16. Deit against Executors who pleaded Acquaintance as to Parcel, and fully administrated as to the Rest, and both were suffered, quod nota. Br. Deux pleas, pl. 27. cites 23 E. 3. 91.

17. Three Issues were permitted in alleging that the Bailiffs of the Francis chief after Course of the Plea granted had failed of Right to the Plaintiff, inasmuch as it contrivs the Jurisdiction of the Court of the King, and the King is as Party to it, the Plea of which shall not be challenged for doubleten. Br. Double, pl. 119. cites 40 E. 3. 11.

18. In Dever the Tenant said that Baron had nothing unless in Special Tail to him and his first Feme, the Remainder to J. N. in Tail, the Remainder to the Baron in Fee, the Baron died and he in the Misfine Remainder survived, the Demandant said to Parcel Nient compris, and to the Rest that he in Remainder did not survive the Baron, by which the Baron was jailed in Fee; For he had no Issue by the first Feme, and he had both the Pleas, and yet if the Baron surviv'd the ought to have Dower. Br. Deux pleas, pl. 34. cites 46 E. 3. 16.

19. In Ward of Land and Body, the Defendant as to the Body pleaded Delivery by the Plaintiff himself upon certain Conditions performed to re-deceiver, and afterwards to retain him &c. and to the Land that the Ancestor in his Life injefted J. N. Que Ejfate be his, and because this last Plea goes to all, therefore per Cur. he was drove to the one, by which he held him to the Feeomission. Br. Deux pleas, pl. 2. cites 3 H. 6. 32.

20. In Dower against one Jo. he said, that he and one Ro. not named, held the Tenements jointly as Guardians in Ch creda by the Nomage of such an one Heir &c. Judgment of the Writ &c. And adjudged that he should have the Plea &c. notwithstanding that it is Double, viz. that he was Guardian not named Guardian, and the Jointenancy. Thel. Dig. 215. lib. 15. cap. 3. S. 17. cites Pauch. 9 H. 5. 4.

21. In Dever, the Tenant said, that he had nothing but in Ward with W. N. of the Grant of G. of whom the Ancestor of the Infant, Son of the Baron, held in Ch creda &c. Per Hals, the Plea is double, one that he has nothing but in Ward, and the other that he holds jointly; and because if he should be compelled to hold to the one, he at another Time should lose the other, therefore for the Mistchief he shall have Plea; per tot. Cur. Br. Double, pl. 33. cites 9 H. 5. 4.

22. It is held, that in Appeal of Death, the Defendant may plead that there is another Appeal pending, and Nut tial Vill &c. also, and Misjudgmer of himself, and Nut tial Vill &c. and pray Allowance of them &c. and as to the Felony plead Not Guilty. Thel. Dig. 215. lib. 15. cap. 3. S. 18. cites Hill. 4 H. 6. 15.

23. A Rule is laid down, that when a Man has two Matters, he may plead either of them, and if he cannot come at one without alleging the other, the alleging it will not make his Plea double; Arg. 12 Mod. 507. in Cafe of Pell v. Garlick, cites 5 H. 7. 38.

24. In Scire Facias out of a Fine, the Tenant pleaded that it was once executed, and also that he is in by Tail made before this Fine, and held that he should have both. Thel. Dig. 214. lib. 15. cap. 3. S. 15. cites Pauch 32 E. 3. Scire Facias 132. 145. and 18 H. 6. 3.

25. Affife by the Master and Confessors of the Fraternity of the nine Orders of the Angels in B. in the County of Middlesex, the Defendant said that there is not any such Corporation by the Name at supra in the same County, and if &c. nut tort &c. and was not suffered to have both, for the first Plea goes in Bar, and he shall not have the Bar and also a general Issue, Quod Nota, per Cur. Br. Barre, pl. 91. cites 22 E. 4. 34.


27. Where
Double Pleas.

27. Where there is but one Tenant, and one Defendant, he cannot have two such Pleas as each of them do go to the whole; but where there are divers, each of them may plead several Pleas, which extend to the whole. Co. Litt. 303, a.

28. The Plea which contains Duplicity, or Multiplicity of distinct Matter to one and the same Thing subsequenlly several, Answers (admitting each of them to be good) are required, is not allowable in Law; and this Rule extends to Pleas Perpetual or Peremptory, and not to Pleas Dilatory; For in their Time and Place a Man may use divers of them. Co. Litt. 304 a.

29. Double or treble Pleas are allowable in an Action of Novel Disjefion, Mor denounced, Juris Utrum, Aatinent, or Certificate of Aisle, which would have Juries returnable on the first Day before any Plea pleaded; For these are Feltem Remedies; But Double Pleas are not allowable in other Actions; For there is an original Writ, Plea, and Issue, and upon this a Venire Facias &c. and a Trial. Jenk. 75. pl. 43. cites 3 H. 4. 2.


31. Duplicity is not a good Exception to a Plea in Abatement, But in ibid. cites Plea in Bar Duplicity of Matter makes the whole void; admitted. But Co Litt. the Court took a Difference between a Plea of Outlawry in Disability, and other Pleas in Abatement, and that a Plea of ten Outlawries is double, because a Plaintiff is disabled as well by one as by the other nine. Carth. 8. Trin. 3 Jac. 2. B. R. Trevilian v. Second.

32. One Defendant could not plead two Pleas that went to the whole, (but now by 4 & 5 Anne for Amendment of the Law he may,) Salk. 218. pl. 3. Mich. 5 W. & M. in B. R. Combe v. Talbot.

33. 4 & 5 Anne, cap. 16. S. 4. Enacts, that it shall be lawful for any Defendant or Tenant, or Plaintiff, in any Replication, in any Court of Record, with Leave of the Court, to plead as many several Matters as are necessary. Plaintiff brings a Writ of Error to reverse a common Recovery. Defendant moved for Liberty to plead Double. The Motion was opposed, because the Act for the Amendment of the Law, whereby a Defendant, by the Leave of the Court first obtained, may plead Double, was not to per se underfoot of a Defendant in a Writ of Error, but a Defendant in an original Action; But it was inferred upon by the Counsel on the Side with the Motion, that this Act did extend to the Defendant in a Writ of Error, as well as in an original Action; that the one might have a great Occasion of pleading double as the other; That it had lately been resolved, that a Writ of Error did not abate by the Death of one of the Plaintiffs, whereas, as the Law stood before that Act of Parliament, it would; That by the same Reason by which the Word Plaintiff, in that Part of the Act of Parliament, was to be extended to a Plaintiff in Error, the Word Defendant should likewise. It was further urged, that the pleading Double was at their own Peril; for if the Court had not Power by this Act of Parliament to grant them Leave to plead Double, the other Side may demur; And to this Opinion the Court inclined; But the Court made Motion fruitless, by declaring, that none of the Things they desired to plead, did upon the Record appear to be false. Mod. 526. Pach. 2. Geo. B. R. Harbou v. Aglomy. The Court was moved for Leave to plead and demur, but refused the same; For demurring is not pleading. Mod. 28. No Hill. 1. Geo. B. R. Haysen & al. (Alliances) v. Jefferys. An Heir shall not have Leave to plead Rents per Defent with another Plea, except he make Affidavit that he has Rents per Defent; nor shall an Administrator have Leave to plead Plane Actions, and No Affairs, without an Affidavit that he has no Affairs. Mod. 534. Trin. 2. Geo. B. R. Carrington v. Warren.

34. Upon a Writ of Error brought upon a Judgment in C. B. in a Comyns' Inheritance in Remainder for Lands in Lincolnshire, the Cause was this viz. Sir Edward Hussey the Demandant counted of a Gift by Sir Thomas Hussey to J. B. R. M. and T. L. Kq; in Fee, to the Use of the Heirs of Sir Thomas, and the Heirs Male of his Body begotten upon the Body of Sir Thomas, and for Default of such Hfue, to the Use of the Heirs Male of the Body of the said Sir Thomas, and for Default of such Hfue, to the
Ufe of William Hufley, Esq. for Life, and after his Deceafe to the Ufe of the firft and every other Son of the faid William in Tail Male, and for Default of fuch Ufue, and if the faid Williams’s Wife fhould be with Child at the Time of his Deceafe, and fuch Child fhould be a Son, to the Ufe of fuch pofthumous Son, and the Heirs Male of his Body, and for Default of fuch Ufue, to the Ufe of Sir Edward the Demandant, and that the faid William H. died in the Life-time of the faid Sir Thomas without Heir Male of his Body, and that there was not any pofthumous Son of the faid William, and that afterwards the faid Sir Thomas died without Heir Male of his Body, fo that the Right remained in the faid Sir Edward the Demandant &c.

The Tenants, having obtained Liberty to plead Double, pleaded as fol. that the faid Sir Thomas being feeled of &c. in Fee the 8th, Decemb. 1682, by Indenture of Bargain and Sale between the faid Sir Thomas of the one Part, and the faid J. B. R. M. and T. L. by the Name of T.L. of London, Merchant, of the other Part, bargained and fold to the faid J. B. R. M. and T. L. the &c. for one Year, from the Day next before the Date of the faid Indenture, by Virtue of which Indenture of Bargain and Sale &c. the faid J. B. &c. were poftifeled &c. and that on the 9th of December 1682, by another Indenture made between the faid Sir Thomas and feveral others (naming them) of the one Part, and the faid J. B. R. M. and T. L. by the Name of as above, of the other Part, the faid Sir Thomas releafed his Reversion of the &c. to the faid J. B. R. M. and T. L. and their Heirs, to the Ufe of the faid Sir Thomas for Life without Impeachment of Waste, and after his Deceafe to the Intent that S. his Wife fhould receive 600 l. per Annum for her Life; and as to the faid &c. charged with the faid 600 l. per Ann. after the Deceafe of the faid Sir Thomas, to the Ufe of the faid J. B. R. M. and T. L. for 500 Years, upon Trufi &c. And after the Determination of the faid Term, to the Ufe of the Heirs Male of the Body of the faid Sir Thomas, begotten upon the Body of his faid Wife, and for Default of fuch Ufue, to the Ufe of the Heirs Male of the Body of the faid Sir Thomas, and for Default of fuch Ufue, to the Ufe of William Hufley of London, Merchant, Brother of the faid Sir Thomas, for Life, and after his Deceafe to the Ufe of the firft, and every other Son of the faid William in Tail Male, and for Default of fuch Ufue, and if the faid William’s Wife fhould be with Child at the Time of his Death, and fuch Child fhould be a Son, to the Ufe of fuch pofthumous Son, and the Heirs Male of his Body, and for Default of fuch Ufue, to the Ufe of the faid Sir Edward the Demandant for Life, (with divers Ufes over by way of Remainder) and that by the fame Indenture of Reliefs it was provided, that the faid Sir Thomas might re-voke, or alter all or any of the Ufes or Estates in the faid Reliefs, and declare and limit any other Ufes or Estates, as to the faid Sir Thomas fhould feem meet, and that on the 12 Feb. 1 Feb. 2, the faid Sir Thomas, in Purfuance of the faid Power, by a Writing ftigned and fealed &c. revoked the faid Ufe and Estate limited to the faid Sir Edward the Demandant, and that afterwards, viz. 1 May 1701, the faid Sir Thomas, by another Writing ftigned and fealed &c. revoked all the Ufes and Estates limited by the faid Reliefs concerning the Lands in Question, and limited the Ufe thereof to himself in Fee, and died fealed, upon whose Death the Lands descended to the Defendants as his Heirs &c. abufe both that the faid Sir Thomas gave the Lands in Question, Moso & Forma as the Demandant has alligned &c.

And the faid Tenants for their fecond Plea pleaded the fame Matter in Bar, concluding with an hco parat’ verificare &c.

The
Double Pleas.

The Demendant averred, that the said William Huffey, Esq; and the said William Huffey of London, Merchant, Brother of the said Sir Thomas, are the same Persons, and demurred to the Pleas, and for Cause said, that the several Matters pleaded by the Tenants were inconfident and repugnant in themselves, and every of the said Pleas are either Contradictions to itself, or to the other, (viz.) the second Plea was repugnant to the first in this, that the second suppos’d and confessed the Gift of the Lands in Queltion as the Demendant alleged, and upon that Supposition it was founded, other wise it was superfluous, and to no Purpofe, and the Inducement to the Traverfe in the first Plea suppos’d the Gift to be made to the fame Effect contained in the Writ and Count, though nor in the fame Words, and upon that Supposition the said Power of Revocation, and the Revocation of the Use, and Estate limited to the said Sir Edward, were in both the Pleas (though insufficiently) pleaded, yet the said Gift, as alleged by the said Sir Edward, was by the first Plea traverfed and denied, and fo the first Plea repugnant to itfelf, and to the second Plea; and where in the said Pleas after the Pleading of the Indenture of Bargain and Sale it was said, By Virtue of which Indenture of Bargain and Sale &c. whereas it ought to have been faid, By Virtue of which Bargain and Sale &c. and not By which Indenture &c. Alto the Tenants did not produce nor allege to have produced the Writings mentioned to be fcafed with the Seal of the said Sir Thomas, whereby the Uses aforesaid were al leged to be revoked. Moreover, if the first Plea was not repugnant as aforesaid, it at the belt only amounted to the General Ifue, and fo ought to have been pleaded Generally; and though it was lawful for the Tenants with Licence to plead feverall Matters, no one can plead feverall Matters which are inconfident, or the fame Matter several Ways.

Lastly, that the Pleas were insufficient, because it did not appear whether William Huffey named in them, and William Huffey named in the Writ and Count, were the fame Perfon or divers, nor whether the said William, at the Time of the first Revocation, was dead without Heir Male or his Body, or leaving fuch Ifue, or was then alive. The Tenants joined in Demurrer, and in C. B. the Pleas were held good, and Judgment given for the Tenants.

The Demendant brought Writ of Error, and afligned the general Error, and alfo the said Matters fhewn for Cause of the Demurrer, and upon Argument the whole Court held the Pleas good, and as to the Repugnancy of the said Pleas which was the chief Point inquired upon, held that the said Pleas were confident; for both the Pleas confided of the fame Matter though it was pleaded with divers Views, and to divers Intent, the Reason whereof was, because the Tenants doubted whether the Deed, being something various in its Limitations from the Gift counted upon, would be adjudged the fame Gift, and therefore got Leave to plead Double, to the End they might be fave, whether the Deed was adjudged the fame, or not the fame Gift where upon the Demendant counted. Judgment affirmed. MS. Rep. Hill. 2 Geo. B. R. Huffey v. Huffey.

35. Double Plea was allowed on a Promise of Marriage, viz. Non So in Case Aflumpit and Infancy. Gibb. 175. pl. 23. Path. 3 Geo. 2. B. R. upon several Promises, viz. Non Afl. jumptit and

36. A Motion was made for Liberty to rejoin double, as being within the Equity of the Act, which allows pleading double. But the Court faid, that they thought that this would be entirely inconvenient and
Double Pleas.


37. A Rule to plead double, viz. Non Assumpsit, and a General Re- 

ecape was discharged because these Pleas are contradictory. Notes in 


38. In Trepassi for entering of Plaintiff's Close and pulling down a 

Ware. Defendant moved to plead double, viz. Liberum Tenementum 

and a Justification of pulling down the Ware as a Nuisance, and a 

Rule Nisi was obtained; but was afterwards on hearing Counsel on 

Sides discharged by the Court, the Matters prayed to be pleaded be- 

ing inconstant. Notes in C. B. 229. Trin. 6 & 7 Geo. 2. Halley 

v. Feltham.

39. Defendant obtained a Rule Nisi to plead double, Non Assumpsit 

and Non Assumpsit infra sex annos. Plaintiff shewed for Caufe, that 

the Rule to plead was expired before the Motion to plead double was 

made; but Court held that Defendant was proper to move to plead double 


King v. Bobwell.

40. A Motion was brought against an Innkeeper for detaining two Horses 

of the Plaintiff's. It was moved to plead double, viz. Not Guilty, and 

Accord and Satisfaction, and would have compared it to Non Af- 

sumpt and Non Assumpsit infra sex annos. The Court denied to make 

any Rule, the Matters prayed to be pleaded being contradictory. 


41. A Rule was made for Plaintiff to shew Caufe why Defendant 

should not plead double, viz. Non Assumpsit and Non Assumpsit infra 

sex annos. Plaintiff shewing Caufe, produced an Affidavit that De- 

fendant had not appeared, and consequently not being in Court was not 

proper to make the Motion, and the Rule was discharged. Notes in 


42. It was moved to plead double, Non Assumpsit and Plea Admi- 

nistravit, which was denied by the Court, no Affidavit being produced 

that Defendant had fully administered. Notes in C. B. 234. Mich. 8 


43. On Motion to plead double, Schuit ad Dicem and Riens per De- 

fent, it was objected that an Affidavit of the Faß as to Riens per De- 

cent ought to be produced from the Heir, as from an Executor or 

Administrator in a Plea Administravit, and the Objection was held 


of Wisbetch v. Frier.

The Reporter adds a Note that Affidavit must be made by the Executor or Administrator that he 

has fully administered and by the Heir that he has nothing by Defent, before Motion.

44. Defendant Non Assumpsit infra sex Annos, and Plaintiff denounced 

to the Plea; The Matters in Quelion being Affairs between Merchant 

and Merchant; and Defendant thereupon moved to add to his former 

Plea a general Non Assumpsit upon Payment of Costs; but this was denied. 


45. Motion to plead double, viz. Non Assumpsit, and several Matters 

set off against Plaintiff's Demand was denied per Cur. as contradictory. 

The general Issue must be pleaded with Notice to set off pursuant to the Statute. Notes in C. B. 236. Pack. 8 Geo. 2. Jarratt v. Rob- 

bllton.
Double Pleas.

46. A Motion to plead double, viz. *Nil debet* and *Nil debent in Tenements* was refused. Per Cur. The latter may be given in Evidence upon the former. Notes in C. B. 236. Trin. 8 & 9 Geo. 2. Marthai v. Lawrence.

47. In a Prohibition it was moved to plead double, viz. *That J. C. &c.* named in the Declaration at a Meeting &c. did not make up a true and just Account &c. and that the Account mentioned in the Declaration was not examined, allowed and approved by the Victry; and the same was granted on hearing Counsel on both Sides. *Cales of Practice in C. B. 122. Mich. 9. Geo. 2.* Coates v. Smith and Midgley.

48. In Trespass it was moved for Defendant for Leave to plead doubly, viz. *Non cult* and *Liberam Tenementum* of the Liberty of St. Catherine's, and obtained a Rule to shew Caufe, which was afterwards made absolute upon an Affidavit of Service, no Caufe being shewn. *Notes in C. B. 241.* 10 Geo 2 Stibbs v. Nevees.


50. After a Judge's Order for Time to plead, *pleading an insufficient Plea,* Defendant moved to plead double Matter, and the Quetion was, Whether a Rule for that Purpoze ought to be granted or not? The Court took Time to consider, and after conferring with the Judges of the other Courts, gave Defendant Leave to plead doubly, pleading influe Pleas, and taking short Notice of Trial. *Notes in C. B. 244.* Mich. 10 Geo. 2. Leighton v. Leighton.

51. Defendant had pleaded *Non Assumpsit infra sex annos,* and moved to add to that Plea *Non Assumpsit generally,* which was denied. *After Defendant hath pleaded a Single Plea,* he cannot have Leave to plead doubly. *Notes in C. B. 245.* Hill. 10 Geo. 2. Nevil v. Fither.

52. In Trespass it was moved to plead doubly, *Not Guilty,* and a *J&jification,* which was denied as contradictory. *Notes in C. B. 245.* Hill. 10 Geo. 2. Barnett v. Greaves.

53. *Assumpsit:* *Defendant paid 10l. on the Common Rule,* and afterwards obtained a Rule to plead double, *Non Assumpsit and Non Assumpsit infra sex annos.* Plaintiff moved to set aside the double Plea S.C. ac- with Cofts, and had a Rule to shew Caufe, which was made absolute, afterwards. Plaintiff by the Rule to pay Money into Court is confined to plead the General Issue, and no other Plea. The Motion afterwards to plead Double is an Impediment on the Court. *Notes in C. B. 245, 245.* East. 10 Geo. 2. Buck v. Warren, Attorney, in Cæfe.

54. It was moved to plead double, viz. *Damage-Feasant,* and under *Cales of a Demise from Defendant to Plaintiff.* Ch. J. said he thought them in. *Cales of Prac* in confluent; but as Defendant obtained a Rule to shew Caufe, and Plain- *S. C. accord- tiff did not oppose it, it must be absolute. Notes in C. B. 246. *Cales of* ingly.

55. The Court gave Defendant Leave to plead doubly, viz. a *Dif* *Cales of* *Cales of tria* for *Damage-Feasant* and for *Rent in arrerar.* This is not stronger *Cales of* than *Not Guilty and Liberam Tenementum,* *jovit ad Diem* and a *S. C. accord- *mutuat Debt,* which have been granted. *Notes in C. B. 247.* Trin. *Cales of* ingly.

56. Defendant having obtained a Rule to plead doubly (*Non Assumpsit* & *Non Assumpsit infra sex annos*) Plaintiff mov'd to discharge it.

*G G G*
instituting that Defendant who was a Prisoner in the Fleet at the Time of his being charg'd with the Declaration before this Rule obtained was discharged at the Sessions of the Peace, by the compulsory Cautie in the Infelicit Debors Act 10 Geo. 2, and being at large could not regularly apply for the Rule to plead double, without first entering a common Appearance; which was not done. The Question was never determined, but by Consent the Plaintiff had Leave to discontinue without Costs. Notes in C. B. 274. Trin. 11 & 12 Geo. 2. Cook v. Kerredge. 


58. A Rule the same Term in Case of Little v. Fenrys, had been made to have Caufe, and absolute on Affidavit of Service (no Caufe being shewn) to plead Non assumpsit, and Defendant discharged under the said Act. Notes in C. B. 252. Jones v. Body. 

(C) Allow'd in what Cafes, where there are several Defendants. And where the one pleads one Plea, and the other another. 

1. I N Writ against Ro. and W. Ro. made Default after Default, and W. was received to plead Sole Tenancy of Parcel, and Jointenancy of the Reftante. Thel. Dig. 214. Lib. 15. cap. 3. S. 3. cites Mich. 5 E. 3. 209. 229. 

2. In a Writ of Error it was said Arguendo that where Precipice is brought against two Jointenants, Parceurs, or fuch like, each may plead in Bar by himselfe of his Part, and if the one pleads a Plea which goes to all, and it is found for him and the Plea of the other is found against him, yet be shall loafe his Maindy. Br. Deux pleas, pl. 4. cites H. 6. 46. 

3. But Quære if Baffardy be pleaded by the one in Action Ancefal, and another Plea by the other, and the Baffardy is found for him who pleads it, and the other Plea is found against the other if this shall not ferve both, but it was said that all is one, and that each may lofe his Part; but Quære, because it was not adjudg'd. Ibid. 

4. But if the one pleads to the Writ and the other to the Action, there the Plea to the Writ shall be first try'd; For if it be found for him all the Writ shall abate, and this shall ferve both. Ibid. 

5. But in Trefpafs in Personal Action against two, and the one pleads one Plea, and the other another Plea which goes to all, there this shall ferve both; Quære in Action real. Ibid. 

6. And in Action brought against one if he pleads one Plea to Parcel, and the other Plea to the Reft, which goes to all, there the Plea which goes to all shall be accepted only, and not the other be it in Action Real or Personal, becaufe it is pleaded by one and the fame Person. Ibid. 

7. Quære where two Pleas are pleaded by two in Precipice quod reddat whether the one goes to all. Ibid. 

8. Forger de Factis against three, the one made Default, and two appeared, and the one pleaded the Death of the Third, who did not come, at D. in another County before the Writ purchas'd, and the other pleaded Not Guilty, and Ven. fac. issued upon both; and after the Plaintiff pray'd two Nisi Prius's upon those two Issues, and triable in two Counties. Per Moyle
Double Pleas.

Moyle he cannot have both, but if the Issue of the Death betry’d then the other Issue is void, though it be try’d also. But per Prifon the Plea of the Death goes to the Writ, therefore the other shall have thereof Advantage, Where of several Pleas to the Action, and therefore here the one may make an End of all, and therefore this shall be first try’d, and if it be found against the Defendant, then the other Plea shall be try’d for the other, but if it be found for the Defendant who pleaded the Death, the Writ shall abide in all, by which Nisi Prius was granted only of the County where the Death is alleged. Br. Deux plees, pl. 2o cites 37 H. 6. 37.

9. In Precipe against two, if the one pleads Baitardry and the other Release of the Demandant, both shall be tried, and if the Baitardry be found the other Issue is void because the Baitardry goes to all; Per Moile. But Prifon denied it, for in Plea of Land every one may save or lose his Moiety, therefore if Baitardry be found for the one, and Release against the other, the Demandant shall recover one Moiety and shall be barr’d of the other Moiety only, and of no more. Ibid.

(D) Allowed in what Cases, where one shall be said to go to the Whole.

1. In Precipe quod reiedat the Tenant as to Parcel said, that he had nothing unite of as Baron of his Feme not named in the Writ; Judgment of the Writ, and as to the rest he shall be pleaded Nontenure; Per Birton, he has pleaded two Pleas where the one, still the Nontenure goes to all, and prayed to be discharged of the one; and per Cur. he shall answer to both, and so he did, that is to say, to the one Parcel that he is sole Tenant, and the Feme has nothing, and to the rest Tenant as the Writ loppes, Prist &c. Br. Deux Plees, pl. 12. cites 21 E. 3. 28.

2. In Dower the Tenant to Parcel pleaded Jointenuancy, and to the rest Ne unques Accouple in lawful Matrimony; and per Wich, he shall not have both, because the one and the last Plea goes to all; but Finch contra, for it he has a Joint-Feoffee it is no Reason that he shall render the entire Damages, and also he cannot vouch without his Companion; but Wich contra. Br. Deux Plees, pl. 7. cites 40 E. 3. 31.

3. And that he cannot plead Release to Part, and another Answer to the rest, for the Release goes to all; Per Wich. Ibid.

4. But 43 E. 3. 39. it is adjudged that a Masue Tenant shall not plead one Plea which goes to all, and another Plea to the rest. Br. Deux Pleas, pl. 7. cites 40 E. 3. 31.

5. But it was said 9 H. 6. that where two are imploade in a real Action the one may plead a Plea which goes to all for his Part, and the other another Plea to the rest, and each shall lose or save his Part according to the Trial of the Plea &c. and see 15 E. 4. 25. a Diversity of those Matters between real Actions and personal. Ibid.

6. In Dower the Tenant pleaded that the Demandant detained Evidences where he is Brother and Heir to the Baron, and the Demandant said that she detained two Deeds because Estate was made by them to her and her Baron, and to the rest that she is Ensent by her Baron; Per Cand. the last Plea goes to all, and yet she had both. Br. Deux Plees, pl. 8. cites 41 E. 3. 11.

7. In Forfomed the Tenant pleaded Nontenure to Parcel and that the Demandant is a Baitard to the rest, and could not have both the Pleas because the last goes to all. Br. Deux Pleas, pl. 9. cites 43 E. 3. 29.

8. Debe
8. Debt of 20l. against Executors, and to 10l. they pleaded Acquittance of the Plaintiff made to the Tenant, and to the rest fully administered. Percey said the last Plea goes to all, but after he passed over. Br. Deux Pleas, pl. 35. cites 46 E. 3. 18.

9. In Ward the Defendant pleaded Nuncupation to the Body, and as to the Land, that the Ancestor did not die his Tenant, and had the one and the other by Award, and yet the last might have been pleaded to both. Br. Deux Pleas, pl. 10. cites 7 H. 4. 12.

10. And per Hank. In Precipe quod reddat the Tenant pleaded to one Acre Nuncupation, and to the rest Release of Allions real and personal, and bad both, and yet the last goes to all; the Reason seems to be inasmuch as they are pleaded to several Parcels. Ibid.

11. Debt upon an Obligation of 20l. to pay 10l. at two Days, and the Defendant for the first Day pleaded Acquittance, and for the last Day that he has been always ready, and yet it, and brought the Money into Court, and the Plaintiff to the Acquittance demurred because it had no Seal, and to the other Plea said that he had not been always ready, and was not suffered to have both by Replication because if the Condition be broken in Part it is broke in all, and therefore he was compelled to hold to the one, and so he did, ibid. That he has been always ready &c. Br. Deux Pleas, pl. 11. cites 14 H. 4. 30.

12. In Ward the Defendant as to Body said, that the Ancestor of the Infant held Land of A. who held over of the Demandant. One Estate he has in the Ward, and as to the Land that he and the Ancestor of the Infant held jointly, and be survived, and it was determined that he should hold him to the Jointtenancy, for this goes to all, by which he said that W. leased the Ward of the Body to the Defendant, and couched him to Warranty, and as to the Land pleaded Jointtenancy by Fine as above, and it was awarded that he shall have both, by reason of executing the Damages and to put it upon the Voucher. Br. Deux Pleas, pl. 13. cites 7 H. 6. 14.

* Orig. (terre) but the other Editions are

13. Debt upon a Lease for 10 Years rendering Rent, and for Arrear of eight Years &c. Fullthey did say Green Acre in Parcel of the Premises which was allotted to 5 s. at the Time of the Demise, into which the Plaintiff entered three Years after the Lease, before which Entry as Parcel nothing Arrear and as to the rest he owes him nothing. Pris, where one entire Rent was reserved for all, and the Opinion of the Court was, that the Entry into Parcel goes to all the Writ. Br. Deux Pleas, pl. 14. cites 7 H. 6. 26.

14. In Waite the Defendant pleaded to Part that the Plaintiff had an elder Brother who survived the Father and died, after whose Death no Wills done, and to the rest that the Plaintiff had another Coparcener in full Life not named. Judgment of the Writ, and by some the first Plea goes to all, but by the best Opinion the last Plea goes to all clearly. Br. Deux Pleas, pl. 3. cites 9 H. 6. 11.

15. Foger de Fauts of Land in four Vills &c. the Defendant as to three Vills said that the Plaintiff never any Thing had, and to the Rest conveyed Estate to bimself, absole hæc that he for'd Modo et Forma. Per Newton this last Plea goes to all, but the Court was against him. Br. Deux plees, pl. 29. cites 10 H. 6. 24.

16. And per Car. it in Precipe quod reddat the Tenant pleads Release to Parcel, and Bystady in the Demandant to the Rest this shall not be suffered; For the last Plea goes there to all; note the Diversity. Ibid.

17. In Arrears the Defendant pleaded Acquittance of two Years, and to the Rest that he offered to the Plaintiff a competent Benefice which was the Condition of the Grant, and he refused, and became this Plea goes to all, the first Plea was out; For Debt shall lie of the Arrears before. Br. Deux plees, pl. 15. cites 19 H. 6. 54.

18. In
Double Pleas.

19. In Trepassis of a Villain in his Service being taken, Frank and of Frank-Fstate goes to all without awnswering to the Service; Quaere by others. Br. Deux pleas, pl. 16. cites 22 H. 6. 30.

20. And in Trepassis de Muliere abdita eum buis visi, Never his Feme is a good Plea to all, per Fultorpe, but Afceu contra; For he shall answer to the Goods afo. Ibid.

21. Trepassis of Trees cut and carried away, the Defendant as to the Trees pleased Gift of the Plaintiff before the Trepassis, and to the cutting and carrying away Not Guilty; And per Littleton the last Plea goes to all, but Prior said No, but in Trepassis against two if the one pleads Release, and the other another Plea, there the Release goes to all if it be first try'd. Br. Deux pleas, pl. 5 cites 33 H. 6. 12.

22. If Baron and Feme plead Misrainer of the Feme, it goes to all the Br. Mistake-Write it if it be found, and yet the Baron shall plead another Plea for mcer, pl. 8. himself also; and so he did, quod nona, and so two Pleas, and yet the one goes to all. Br. Deux pleas, pl. 6 cites 33 H. 6. 22.

23. In Dower, the Tenant pleaded Nontenture to Parcel, and to the Rest that the Demendant daint'd from him certain Evidence which concern'd the same Land, and had both; For the last Plea goes but to this Parcel of which the Tenant takes the Tenancy. Br. Deux pleas, pl. 36 cites 33 H. 6. 51.

24. Trepassis in three Acres of Land, the Defendant justified for the third Part by one Title, and in the other two Parts by another Title, and well; For it may be that it is in Severally, the third Part from the two Parts; For otherwise, the one Plea goes to all. Br. Deux pleas, pl. 30. cites 37 H. 6. 39.

25. In Debt upon arrears of Annuity granted pro Concilio impenso &c. against the Successor of an Abbott, the Defendants, as to the Arrears between such a Feast and such a Feast, said, that the Predecessor requir'd Counsel in such a Matter at D. and be there refus'd to give Counsel; and to the Arrears before, that he did not give Counsel &c. and had both Pleas; For though the Annuity was determin'd by the Refusal, yet Debt lies of the Arrears before, and this Action is Debt, but in Action of Annuity, there the Refusal goes to all of this Nature of Action Note the Difference in Annuity, and e contra in Debt upon arrears of Annuity. Br. Annuity, pl. 28. cites 39 H. 6. 22.

26. Action of divers Treppaisses, the Defendant to some pleaded Not Guilty, and to the Rest Arreivment of all Treppaisses, and were at Illyue of this, and found for the Plaintiff, and by force this last Plea goes to all, and by several none shall have Advantage of the last Plea but the Party, but any as Amicus Curiae may thow to the Court that the one Plea goes to all, and the Court ex Officio shall discharge all but that; and after it was faid per Cur. that it is better for the Plaintiff to releave Part of his Damages and to have Judgment of the Rest; For where diverfe Treppaisses are, and divers Pleas pleaded, and found for the Plaintiff, and the Damages are sever'd, the Plaintiff may releave his Damages for Part, and pray Judgment for the Rest; and fo is sure. Br. Deux pleas, pl. 23. cites 5 E. 4. 124.

27. In Affixe by B. and S. the Defendant pleaded against B. that he is an Alien born, and against S. that he had never such Office of which the Affixe is brought, and it was held that the last Plea goes to all against both; For if there be no such Office, no Affixe lies. Br. Deux pleas, pl. 24. cites 7 E. 4. 29.

28. A Man shall not have two Pleas where the first goes to all. Br. Trepassis, Deux pleas, pl. 25. cites 12 E. 4. 10.

For more of Double Pleas in General, See other Proper Titles.

H h h

Dower.
Dower.

What it is, and the several Sorts and Incidents.

At this Day 1. DOWER is Propert onus Matrimonii & ad sustentationem Uxoris & Educationem liberorum cum fuerint procreati, si Vir præmoritatur. Et hoc proprie dicitur Dos Mulieris secundum Confessores of the sustendinem Anglicanam. Co. Litt. 30. b. Common Law, either for the Land which the Wife brings with her in Marriage to her Husband, for then it is either called in Frankish Marriage or in Marriage, nor for the Portion of Money or other Goods or Chattels which she brings with her in Marriage, for that is called her Marriage-Portion. And yet of ancient Time Dos Mulieris, the Dower or Dowry of the Woman was also applied to them; but it is now commonly taken for her third Part which she hath of her Husband’s Lands or Tenements. Co. Litt. 31.


4. Concerning Seisin, it is not necessary that the same should continue during the Coverture; For albeit the Husband aliens the Lands and Tenements, or extinguishes the Rents or Commons &c. yet the Woman shall be endowed. Co. Litt. 32. a.

(A) What Woman shall be endowed.

2. If the Husband dies before his Wife is of the Age of 9 Years, she shall not be endowed. Litt. 8. 12 H. 4. 3. S. P. cites 12 H. 4. 2. and 7 H. 6. 11, 12. Br. Dower, pl. 56. cites 12 H. 4. 1. — And if she be of nine Years, and the Eaves is not of seven Years of Age, she shall not have Dower; Conta if he is seen at the Time of his Death. Br. Dower, pl. 56. cites Doct. and Stud. lib. 1. cap. 7. fol. 15. and Papra No, br. fol. 7. — If she be nine Years old at her Husband’s Death, she shall have Dower. 2 Instl. 254. —— See (E) infra.

3. Rot. Parliamenti 8 H. 5. Numero 15. the Commons prayed, That all Manner of Women Aliens that should be married to Englishmen by the Royal Licence, should be endowed &c.
(B) ANSWER.

[4] Let it be done as desired by the Petition.

This is printed as in the Original.

1. [5.] Rot. Parliamenti, 9 H. 5. Numero. A Petition was delivered to the King in this Parliament for Bartrice, who was the Wife of Thomas, late Earl of Arundel, dwelling, that whereas she was born in Portugal, and took to Husband the said Earl, who was sealed in Feu, and Fec-Tal, of divers Castles, Lands &c. The Pears and Tenants now disturbed her of her reasonable Dower, because she was born and begotten in the said Land of Portugal, that it would please him to declare and ordain by Authority of Parliament, that she should have her Dower.

This is printed as in the Original.

(C) ANSWER.

1. [6.] The King, of the Alient of the Lords in this Parliament, hath declared openly, and ordained in the same Parliament, as he hath directed.

2. [7.] In some Cases a Woman shall be endowed, though there is a Divorce between her and her Husband. 39 E. 3. 33. But quær

8. In 23 Eliz. in Case of one Serle, it was argued by the Justices of C. B. if the Huses of Prelats were legitimate, and Popham Attorney says, when he was Serjeant, it was adjudged that the Wife of a Priest should have Dower. D. 155. pl. 65. Merg.

9. The Policy of the Common Law may make a Quoad, as in 22 El. D. 274, a Marriage infra Anos nubiles is perfect Quoad Dorem, but as to other Purposes it is only Inchoatum & Imperfectum. 6 Rep. 40. b.

Mich. 3 Jac. B. R. Mildmay's Case.

10. If a Freeman took a Nix to Wife, she should have been endowed; but the Wife of an Idez, Non Compos, outlawed, or attainted of Felony or Trespass, attainted of Heresy, Pramuntrire, or the like, shall be endowed. Co. Litt. 31. a.

11. But if the Husband be attainted of Treason, though it be for Treason done after the Title of Dower, she shall not be endowed. Co. Litt. 31. b.

12. If a common Person takes an Alien to Wife, and dies, she shall not be endowed; but if the King marries an Alien, she shall be endowed by the Law of the Crown. Edmond, the Brother of King E. 1. married the Queen of Navarre and died, and it was resolved by all the Judges, that she should be endowed of the third Part of all the Lands whereof her Husband was sealed in Fec. Co. Litt. 31. b.

13. It is necessary that the Marriage do continue, for if that be dissolved the Dower ceaseth, Ubi nullum Matrimonium ibi nulla Dos; but this is to be understood when the Husband and Wife are divorced a vinculo Matrimonii, as in Case of Pre-contracét, Confanguinity, Affinity &c. and not a Mens & Thoro only as for Adultery. Co. Litt. 32. a.

14. If a Jew born in England take to Wife a Jew born also in England, and the Husband is converted to the Chrisfii in Faith, and purchasé Lands, and infecile another, the Wife shall not be endowed. Co. Litt. 31. b. 32. a.

15. If
15. If a Marriage de Facto be voidable by Dissolution in respect of Con- 
fanguinity &c. whereby the Marriage might have been dissolved, and 
the Parties freed a Vinculo Matrimonii, yet if the Husband dies before 
any Dissolution then for that it cannot now be avoided, this Wife in Facto 
shall be endowed, for this is legitimam Matrimonium; and 5 is in a 
Writ of Dower the Bishop ought to certify that they were Legitimo 
Matrimonio copulati, according to the Words of the Writ. Co. Litt. 
32. a. and says that hereinwith agrees 10 E. 3. 35.

16. If a Man takes a Wife of the Age of seven Years, and after ali- 
enst his Land, and after this Alienation the Wife attains to the Age of 
nine Years, and after the Husband dies, the Wife shall be endowed; 
for although she was not absolutely dowable at the Time of the Mar- 
rriage, yet she was conditionally dowable, viz. If she attained to the 
Age of nine Years before the Death of her Husband; For so Little- 
ton here says, so that the pass the Age of nine Years at the Death of 
his Husband; and by his Death the Possibility of Dower is confum- 
mate. Co. Litt. 33. a.

17. If the Wife be past the Age of nine Years at the Death of her 
Husband the shall be endowed, of what Age soever the Husband be, 
although he were but four Years old. Quia junior non potest dotem 
promereri neque virum sullineire, nec obitabit Mulieri potenti Minor 
statas viri, wherein it is to be observed that though Confensus non Con- 
cubitus facit Matrimonium, and that a Woman cannot consent after 
twelve, nor a Man before fourteen, yet this inchoate and imperfect 
Marriage (from the which either of the Parties may disagree) after the 
Death of the Husband shall give Dower to the Wife, and therefore it is 
accounted in Law after the Death of the Husband Legitimam Matrim- 
onium, a lawful Marriage, quoad dotem. Co. Litt. 33. a.

18. The Wife of a Man who is banished shall have Dower in his Life- 
time if she has not a Jointure; if she has a Jointure she shall enjoy 
it in the Life-time of her Husband. Banishment is by Abjuration or 

19. If a Man take an Alien to Wife, and then sells his Land, and 
his Wife is made a Denizen, the shall not be endowed by Virtue of the 
Denization; but if it is otherwise if she be naturalized by Act of Parlia- 
ment. Co. Litt. 33. a.

(D) Of what Things she shall be endowed.

1. SHE shall not be endowed of the Goods of her Husband. 7 D. 

2. But by the Civil Law she shall be endowed of the Goods, 

that the Laws of England is contrary; and that the Civil Law does not give it of the Land.

3. She shall be endowed of Villeins regardant. 2 D. 6. 11. b.

S. P. and p. of Villeins ap- 
dendent, and

the Writ shall be De Libero Testamento. Br. Dower, pl. 91. cites 2 H. 6. 11. —— She shall be endowed of a Villein, either the third Day's Work, or every third Week or Month. Co. Litt. 
32. a. —— Ibid 164. b. S. P. —— Ibid. 507. a. S. P. for in him a Man may have an 
Estate in Fee, or Fee Tail, or for Life or Years.

5. She
5. She shall not be endowed of a Common lans Number, because Co. Litt. 32. 4. a. 8 P. but then the Land would be doubly charged. Co. 11. Rich. Gratry 43. 4. Perkins, 6. 34. 1. Deo. Nat. 2. 7. b. 9 Car. 2. R. between * Frewett and Drake, per Curiam agreed in a Writ of Error over a Judgment in Dower, but Judgment affirmed, because it shall not there be intended to be Common lans Number, but appellant.

of Dower in a Measuring, Land, Meadow, Pasture, and of Common of Pasture, pro omnibus Ave- ris com Pecuniosis in tv. and the Judgment being after a Verdict which finds that the Husband was tried, quad Dower &c. and by Intendment it appeared upon the Evidence that it was such a Common as went with the Land whereas she was doable; and if it had been Common in Grofs without Number the Judge before whom the Trial passed would have directed it to be found again it the Defendant. — 10. 214. pl. 2. Brewood v. Drake. S. C. adjudged. And a Note is added that a President was shown of 4 Jac. where a Demand was of Dower inter alia of Com- mon Generally, and Judgment given for the Plaintiff.

6. She shall be endowed of the Office of Marshall of the 5. 57. b. admitted. Co Litt. 52. a. S. P. and as to the Profits arising from the Custody of the Gait of. Weetminster- Abbey, a d says that therewith agrees reverend Antiquity. —— Thel al Dig. 67. lib. 8. cap. 5. 8. 2. cites Trin. 21 E. 5. 55. S. P. —— F. N. B. S. (K) in the new Notes there (b) cites S. C.

7. The Queen shall not be the endowed of the Crown. Liber Su- cessions. 92. b. A Man seized of Half an Ave of Land or Husband, the Feme of the Fessor brought Dower, and recovered in falsus by Award, but not the third Part. Br Dower, pl 81. cites 20 E. 1. —— Co Litt. 51. b. S. P. —— But where they are not for the necessary Defence of the Realm the Wife may be endowed thereof. Co Litt 164 a. at the bottom. —— 2 Inf. 17. S. P. accordingly in the Expulsion of the Word Cæsar in the Statute of Magna Charta, cap. 7.


9. A Woman shall not be endowed of Scene Regiam Majestatum. 41. b. Peril. 62. Of the principal Magni- fication and capital Measuring a Woman

shall he endowed, it no nfit Caput Comitatus vel Baronize, for the Honour of the Realm. Co. Litt. 51. b.


11. It was said that a Feme might bring Writ of Dower of Common F. N. B. of Pasture with a certain Number of Beasts. Thel. Dig. 67. Lib. 8. 145. (C) cap. 5. S. 15. cites Trin. 4 E. 3. 146. and that so it is said by Littleton Palch. 4 E. 4. 2. and says see 12 E. 2. Dower 161. accordingly.

Dower.

As of the Office of Bailiff, Parker &c., without demanding the third Part of the Office of it, which cannot be, because the Office is intire. But Quere of the Office of Tentry F. N. B. 8. (K) in the new Notes there (b) cites S. C.


15. A Man shall not have Assise of the Farm of a Fair; for it is not in levo certo copiendo, as in the Statue, and yet the Feme was thereof endow'd." Br. Aisiffe, pl. 471. cites 14 E. 3. Fitch. Sci. Fa. 122.

* Co. Litt. 52. n. S. P.
— P. N. B. 8. (K) in the new Notes there.


S. P. 8 Mod. 355. Arg. cites S. C.

16. And Dower was maintain'd of the Profits arising from a * Fair and from a Market, and from the Court of the same Market &c. But the Demand was not of the third Part of the Fair or Market. Theil. Dig. 48. Lib. 8. cap. 7. S. 2. Mich. 15 E. 3. Dower 81.

17. Writ of Dower lies of a Garden, Croft, or Cottage, by the opinion of the Court. So Aisiffe lies of it, but Praecept quod reddat does not lie of it. Br. Dower, pl. 92. cites 8 H. 6. 3.

* S. P. and yet the Heir shall have it; for it is incident to the Reversion; For the Rent is no Inheritance, and is determinable by the Death of the Lessor. Br. Dower, pl. 89. cites M. i E. 6.

18. A Man leaied for * Life rendering Rent, and took Feme and died, the Feme shall not be endowed of this Rent. Contra of a Rent reserved upon a Gift in Tail; Per June. Br. Dower, pl. 44. cites 7 H. 6. 3.

19. If A holds Lands of B. by Homage, Fealty and 10s. Rent, and B. dies, B's Wife shall not be endowed of the Homage and Fealty, but shall have a third Part of the Rent as a Rent Sack. Kelw. 126. a. b. pl. 87. Catus incerti Temporis.

20. A Writ of Right of Dower lieth of that Thing which is appendant parvament unto the said Land which a Woman holdeth in Dower. As of so many Loaves of Bread, of so many Flagons of Ale &c. a Day or a Week &c. which she claims to pertain to her Tenement which she holds in Dower &c. F. N. B. 8 (K) and 9 (A).

21. A Wife shall be endowed of Advowsons, Villains, Cannon of Poss or apurture, and of other Profits or Liberties of which her Husband had any Eatee of Inheritance; which Estate the Ex lieutenant them by Possibility may inherit &c. F. N. B. 148. (C).

22. Dower may be of Rent-Corn. Per Curiam. Ow. 32. Pasch. 7 Eliz. in an Anonimous Cafe.

23. Dower may be of a * third Part of the Manor. But then it must be claimed by the Name of the third Part of the Manor and not of certain messuages certain Acres of Land and certain Rents, for in the last Cafe it is only a Demand as of a Thing in Grofs, and a Recovery in such Cafe is not of the third Part of the Manor. Godb. 135. pl. 156. Mich. 29 Eliz. C. B. Bragg's Cafe.

Gould's 57: Brook's Cafe.

S. C. & S. P. held accordingly.

— On 3.


F. N. B. 149. (K) Mill's And of the Profits of keeping a Park; And of the Profits of a Dowsbourse; and of a Pitshary; And of the * third Presentation to an Advowson; S. P. admitted. — F. N. B. 7. (K) in So of the Profits of Courts, Fines and Heriots; And of Tribes. Co. Litt. 32. a. the new Notes there (b) S. P. cites 45 E. 3. Fitch. Dower, pl. 50. and that she had thereby the Freehold of the third Part of the Mill relit in her.

† F. N. B. 150. (G) S. P. cites 1 E. 1. Dower 176. — Ibid. 143. (C) S. P.

Wives
Dover.

31. The Sheriff does not lie in a quittance, it being a Writ of an action 3d. to remain, Satisfaction not being given. The Sheriff's action, it is therefore, that the Sheriff cannot give Sa. in his Court. As for a Judge, or Ker., C. 211; an action.  A. R. upon which a writ was brought in Dano Fennos, whereupon the action was held, and for the Judgments of the House of Lords.

32. But if the Right of a Freehold be not the other out of any Lands or Tenements, there shall not be an action or suit brought in such a Court, as the action is not lie in a writ of the Sheriff, it being a Writ of an action 3d. to remain, Satisfaction not being given. The Sheriff's action, it is therefore, that the Sheriff cannot give Sa. in his Court. As for a Judge, or Ker., C. 211; an action.  A. R. upon which a writ was brought in Dano Fennos, whereupon the action was held, and for the Judgments of the House of Lords.
(E) Dower ad Ostium Ecclesiae.

Of what Things he may endow her.

[And How.]

1. A MAN cannot endow his Wife ad Ostium Ecclesiae of his Capital House having other Lands sufficient for her Dower.

2. With this agrees the Law of Scotland. Skene Leges Burgorun, cap. 3.

3. In Ejectione Custodiae by the best Opinion, and in a Manner per tot. Car. that if a Man endows his Feme at the Church-Door of H. in the County of E. of Land in the County of L. this is a good Aßignment of the Dower, though it was in another County than where the Land lies, and without Deed, but contra of Aßignment of Dower Ex affenfus Patris, this shall be by Deed; For otherwife the Franktenement of the Father cannot pas, and Affent does not lie in Averment but in Speciæty, and in both these Dowers Franktenement passes without Livery of Seifin; Quod Nota. Br. Dower, pl. 7. cites 40 E. 3. 43.

4. If a Man marries a Woman in a Chamber, Dowment ad Ostium Camera is not good. F. N. B. 150. (E.)

5. The youngest Son cannot assign Dower Ex affenfus Patris, because he is not Heir apparent. F. N. B. 150. (E.)

If a Man seised in Fee Simple, being within Age, endows his Wife at the Monastery or Church Door, and dies, and his Wife enters, in this Case the Heir of the Husband may ouft her. Lit. S. 47.

6. None may endow his Feme ad Ostium Ecclesiae unless he be of full Age at the Time &c. and then she may enter after the Death of her Husband, and in this Case Franktenement passes without Livery; but if the Baron was within Age at the Time of Dower, the Heir may enter and ouft the Feme, and contra where one within Age endows his Feme Ex affenfus Patris, the Father then of full Age; this is a good Dowment. Br. Dower, pl. 80. cites Lit. fol. 8, 9.

7. It seems that Dowers made Ex affenfus Patris, or Ad Ostium Ecclesiae, are good, though the Wife be within nine Years of Age; For Conenfus tollit Erreorem. Co. Litt. 37. a.

8. Dowment ad Ostium Ecclesiae is where a Man of full Age seised in Fee-Simple, who shall be married to a Woman, and when he comes to the Church-Door to be married, there, after Affiance and Troth plighted between them, he endows the Woman of his own Land, or of the Half, or other Lesser Part thereof, and there openly does declare the Quantity and Certainty of the Land which he shall have for her Dower, in this Case the Wife, after the Death of her Husband, may enter into the said Quantity of Land, of which her Husband endowed her, without other Aßignment of any. Lit. S. 39.

9. Dower is ever after Marriage solemnized, and therefore this Dower is good without Deed; because he cannot make a Deed to his Wife; For no Aßignment of Dower Ad Ostium Ecclesia can be made before Marriage; for that before Marriage the Woman is not intituled to have Dower. Co. Litt. 34 a.
Dower.

10. An Allignment of Dower either Ad Offi.um Ecclesiae, or Ex Affenso F. N. B. 
Patris may be made of more than a third Part. But it was the ancient Law, That no greater Allignment could be made in those Cases but of a third Part, but lets he might, as appears in Glanvill. Co. Litt. 36. 36.

11. Dower Ad Offi.um Cafrî five Mensajtii is not good; But ought to be made Ad Offi.um Ecclesiae; Non enim Valet facta in Letjo mortali, vel in Camera, vel alibi ubi Clandestina tuere Conjugia. For the Law requires that this and like Matters be done publicly and solemnly. Co. Litt. 34. a.

12. If Tenant in Tail endows his Wife Ad Offi.um Ecclesiae, this shall little or nothing at all avail the Wife, because after the Decease of her Husband, the Life in Tail may enter upon her Possession, and so may he in the Reversion, if there be no Life in Tail then alive. Litt. 46.


(F) Of what Easate she shall be endow'd.

1. If A. feited in Fee of Lands, Covenant's to stand Feited thereof S. C. cited, to the Ufe of himself and his Heirs, till C. his middle Son takes a Wife, and after to the Ufe of C. and his Heirs, and after A. 377 and B. by which it descends to B. the Elder Son of A. who has a Wife and dies, and after C. takes a Wife, it seems the Wife of B. the Elder Son shall not be endow'd of the said Estate of her Husband; because his Estate is ended by an express Limitation, and therefore the Estate of the Wife being devi'd out of it cannot continue longer than the original Estate. 3. to Ja. B. between Framill and Cafr of Ventris, substantia upon a Special Verdict; For upon Argument the Court was divided, Scilícet, Crawford and Heron that the shall not be endow'd, and Button and Death contro, Intracit. Omn. 8 Car. Rot. 1343. cites S. C. — If a Feeblement be made to the Ufe of J. S. and his Heirs until J. D. has done such a Thing, and then to the Ufe of J. D. and his Heirs, and afterwards the Thing is done, and J. S. dies, his Wife shall be endow'd; Per Anderson. Le. 169. in pl. 253. Mich. 31 & 32 Etr. C. 6.

2. If Lands is granted to a Man and his Heirs for the Life of J. S. his Wife after his Death shall not be endow'd; Arg. Built. 135. cites 22 E. 3. fol. 19. pl. 6.

3. In Dower it was agreed that where the Baron before the Coverture acknowledges by Fine come ceo &c. and the Connex grants and renders to the Baron for Life, the Remainder to W. in Tail, the Remainder to the Baron in Fee, and he takes Feme the new Demaundant and dies; and because the Fee is only expendant, and not executed in his Life by Reason of the former Remainder, therefore he is not dowable. Br. Dower, 62. cites 40 E. 3. 15.

4. Memorandum that in Feeblements to make Easate over or to re-inflo the Feoffor, this shall be made to a Man Sole, or to a Chaplain who has no Feme; For if it be to a Man who has a Feme, and the survives, the will or may have Dower. Br. Affirmances, pl. 3.
5. If there be Lord, Mesne and Tenant, and the Tenant holds of the Mesne by Fealty and g. Rent, and the Mesne takes a Wife, and the Tenant brings a Rent of Mesne against the Mesne and forgives him, and the Mesne dies, the Wife of that Mesne shall have Dower of the Rent by which the Tenant held, and shall not be Attendant unto the Tenant; causa patet. Perk. S. 432.

6. If there be Lord and Tenant by Fealty and 12 d. and the Tenant leases the Tenancy for Life unto a Stranger, and the Lord takes a Wife, and the Tenant dies without Heir, and afterwards the Lord dies before the Lease for Life, the Lord’s Wife shall not have Dower of the Tenancy; but she shall be endowed of the Rent of the Seignory &c. Perk. S. 339.

7. If Grantee of a Rent charge in Fee takes a Wife, and the Grantee leases the Land out of which the Rent is issuing unto a Stranger for Life; and the Grantee of the Rent purchases the Resumption of the same Land, and the Tenant for Life attorns, and the Grantee of the Rent dies, leaving the Tenant for Life, his Wife shall be endowed of the Rent but not of the Land, because the Freehold and Inheritance were not in the Husband Simul & Semel during the Coverture &c. Perk. S. 340.

8. If a Man make a Gift in Tail referring Rent to him and his Heirs, and afterwards the Donor has a Wife, and the Tenant in Tail dies without Issue, the Wife of the Donor shall not be endowed of the Rent, because the Rent is extant, for it was reserved upon the Estate Tail, which is ended. F. N. B. 149. (G).


9. But although that the Tenant in Tail dies without Issue, yet his Wife shall be endowed, because the Land continues, and is not determined as the Rent is. F. N. B. 149. (G).

10. Tenant in Tail bargain’d and sold Land to H, and his Heirs. H. has an Estate defensible and determinable upon the Death of the Tenant in Tail, and his Wife shall be endowed determinable upon the Death of Tenant in Tail. 10 Rep. 96. a. 98. a. Mich. 10 Jac. rcolv’d in Seymour’s Cafe.

S. C. cited by Holt Ch. J. in delivering the Opinion of the Court. 7 Mod. 24. Trin. 1 Ann. B. R.

(G) Of
(G) Of what Estates the Wife shall have Dower.

1. If a Man leaves for Life rendering Rent, his Wife shall not be S. P. see Thorp J. 1 endow'd of this Rent; For this is but an Estate for Life in the Rent though it descends to the Heir. 7 D. 6. 3. b. 17 E. 3. 12. 28 Ait. 3 adjuge'd.

of Life, and by the Incasancy the Heir shall have it, but the Father nor the Heir shall not have Estate of Inheritance in it. Br. Lower, pl. 50. cites 26 Ait. 58.

2. If Leeslee to him and the Heirs of his Body, or to him and his Heirs for the Life of 1 S. dies, his Wife shall not be endow'd, because this is but an Estate for Life. 18 E. 3. 44. b. 22 E. 19. b.

3. If Leeslee for Life leaves for the Life of another, his Wife shall not be endow'd; for he gains this Fee in an Instant. 3 P. 4. 6.

Rome of him shall not have Dower; For though the Baron gave Fee Simple by Alienation, yet he never was seised in Fee so as the might have Dower; quod non negotium. Br. Dower, pl. 59. cites S. C.

4. If the Baron and another are jointly seised in Fee, and the Baro. Co. Litt. 3. b. 8 P.—— F. N. B. 159. c. 3. K. S. P. cites 54 E. 1.

Dower 179.—— Jenk. 105. pl. 1. S. P.

5. If Tenant in special Tail takes a second Wife that is not dowable Husband of the Tail and after makes Feoffement in Fee, and dies, his Wife shall not be endow'd because he gains the Fee but in an Instant. Co. 3 Blit. 43. b. 23. will prove this; For there it is that if the Baron be within Age at the Feoffment of his Wife was Dowable, and the second Wife, and dies not avoid it, because he is not inheritable of the Right, for such Right so gained does not descend.

the Husband made a Feoffment to the Use of himself for Life, Remainder to the Use of his Son in Tail, with a Letter of Attorney to make Livery, but before that was made he married a second Wife, and then Livery was made according to the Use in the Feoffment, then the Husband died; and the Question was, Whether this second Wife was Dowable; and adjudged that she was not, because before the Feoffment made, the Husband was such a Tenent in special Tail, that the Issue by his second Wife could not inherit, and by the Feoffment before, and Livery after the Coverture, he did not gain any new Estate or Seisin of which the Wife might be endow'd; for what was done by that Feoffment was immediately drawn out again by Virtue of the special Estait. Cro. J. 615. pl. 5. Pach. 18 Jac. in Scacc. Amcots r. Catherick.

6. If there be Leeslee for Life the Reversion to the Husband in Fee, and the Leeslee leaves the Land to the Husband for the Life of the Husband, and after the Husband dies, and the Leeslee dies the Wife shall not be endow'd thereof; because there was a Possibility of a Reversion during the Coverture as to the Freehold. 1 E. 3. 16. per Cond.

7. If the Baron be Tenant in special Tail the Remainder to his own right Heirs, and takes a second Wife, and then becomes Tenant after Possibility, and dies, his Wife shall be Dowable. 46 E. 3. 24. b. 22 E. 3. 3.

1. 80
9. The Husband ought to have a Fee or Tail and Freehold in Possession, otherwise the Wife is not dowable. 46 C. 3. 16.

So where the Husband was to the Baron for the Life, Remainder to the first Son in Tail, and to the second, Remainder to the Heirs of the Body of the Baron, it was resolved that the Estate Tail was not executed for the Possibility of the Meine Estate that might interpose, and therefore it was always dispensed during the Life of the Baron, so that of that Estate his Wife could not be endowed. Cro. E. 315. 316. pl. 10. Hill. 36 Eliz. B. R. Cord. Cafe.

10. If the Baron hath an Estate for Life, Remainder to B. in Tail, Remainder to the right Heirs of the Baron, and dies during the Life of B. the Wife shall not be endowed; for it is not a Fee in Possession. 49 C. 3. 15. b. 49 C. 3. 16. b.

11. But if Tenant for Life surrenders to the Remainder-man in Tail or Fee his Wife shall be endowed; for the Estates are united. 44 C. 3. 31. b.

12. The same Law if the Tenant for Life grants his Estate upon Condition, if the Condition be not broke. 44 C. 3. 31. b. 45 C. 3. 13. b. adjudged.

13. If Leffe for Life leaves the Land to the Leffe and the Heirs of his Body for the Life of the Leffe, and after the Leffe dies, Living the Leffe, the Wife of the Leffe shall be endowed, for he had the Fee and Freehold in him. 18 C. 3. 45. adjudged.

14. If the Husband hath a Fee and Freehold defeasible yet his Wife shall be endowed till it is defeated. 45 C. 3. 13. b.

S. P. As if Tenant in Tail bargains and sells by Deed indented and inrolled to another and his Heirs, the Wife of the Bargainee shall be endowed as long as the Tenant in Tail lives; Resolved. 10 Rep. 96. a. Mich. 10 Jac. B. R. Seymour's Cafe. ——— See (H) pl. 1. S. C.

15. If Baron and Feme Leassees for Life surrenders to him in Reversion, this is defeasible by the Feme after the Death of the Baron, yet in the mean Time if he in the Reversion dies his Wife shall be endowed. 45 C. 3. 13. b.

The Wife of the Father shall not be endowed of the third.

Part. F.N.B. 149 (H) ——— If there be a Grandfather, Father and Son, and Grandfather is seized of three Acres of Land in Fee, and takes Wife and dies, this Land descends to the Father, who dies either before or after Entry, now is the Wife of the Father dowable. The Father dies, and the Wife of the Grandfather is endowed of one Acre and dies, the Wife of the Father shall be endowed of the two Acres Residue; for the Dower of the Grandfather is Paramount the Title of the Wife of the Father and the Seisin of the Father, which descended to him, (be it in Law or actual) is defeated, and now upon the Matter, the Father had but a Reversion express upon a Feehold, and in that Case Dos de Doro peti non debet; though the Wife of the Grandfather dies living the Father's Wife; but there is a Diversity, between a Defect and a Purchate. Co. Lit. 315. a. 4 Rep. 122. a. b. S. P. cites 5 Eliz. 5 vac. Vocher. 289 the Case of Paris v. Paris, S. P. and is the Case whence this is taken. ——— See (H) pl. 6. S. P. because a Woman shall not be endowed of a Reversion express upon a Feehold, and the Possession of the Feehold by the Endowment is vested in the Grandmother by a Title before the Title of the Father unto the Feehold; but if the Grandfather had encroached the Father of the same Land during the Marriage between the Father and his Wife, in that Case, after the Death of the Grandmother, the Wife of the Father should have Dower of the same Land of which the Grandmother was endowed, because the Possession of the Father which gave Title to his Wife to have Dower was in the Life of the Grandfather, at which Time the Plaintiff could not demand the Dower, so that by the Endowment of the Grandmother the
17. There is another Diversity, As where the Wife of the Father is 4 Rev. 122,
first endowed, and where the Wife of the Grandfather; For in the same
Case, after the Decease of his Grandfather and Father, the Son enters
and endows his Mother of a third Part, against whom the Grandmo-
ther recovers a third Part and dies. The Mother shall enter again
into the Land recovered by the Grandmother, because the had in it
an Estate for Term of her Life, and the Estate for the Life of the
Grandmother is left in the Eye of the Law, as to her, than her own

18. The Heir took Feme and entered, and endowed his Mother, and after
abused the Reversion, and then the Tenant in Dower died, and after
the Heir who endowed her died, and yet the Feme of the Heir was not
endowed of this Land allotted in Dower, and to fee that the Endow-
ment cuts off and destroy the Seisin of the Heir; Quad. Nota. Br. De-
cent, pl. 19. cites 19 E. 2.

19. T. was seised and had Issue Robert, the eldest, and Richard the
Youngest, and died, and Robert entered and took Feme, and had Issue
Alice. The Feme died, and he took another Feme and died, the Feme
premum enfeft with a Son, and the Lord seised the Ward of the Land, and
of Alice, for the Nomage of Alice, and seised the Ward to T. who en-
dowed the Feme of Robert, and alter the Feme is delivered of a Son, a
son, by which the Lord re-seised the Ward of W. and W. lived 10 Years, and
died without Issue, by which H. the Plaintiff entered as Heir of Rich-
ard the youngest Son of J. and Alice ousted him, and he brought Aff-
ife, and prayed the Defeciton of the Justices; and because W. to
whom Alice was of half Blood was seised, it was awarded that Henry
should recover; And to note that the Seisin of the Guardian makes the
Heir of the Infant of the entire Blood to be Heir, and the Sister of half
Blood was barred of the Land, but by the Opinion of the Court, the
Dower of the Feme shall revert to Alice, because W. was not seised of
it; Quere. Br. Defcent, pl. 19. cites 8 All. 6.

20. If the Issue be remitted to a special Tail, the Feme of the Father,
who is not his Mother, shall not be endowed. 2 Roll Remitter (K)
pl. 4. cites 44 E. 3. 26. b.

21. In Dower; Baron and Feme Tenants in Tail had Issue two Sons, and S. P. but
the Baron died. The Feme leased to the eldest Son for Years, and after resigned
him to his Heirs with Warranty. He took Feme and died without Issue,
and after the Mother died, and the youngest Son entered, and the
Feme of the eldest Son brought Writ of Dower, and recovered by
Judgment, and therefore it seems that a Realse with Warranty in a
Difcontinuance; nevertheless, this Judgment was contrary to the Opin-
ion of several. Br. Difcont. de Poffellion, pl. 7. cites 24 E. 3. 28.

the gave Fee, yet the younger Son is remitted to the Tail, which is elder than the Title of the Feme
now Demandant. Br. Dower. pl. 50. cites S. C.

22. If two Exchange, and afterwards one alien, and the other vouch-
Perk. S. 309.

es him being impleaded, he shall recover in Value the Land given in
in S. E. 3. 7. Exchange, and so it shall relate before the Recovery, 2 Roll Vouch-
er (R. b) pl. 4. cites Perk. S. and lays the Feme of the Ailene shall not
be endowed.

A Woman shall not be

endowed both of the Land given in Exchange, and of the Land taken in Exchange, yet the Husband
was seised of both; but she may have her Election and be endowed of which she will. Co. Litt 31 b.

L I I

23. In.
23. In Dower; the Tenant said that B. Baron of the Demandant, was
seised &c. and infused W. who regave to the Baron and his first Feme, and
to the Heirs of their two Bodies, who had Issue this Tenant, and the first
Feme died, and the Baron took the Demandant to Feme and died; Judgment
if Dower; The Feme said, that before B. her Baron had any thing,
C. was seised &c. and gave to the Father of the said B. in Tail, and that
the Father of B. died, and so is the Tenant remitted as Heir to the first
Tail, which is general Tail, of which she is dowable, and yet because
her Baron during the Coverture had nothing but by the second Tail, of
which she is not dowable, therefore the Opinion of the Court was a-

24. And there it is said, that if Dower in Tail takes Feme, and dies
without Issue, so that the Lands revert, yet the Feme shall be endowed.

25. And it was said in the Cafe supra, that the Heir in Tail may claim
in by the one Tail or the other. Br. Dower, pl. 18. cites 40 E. 3. 24.

26. In Dower, the Tenant said, that the Land was given to the Baron
of the Demandant, and to his first Feme in Tail, the Remainder to W. in
Tail, the Remainder to the Baron in Fee, and the first Feme died without
Issue, and the Baron died, bringing him in Remainder in Tail; Judgment
&c. and a good Plea; by which the Demandant averred, that her Baron
survived him in Remainder, who died without Issue, and so settle

27. quad e deforci; the Cafe was, that a Man was seised in Genera-
""
30. Dower of the Seisin of N. her Baron against the Heir of her Baron, who showed how the Land was intailed by Fine to his Father Baron of the Demantant and his Fee Mother of the Tenant in special Tull, and that after his Father and Mother discontinued the Tail by Fine to a stranger, and retook Estate by Grant and Rendeh in general Tail, and had Issue the Tenant, and the first Fee, Mother of the Tenant died, and the Baron took the Demantant to Fee, and alter died, and so he is in by the one Tail and the other, and adjudged in his Elder Right by Remitter; Judgment is Action; And the Opinion of the Court was clearly that the Fee shall be barred; Quod Nota; By which the said over to the other Answer. Br. Dower, pl. 14. cites 44 E. 3. 26.

31. A Man leased to A. for Life, the Remainder to B. in Fee, and after Br. Fee inheritance the Tenant for Life leased to the said B. for Term of B's Life, and B. died, and his Fee was barred of Dower, and so fee that B. was not feied in Fee, nor it was not a Surrender; for if A. survived B. then A. shall re-have the Land. Br. Estates, pl. 69. cites H. 13 R. 2.

32. Dower of the Dowment of J.M. late her Baron; The Tenant said that the Land was tailed in Remainder by Fine to J. M. his Father, Baron of the Demantant, and to his Heirs of the Body of E. his first Fee begotten, and that J. M. and E. had Issue this Tenant, and E. died, and J. M. married the said Demantant, and died; Judgment if Dower; and by the best Opinion the shall not have Dower. Br. Dower, pl. 36. cites 12 H. 4. 1.

33. The Fee shall not be endow'd of Lands or Tenements which The Reason her Baron held Jointly with another at the Time of his Death. But where he held in Common it is otherwife. Litt. S. 45.

34. Where the Estate which the Husband has during the Marriage is ended there the Wife shall lose her Dower. As it Tenant in Tail discontinues in Fee, and afterwards takes a Wife and disdies the Discontinues, or the Discontinue, or does intestate him, and afterwards the Tenant in Tail dies feied, his Heir is remitted, and the Wife shall lose her Dower, because the Heir is in of another Estate of Inheritance than the Husband had during the Coverture. F. N. B. 149. (F).

35. If a Man has Title of Adson to recover any Land, and afterwards he enters and disdies the Tenant of the Land and dies intestate, and his Heir enters, the Heir is remitted unto the Title which his Ancestor had, and the Husband's Wife shall lose her Dower; for that Estate which the Husband had is determined, for that was an Estate in Fee by Wrong, and the Heir has the E polite in Fee which his Ancestor had by Right. F. N. B. 149. (F).

36. If there be two Jointenants of certain Lands in Fee and the one disdies that which belongs to him to another in Fee, who takes a Wite and after dies. In this Case the Wife for her Dower shall have the third Part of the Moley which her Husband purchased to hold in Common, (as her Part amounts) with the Heir of her Husband, and with the other Jointenants which did not Alien. For that in this Case her Dower cannot be affained by Metes and Bounds. Litt. S. 44.

37. A devises Lands to B. and the Heirs of his Body, and adds Item. I will that after B's Death my Land shall remain to C. the Son of B. B. pl. 9. S. C. died, and adjudged that the Wife of B. shall have Dower; For that B. and a former Judgment had an E polite Tail. Mo. 593. pl. 801. Hill. 35 Eliz. Atkins v. Eliz. Atkins. A. 38. A.
Dower.

38. A Lestce for Life, the Remainder to B: in Fee. A. surrenders upon Condition to B, and enters for the Condition broken. B. dies, and his Wife brought Dower against A. and Ifue is join'd upon Ne unques Sisfe que Dower &c. That shall be found against A. Noy. 66. Patch. 37 Eliz. Oimond and his Wife.

And. 192. in pl. 227.
Cham. v.
Pach. 26 Eliz. B. R. Copyholder of the Cuffon is paramount the Title of Dower, and the Seisin of the Lord, to that she shall not be endow'd though he keeps the Lands in his Hands for a Time after the Marriage, and then grants them again by Copy. Per Wray Ch. J. — Per Doderidge J. 2 Bulst. 537. S. P. and Per Coke Ch. J. Tol.

2 And. 147.

But before the Statute
she was not dowerable of Land convey'd to Ufe. 4 Rep. 1 b. — No Dower or Tenancy by the Curtely of an Ufe. Arg. Hard. 492. cits Perk. 69. 89. Lane. 104. Doctor and Stud. 98.

For the Law requires Seisin

40. Since the Statute 27 H. 8. the Feme shall have Dower of Cafe. S. P.

But before Andrews.

Since the Feme shall have Dower of Cafe, his Wife shall not be endow'd. Co. Litt. 31. b.

For the Seisin of the Conveyance, the Wife of the Conveyance shall not be endow'd.

Co. Litt. 31. b.

For the Seisin of the Conveyance, the Wife of the Conveyance shall not be endow'd.

Co. Litt. 31. b.

42. So if the Conveyance of a Fine does grant and render the Land to the Conveyer, the Wife of the Conveyee shall not be endow'd. Co. Litt. 31. b.

43. But if the Husband makes a Gift in Tail, reserving a Rent to him and to his Heirs, and after the Donor takes Wife and dies, the Wife shall be endow'd of this Rent, because it is a Rent in Fee, and by Possibility may continue for ever. Co. Litt. 32. a

Perk. S. 517.

But had it limited the Ufe in him sel for his Life, by which Means he could not limit any Remainder over in such Cafe the Wife should not be endow'd. Arg. Gadg 442. cites 35 Eliz. 2 Rep. 52.Blithman's Cafe.


44. Tenant in Tail, in Consideration of Marriage intended between A. his Son, and M. Daughter of B. covenanted to stand failed to the Ufe of himself & c. till the Marriage, and after to himself for Life, and then to the Ufe of A and M. and the Heirs of their Bodies, and suffered a Recovery to the same Ufes. The Father dies. A. dies without Issue. If after such Covenant the Father had married, his Wife would have been endow'd; but it the Consideration had been for the Establishing the Land in his Name and Blood, then an Ufe had been rafed, and it would have been otherwife. Brownl. 193. Mich. 2 Jac. Freshwater v. Rois.
45. No Dower shall be of Lands bargained and sold to the Husband so it a Man dies before Involvment. Ow. 150. Pach. 5 Jac. in the Court of Wards, Sir Henry Dimmock's Cafe.

and dies, and afterwards the Deed is involvled within six Months, the Wife shall not have Dower. Cro. C. 569. p. 6. Hill 15 Car. B. R. Parker v. Blecke.

46. If A. bargains and sells Lands to B. and his Heirs by Deed indented and enrolled, with Provision if such Act be done, that the Bargain and Sale shall be void, and afterwards A. takes Wife, and after the Provision is broken A. dies before Entry, and adjudged that the Wife shall not be endowed; for though the Estate of the Bargainee vetis by the Statute of 27 H. 8. by Execution of the Estate of the Land to the Use ratified by the Bargain and Sale, yet inasmuch as the Baron did not re-enter, he had not any Estate in the Land whereof the Feme may be endowed; cited per Cur. as io adjudged. 6 Rep. 34. a. Trin. 7 Jac. B. R. in Fitz-Williams's Cafe.

47. A. Tenant in Tail, Remainder to B. in Tail. A. bargains and sells the Lands to J. S. by Deed indented and enrolled. J. S. has an Estate indefinable to him and his Heirs determinable on the Death of A. and his Wife shall be indow'd; but such Dower shall be determinable by the Death of A. Resolv'd. 10 Rep. 96. a. Mich. 10 Jac. Seymour's Cafe.

48. The Dutchy of Cornwall by an Act of Parliament made the 11 E. 3. establisht to the King's Eldest Son, habendum ibi & ipius & Hereditum fuorum Regnum Angliae filiis Primogenitis in Regno Angliae Hereditario Successiris: Resolved by all the Judges of England, that this is an Estate of Fee-Simple in the Prince, and his Wife is Dowerable of it by Force of this Act. But such a Charter granted by the King to a Subject is a void Grant. Jenk. 280. pl. 5.

49. Tenant in Tail makes Lease for Years, and then relieves to Leasee and So if the his Heirs. The Wive of this Leasee is Dowable of this Estate, and this Dower shall continue till the Entry of the Iluie in Tail. Jenk. 274. pl. 96.

50. If Tenant for Life makes a Lease by or without Deed to him in the Remainder or Reversion in Tail or in Fee, for the Term of the Life of him in the Reversion or Remainder, and after he in the Remainder takes Wife and dies, his Wife shall not be endowed, for Tenant for Life shall enjoy the Land again, for a forfeiture it cannot be, for he in the Remainder was Party, and a Surrender it cannot be, for his whole Estate was not given. Co. Litt. 42. a.

51. J S. Tenant in Fee Simple by Indenture involv'd, bargained, and sold S. C. cited the Lands to B. for 1201. in Consideration that B. shall redeem to him Show. Part. and his Wife for their Lives, rendering a Pepper-Corn, and with a Condition that if J. S. paid the 1201. at the End of 20 Years, then the Bargain and Sale to be void; B. redeemed it accordingly and died; B.'s Wife brought a Writ of Dower and held good, because by the Bargain and Sale the Land was vested in her Husband, and thereby the Wife intided to Dower; and when he redemifies it according to the Agreement, yet thoe to whom the Redeemise was made shall hold it subject to Dower; and it was his Folly not to join another with the Bargainee as is the ancient Course on Mortgages; and when she is dowable by Act or Rule in Law a Court of Equity shall not bar her to claim her Dower; for it is against the Rule of Law, where no Fraud or Covin...
Dower.

Truett, in a Court of Equity will not relieve; and this was certified by Jones-Defendant was barred of her Dower contrary to the Opinion of Nath v. Prefton, 1 Cro. 191. and so it was said is the contum Cullum of the Court now. 2 Frem. Rep 45. pl. 48. Mich. 1678. Noel v. Jevon.

52. If Rent be granted to A. and his Heirs to commence after the Death of B. and Grantee dies before B. yet his Wife shall be endowed. Arg. 2. Sid. 110. Mich. 1658.

S. C. cited


Matter of the Rolls, who said it was 15 Car. 2. Tol. 792. and that the Truitt was created by the Husband. 2 Wms. Rep. 629. Hill. 1712. in Case of Sutton v. Sutton, and said that where a Truitt of Inheritance is created by the Husband himself, he took it to be settled that the Wife shall not have Dower, even against the Heir, nor against a Devisee, the Cases in Reston being the fame. Ibid 629. — If a Man before Marriage conveys an Eftate to Truettess and their Heirs, to S. C. cited and approved by the Matter of the Rolls. 2 Wms. Rep. 642. 641. Hill. 1732 in the Case of Sutton v. Sutton. — S. C. cited by Lt. C. Talbot, Cases in Equ. in Lt. Talbot’s Time 159. — the Wife shall not be endowed of this Eftate. Chan. Prec. 176. Pach 1712. Bottomly v. Fairs. — S. C. cited and approved by the Matter of the Rolls. 2 Wms. Rep. 642. 641. Hill. 1732 in the Case of Sutton v. Sutton. — S. C. cited by Lt. C. Talbot, Cases in Equ. in Lt. Talbot’s Time 159. — The Wife of any que Truitt is not intitled infenting to bar Dower would be of no Signification. — The Wife of Caffy que Truitt is not intitled to Dower; per Lt. Talbot. 3 Wms. Rep. 229. pl. 57. Hill. 1732. Chaplin v. Chaplin.

54. The Husband purchased Lands of Tenant for Life, and took a collateral Security of him for a Conveyance of the Fee by his Son and Heir, the Remainder-man in Fee, when of Age, but the Husband died before such Conveyance was made; the Wife is not intitled to Dower. Fin. Rep. 368. Trin. 30 Car. 2. Exton v. St. John.

55. In Dower against the Heir of her Husband, the Tenant pleaded, that A. was seized and devised the Tenements to the Husband and to two equally to be divided, and fo demands Judgment of the Writ, supposing that she could not sue Dower before Partition against Tenants in common; but upon Demurrer adjudged that the Writ well lies.

56. After a Decree for a personal Duty a Segregation issues, and then the Defendant marries and dies; this shall not bind the Feme who comes in for her Dower; Per North K. Vern. 118. pl. 106. Hill. 1682. Anon.

57. Eftate to A. for Life, Remainder to B. and his Heirs for the Life of A. Remainder to the Heirs of the Body of A. Remainder over. The Wife of A. shall not be endowed, for the Eftate for Life of A. does not merge. Adjudged suddenly on the firt Argument, though it was urged that the Remainder to B. was only for preferring the Remainders during A.’s Life against any Forfeiture, but that in the mean Time the Eftate was executed in A. 3 Lev. 84. Mich. 34 Car. 2. C. B. Sutton v. Rolle.

58. A Tenant for Life, Remainder for Years, Remainder to A. in Tail. A’s Wife shall be endowed, otherwise if the Remainder had been for Life. 1 Salk. 254. Hill. 9 W. 3. C. B. Bates’s Cafe.

59. A.

60. The Question was, If Affignees of Commissioners of Bankrupt by taking an Assignment of a Mortgage Term prior to the Title of Dower shall protect their Estate from Dower?

It was insisted that Creditors and Affignees of Commissioners of Bankrupt stand only in the Place of the Bankrupt, and since such an Assignment to the Bankrupt himself or his Heir would not protect the Estate from Title of Dower in the Hands of the Heir, neither will it protect the Estate in the Hands of the Creditors of the Bankrupt or the Affignee of the Commissioners, and this differs the present Case from the Case of Lady Radnor and Vandebendi in Dom. Proc. where it was held that such a prior Term should protect the Estate from Dower in the Hands of a Purchaser, —— Nota Differentiam. Dower, keeping down the Interest of a third Part of the Mortgage. M.S. Rep. 156. Patch. to Geo. Can. Squire v. Compton.

61. All Estates Tail are Estates of Inheritance, to which Dower is incident, and must be within the Statute De Donis. [3 Wms's Rep. 263. Patch. 1734. Low v. Burron]

62. A Limitation of Estate pur aener Vie to A. and the Heirs of his Body makes no Estate Tail in A. and there can be no Dower of it, it being no Inheritance but only a defendible Freehold. [3 Wms's Rep. 263. pl. 65. Patch. 1734. in Case of Low v. Burron]

63. If a Rent de Novo be granted in Tail without any Remainder over, For though the Tenant in Tail takes Wife and dies without Issue the Wife shall not be endowed, because the Thing out of which the Dower is to arise is not in Being; Secus if the Rent were granted in Tail, Remainder over. [3 Wms's Rep. 230. Hill. 1733. in Case of Chaplin v. der of that Chaplin.]

Reversion, yet the Intent of the Party gives the Rent de Novo a Being for the Whole, and then the Jeffer Estates are carried out of it. By Holt Ch. J. 3 Wms's Rep. 230. at the Bottom of the Page in a Note of the Reporter cites Salk. 577. Weeks v. Peach.

49. An Estate was conveyed to f. S. and his Heirs, to the Use of him and his Heirs in Trust, to permit A. and B. to receive the Rents and Profits during their Lives, and the Life of the Survivor of them, with Power to A. to charge it with 400 l. and subject to such Power f. S. to stand sealed to the Use of the Survivor of them. A. died in 1713. B. died in 1723, and by his Will devised this Estate to C. and his Heirs, who long before had taken M. to Wife. C. mortgaged the Estate. The Question was, If M. would upon the Death of C. be intitled to Dower so as to affect the Mortgagee? Ld. C. Talbot decreed that M. would not be intitled to Dower of this Trust E-state. Cases in Eqv. in Ld. Talbot's Time 138. Mich. 1735: 9 Geo. 2 Attorney-General v. Scott.
(G. 2) Of what Seisin.

1. In Affife J. N. was seised in Fee, and had Issue two Sons, R. and T., and died. R. entered and had Issue a Daughter, and his Feme died, and he took another Feme and died, the promissory enjoint with a Son. The Daughter of R. entered, and the Lord seised the Ward, and endowed the Mother of R. who was the Feme of J. N. the Grandfather. The Son of the second Feme of R. is born, and the Lord seises the Ward of him, and he dies without Issue within Age, and the Son of T. the Uncle entered upon the Daughter of R. into two Parts, and she ousted him, and he recovered the two Parts by Affisle; and so fee that by the Seisin of the Guardian by the Ward of the Son, the two Parts shall go to the Heir of this Son, and not to the Daughter of R. who was of the half Blood; but the Opinion of the Court was, that the Dower shall go to the Daughter of R. for this is in Reversion, and the may claim it as Heir of her Father or Grandfather; For the Tenant in Dower is in by his Baron, and not by him who endowed her, and the Daughter of the eldest Son is Heir to the Grandfather. Br. Dower, pl. 87. cites 8 Ali. 6.

2. In Affisle, the Tenant of the King died seised of Lands held of the King &c. and the Heir was in Ward, and the Feme for Dower, and Writ issued to the Sheriff of N. to deliver her 10 Marks per Annum for Dower in Land and Rent, and he delivered to her 5 Marks Land, and 5 Marks Rent issuing out of the Land of which she was seizable, and she was seised and dispossessed of the Rent, and brought Affisle and recovered; For it is a good Endowment, and yet her Baron was never seised of the Rent. Br. Dower, pl. 61. cites 26 Ali. 41.

3. The same Law of such Assignment of the Heir if the Feme accepts it. Br. Dower, pl. 61. cites 26 Ali. 41.

4. Contra it is said elsewhere, if it was assigned out of Land of which the Feme is not seizable. Br. Dower, pl. 61. cites 26 Ali. 41.

5. Dower was brought by a Feme, and it does not appear what the Issue was; But it seems that the Issue was Ne unques seioj que Dower la polet; the Jury said, that W. borrowed 40l. of R. Baron of the Demandant, which W. infreed R. upon Condition, that if he repaid the 40l. by such a Day that he should re-enter, and at the Day W. did not pay but died, and the Feme of W. married B. and by Accord between R. Baron of the Plaintiff, and B. and his Feme, B. paid the Money to R., by which B. and his Feme had the Land, and this Feme Demendant demanded Dower, and prayed the Discretion of the Justices &c. by which the Demandant recovered her Dower; the Reason seems to be, inasmuch as by the Nonpayment at the Day the Baron of the Demandant was seised Simpliciter and without Condition, and then the Acceptance by R. after cannot prejudice her Feme of her Dower. Br. Verdile, pl. 85. cites 42 E. 3. 1.

6. In Dower, the Tenant said, that the Baron of the Demandant bad nothing but by Diffinian made to him; Judgment in Actio; and the Feme said, that the Father of her Baron had two Sons, and leased the Land to the Eldest and his Feme for their Lives, and the Younger took the Demandant to Feme, and the eldest Son died, and his Feme took the Tenant to Baron, and the Father of the two Sons died, and the Reversion deflected to her Baron, and after the Feme of the eldest Son died, and the Tenant held himself in, and our Baron ousted him, and prayed Seisin &c. Quare if it ought not to traverse the Seisin alleged in the Baron, and it seems that
the should; For if the Baron of the Demandant had not entered after
the Death of the Feme of the eldest Son, the should not have Dower;
For the Baron of the Feme of the eldest Son had Franktenement in Ju-
re Uxoris, which is not defeated without Entry, as it seems; Quere ;
and Quere if there shall not be Seisin in him without Entry. Br.
Dower, pl. 29. cites 2 H. 4. 22.
7. In Dower, the Baron purchased Rent, and died before the Day of
Payment, yet the Feme shall be ended. Br. Dower, pl. 33. cites 11
H. 4. 88.
8. If a Man grants a Rent to S. in Fee, and he dies before Seisin of
it, the Feme shall be ended; Per Heidon; Quod non negatur. Br.
Dower, pl. 71. cites 5 E. 4. 2.
9. A Feme shall be endowed of Seisin and Possession in Law without
S. P. 149;
Seisin in Fact; As where the Father of the Baron died seised, and Ba-
ron after died before Entry; QuodNota ; For otherwise it is of Ten-
nant by the Curtesy, and the reason seems to be, inasmuch as the Baron
cites 7 E. 5. may enter in Jure Uxoris, but the Feme cannot compel her Baron to enter
into his own Land. Br. Dower, pl. 75. cites 21 E. 4. 60.

10. In Dower, where there were Grandfather, Father, and Son, and
the Grandfather held of the King, The Father took Feme. The Grand-
father died. The Father had Issue and died before Office found, and before
any Entry; and after an Office was found for the King, that the Grand-
father was seised and died seised, and held of the King, and that he had
Issue, who had Issue him who now is Heir and within Age, by which the
King seised and committed the Ward during minor estate, and the Feme of
the Father, Son of the Grandfather, brought Writ of Dower against the
Committee, and the Committee demurred in Law upon the Matter. Br.
Dower, pl. 66. cites 1 H. 7. 17.
11. But in Anno 4 H. 7. 1. the Case is put, that the Father entered
and died before any Office, and therefore by all the Justices the Feme is
dovable. Br. Dower, pl. 66.
12. Where a Stranger abates upon Tenant of the King, and the Heir
has a Feme and does not enter, the Feme shall not have Dower upon this
Possession, per Wood; and he vouch'd 21 E. 4. 60. which Firher and
Davers agreed; For after Patent made to the Committee, the Com-
mittee takes the Profits, and not the King, though Livery be fued out
of the King's Hands. Br. Dower, pl. 66, cites 1 H. 7. 17.
13. But per Hufley, if the Tenant of the King dies seised, and his
Heir has Feme, and after Office is found for the King, there is no Doubt
but the Feme shall be endowed for the Possession in Fact which was be-
fore in her Baron by his Entry before the Office; For it was agreed per
tot. Cur. that the Heir by his Entry is no Intruder before Office be found
for the King. Br. Dower, pl. 66. cites 1 H. 7. 17.
14. And if a Rent defends to the Baron, who dies before the Day of
Payment, yet the Feme shall be ended. Br. Dower, pl. 66. cites
1 H. 7. 17.
15. For such Seisin upon which Precede quod reddat lies is as sufficient
to have Dower as those which are Seelins in Law, of which Affile lies
not; For such Seisin o which Affile lies, is not always requisite
where Dowment shall be, but Seisin in Law suffices. Br. Dower, pl.
66. cites 1 H. 7. 17.
16. And per Brian, where the King has Ward, and the Ward dies
within Age, his Heir has a Feme, and the Baron dies before it comes
to him, there the Feme shall not have Dower. Br. Dower, pl. 66.
cites 1 H. 7. 17.

N
n
17. Where
17. Where the Heir of the King's Tenant has a Feme, and Office is found for the King, and after the Heir enters and intrudes, and dies, yet the Feme shall have Dower by reason of the Possession which he had before the Office, Per Divers; For by him the Statute de Praepotentia quod nullum accrescat ei liberum Tenementum is intended where Office is found, and after he takes Feme, intrudes and dies; but divers good Students denied it. But Brian and Hufly agreed with Divers. Br. Dower, pl. 66. cites 1 H. 7. 17.

18. And if he had not entered, yet she had been decedable; for there was Seisin in Law in the Baron, and he was not an Instruer, because Office was not found for the King, and it lies as well against the Committee of the King as against another Guardian. Br. Dower, pl. 66. cites 4 H. 7. 1. Of a Seisin for an Infant a Woman shall not be endow'd as if Ceasing the Use after the Statue of 1 R. 3. and before the Statue of 27 H. 8. had made a Feoffment in Fee his Wife should not be endow'd. Co Litt. 51. b. — Of an Instantaneous Seisin by Fine and Render no Dower shall be. Cited per Tanfield J. as unjudged. Cro J. 615. — Co. Litt. 51. b. S. P. — Baron and Feme Tenants in Special Tail. The Feme dies leaving Issue. The Baron makes Feoffment to the Use of himself for Life and after to B. his Son in Tail, and marries a second Wife and then makes Livery. Resolved that she is not double, for before the Feoffment she was not, he being such Tenant in Tail that the Issue by her could not inherit, and the Instantaneous Seisin by the Livery will not inhere her. Cro. J. 615. pl. 5. Pach. 18 Jaz. in Secae. Amcois v. Catherich.

20. Father Tenant for Life, the Remainder to his Son in Tail, the Remainder to the right Heirs of the Father. After the Father and Son at a certain Time were attainted of Felony, and executed likewise at one Time, the Son not having any Issue of his Body. If now the Father shall be said to be feidad of an Estate in Fee, that Dower &c. was the Matter. And there because it was proved by Witneifes that the Father moved his Feet after the Death of the Son; It was found by the Jury Seifie que Dower &c. And upon that the Wife of the Father had Judgment to recover. Note after Error was brought, and the Error affigned in the Proces. See Trin. 38 Eliz. Rot. 876. Nov. 64. Broughton v. Randal.

21. Dower may be of a Possession in Law. Jo. 361. Trin. 11 Car. shall be en-
dowed of a Seisin in Law, as where Lands and Tenements devolved to the Husband before Entry he has but a Seisin in Law, and yet the Wife shall be endow'd, albeit it be not reduc'd to an actual Possession; for it lies not in the Power of the Wife to bring it to be an actual Seisin, as the Husband may do of his Wife's Land, when he is to be Tenant by Curtesy. Co. Litt. 51 a. — Litt. S. 428. S. P.

(G. 3) Out
(G. 3) In what Cases Dower may be Out of Dower.

1. In Dower a Custom was pleaded that if the Baron alienates the Land, and expends the Monies between him and his Feme, that she shall be barr'd of Dower, and adjudg'd a good Custom. Br. Customs, pl. 78. cites 3 E. 3.

2. Feme of the Father is endowed, and the Grandmother brought Writ of Dower against her and she vouch'd the Heir by Reverion, and the Demandant recover'd against the Tenant, and she over against the Heir, the third Part of the two Parts reversion, and not in Value, and well. And if the Feme of the Grandfather dies, the Feme of the Father may enter; For the Grandmother was Attendant to him by Tender; and from hence it seems that the Heir may enter then into the second Dower; For this shall not have both. Br. Dower, pl. 79. cites M. 5 E. 3. and Fitzh. Voucher 249.

3. Where Heir takes Feme and enters and endow his Mother, and alien the Reverion, and the Mother dies, and after the Heir dies the Feme of the Heir shall not have Dower of the Land of which the Mother was endow'd. For the Sein of the Heir who was her Baron was determined by the Endowment, and the Feme in by her Baron and not by the Heir; For if the Heir had charged the should hold discharged, quod nota. Br. Sein, pl. 18. cites 8 All. 6.

4. In Dower, the Tenant in Dower leas'd her Estate to the Heir, rendring Rent for Term of his Life, and the Heir died, and his Feme was endowed by Award; For this is a Surrender notwithstanding the eldest Endowment, and to the Heir in in Fee, though the first Tenant in Dower who les'd, was alive. Br. Dower, pl. 17. cites 45 E. 3. 13.

5. If a Man makes a Feoffment with Warranty and dies, and the Feme of the Feoffor brings Writ of Dower against the Feme of the Feoffee, and she vouches the Heir of the Feoffor, and pending the Action the Feme of the Feoffee brings Writ of Dower of the whole Land and not of two Parts, she cannot recover Dower till the first Dower be determined. Br. Dower, pl. 89. cites Litt. fol. 11.

6. The Custom of a Manor was for the Widow to be endowed of a Moiety of the Copyholds of which her Husband died feized; the Husband died, and his Wife was endow'd of 100 l. per Ann. and 100 l. S. P. does per Ann. defended to his Heir, who afterwards died, leaving a Widow. This second Widow shall be endow'd of a Moiety of the 100 l. S. P. does.
Dower.


The Rule of Dos de Dote peri non debet is thus to be understood, Where the Grandfather dies seised of three Acres, and the Father enters and endows the Grandfather's Wife of one Acre and dies, the Father's Wife shall be endow'd only of the third Part of the other two Acres; For inasmuch as the Grandfather died seised there was no Mefne Seisin in Judgment of Law berwixt him and his Wife. But if the Father had claimed the said three Acres by Purchase from the Grandfather, his Wife should after the Death of the Grandfather's Wife be endow'd of the third Part of that Acre whereof the Grandfather's Wife was endow'd; or in the first Case, if the Son after the Death of the Grandfather and Father had endow'd his Mother first, and then the Grandmother had recovered a third Part against her, the Mother after her Death might have entred again; for her Estate in the Part so recovered was defeated by the Grandmother's Life. Hawk. Co. Litt. 44.

See (G) pl. 15, S. C. and the Notes there.

1. If the Baron had a Fee and Freehold though it be defeasable, yet his Wife shall be endow'd till it is defeated. 45 E. 3. 13 b.

2. As if the Baron and Feme Leesee for Life surrender to him in Reversion this is defeasible by the Feme; yet in the mean Time if he in Reversion dies, his Wife shall be endow'd. 45 E. 3. 13 b. 18 E. 3. 45.

3. If a Diffeilor dies seised, and after the Diffeilor abates, the Wife of the Diffeilor shall have Dower against him, so long as the Deceased is in Force. 17 E. 3. 24. admitted by the Statute.

4. If a 1vounce of the Land to B. who makes a Feoffment of the Land to B. who makes a Feoffment thereof to C. the Wife of B. shall be endow'd against C. till the Wife of A. recovers her Dower. Temp. 1 e. 66 b. admitted.

5. But in this Case after the Endowment of the Wife of B. if the Wife of A. brings a Writ of Dower against the Wife of B. and she vouches C. to * Warranty, this Endowment of the Wife of A. ad Offium Ecclesiae shall be a good Counter-plea of the Warranty, whan Dos de Dote peri non debet. Temp. 1 e. 66 b. adjudged.

6. If A. seised of the Manor of D. takes B. to Wife, and after aliens to C. who takes E. to Wife, and after aliens to F. and dies, and after E. is endow'd, and after B. is assigned Dower of a third Part of the Manor, and the brings a Precipe thereon against the Wife of C. seised, who vouches to warranty F. who counterpleads it by this Matter, and says that the Wife of C. cannot be endow'd so quod non potest habere Domem de Dote, et sic per Considerationem Tuisae Ajudicatun fut, quod est inconvenient, hoc est F. sit quiennis de Warrantia et B. recuperet levisani et Defendens in Districordia. D. 11. E. 4. B. Rot. 46.
Dower.

7. If a Woman recovers Dower of a Reversion expectant upon a Leafe for Years upon which a Rent is reserved, she shall have a third Part of the Reversion, and the Rent presently as incident to the Reversion, and the Execution shall not cease till the Leafe expires; for the Sheriff shall put her in Execution of the Freehold, and the Term shall continue his Term. Q.r. 7. Ta. per Curiam. P. 8. Ta. B. per Curiam. ill. 10 Ta. B. per Curiam.

Where a Man settled in Fee leased for Years rendering Rent, and after takes a Feme and dies, the Feme shall have Dower, but shall not have Execution during the Term of Years; for the Rent is incident to the Reversion, and is no Inheritance, but is determinable by the Death of the Liffe, and therefore she cannot be endowed of the Rent. Br. Dower, pl. 89. cites M. 1. 6. 6.

In some Cases of Lands and Tenements which are devisable, and which the Heir of the Husband shall inherit, yet the Wife shall not be endowed. As if the Husband make a Leafe for Life of certain Lands, referring a Rent to him and his Heirs, and he takes Wife and dies, the Wife shall not be endowed, neither of the Reversion, (albeit it is within these Words Tenements) because there was no Salien in Deed or in Law of the Freehold, nor of the Rent, because the Husband had but a particular Estate therein and no Fee Simple. Co Litt. 52. a.

But if the Husband make a Leafe for Years referring a Rent, and takes Wife, and the Husband dies, the Wife shall be endowed of the third Part of the Reversion by Leases and Bounds, together with the third Part of the Rent, and Execution shall not cease during the Years. If the Husband make a Gift in Fait, referring a Rent to him and his Heirs, and after the Donor takes a Wife and dies, the Wife shall not be endowed of this Rent, because it is a Rent in Fee, and by Possibility may continue for ever. Co Litt. 52. a.

In Dower it was agreed clearly, that if the Tenant knew, that before the Husband any Thing had, A was left of the said Land in Feme, and let that for Years rendering Rent, and granted the Reversion to the Husband of the Plaintiff, who died before the said Reversion, and so demanded Judgment if the Demandant shall have Dower &c. This is no Plea in bar of Dower, but proves the bad Title of Dower, but this faves the Leafe for Years, and the shall have Judgment only of the Reversion, and of the Rent; and also he does issue to the Tenant Damper, and the Demandant shall be endowed of the Reversion. Win. 80. Petch. 22. Jan. C.B. Anns.

8. But if no Rent be reserved upon the Leafe for Years, then the Execution shall cease till the Term expires. Trin. 7 Jac. 23. 2. S. P. per Curiam.

9. A Rent de novo was granted to a Man and his Heirs, with a Proviso that if the Grantee died, his Heirs being within Age, that then the Rent should cease during his Minority, and he died, his Heir being within Age, and the Wife of the Grantee brought a Writ of Dower 2 where against the Tenant, and held it lyv., and that the Demandant should have Execution against the Heir whose cause is full Age. 1 Rep. 87. a. in a Nota of the Reporter cites 5 E. 2.

Fifth Party sue for a Bill in Parliament, which they did, where it was ordered that the Demandant should recover her Dower against the Grantor, viz. Territum Partem pridem Redittus percipiendo according to the Form of the said Grant, when the Heir shall come to his full Age; and so the Question was determined — Jenk. 9. pl. 6. S. C. resolved in Parliament — Vent. 56. Mich. 22 Car. 2. B. R. per Cur. S. P. Oster, the shall have Judgment but Ceiliter Executo.

10. Where Father and Son are; the Father dies, the Son takes Feme and enters, and endows his Mother, and after grants the Reversion, and the Mother dies, and the Son dies, the Feme cannot have Dower; And Brock says it seems to be good Law; for it is said elsewhere that where the Heir enters and endows his Mother, and she dies, and J. N. abates, he shall not have Allffe but Mortdancer or Intitution; for the first Possession is defeated by the Dower. Br. Dower, pl. 87. cites 19 E. 2.

11. If a Man leaves Land for Term of 10 Years upon Condition that if Leafe pays 100 l. at the End of the Term, that he shall have fee, and if not, that he shall have but a Term; it if pays 100 l. at the End of the Term he by this has Fee for all the Term, and the Feme shall be endowed; Quere inde; for this Word Tune has no Relation to
give Fee Niñ de Tempore Solutionis, as it seems. Br. Dower, pl. 45. cites 7 H. 6. 11.

12. If Lands are given to the Baron and Feme and to the Heirs of their two Bodies, or to their Heirs, and after the Baron dies, now if the Feme will waive and refuse the Joint-Estate the man bring Writ of Dower, and by this, in Judgment of Law, the Baron shall be said sole seised Ab Initio; for otherwise she cannot be endowed, and yet in Truth the Baron and Feme were Jointenants during the Copuissance. 3 Rep. 27. b. per Cur. Mich. 33 & 34 Eliz. B. R. in Case of Butler v. Baker.

13. If a Man gives in Tail to Baron and Feme, and after grants the Reversion of those Lands to J. S. and then the Baron dies, and the Feme waives, and disaffirms to the Estate Tail, and claims her Dower; Now as to her there is a Nullity of Estate Ab Initio, and to such Intent the Law holds it as an Estate made to the Baron only; Per Cur. 3 Rep. 28. b. Mich. 33 & 34 Eliz. in Case of Butler v. Baker.

14. In a Writ of Dower the Tenant pleads Ne unques Seifie que Dower, and in Truth the Husband of the Demandant had an Estate by Dillage which was avoided by the Entry of the Dissailer, and who had a Title Paramount; It was agreed clearly that this is no Title by which the man have Dower. Win. 77. Packer. 22 Jac. C. B. Berkshire (Countsess of) v. Sir Peter Vanlore.

15. If there are two Jointenants in Fee, and one of them makes a Feoffment in Fee, his Wife shall not be endowed. Co. Litt. 31. b.

16. Tenant in Dower shall not have Execution of a Reversion after Term on which no Rent was referred; for in such Case it would be in vain to have Execution before the Term be ended; Per tot. Cur. and Judgment accordingly. Comyns's Rep. 155. Mich. 8 Ann. C. B. Bodmyn (Lady) v. Child (Sir Richard)

(I) Of what Estate for a Collateral Respect the shall be endowed.

For Collateral Qualities.

[Conditions &c.]

1. If a Man makes a Feoffment to the Husband upon Condition that he shall enfoff his Wife and Son, and he makes a Feoffment accordingly and dies, the Wife shall be endowed of this; for the Feoffment to her by her Husband was void, but it appears the Intent of the first Feoffor was that she should have an Estate in the Land, and inasmuch as she could not have the Estate according to his Intention, she shall have the Estate which the Law gives her. 28 Inf. 4. Curia. Brooke Dower 62.
Dower.

2. So it seems if a Feoffment be made to a Husband upon Condition to inoeff J. S. and he does it accordingly and dies, the Wife shall be indemned; for his Intent does not appear to exclude the Wife of her Dower; and if this had appeared, yet it seems it would not have stood with Law. It seems as it this was the Reason of the Case in 28 Atl. 4. Brooke Dower 62.

3. In Dower the Tenant said that Tenant by the Cartesy granted his Estate to him in Reversion, (who was Baron to the Feme now Demandant) rendering Rent, and for Default of Payment to re-enter; he in Reversion married the Demandant, and for the Rent-Arrear the Tenant by the Cartesy entered; he in Reversion died, and his Feme was barred of Dower by the Re-entry; for Surrender may well be upon Condition. Br. Dower, pl. 74. cites 14 E. 4. 6.

4. If a Man be Tenant in Fee Tail general, and makes a Feoffment in Fee, and takes back an Estate to him and his Wife, and to the Heirs of their two Bodies, and they have Issue, and the Wife dies, and the Husband takes another Wife and dies, the Wife shall not be endowed; For during the Coverture he was seised of an Estate Tail special, and yet the Issue, which the second Wife may have, by Possibility may inherit. Co. Litt. 31 b.

5. The same Law it is, if he had taken back an Estate in Fee-Simple, and after had taken Wife, and had Issue by her, yet the shall not be endowed; For that the Fee-Simple is vanished by the Remitter, and her Issue has the Land by Force of the Intail; But in that Case the Tenant cannot plead that the Husband was never seised of such an Estate, whereof the Demandant might be endowed, but he must plead the special Matter. Co. Litt. 31 b.

(K) At what Time she shall be endowed.

1. If the Husband enters into Religion; though it is a Civil
   Death, in fact as he is dead as to the World, for his
   Heirs shall have his Land, and a Wife of Portance, yet her
   Wife shall not be endowed during his natural Life, because he entered
   into Religion with her Consent, otherwise she might deraign him and
   so by her own Alien she in a Tanner vows Chality as well as
   her Husband. 32 E. 1. Dower 176.

2. The Death of Baron was suggested, because of his Absence seven
   and twenty Years, and upon circumstantial Proof, (none being offered to the contrary) she recovered. D. 185. a. pl. 65. Patch. 2 Eliz. Thorn v. Rolf. 15. pl. 33. 4. C. but the
   Point of Absence is not particularly mentioned in either And. or Mo. — Bendl. 89. pl. 131. 4. S. C.

3. Proof by 4 of the Death of Baron, and at the Elloign Day Proof Firtha Tri-
   by 12 de Vita Vr, all agreeing in the same Points. Qui melius pro-

(L) By
By what Act or Thing a Woman may delay herself of her Dower.

Detainment of Charters, or of the Heir.

What Charters or Heir.

Dower.

Detainment of Charters concerning the same Land of which the demands Dower, is a good plea in Delay of her Dower.

2. [So] detaining of a Fine concerning the Land &c. is a good Plea in Delay of Dower, though the Fine may be had again in the Treasury. 1 C. 3. 12. b.

3. Detaining the Heir is a good Plea in Delay of Dower brought against the Guardian in Chivalry. 17 C. 3. 58. b.

4. [So] if a Woman be endowed Ad infinitum Ecclesiae, and after the Death of the Baron she brings a Writ of Dower against the Guardian in Chivalry of the Heir of her Husband, it is a good Plea in Delay of this Dower, that the Demandant detains the Heir from him. 11 H. 3. Rot. 6. inter Donaunt Burdett and Wilhelmium Burdett, admitted per Issue, and agreed by Plea. 11 H. 3. Dower 187. the same Case, as it seems, but in Burdett's Case it is not expressed what Dower this was, but she claims it as Land of which she was nominam dotata by her Husband.

5. The same in a Writ of Dower Ex asselli Patris, or Matris 11 H. 3. Dower 186.

6. In Dower, the Tenant said that the Demandant detained from him certain Charters concerning his Franktenement, and in Case she would deliver them, he is ready to render Dower, and at all Times has been ready; And it was agreed, that this Detainer is no Plea, but of Charters concerning the Inheritance, and not of Land purchased; And so it seems there, that if it concerns the Inheritance, though it be other Land than of which the Dower is demanded, yet it is a good Plea; and there the Defendant was compelled to show what Charters she detained. Br. Dower, pl. 47. cites 22 H. 6. 16.

7. Dower of four Acres; As to one Acre the Tenant conduced to Warrant, and as to the rest that the Demandant detained Evidences from him concerning the same Land, and secured one specially, by which T. infefted J. W. and R. his Father, bequest to them and to the Heirs of R. and if she would deliver them, he is ready to render Dower; Pool said his Plea goes
Dower.

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goes to all; for if the detain's Charters which concern any Part of the Land in Demand, it is a good Bar to the whole Dower, and the De- tain shall be of Land defended to the Tenant, and not of the Land per- chased; Per Newton, the Plea does not go to all. Br. Dower, pl. 48. cites 22 H. 6. 42.
8. In Dower, the Tenant said that the Demandant detained certain Charters concerning this Land &c. and if she will render &c. then ready to render Dower &c. The Demandant produced the Deed, and prayed Dower, and the Deed was read, so that the Court perceived it was the same Deed, by which the Demandant recovered. Br. Dower, pl. 53. cites 9 E. 4. 47.
9. Dower against the Heir, who said that the Demandant detained from him a Bag sealed, with certain Evidences concerning the same Land, and if she will deliver it &c. be is ready to render Dower, and a good Plea, per rot. Cur. except Englefield, without showing the Certainty of the Evidences; Quere if it had not been in a Bag sealed. Br. Dower, pl. 1. cites 18 H. 8. 1.
10. In Dower, if the Tenant pleads that the Demandant detains Evidence, the Demandant delivering in the Evidence may have Judgment immediately; But if it denies the Detainer of the Evidence, and that be found against her, she shall lose her Dower; Per Cur. Obiter. Hob. 199. Mich. 15 Jac. in Case of Brickhead v. York (Archbithop.)
11. So in the Case of Dower brought against a Guardian in Chivalry who pleads the Detainer of the Heir his Ward. Ibid.

(M) Detinue of Charters. [Or Heir.]

Who may plead it. [And How.]

1. If a Wife be with Child, the Heir for the Time being cannot in Dower, plead Detinue of Charters; For she may keep them for the Infant. 41 E. 3. 11, b.
2. In a Wett of Dower against the Guardian in Chivalry, he may plead as P. B. but he shall shew his Name, viz. J. Son and Heir of. W. T. Br. Dower, pl. 47. cites 22 H. 6. 16. S. P. and shall shew whether Male or Female, or otherwise Elogement by the Demandant is no Plea. Br. Dower, pl. 67. cites 2 H. 7. 6. —S P. But he cannot plead Detainment of Charters; For he cannot conclude his Plea thus, viz. "And if the Demandant will deliver to him the Charters &c." For the Charters which concern the Inheritance of the Heir shall not be delivered to the Guardian. 9 Rep. 19. resolved in Bedingfield's Case, and cites it to adjudged in 10 E. 3. 49. a.
Dower.

3. In an Action of Dower, if the Tenant vouches the Heir in Ward, the Guardian may plead in Delay of Dower, that she retains the Heir from him, though the Guardian could not have rendered to her Dower before this Time; for he may render it now. 17 Eliz. 3. 38. b. Citrin.

4. A Man having a Charter which concerns four Acres of Savage Land, he devolved three to his youngest Son, and four to his Wife for Life, the Remainder to a Stranger, and died. The Wife entered in the Acre, and happened upon the Charter, and brought a Dower of three Acres against the youngest Son, who pleaded Betinue of Charters in Bar, and that if she would deliver, he was ready to render Dower; But in the Conclusion he said, yet ready to render, leaving out the Condition, if &c. which is a Contention, and adjudged for the Complainant. D. 230. pl. 32. Trin. 6 Eliz. Anon.

5. No Stranger, though he is Tenant of the Land, and has the Evidence conveyed to him, can in a Writ of Dower plead Betinue of Charters, but this Plea lies only in Privy, viz. for the Heir of the Baron. 9 Rep. 18. a. Hill. 28 Eliz. the third Resolution in Bedingfield's Cafe.

6. Betinue of Charters is not pleadable by Tenant by Receipt, who has a Reversion after Tenant for Life, because he cannot render her Demand, and is a Stranger, and therefore Settin was awarded to the Demandant. 9 Rep. 18. b. 19. a. per Cur. cites 8 Eliz. 3. 55. a. [pl. 3.]

7. The Heir in several Cases stands in the Degree of a Stranger, and shall not have this Plea. 9 Rep. 18. a. Hill. 28 Eliz. in Bedingfield's Cafe.

8. As if the Heir hath the Lands by Purchase. 9 Rep. 18. a.

9. If the Heir has delivered the Charters to the Woman, he cannot plead the Betinue of them, for he has them with his Confect. 9 Rep. 18. a.

10. So if the Heir is not immediately vouch'd by the Tenant, but the Tenant vouches one who vouches the Heir. 9 Rep. 18. a.

11. So if the Heir coming in as Vouchee, has no Land in the Same Coinity. 9 Rep. 18. a.

(N) [Detinue of Charters in Bar of Dower.]

How to be pleaded.

Dower a-
gainst the
Heir, who
said that he
was ready
to render
Dower if she would render to him certain Charters concerning his Inheritance, which she detained from him; Per Cur. you shall show what in certain, and this is reasonable, by reason of the Devise to the Joints, and that it appear to the Court to whom they belong; For if they belong to the Defendant by Purchase, and not by Inheritance, he is put to Writ of Detinue; but if they are in a Bar feould &c. he shall not declare in certain. Br. Dower, pl. 67. cites 3 H. 7. 6. —— 9 Rep. 18. a. S. P. resolved in Bedingfield's Cafe, so that a certain Issue may be taken, and cites 22 H. 6. 16. a. 2 H. 7. 6. a. 14 H. 6. 4. a. and 18 H. S. 1. a.

The
Dower.

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The Certainy of the Charters ought to be alleged, unless they are in a Chrest, Box, or Bag sealed &c.

D. 251 a pl. 52. Trin. 6 Eliz.

2. Dower against two Femers, who said that the Feme Demandant was Feme of their Father, and that all the Land of the Baron descended to them as Heir &c. and Partition was made between them, so that certain Land was allotted to the one, and certain to the other, and for the one be said, that the Demandant detained a certain Box full of Monuments touching the Inheritance of the Feme Tenant, and if she will deliver the Box she is ready to render Dower, and at all times has been, and demanded Judgment if the may demand Dower before the Delivery of the Box; And for the other Daughter it was said, that the Demandant detained the same Box and two Indentures, and that in the one it is contained, that A. enjoined the Father of this Feme of the Tenements to her assigned in Partition, and in the other Indenture it is contained, as the Father of the Tenant granted to B. a Rent-Charge, that if the Father performed certain Conditions, that the Rent should cease, and that the Box and those Indentures come to the Hands of the Demandant after the Death of her Husband, and demanded Judgment if before the Delivery of those the may demand Dower; And the Demandant as to the Box said that she is ready, and at all Times has been; by which, as to this it was adjudged, that the Demandant recover Dower, and no Party athered; and lo as to her who first pleaded the Detinue of the Box, and to the other he said, that as to the first Indenture she never took it, and the other contra; and as to the other Indenture she said that she had delivered it to the other Personer; And it was awarded that she deliver the Box to her who rendered the Dower for her Part, and as to the Delivery to the one Personer of the Indenture which concerned the Party of the other, she demurred, &c. et adjurator, therefore quire. Br. Dower, pl. 41. cit. 21 Eliz. 3. 8.

3. In Dower, the Tenant said that Alto non; For his Father was possessed of a Chrest and Charters, and of two Fines in Special, and divers other Charters which concerned the Land which is descended to him from his Father, which came to the Demandant, and he is, and at all Times has been, ready to render Dower, in Case he would deliver the Chrest and Charters; And the Demandant said, as to all the Charters except the two Fines, she has been always ready to deliver them, and offered them to the Court, and to the two Fines, that they came not to her Hands; Per Martin J. were the Chrest is open, you ought to declare every Charter specially, and the fame in Detinue of a Chrest open with Charters, quod Curia concepfit, quod nota bene. Br. Dower, pl. 57. cit. 14 Eliz. 6. 4.

4. He that pleads Detinue of Charters ought to plead that he has been always ready to render Dower, and yet is if the Demandant would deliver to him the Charters. 9 Rep. 18. a. 19. b. Hill. 25 Eliz. in Bedingfield's Case.

5. Detinue of Charters is no Plea after Imparlance; for per Cur. He that pleads this Plea must plead that from the Time of the Death of his Ancestor paratus sit & adhiber potestus existit to allign her Dower if she would deliver the Charters. 1 Salk. 253. pl. 2. Pal. 3 W. S. C. 21 B. M. in B.R. Burden v. Burden.

(0) When

Cumb 183.

S. C. Show 271.

and Judg. affirmed.

Cumb 183.

S. C. the Plea goes only in Abatement, and Judgment affirmed Nisi &c.
(O) What Act of the Baron may bar the Wife of her Dower.

1. If Land be mortgaged to the Baron, and the Condition is broke, and afterwards upon the Agreement the Mortgagor hath the Lands again by Payment, yet the Wife of the Mortgagee shall be endowed after the Death of the Baron hath recovered, and to it seems before; but this is a Querc. 41 C. 3. 1. b.

2. If a Man takes an Alien to Wife, and afterwards he aliens his Lands, and afterwards she is made a Denizen, she shall not be endowed; for she was absolutely disabled by the Law, and by her Birth not capable of Dower, but her Capacity and Ability began only by her Denization. 13 Rep. 23. Hill. 27 Eliz. in Chancery in Menavill's Case.

3. If a Man seised seised of Lands in Fee takes a Wife of eight Years of Age, and aliens his Lands, and afterwards the Wife attains to the Age of nine Years, and afterwards the Husband dies, the Wife shall be endowed; For although at the Time of the Alienation the Wife was not dowlable, yet for as much as the Marriage, and Seisin in Fee, was before the Alienation, and the Title of Dower is not consummated until the Death of her Husband, so as now there was Marriage, Seisin in Fee, Age of nine Years during the Coverture, and the Death of the Husband, for that Cause she shall be endowed; for it is not requisite that the Marriage, Seisin, and Age, concur together all at one Time, but it is sufficient if they happen during Coverture. 13 Rep. 22, 23. Hill. 27 Eliz. in Chancery in Menavill's Case.

4. Though the Husband aliens the Lands or Tenements, or extinguishes the Rents or Commons &c. yet the Woman shall be endowed. Co. Litt. 32. a.

(P) What Act of the Feme will bar her of her Dower.

Elopement.

* Br. Dower 1. If she elopes from her Husband with another Man, and continues in Adultery with him without being reconciled to her Husband before the Death of her Husband, she shall lose her Dower. * 43 C. 3. 19. 19 C. 4. 30. Perkins S. 354. 47 C. 3. 27. Vide Statutum Roberti Priori, cap. 13. apud Scotos according, Wesc. 2. cap. 138. according.

† This seems misprinted for 34.


2. The same Law if she elopes with the Adulterer and is not reconciled, though she does not stay with the Adulterer. Perkins S. 354.

3. The same Law if she be reconciled to her Husband by the Coercion of Holy Church. Perkins S. 354 and not of her Good-will.

4. So
4. So if the Wife elopes with her good Will, and stays with the F. N. B. Adulterer against her Will, she shall lose her Dower. Perkins 150. (H) 

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4. So if the Wife elopes with her good Will, and stays with the F. N. B. Adulterer against her Will, she shall lose her Dower; but if the remains in Adultery upon the Husband's Lands or Tenements the shall have Dower; because the same is not an Elopement. —Ca. Litt. 53 b. 2

Aft. 456. S. P. and fo if afterwards the Adulterer turns her away, yet she shall be lid mortari cum Adultero within this Act.

5. So if she be ravished and stays with the Adulterer during the See the Life of the Husband willingly without Reconciliation, she shall lose her Dower. 43 C. 3. 19 b. 

6. But if the Wife be ravished and stays with the Adulterer against her Will she shall not lose her Dower. 43 C. 3. 19 b. 

Perk. S. 354. S. P. —— See the Rape, pl. 4. and the Notes.

7. So if after Elopement the Wife be reconciled to her Husband of his Free Will without Coercion of Holy Church, she shall have See pl. 18. and the Notes there.


8. If a Man grants his Wife with her Goods to another, by Force of which the Wife lives with the Grantee afterwards all the Life of her Husband, this shall lose her Dower, because she lived in Adultery with the Grantee notwithstanding the Grant of the Baron. 30 C. 1. Libro Parliamentorum Fol. 96. Williamus Paynell and Margery his Wife's Case. Adjudged in Parliament.

which Ed. Coke lays he cites for the Strangeness thereof.

9. If the Friends of the Husband assail him from his Wife, so that the Wife does not know what is become of him, and the Friends of the Husband publish that the Husband is dead, and after they procure the Wife to release all Marriages and Interests, which she can have in him as her Husband, and after the Wife by the Persuasion of the Friends of the Husband marries with another that dies, and she takes another Husband, to whom Notice is given that the first is living, but no Notice was given thereof to the Wife, though the Wife lives in Adultery, and though the Husband was not out of the Realm or beyond Sea, so that the Wife might take Notice that he was living, yet not as much as the non reliquit Virum Sponte, as the Statute says, but by the Persuasion of the Friends of the Husband that he was dead, and it does not appear that the ever knew that he was living, this is not an ditch Elopement as to bar her of her Dower. Nih. 12 Ta. between Green and Harvey. Per Curtian.

10. If the Wife elopes from her Husband, and after lives with her Husband Years and Days till the Death of her Husband, with the Good-will and Affent of the Husband without Coercion of Holy Church, this shall not bar her of her Dower, though it is not aver'd that he was reconcil'd to her Husband. 19 C. 3. Elopement 94.

To prove a Reconciliation it was given in Evidence that they lay together several Nights in several Places after the Departure and Separation, and demand'd themselves as Husband and Wife. It was objected that they never dwell together in the same House, but liv'd asunder; and that the continued in Adultery with one or another all along during her Husband's Life, fed men Almsman; For there might be several Elopements and several Reconciliations, and the Tenant at his Peril ought to take him upon. D 105. b. 107. pl. 22, 23. Haworth v. Lady Potts.

But though the does cohabit and is reconciled, yet if it be by the Coercion of the Church she shall lose her Dower. a Inf 456.

Q q q

11. H
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Dower.

But if a Man shall elope with a Woman, and live in Adultery, the Baron is not to be bar'd of his Dower, because the Woman is to live next to him within his Land, though she is not in the same Manor. 8 C. 2. Dower 153. adjudged.

2 Infr. 416.

12. The same Law, though the Wife lives in a House of the free Barony, and though she is not in the same Manor, and when she is there the live in Adultery, it is said that by doing to the shall not lose her Dower, because it cannot be intended a running away from her Husband, when the Law cannot intend that she can dwell upon the Manor of her Husband without the Agreement of her Husband, as Cokc says, it has been held otherwise. Coke, 103. * Fol. 621.

11. If a Woman elopes into another Country, and lives in Adultery in a Manor that is of the joint Purchases of the Baron and Feme, he taketh a Wife, and when the Husband is dwelling at one Manor, the Wife goes unto the other Manor, and when there she is free, and that shall not be bar'd of her Dower, because the Baron is to see that none live within his Land.

2 Infr. 416.

13. If the Wife be divorced for Adultery, (which does not disolve the Bond of Marriages by the Canon Law, nor of our Church in this Realm, but is only a Menia & Thoro) yet this shall bar her of her Dower.

Trin 2 Jac. C. B. Powell v. Week's resolv'd Contra, because it is not a vinculo Matrimonii. Godb. 145. pl. 152. 2. Jac. C. B. adjudg'd that she shall have her Dower. Lady Stowell's Case and seems to be S. C.

Co. Litt. 35.

14. With this agrees the Law of Scotland. Skene Regiam Manetatem 43. B. 2 Def. 5.

15. With this agrees the Civil Law. Reynolds of Divorces 86.

16. So the Canon Law is according, Reynolds of Divorces 86.

If the goes away with or to the Adulterer, this is a Departure and a Tarrying, though she remains not continually with the Adulterer she shall lose her Dower. Co. Litt. 52. b. in Principio.

In this Case of Elopement, and remaining with the Adulterer &c. the Wife could not be bar'd of her Dower by the Common Law, though a Divorce were fixed and had for the said Adultery.

2 Infr. 415.

Although the Words of this Branch be in the Conjunction, yet if the Woman be taken away not by Sponse, but against her Will, and after consents and remains with the Adulterer without being reconciled &c. she shall lose her Dower; for the cause of the Bar of her Dower is not the manner of the going away, but the remaining with the Adulterer in Adultery without Reconciliation, that is the Bar of the Dower. 2 Infr. 415.

If the Wife goes away with the Husband's Agreement, and consent with A. B. if after A. B. commit Adultery with her, and she remains with him without Reconciliation, she shall be bar'd of her Dower by this Branch; 2 Infr. 415.

But the Husband may give Licence to a Man to carry his Wife to his House, and this shall be a good Bar in Action brought de Mullere absque cum bonis virt. 2 Infr. 416.

Note, that unless her Husband willingly, and without Coercion of the Church, Cohabitation reconciles her and suffers her to dwell with him, is not sufficient without Reconciliation made by the Husband Sponse, as Cohabitation only in the same House with the Husband avails her not; a Portiori though she remain with the Avowter in any of the Lands or Manors of her Husband, yet she shall be bar'd of her Dower by this Branch, without the Husband's free Reconciliation, although it has been otherwise holden; and the Reason that they yielded it, because it is no Elopement; whereas it appears before that the Words of Relicherit & Abierit are not of the Substance of the Bar of Dower, but the Adultery, and the remaining with the Adulterer, as above said; and although she and the Adulterer remain within any of the Lands or Manors of the Husband, yet (the Words being Si uter sponse Relicherit & Abierit) she has left.
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In Dower Defendant pleaded Elopement in the Wife; Wife replied that her Husband had bargained and sold her to the Adulterer; and held bad. 12 Mod. 232. Mich. 10 W. 3, Coot v. Berry.

20. Articles to settle Lands in Jointure, are in Nature of an actual Jointure, which is not forfeited by an Elopement like Dower. 3 Wms’s Rep. 276. Pach. 1734. in Cafe of Sidney against Sidney.

(P. 2) Barr’d or not. By Act of After-Husband.

1. A Wife is intitled to Dower of the Lands of her first Husband; her second Husband accepts for this Dower left than her third Part; after the Death of this second Husband she may waive it, and have her full third Part. Jenk. 79. pl. 56.

(P. 3) Delayed or suspended. In what Cases.

1. In Dower Rent was granted by Fine, with Condition that when any Heir is within Age the Rent shall cease during the Nonage, and the Feme recovered Dower during Nonage, & Cesset execution till the full Age of the Heir, nota. Br. Judgment, pl. 41. cites 24 E. 3. 61.

2. In Dower it was agreed per Cur. that where the Tenant vouches the Heir in Ward of the King in the same County, where the Writ is brought, the Demandant shall not recover till the Warranty be determined. Br. Dower, pl. 2. cites 3 H. 6. 17.

3. The Heir of the Husband makes a Lease for Years of the Land to the Wife after the Husband’s Death, now during this Leafe Dower is suspended. But not if she has taken another Baron, and during the Cesset the Heir of such Baron makes to him and the Feme such Lease for Years and second Baron dies; if she waives this Lease Dower is not suspended. Jenk. 73. pl. 38.

4. A, an Husband seised of Land held of the King by Knight’s Service dies, his Heir within Age and in Ward to the King; the King by Patent grants to the Widow of A. the Wardship of the Body and Land of the Heir during his Minority; this Patent suspends the Widow’s Dower during the Nonage, for her Dower and such a Patent are inconsistent. Jenk. 73. pl. 38.

5. A, seised of Lands in Fee makes a Lease for Years rendring Rent, and takes Wife; after the Death of A, the Wife shall have Judgment to have the third Part of this Land for her Dower, and shall have a third Part of the Rent; but cesset executio for the Pothelfion of the Land during the Lease. Jenk. 73. pl. 38.

6. Contra
Dower.

6 Conta if he had vowed him and prayed that he should be summoned in another County; for there the Demandant shall recover immediately, quod nota Diversity. Br. Dower, pl. 2, cites H. 6, 17.

7. Dower is demandable against an Infant, and he shall not have his Age. Cro. J. 111. pl. 8. Hill. 3 Jac. B. R. Smith v. Smith.

S. P. But if great Default be in the Wife, Age shall be allowed. As if the best not bring Action in a long Time after the Title accrued, there if the Infant be in by Default, after her Title accrued, Age lies. Arg. in Case of Harvey v. Wyatt, cites Fleta lib. o. cap. 45. and Bract. 252. and Brit. cap. 111. fol. 217.

(Q) What Act of the Baron shall bar the Feme of her Dower.

Recoveries at the Common Law.

[And other Alienations by him.]

1. A T the Common Law if the Baron was once so seised that the Wife was entitled to Dower, if he after aliened the Land, and a Recovery was after had in a real Action upon another Possession, yet his Wife should have had Dower. 47 E. 3. 13 b. 14 D. 4. 33, admitted per Mile.

2. If a Man recovers in Value against the Husband by a Warranty Annecired; yet the Wife shall be endowed, because the fame is by Force of the Warranty made, and not by Reason of Eigne Title to the Land. F. N. B. 150. (D)

It appears by the Preamble of this Statute, that if a Recovery had been in a real Action against the Husband, and the Husband did render the Land to the Demandant, that notwithstanding this Recovery the Wife should recover her Dower. But if the Husband had lost by Default, it was a Question and a Doubt, whether in that Case the Should recover or no; and some Judges would give Judgment for the Woman, and some were in a contrary Opinion. Here is to be noted, that a Recovery by Reddition of the Husband, is not of so great Account in Law as a Recovery against the Husband by Default; but therein before this Act this Diversity was holden for Law, that if in a Writ of Dower the Tenant did plead the Recovery in Bar, the Demandant might reply, Que eco fuit per Fraud, ou per Collusion, ou per gree le Baron, as britton says, who wrote before this Statute; but if it were by Default without Corvin, then the greater Opinion was that it barred the Feme. 2 Inft. 349.

But the Reddition of the Husband was holden for clear Law, as it was adjudged the Year before the making of this Act, so that the Wife was ready to maintain the Title of her Husband. 2 Inft. 349.

All this is to be understood, where he that recovers has no Right, for where he that recovered either by Reddition or Default had Right, there neither the common Law nor this Statute extend it unto. 2 Inft. 352.

If the Recovery be had by Verdict, the Feme shall not falibly in the Point tried, but the may say, that he might have pleaded a better Plea, or confede and avoid the Recovery. 2 Inft. 352.

4. In Dower the Tenant married himself to save the Tail, upon which he entered into the Warranty, and said, that at another Time his Father brought Writ of Right against the Baron, who married himself to save the Tail, upon which the Father of the Tenant said, that the Baron had nothing of the Gift of him whom he supposed gave, and upon this
Dower.

they were at Issue, and found for the Father of this Tenant, then Demandant, that the Donor did not give \&c. upon which the Father of this Tenant recovered Judgment. Haltings said, You have not denied the Seisin of our Baron, nor have you averred that your Father had such Title as you allege, and so recovered upon Dilatory, and prayed Dower. Farhe said, Your Baron and his Heirs shall be bound by the Recovery, and put to Attaint. And by the Common Law every Recovery binds the Feme unless it was upon Render, and the Statute does not aid against any Recovery but Recovery by Default; in which Case the Title, which was not tried against the Baron, shall be tried at the Suit of the Feme; but Recovery by Action, tried against the Baron, is not aided by any Law, and prayed that he be barred, and adjourned. But by the Book Parkins fol. 73, 74, the Feme may fallify Recovery had against her Baron by Action tried. But Brook says, this is not Law in the same Point which was tried \&c. And the like was held Mich. 47 E. 3. fol. 13. that the Recovery against the Baron by Action remained at the Common Law, and therefore the Feme shall not fallify. And by 36 H. 6. Fitz. Faux. Recov. 15. a Feme may fallify Recovery by Action tried against her Baron in another Point, but not in the Point which was tried. Br. Dower, pl. 24. cites 49 E. 3. 23.

5. Where Land pl. recovered against the Feme Tenant in Dower upon Br. Refere, Plea, which does not disaffirm the Possession of the Baron, as where the \&c. pl. 60. pleads that nothing passed by the Deed in Scire Faccias upon Fine against him where pleaded a demission of her Baron by Deed, which passed against him, by which the other recovered against him; in this Case the Feme is not restored to the Writ of Dower; but this Matter pleaded in Writ of Dower is a good Bar. Br. Dower, pl. 26. cites 50 E. 3. 7.

6. And per Wiche, where the Baron was by Dilatory, as upon Non- S. P. For tenure or Mifnoyser of the Vilt \&c. the may fallify in Writ of Dower. this does not disaffirm the Possessi- tion of the Baron; but contra it seems upon Recovery upon Dilatory against the Feme herself being in Dower; Note a Diversify. Br. Refere \&c. pl. 1. cites S. C.

7. The Husband levied a Fine of his Land and died. The Wife Dal. 107. within five Years after his Death brought Writ of Dower, but did not purs. sue her Writ till six Years were past. Manwood and Harper J. held - v. Brought- ton, S. C. this to be no Bar; but Dyer e contra. 3 Le. 50. pl. 71. Trin. 15 Eliz. held accord- ingly. ---

Mo. 57. pl. 154. Pach. 5 Eliz. Anon. S. P. Dyer thought that she was barred because he had Title at the Time of the Fine levied by the Intermarriage, though it could not be executed till after the Death of the Baron; And the Reporter says, that a Precedent was shown Anno 6 H. 8. where all the Matter waspleased. --- Dal. 52. pl 21. S. C. in totidem Verbis. --- D. 224. a. pl. 23. Damport v. Wright, S. P. and seems to be S. C. --- Ibid. Marg. says it was so adjudged Mich. 21 & 32. Eliz. C. B. and that it was also agreed Pach. 34 Eliz. per Cur. --- She is barred by Fine and Nonclaim in five Years after her Husband's Death. 2 Rep. 33. a. cites it as adjudged 4 H. 8. --- S. P. Arg. 2 Roll Rep. 69 cites 1. Eliz. Paine's Case. --- S. P. if the be of full Age, found Memory, out of Prifon, and within the four Seas. Gouldb. 158. pl. 71. Hill. 43 Eliz. Anon --- And bringing a Writ of Dower within the five Years is no Bar to such Fine unless the Return of the Writ be pleaded. 2 Le. 221. pl. 296. Hill. 30 Eliz. C. B. Fitzhugh's Case.

If the brings a Writ within the five Years against one not Tenant of the Land, that is not any Claims within the Statute, but if the brings a Writ against four that are Tenants, and was dies, and the brings a Writ against the others by Journeys Account this is a good Claim within the Statute, though the second Writ was after the Time limited; Per Hober Ch. J. Win. 66. Anne Summer's Case.

But Quere here if the two that died were not Tenants. Ibid.

8. 4 & 5 W. & M. 16. This Act shall not extend to bar any Widow of any Mortagor from her Dower, who did not legally join with her Husband in such Mortgage, or otherwise lawfully exclude herself.

R r (Q. 2)
(Q. 2) Barred. By Acts of Baron and Feme.

1. In Dower the Tenant said, that he himself levied a Fine to the Feme, now Demandant, and to her Baron came ceo que &c. and that the same Feme and her Baron granted and rendered it again to the Tenant with Warranty of the Feme, and the Feme said, that he had nothing but as Feme, and therefore was admitted no Bar; quod mirum, by Reason of the Render and Warranty of the Feme himself, tit. Dower in Fitzh. 160, and 165. M. 19 E. 2, and 145. M. 6 E. 2. Fine upon Conunance de Droit come ceo que &c. by the Baron and Feme; quod mirum! For this is a Gift by Collusion. But otherwife it is of a Fine for Release; For the Title of the Feme does not take Place till the Baron is dead; and to a Release of later Time, and therefore there the may confefs and avoid the Fine. Br. Dower, pl. 77. cites 13 E. 2.

2. Jointure was made after the Coverture, the Husband and Wife levied a Fine Sur Conunance de Droit &c. of the Jointure, it seems clear, if it be as that which the Conunee had of the Gift of the Husband, that is no Bar in Dower; and the Election is not given to the Wise till after the Death of the Husband, according to the Stat. 27 H. 8. c. 10. D. 358. b. pl. 49. Trin. 19 Eliz. Anon.


* S. P. Tho* Recompence Fig. of Recov. 66. cites Pl. C. 514 and 2 Rep. 74. 78. and says, He has heard some learned Men question this, because she has no Estate then in efe, but he says with Submission, the same may be said against a Fine, and the common Recovery effops her as Party, and the Recovery disaffirms her, Husband's Titles to the Lands of which she was dowable. — so by a Fine though the User were declared by the Husband only. Ow. 6. Trin. 28 Eliz. C. 8. Hamington v. Rider.

4. If a Woman has Title of Dower and by Coin causes the Tenant of the Land to be disaffised by a Stranger, against whom she brings a Writ of Dower, and the Feme recovers, yet this is void, and she is not remitted. 3 Rep. 78. a. Hill. 44 Eliz. in Canc. in Fermor's Cafe.

5. If Baron and Feme levy a Fine the Feme is barred of her Dower; Per Coke Ch. 7. in a Note says, that it is so without Question now. 10 Rep. 49. b. Mich 10 Jac. in Lampet's Cafe.

6 Fine levied by Feme Covers to confirm a Lease is no Bar of her Thirds after the Lease satisfied by the Profits. Chan. Rep. 132. 15 Car. 1. Naylor v. Baldwin.

7. Feme joined with her Husband in a Fine in order to make a Mortgage, but which never was made. He died, and the brought Dower, and got Judgment by Dehult, and the Heir could not be relieved; For though it was a Bar at Law, it was not so in Equity. Ch. Prec. 34. Mich. 1691. cites it as Danby's Cafe.
(Q. 3) Bar. By what Estate, Grant &c.

1. NOTE that the Lady of M. was in Chancery to be endowed of the Land of her Baron, where the Heir is in Ward of the King; and because the Ward of the Land and Body of the Heir was committed to her before by Patent of the King, in which no Exception of Dower was made, therefore she was outed of Dower during the Nonage. Br. Dower, pl. 27, cites 2 H. 4. 7. and 11 H. 4. accordingly, in the Case of the Lady Arundel, as it is said there.

2. A Man granted a Rent of 10 l. to a Feme percipienf de terris suis pro tata dote fua de terris suis, and after he married her, and then died, and after she accepted the Rent, and then brought Writ of Dower; Quere if the Acceptance of the Rent be a Bar in Dower, as Dowment ad Olimum Ecclesie, or ex Affensu Patris; For the Acceptance is Recompence. Quere. Br. Dower, pl. 97. cites 20 E. 4. 3.

3. Entry into Part of the Land after the left Continuance by the Demandant will abate the Writ of Dower; And it is no Jujtcification to say that her Husband and the dwelt there till his Death, and that the Heir entered, and he and the Heir dwelt there together till now, and that the claimed at the Will of the Heir, and not otherwise; But it was held not good for the Quarantine; For she should the Death certain, and the Time of the 40 Days, and after, by reason of the Opinion of the Court, she waived the Plea, and traversed the Entry. D. 76. b. pl. 32, 33. Mich. 6 E. 6. Kettleby v. Kettleby.

4. But in Seire Facias to have Execution of Dower recovered, such Entry was no Plea. Ibid. cites 45 E. 3.

5. A Footment was made by the Baron to the Use of himself for Life, and after to the Feme for Life for her Dower, upon Condition to perform his left Will. She entered and agreed thereto, and afterwards brought Dower. It was resolved, that an Acceptance of a Collateral Recompence was no Bar to the Feme of her Dower. 4 Rep. 1. Mich. 14 & 15 Eliz. Vernon's Case.

6. Feme sole Left a marries the Leftor, and the Leftor dies within the Term, and the Wife enters, this shall not conclude her Dower after the Leafe is expired; Arg. Ow. 154. per Shuttleworth, Trin. 29 Eliz. in Case of Goodridge v. Warburton, cites 11 H. 4.

7. A Widow recovered Dower, and upon Writ to the Sheriff to put her in Possession, he returned that he had delivered 8.4 Acres mentioned in the Writ. She brought Seire Facias against the Tenant, suggesting that 60 Acres of the said 8.4 were the Lands of a Stranger not comprized in the Record, and so intended to have a new Division. The Tenant pleaded, that the other 24 Acres were Parcel of the Land recovered, and that she had entered and accepted the same. Adjudged a good Bar by her Acceptance and Entry into the 24 Acres, though less in Quantity than the third Part of all in the Record. Mo. 679. pl. 928. Mich. 44 & 45 Eliz. C. B. Anon.

8. Dower ad Olimum Ecclesie, or ex Affensu Patris, being assented unto, is a Bar of Dower at the Common Law; But a Jointure was no Bar of her Dower at the Common Law. Co. Litt. 36. a. b.

9. An Assignment of other Land whereof she is not dowable, or of a Rent influing out of the fame, is no Bar of Dower. Co. Litt. 34. b.

10. An Estate made by way of Jointure to the Wife for Life, or Lives of one or many others, or to her for 100 Years, or 1000 Years, if she live so
Dower.

10. If an Estate be made to others in Fee-simple, or for her Life, upon
Truf£, so as the Estate remains in them, albeit it be for her Benefic, and
by her Consent, and by express Words to be in full Satisfaction of her
Dower, yet this is no Bar of her Dower. Co. Litt. 36 b.

11. A Devise by Will cannot be averred to be in Satisfaction of her
Dower, unleas it be so expressed in the Will. Co. Litt. 36 b.

12. A purchased in his own and his Son's Name, (who survived A.)
The Vendor was only Tenant for Life, but gave Security that his Heir
should convey the Fee when of Age. A. died before the Conveyance was
executed, so that he never was feized in Fee. Decreed her Title to it
to be discharged, and an Account of the Profits &c. she having enjoyed
it 12 Years; but though she had enjoyed a Jointure for several Years
of Lands evicted from her, yet the Court would not impeach her Title
as to other Lands. Fin. R. 368. Trin. 30 Car. 2. Exton & al. v. St.
John & al.

13. A Term and an old Statute was kept on Foot to protest a Purchase,
and attend the Inheritance. The Widow recovered Dower at Law,
but was prevented from taking out Execution by reason of the Term
and Statute whereupon she brought her Bill to be let into Possession
of her Thirds. The Court inclined to relieve the Plaintiff, in regard of
the equitable Circumstances of a great Portion and the Purchase at an
under Value, and referred to the Master to examine, and file the Case

Ibid. 359. Marg. is a Note, that it
was afterwards dis-
milled, and that the De-
cree of Dif-
mition was afterwards
affirmed up-
on an Appeal
to the House of Lords, and cites Cases in Parliament 69. —— 2 Chan. Cales 12 S. C. but no De-
cree —— S. P. by Ld. Somers, Ch. Prec. 66. pl. 60. Mich. 1696. decreed. Radnor, (Lady) v. Ro-
theram, and affirmed in Dom. Prec. —— But it there had been any Agreement to have had the Be-
nefit of it, it would have done it. Cited per Ld. Somers. Ch. Prec. 67. the Case of Barker v. Fouke.
Ch. Prec. 69. July 1671. Pheasant v. Pheasant, S. P. (though not against a Purchaser) in
which the Wife had recovered at Law the third Part of a Pepper-Corn, being the Rent referred
upon the Term assigned, upon which they brought her Bill in Equity, and after several Arguments be-
fore Lord K. Bridge, and Hale, and Vaughan Ch. Justices, the Case was amicably composd, and
so no Judgment was given. —— S. C. Chan. Cales 181. —— S. C cited Vern. 538.

Ibid. in a
Nota there,
says, that this Case
being heard
before Ld.
Keeper,
Wright, 19
Nov 1702.
he reversed
the Decree.

—2 Vern.
365. pl. 337. S. C. decreed
accordingly by Ld. C.
Somers, and
reversed by Ld. K.
Wright. ——
Equiv. Abr.
218, 219.

15. The Defendant's Husband had devised to her several Parts of his
Estate, altogether of better Value than her Dower, and had devised that
the Profits of all the Reit of his Estate for Years should be applied for
Payment of Debras and Legacies, but did not mention that he intended it
in Satisfaction of her Dower. The Defendant sued at Law and recovered
at Law, though they did plead the Will, and averred that it was in
Satisfaction of Dower; but the Court there was of Opinion, that no such Averment could have been admitted, unless it had been
so declared in the Will. The Plaintiff being Heir at Law, preferred
his Bill to be relieved, and he was relieved; for although it is not de-
clared in the Will to be in Satisfaction of Dower, yet here is that
which is tantamount; for where he appoints the Profits of all the reit of his Estate for other Purposes, it is plain he never intended the
should have her Dower; and in Case she were admitted to her Dower;
those Purposes would be detached, and what appears to be the plain
Intent of a Will by Contra£tion is all one as though it had been
v. Lawrence.

S. C. accordingly, but adds, that the Decree of Reversal was affirmed in the House of Lords, 17 May,
1717. — S C cited per Car. 9 Mod. 162. Trin. 11 Geo. in Canc. 89 so held in the House of Lords, Anno
1717, and adds, That it is true this Court has gone so far as to confine a Widow to her Elicitation
which to take, where a Term for Years was settled on her in Joinder in Bar of her Dower, the

10
Dower.

no Chattel Intefferi can bar her Dower at Law, or within the Statute; but in regard she expressly
confented to accept such an Intefferi for her Jointure, this Court would not admiss her to have
both.

14. In Ejectment, the Plaintiff made Title by Recovery in Dower;
and produced in Evidence the Record of the Judgment, the Hab. Fac.
Seitnam &c. The Defendant offered to prove a 99 Years Term subsisting
prior to this Title, but it was disallowed; For if he had pleaded this in
Bar of the Writ of Dower, yet the Plaintiff must have recovered with a
Ceset Execution, and the Defendant had a proper Time to have pleaded
it then, and has flipped his Opportunity; Besides, a Chattel Intefferi
was at Common Law bound by a Recovery in a Real Action, so
that the Demandant had an immediate Execution without Regard to
the subsisting Term. 1 Salt. 291. Mich. 8 Anna, B. R. Lady Lind-
sey v. Lindsey.

15. Devise of Lands durante Viduitate is no Bar of Dower. MS. Tab.
May 16th 1717. Lawrence v. Lawrence.

16. No Chattel Intefferi can barr Dower at Law or within the Statute Sec 2 Verni;
but where a Term for Years was settled in Jointure in Bar of Dower,
in regard that she expressly consented to accept such an Intefferi for her
Jointure, Chancery put her to her Election whether to take Dower or
that Jointure, but would not admiss her to have both. Per Cur. 9

17. Tenant for Life makes a Lease to Remainder-man for so many Years
as the Remainder-man should live. It was adjudg'd that his Wife should
not be Tenant in Dower; For the Possibility the Tenant for Life had
that the Eftate might revert to him had barred her of all Right of
Dower. Per Cur. 9 Mod. 151. cites 1 E. 3. 14. 15.

18. A Feme Infant having a Jointure made to her before Marriage, may
elect to abide by it or not when of Age, unless after her coming of Age
she enters. Account was directed of the Real Eftate, and after taking
thereof she to elect Jointure or Dower. MS. Rep. 14 May 1734. at
the Rolls. Cray v. Willis.

(Q. 4) Bar. By what Satisfaction or Acceptance.

1. RENT granted out of the very Land recovered in Dower in Re-
compence of all the Dower may be pleaded in Bar, but not if
it was granted out of other Land. D. 91. a. pl. 12. Mich. 1 Mar.
Tunery v. Sturges.

2. In Dower acceptance of 20 Acres of Corn during Life is a good Bar,
and so of Rent, but otherwife of a Horse, and such like which does not

3. If Demandant in Dower accepted the Land affiug'd by the Sheriff,
she cannot in another Term pray a new Execution. Cro. E. 310. in
Cafe of Hanger v. Fry.

4. If the accepts of 24 Acres for her Thirds of 84 and enters into them,
She is Barr'd as to any more. Mo. 679. pl. 928. Mich. 44 & 45 Eliz.
C. B. Anon.

5. Dower in Ireland will be good in Bar of Dower in England. So Dower
in Wales bars Dower


6. Acceptance
The Feme of one attainted of Murder or Felony should not by the Common Law before the Statute 1 E 6. 12. have Dower against the Feeoffee of her Baron, though the Feeoffee was made before the Felony or Murder done; but otherwise since the Statute. Bend. 66. pl. 91. Marg Mich 3 & 4 P. & M. Gate v. Wifeman, cites Dal. 140 b. pl. 24. Hill. 3 P. & M. the S. C. the Demandant was barred by the Opinion of all the Justices — Le. 5. pl. 7. S. C. cited by Manwood Ch. B. as resolved by all the Justices of England, — Co. Litt. 41. 2. cites S. C. resolved, and resolved there also that so it was at Common Law in Case of Felony, but as to Felony the same is altered by Statute. — Le. 3. pl. 7. Mich. 25 & 26 Eliz. in the Exchequer, Mayneey's Cafe, S. P. in Cafe of Tresfon; and Manwood Ch. 3. said, that by reason of this Attainer Dower cannot accrue to the Wife, for her Title begins by the Intermarriage, and ought to continue and be confirmed by the Death of the Husband, which cannot be in this Case; for the Attainer of the Husband has interrupted it as in the Case of Elopement; and this Attainer is an universal Ellopp, and doth not run in Privity only betwixt the Wife and him to whom the Efcheat belongs, but every Stranger may bar her of her Dower by reason thereof; for

7. Nothing but a plain and express Intention of the Parties shall bar the Right of Dower; as where a Settlement was made in Consideration of a Portion in Marriage; but it did not appear that the Parties intended it should be in Bar of Dower. 9 Mod. 152. cited per Cur, Trin. 11 Geo. in Canc. as so held Anno 1717 in the House of Lords. Lawrence v. Lawrence.

(Q. 5) Bar. By What Offence of the Baron.

1. If the Baron be outlawed in Trespass after Diffeßen, and after has Charter of Pardon, his Feme shall be endowed; Contra after Outlawry of Felony. Br. Dower. pl. 82. cites 13 E. 3. and Fitzh. Utalrie 49.

2. A Man seised of Land shall forfeit it by Felony, and by the Attainer of him the Feme shall lose her Dower. Br. Forfeiture de terres, 78. cites 21 E. 3. 49.

3. If a Man seised in Fee commits Felony, and after makes a Feeomission and dies and after is attainted, the Feme of him shall be endowed against the Feloffice; Contra against the Lord by Efcheat. Br. Dower, pl. 80. cites Litt. fol. 9. Per Vavitor.

4. If the Baron be attainted of Felony, and gets Charter of Pardon and after dies, yet the Feme shall not have Dower of the Land which he had before the Pardon. Br. Efcheat, pl. 27. cites F. N. B. tit. Dower. 5. Contra if the Land which he gets after the Pardon; For the first Land shall Efcheat, Br. Efcheat, pl. 27. cites F. N. B. tit. Dower.

6. So it seems of Land which be purchaser, or which defends to him Meffe between the Attainer and the Pardon. Br. Efcheat, pl. 27. cites F. N. B. tit. Dower.


8. Stat. 1 E. 6. cap. 12. § 12. The Wife shall be outlawed although her Husband were attainted, convicted, or outlawed for Treason or Felony, safeguarding the Right of others.
Dower.

for by the Attainder of her Husband the Wife is disabled to demand Dower as well as to demand his Inheritance.

But if the Heir receives the Attainder by Writ of Error then the Wife shall be endowed, and though before the Treason committed the Baron had testified a Fine, and five Years had paffed before the Reversal, yet the shall have her Dower, for during the Attainder she could not claim, and the Action and Right of Dower accrued to her after Reversal of the Attainder by reason of a Title of Record before the Fine by the Seinim in Fees and the Marriage. 13 Rep. 15 Hill. 27 Eliz. in Canc. Ninian Merril's Case. — Mo 639. S. C. — S. C. cited per Coke Ch. J. 23 Reolved 5 for she had no Means of Reversal. 2 Bulst. 454.

A Man seized of Land in general Tail takes Wife and after is attainted of Felony, before the said Statute 1 E. 6. the Ille should have inherited, and yet the Wife should not have been endowed; for the Statute of W. 2. cap. 1. relieves the Ille in Tail, but not the Wife in that Case, but at this Day, if the Husband be attainted of Felony the Wife shall be endowed, and yet the Ille shall not inherit the Lands which the Father had in Fee Simple. Co. Litt. 40. b.

It was otherwise at the Common Law. Co. Litt. 41. a. for then she should not have recovered her Dower ad Oftium Ecclesie, or Ext anti Patris, any more than her reasonable Dower which the Common Law gave her. — But this did not extend to Petty Larency. Ibid.

9. But note that this Clause is altered for Treason* by 5 E. 6. cap.* This extends to Petty Treas- as well as High Treas- tion. Co. Litt. 57. a.

10. 18 Eliz. cap. 1. which makes it Treason to diminuifi, falsify &c. the Monies of this Realm, provides that it shall not make the Wife to lose her Dower.

11. The Wife of one attainted of Felony or Treason, or Heresy, or Prelature &c. shall be endowed. Co. Litt. 31. a.

12. The Wife of a Man attainted of High Treason or Petit Treason shall not be received to demand Dower unless it be in certain Cases specially provided for. But the Wife of a Person attainted of Mifprien- tion of Treason, Murder, or Felony, is dowable since our Author wrote, by the Statute in that Case made and provided, which is more favourable to the Woman than the Common Law was. Co. Litt. 392. b.

13. Tenant of a Copyhold for Life, in which the Custom was that the Wife should have her Widow's Estate, and the Husband was attainted of Felony and executed, and whether the Wife in this Case shall have the Widow's Estate, was the Question upon the Demurrer; Winch being only present seemed that she should not without a special Custom. Win. 27. Hill. 19 Jac. Allen v. Brach.

14. 21 Jac. 1. cap. 26 S. a. It is Felony without Benefit of Clergy to acknowledge, or procure to be acknowledged any Fine, Recovery, Deed enrolled, Statute Recognition, Bail or Judgment in the Name of any Person not privy or consenting thereto, beweth this Offence shall not take away Dower.

(Q. 6) Barred; By what Act or Offence of the Feme.

1. If Feme, Tenant of the King, takes a Grant of the Ward of the Heir during his Nomage, and does not accept her Dower, this is a Bar in Dower pro Tempore &c. Br. Executions, pl. 57. cites 24 E. 5. 59.
Dower.

2. If a Man be seized of Lands in Fee, and takes a Wife, and afterwards the Feme is attainted of Felony, and after the Husband dies, the Feme shall be endowed. 13 Rep. 23. Hill. 27 Eliz. in Canc. in Ninian Menvill's Cafe.

3. The Statute of 11 & 12 W. 3. [cap. 4. 4.] enacts, That no Papist [or Perfom making Proletion of the Papistic Religion] shall purchase any Manors, Lands, or Terms, [Hereditaments] &c. It was said by the Lord Chancellor, that in this Case a Purchase must be made by the Act of the Party in the Way of Grant or Conveyance, or at least by Will, but in Case of one dying Intestate it is the Act of the Law. 3 Wms.'s Rep. 48, 49. Trin. 1730. in Cafe of Divers v. Dewes, whence the Reporter infers, that for the same Reason it should seem that a Papist is capable of taking as Tenant by the Curtesy or in Dower.

(R) What Act in Law will bar the Wife of her Dower.

Divorce.

If the Divorce be Causa Precontractus, the Wife shall not have Dower. 47 Ed. 3. pl. 78.

So if it be Causa Confangumatis. 47 Ed. 3. pl. 78.

Causa Affinitatis. 47 Ed. 3. pl. 78.

Causa Frigidatis. 47 Ed. 3. pl. 78.

But if it be Causa Proteffionis the Wife shall be endowed. 47 Ed. 3. pl. 78


That notwithstanding any Divorce shall happen, yet the shall hold it for her Life, that this is good. Co. Litt. 52. a. ad finem.

Adjudge'd no Bar. Co. Litt. 53. b.

7. Divorce a Mensa & Thoro only, as for Adultery, seems to be no Bar of Dower. Co. Litt. 32. a.

(S) In what Cases Assignment of Dower is neceffary.

If a Woman recovers Dower of Land, she cannot enter before Execution is sued. 40 Ed. 3. 22. 45 Ed. 3. 5. b.

The same Law is where the Recovery is of a Rent. 40 Ed. 3.

22. yet there it is certain enough.

3. In
Dower.

3. In Dower, the Tenant pleaded Recovery by himself against the Baron in Affs., and the Demandant said that the Baron was seised after Covern-
ture, and unjustly the Tenant, and after distress him and recovered by Af-
sts; Judgment it Dower, and so confessed and avoided him. Br. Con-
fess and Avoid, pl. 12. cit. 14 H. 4 33.

5. If there be Lord and a Woman Tenant by Fealty, and 3 s. Rent, and
they intermarry, and the Lord dies, the Wife shall have 12 d. of the
Rent for her Dower of the Seigniory by way of Retainer &c. without

6. If a Man endows his Wife ad Offinm Ecclesie, he then openly de-
clares the Quantity and Certainty of the Land which the shall have
for her Dower; and in such Case the Wife, after the Death of the
Husband, may enter into the Land of which she was endowed, without

has Judgment to recover the third Part, although it be certain that a b. S. P.
he shall have 40 s. yet he cannot distrain for 40 s. before the Sheriff de-
lay the same unto her; For wherefoever the Writ demands Land, Dower is of
Rent, or other Things in certain, there the Demandant after the 3 s. Rent.
Judgment may enter or distrain before any Seisin delivered unto him—Perk. S.
by the Sheriff upon a Writ of Habere Facias Seisinam; But in Dower,
where the Writ demands nothing in certain, there the Demandant after
Judgment cannot enter or distrain until Execution sued, by which Ex-
ecution the Sheriff is by the King's Writ to deliver a third Part in
Certainty to the Demandant. Co. Litt. 34. b.

8. So when the Wife of one Tenant in Common demands a third Part Co. Litt. 57.
of a Moiety, yet after Judgment she cannot enter until the Sheriff deliv-
er to her the third Part, although the Delivery of the Sheriff shall
reduce it to no more Certainty than it was. Co. Litt. 34. b.

9. Where it appears in certain what Lands or Tenements the Wife
shall have for her Dower, As in Case of an Endowment Ad Offinm Ec-
clesiæ, or Ex Affinis Patris, the Wife may enter without Alligment
of any; But where the Certainty appears not, as to be endowed of the
third Part to have in Severalty, or the Moiety, according to the Cus-
tom to hold in Severalty, Dower must be aligned to her after the
Death of the Husband, because it does not appear before Alligment
what Part of the Lands or Tenements she shall have for her Dower. Litt. S. 43. and Co. Litt. 57. a.
(T) What Persons may assign Dower of Common Right.

[And against whom a Writ of Dower lies for a Collateral Respect.]

1. An Infant may assign Dower in Pais, because he is capable by Writ.
   Before the Guardian in Chivalry enter, the Heir within.
   Age may assign Dower, for the Guardian may waive the Wardship; But there needs neither Livery of Seisin, nor Writing to any Assignment of Dower, because it is due of Common Right. Co. Litt. 53. a.

2. [But] an Infant in Ward cannot assign Dower of the Land in Ward, for the Prejudice that may come to the Lord thereby. 9 H. 6. 6. b.

Co. Litt. 52. a. S. P. of the Lands and Tenements which he hath in Ward. —Ibid. 55. a. S. P. —Anno 9 H. 3. Dower 137. A Man of the Age of 18 Years took a Wife, and by Affent of his Guardian endowed her, ad Oftium Echelle, and it was adjudged a good Endowment, although the Husband died before the Age of 21 Years. Co Litt. 54. a.

3. Guardian in Chivalry may endow her. 9 H. 6. 6. b. 24 b.
   If a Man be yellefted of the Wardship of certain Land, either jointly with his Wife, or in the Right of his Wife, yet the Writ of Dower lies against the Husband only. Co. Litt. 58. b.

4. And a Writ of Dower lies against Guardian in Chivalry. 47 Att. 5. per Finichden.

5. If a Husband hath a Ward in the Right of his Wife as Guardian in Chivalry, a Writ of Dower lies against the Husband, without naming the Wife. 47 Att. 5. per Finichden.

6. A Writ of Dower does not lie against Guardian in Socage. 29 Att. 68.

7. A Guardian in Socage cannot assign Dower. 29 Att. 68. But

8. The King committed the Wardship during the Nonage of the Infant; and whether the Committee might assign Dower so as to bind himself, Kelw. * 112. dubitur.

Though the King does commit the Custody of the Land to another, yet he may assign Dower to the Wife in Chancery, and the shall have a Writ to the Ecclesiar to deliver the Land to her. F N. B. 262. (D). —Ibid. in the new Notes there (b.) cites Kelw. 133, that it seems the Committee cannot assign Dower; but says Oxere tamen, if it be not good till the Heir sues his Livery.

* This is at Fol. 133. b. pl. 112. Causa incerti Temporis.

9. If a Woman Guardian in Socage bring a Writ of Dower against the Heir, it is no Plea for the Heir to say, that she is Guardian in Socage and may endow herself &c. Perk. S. 452.

10. And if a Woman Guardian in Socage bring a Writ of Dower against the Feoffe of the Husband with Warranty, the Feoffe cannot shew the
Dower.

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the special Matter, and pray that the Court would award that she may endow herself of the Fairfeit Part &c. because that the Feoffee may vouch the Heir. But the Guardian in Knights Service may do &c. Perk. S. 453.

11. As concerning Dower at the Common Law, there must be an Affignment either by the Sheriff by the King’s Writ, or else by the Heir or Tenant of the Land by Consent or Agreement between them. Co. Litt. 34. b.

12. An Endowment Ex affensu Matris is as good as Ex affensu Patris; because there is an Appearance of a constant and perpetual Heir. Co. Litt. 35. b.

13. It is held in the 2 H. 3. Dower 199. That if the Heir apparent be within Age, yet the Endowment Assempus Patris is good. Note, that Littleton in the Case of Dower Ad Ottium Ecclesiae doth put the Husband of full Age; But here of the Dower Ex Affensu Patris he speaks generally. Co. Litt. 35. b.

14. The Lord, of whom the Land is held in Chirograph, is not possessed as a Guardian against whom a Writ of Dower lies until he enters; Of the Wardhip of the Body he is possessed before Seizure, because it is Transitory. But he is not possessed of the Lands until he enters. Because it is permanent, and therefore if he does not enter, the Heir within Age may assign Dower. Co. Litt. 38. a. b.

(U) [Affinment.]

Of what Things it may be.

[Or what she shall be intitled to.]

1. If the Wife recovers Dower of a Rent, she shall not have the Rent incurred before Judgment, nor after Judgment before Execution. 40 C. 3. 22.

2. If the Husband fows the Ground and dies, the Property of the Corn is in the Executors but subject to this Condition, that if the Heir assigns to her the Land fown for her Dower she shall have the Corn; For she shall be in de optima Possiellione above the Title of the Executors. 2 Inst. 81.

(U. 2) In what Cases she has Election to be endowed of one Thing, or another, or of Both.

1. Sometimes the Wife may chuse to be endowed of one Land, or of other Land &c. or of servitude, or of a Tenancy &c. of Land, or of a Rent-Charge, or of a Rent-Stock illuing thereout &c. But in such Cases she shall not have Dower of both, if not that it be in Special Cases &c. Perk. S. 318.

2. If a Man seized of one Acre of Land in Fee takes a Wife and feith, exchanges the same Acre of Land with a Stranger, for another Acre of Dower, pl. Land, 130. Mich.
45 E. 3. S. P. by Wilby, F. N. B. 149. (N). S. P. the shall not have Dower of Both. —— Co. Litt. 31. b. S. P.

3. If there be Lord and Tenant by Fealty, and 12d. Rent, and the Lord takes a Wife and purchaseth the Tenancy in Fee and dies, in this Case it shall be at the Liberty of the Wife to have Dower of the AccorDr: according her be endowed in Fee, but if endowed in Fee, shall not have Dower of both Acres. Perk. S. 319.

2. If he shall it be if a Man seif'd of a Rent-change in Fee takes a Wife, and purchaseth the Land in Fee whereout the Rent is illuing, and dies, it shall be at the Liberty of the Wife to be endowed of the Land, or of the Rent &c. Perk. S. 320.

5. If there be Lord and Tenant by Fealty, and the Lord takes a Wife, and the Tenancy be not the Husband and the Seigniory determined during the Coverture, by Act of Law, and it is to no Disadvantage unto the Wife to be endowed of the Tenancy, for if the be put out of the Poissell of Part thereof by a more ancient Title, the Seigniory shall be revived for so much, and if all the Tenancy be recovered by a more ancient Title, then the Seigniory shall be re-revived in all, &c. and then the may have Dowry of the Seigniory &c. Perk. S. 321.

(X) Assignment.

How it is to be made.

An Assignment of Dower where the Husband was seif'd in Common, the Wife shall not be endow'd by Metes and Bounds. Co Litt. 32. b. in Principio.

Where the Husband was seif'd in Common, the Wife shall not be endow'd by Metes and Bounds. Co Litt. 32. b.

2. But otherways it is where the Thing recovered is not severable. 43 E. 3. 15. 6.

3. If A. seif'd of Lands in Fee takes a Wife, and after devises it for 21 Years to B. and dies, and after C. his Heir affinys to the Wife the third Part of the Land for her Dower, without setting it out by Metes and Bounds, and the Wife accepts it in Satisfaction of her Dower; tho' the was not bound to accept it in Common, without setting it out by Metes and Bounds, nor the Heir bound to assign it out by Metes and Bounds, for the Prejudice that may accrue to them to occupy it in Common, yet maliciously as the third Part in Common is due by Law, and they both consented to accept it according to Law, they may by their Con sent waive the Assignment by Metes and Bounds, which is only for their own
Dower.

own Advantage, and accept it as it is due by Law; and though all the Land
the Lease for Years did not agree therein, yet the Assignment of the
Tenant of the Freehold shall bind him. 17th 1651. between I
and Lambert, adjudged upon a special Verdict, Injustice So-

which Nicholas and Ask. Justices agreed, held that it may be assigned Generally of the third Part in some Cases, and the Parties may agree against Common Right, and that here both Parties agreed to take Dower in this manner; but Jermaine contra. But per Roll Ch. J. if the Sheriff assigns Dower and does it not per Metas & Bundas, it is Error if it might have been so Assigned, and where a Feme cannot be endowed per Metas & Bundas, she may enter without Assignment.

4. A Rent may be reserved for Equality of Dower, if the thing
Assigned be of greater Value than she ought to have. 17 E. 3. 10.

5. But this cannot ensue as a Reservation, if the Wife in another
Clause of the Deed makes a Grant of the Rent, without any men-
tion in the Deed, that the Thing is of greater value. 17 E. 3. 10.

6. If the Guardian assigns Dower, referring a Rent for equality
during the Sonage of the Heir, this is not good, because this shall
not go to the Heir. 17 E. 3. 10.

7. If Dower be assigned upon Condition, the Condition is void.

for the Comes in by her husband.

8. If Dower be assigned of the Lands, excepting the Trees
 growing on the Land, this is a void Exception for the Cause a-
foresaid. Br. Coverture at a Dower cited 44 El. 2. R. between
Bullock and Finch, to be so adjudged.

9. If Dower be assigned with a Remainder over, it is a void
Remainder, because she comes in by her husband; and when it
should be a good Remainder, it would be without a particular

made to the Feme, because the Dower has Relation to the Death of the Baron.

10. The King may assign Dower without limiting any Estate.

11. If a Woman be endowed of an Advowson, the shall be as-
signed the third part of the Advowson, and not only the third part
of the profit, neither the third presentation. 17 E. 3. 38. b. Con-
tra, 17 E. 3. 22. b.

12. If a Woman recovers Dower of a Rectory inappropriate, where
there is not any Glebe, the Sheriff shall put her in possession of the
third part of the Tithes generally, and not of the Tithes that
issue out of any third part of Lands of the Parish in certain.
Path. 9 Jac. 5. per Curtiam.

because it is uncertain what Land shall be sown.—— 11 Rep. 235. b. Coke Ch. J. cited Path.
5 Jac. the Counties of Oxford's Case held accordingly.

13. If a Woman be dowerable of three Manors, the Sheriff may
assign her one of the Manors in Lieu of all three. 12 E. 4. 2. of
the Society of a Manor. Ancient Entries. Square Impeedit
529. 10.

of three Acres; for if he assigns the third Part of every Acre it would be infinite.—— If upon a
Recovery, in a Writ of Dower de tribu, Manersse the Sheriff on an Habitation, Seifman returns that he has
recovered
rendered to the Feme one Manor, this is not good; for she shall have the third Part of each; but if the Writ was of all Lands and Tenements, and there was Meadow and Pallure, the Sheriff may align all the Meadow; Agreed by all the Justices. Bendows laid, that if the Writ had been of all Tenements it would have been good, which Brown denied. Mo. 12. pl. 47. Trin. 4 & P. & M. Anon.—Ibid. 19. pl. 65. Mich. 2 Eliz. Anon. S. P. and seems to be S. C. held accordingly. And if the Aligns were made by Consent of the Parties, or by Alignment of the Heir or Tenant of the Land, then the Alignment of the one Manor in the Name of her Dower of all the Manors is good enough; and so was the Opinion of all the Justices.

14. So if an Adowvon be appendant to one or more of the said Manors, the Sheriff may align one of the Manors with the Adowvon appendant in lieu of Dower. 12 C. 4.

15. If a Woman be dowable of one Manor, the Sheriff may align the third Part of the Manor in common in lieu of Dower, without setting it out by Metes and Bounds. Ancient Entries, Quare Impedit 329. 10. and Quare Impedit in Dower 1. so aligncd in Chancery.

16. A Feme is endowed of a third Part of the Manor to which Franchise are appendant, the shall not have the third Part of the Franchise; for these cannot be divided. Contra where she has the whole Manor in Dower. Br. Dower, pl. 102. cites 3 E. 3. Iritene Derby.

17. If on a Recovery of the third Part in Dower the Sheriff affigns a Moity &c. the Tenant has Remedy against the Sheriff by Affife, or he may have a Seire Facias against the Sheriff to affigu de novo. P. N. B. 144. 1 in the new Notes there (b) cites 22 R. 2. Execution 165. and says, see 21 H. 7. 29.

18. If the Freehold, whereof she is dowable, be in the Possession of divers Persons by several Titles, the Wife in a Writ of Dower brought against one of them, shall recover but the third Part of the Freehold which is in his Possession; So that a Man or a Woman who hath Possession of Parcel of the Freehold (of which the Woman is dowable) shall not be charged according to the Possession of the whole Freehold of which the Woman is dowable; if he or she will not. Perk. S. 423.


20. If Alignment and Grant of Land be made to the Feme for Terms of Years in Recompence of her Dower, this will not bar her; because of this she is not Tenant in Dower, nor has such Estate in such Case as she would have if she had been inlabeled, viz. an absolute Estate for Life. 2 And. 31. in pl. 20. Trin. 38 Eliz. Anon. So if Feme accepts a Rent for Years in Allowance of her Dower or for the Life of him that aligns it, the Rents shall not bar her of her Dower, because they are not such-like Estates as she should have in her Dower, which the Law appoints to be an Estate for her Life. And. 288. in pl. 296. ad finem Patch, 34 Eliz.—Hob. 153. S. P. by Hobart Ch. J. cites 7 H. 6. 54. and 33 H. 6. 2.

21. The Wife of one Jointenant shall have the third Part of a Moity, which her Husband purchased to hold in common, with the Heir of the Husband, for in this Case her Dower cannot be aligned by Metes and Bounds. Litt. S. 44.

22. Though of many Things that be intire, whereof no Division can be made by Metes and Bounds, a Woman cannot be endowed of the Thing itself, yet a Woman shall be endowed thereof in a special and certain Manner. Co. Litt. 32. a.
Dower.

23. As of a Mill a Woman shall not be endowed by Metes and Bounds, nor in common with the Heir, but either she is entitled to half the third Toll-Difs, or she in integro Molendino in the third tertiam Menjem. Co. Litt. 32 a.

She shall have the third Part of the Profit, or of Quanlibet of the Profit, tertiam Menjem. Co. Litt. 32 a.

The shall have a Frechold in the third Part of the Mill &c. F. N. B. 49 (K) cites Mich. 45 E. 3 Perk. S. 542 S. P. as to the third Part of the Profit, cites H 5. 1. Mich. 45 E. 3. Dower 50 16 Aff. 41 14 Rep. 25. b. Coke Ch. J. cited Mich. 3 & 4 Eliz. Bendl. [118. 120. 131] where the Affignment was accordingly.

24. Of a Villein, either the third Day's Works, or every third Week or Month. Co. Litt. 32. a.

25. Of the third Part of the Profit of Stallage. Co. Litt. 32. a.


27. Of the third Part of the Profits of the Office of Marshal. Co. Litt. 32. a.

28. Of the third Part of the Profits of the Keeping of a Park. Co. Litt. 32. a.

29. Of the third Part of the Profits of a Dove-House. Co. Litt. 32. a.


32. a.

33. If the Wife be intituled to have Dower of three Acres of Marsh, every one of the Value of 12d. and the Heir by his Industry and Charge makes it good Meadow, every Acre of 10s Value, the Wife shall have her Dower according to the improved Value, and not according to the Value as it was in her Husband's Time; for her Title is to the Quantity of the Land, viz. one just third Part. Co. Litt. 32. a.

34. And the like Law is if the Heir improve the Value of the Land by Building. Co. Litt. 32. a.

35. And on the other Side, if the Value be impaired in the Time of the Heir, the hall be endowed according to the Value at the Time of the Affignment, and not according to the Value as it was in the Time of her Husband. Co. Litt. 32. a.

36. There needs neither Entry of Seisin nor Writing to any Affignment of Dower, because it is due of Common Right. Co. Litt. 32. a.

37. Both of Dower Ad Olibum Ecclesie, and Ex Alienfu Patris, the Certainty must be expressed. Co. Litt. 35. b.

38. Dower demanded of the third Part of Tithe of Wool and Lamb in three several Towns, and it was demanded of the Court how the Sheriff should deliver Seisin; and the Court held it the best way for the Sheriff to deliver the third Part of the tenth Part, and the third tenth Lamb, viz. the 30th Lamb. Brownl. 126. Mich. 9 Jac. Anon.


40. Upon an Habere Facis Seisinam in Dower, the Sheriff returned, S. C. Quod hanc fecit Seisinam de tertia Partis de the Honour, Hundreds, Tenements &c. viz. De uno Tenemento seu firma in C. vocat' Welfon-Farm, in Tenura f. S. and 12 other Tenements by Copy; and it was held, that this being in an Affignment of Dower, and only the Return of the Sheriff, was certain enough, and that there needed not such precise Certainty therein as in Declarations and Indemnities; Adjudged. Cro. J. 621. Mich. 18 Jac. Sir Charles Howard v. Sir William Cavendish.

41. Commission out of Chancery was ordered to align Thirds for Dow- 14 Fit. 145 cites. 25 Eliz. Wild v. Wells.

42. Error
42. Error of a Judgment in Dower of the third Part of a Mill and Kiln, and two Acres of Land, where the Judgment was to recover Seisin of the third Part of the aforesaid Tenements severally per Matas & Bandas, and the Error assigned was, that it could not be per Metas & Bandas of the Mill and Kiln, for if it should, neither of the Parties could use his Part, but that the Judgment ought to be de tertia Parte tantum; and the Judgment was reversed. Lev. 282. Paclh. 18 Car. 2. B R. Gilpin v. Cocklon.

43. Where a Writ of Dower was brought against several Purchasors, the Court directed, that the Sheriff should charge them all proportionally, though otherwise the Sheriff might have charged all out of one Party, and the Party could have no Remedy at Law; but in Equity they ought to be all equally charged; and therefore the Court gave this Direction. Freem. Rep. 227, pl. 234. Paclh. 1677. Anon.


(Y) Assignment of Dower against common Right in lieu of Dower.

What it is,

See (X) pl. 11.

1. To assign Dower of an Advowson is against common Right, for the ought to have the third Presentation of Common Right. 12 C. 4. 2.

2. So an Assignment of Rent out of Land is against Common Right. 12 C. 4. 2.

3. An Assignment of all the Wood, or all the Meadow in lieu of all the Wood, Meadow, Pature and Arable, is not against Common Right, but Common Right is the third Part of each. 12 Ed. 4. 2. 6.

Upon an Habere Factas Seisin was upon Recovery of Dower of three Mannors, resolved the Sheriff cannot give her Seisin of one Manor, but he must give her Seisin of the third Part of every Manor; but if the Recovery be of all Lands, viz. Meadow &c. Pature, the Sheriff may Assign her Dower in the Meadow only. Mo. 12. pl. 47 Trin. 4 & Tr. Phil. & M. Anon.

4. If the be dowable of three Manors, and the accepts of the Heir ne Manor in Dower Allowance of all, this is an endowment against Common Right. 18 H. 6. 27. 19 E. 3. Nuture imped 154.

5. A Feome was endow'd of the Moiety of the Rent, by reason of the Custum of the Land out of which the Rent issued. Br. Rents. pl. 20. cites 4 E. 3.

6. In Dower the Tenant pleaded a Fine levied by the Prior of N. of the same Rent of 20 l. of which Dower is demanded, to 7 l. and his Heirs, upon Condition, that if the Heir, or any Heir of 7 l. shall be within Age at the Time of the Death of his Aisessor, that then the Grantor and his Successors shall be discharged of the Payment of the Rent during the Nonage, and said, that the Baron died, W. his
Dower.

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his Son within Age; Judgment if Dower during his Nonage; For the Rent is ceased during the Nonage, and yet the Feme recover'd Dower by Award and Cellet Execucio during the Nonage, and therefore Error was brought in B. R. Brook says, to what End the Writ of Error was taken? For it seems that it is a good Judgment. Br. Dower, pl. 51. cites 23 E. 3. 19.

(Z) What Person may assign it.
[Against Common Right]

1. The Sheriff cannot assign Dower against common Right.
   12 E. 4. 2. Contra 18 B. 6. 27.
2. The Heir may. 12 E. 4. 2. b. 26 Am. 41.
3. And to the Right Tenant of the Land may. 12 E. 4. 2. b.
4. The Sheriff may assign a Rent in lieu of Dower. 20 Am. 41.
5. If the Heir be in Ward to the King, and the Wife is to be Dower-in-endowed in Chancery, the Chancery may assign a Rent de novo not to be assigned to her out of the Land of which she is dowable, in lieu of Dower.
6. If a Writ be directed out of Chancery to the Heir or deliver to the Wife ten Marks Rent, and Land in the Name of the King's Tenant is in Dower, and the Chancery assigns to her five Marks Land, and five Marks Rent de novo out of other Land of which she is dowable, in such Case this shall bind the Writ. 26 Am. 41. adjudged by all the Justices, which is more usual, or a Writ to the Chancery to do it, cites F. N. B. 265. If it had been said, that the Heir had assigned it in Obedience to the Decree it might have been good, but in such Case the Tenant had been in by the Assignment, and not by the Decree; Per Holt Ch. 1. in delivering the Opinion of the Court. Ed. Rvym Rep. 784. Trin. 1 Ann. in Case of Smith v. Angel——

7. A Rent out of the same Land may be assigned in lieu of Dower. 7 H. 6. 34. b. 26 Am. 41.

8. If Tenant in Tail assigns a Rent out of the Land in lieu of Dower, this shall bind his Issue, unless it amount to more than a third part; Per 2 Judges. And. 288. Pach. 24 Eliz. Bickly v. Bickly.

9. Assignment of Dower made by a Differei is good, and shall not Co Litt. 55. be avoided, if it be not made by Covin or Fraud, if the Woman has the Right to have the Thing in Dower. Perk. S. 394.

10. If a Differei, Abator, or Intruder, be of Land by Covin of the Co Litt. 53. Woman who has Right to have Dower of the same Land, and such Differei. 4 and 535. to, Abator, or Intruder, endow the same Woman, the Differei who has Right unto the Land, may avoid and defeat such Dower by his Entry into the Land &c. Perk. S. 395.

X x X

11. If
Dower.

11. If J. S. be Tenant of Land unto which a Woman has Right to have Dower, and he is displaced of the same Land by the Woman and a Stranger, or by the Woman alone, and afterwards she is endowed of the same Land by one who is in the Land by her and the other joint Differior, or by one of them, such Endowment may be avoided by the Entry of the Differior, because he shall not take Advantage of the Wrong of which the herfell wasParty &c. Perk. S. 396.

Co. Litt. 35. a S. P.

12. If an Assignment of Rent be made unto a Woman in Allowance of Dower, which the ought to have of the same Land, by a Differior, Abator, or Intruder, the Differior, or he who has Right unto the Land, shall not be bound by such Assignment, notwithstanding that it be without any Covin of the Woman &c. Perk. S. 398.

13. Assignment of Dower by a Guardian in Secuage is not good, as it seems, because a Writ of Dower does not lie against him. Perk. S. 404.


15. But if made by him who has the Freckold, it is good if it be of such a Thing as may be assigned, and of which she has Right to have Dower; And though she has not Right to have Dower thereof, yet it shall stand good, until it be defeated and avoided &c. Perk. S. 404.

16. It must be made by him that is Tenant of the Land, but herein certain Diverfities are to be observed; if two or more be Tenants of Lands, the one of them may assign Dower to the Wife of a third Part in Certainty, and this shall bind his Companion, because they were compellable to do the same by Law. Co. Litt. 34. b. 35. a.


Fitzh. Dower 110. and 1 E. 2. Dower 139.


17. But if one of them assigns a Rent out of the Land to the Wife, this shall not bind his Companion, because he was not compellable by the Law thereunto. Co. Litt. 35. a.

18. If the Husband makes several Feoffments of several Parcels, and dies, and the one Feoffee assigns Dower to the Wife of Parcel of Land in Satisfaction of all the Dower which she ought to have in the Land of the other Feoffee, the other Feoffees shall take no Benefit of this Assignment, because they are Strangers thereunto and cannot plead the same. Co. Litt. 35. a.

19. But in that Case, if the Husband dies seized of other Lands in Fee-simple, and the same descends to his Heir, and the Heir endows the Wife in certain of those Lands, in full Satisfaction of all the Dower that she ought to have, as well in the Lands of the Feoffees as in his own Lands, this Assignment is good, and the several Feoffees shall take Advantage of it; And therefore if the Wife bring a Writ of Dower against any of them, they may vouch the Heir, and he may plead the Assignment which he himself has made in Safety of himself, left they should recover in Value against him, so as there is a Privyty in this respect between the Heir and the Feoffees, and by this Means the same may be pleaded by the Heir that made it; And so it is adjudged in our Books. Co. Litt. 35. a.
(A. a) Assignment [of] Common Right.

How.

1. If a Man assigns a Rent out of Land of which she is dowable upon Condition, in lieu of Dower, this is not good, for she ought to have it free of any Condition, as she should have the Land. 

Walter Bridgeman, at a Suit in Chancery cited a Report, 27 Eliz. S. between Wentworth and Wentworth, to be so adjudged.

at the Day, it should cease and determine, and that then she should have her Dower; and all the Court held that it did not bar her of her Dower; For if the Assignment bars the Prize of her Dower, she ought to have such Estate in the Thing assigned as she should have in the Dower, which is an absolute Estate for her Life, and if it be not the shall not be bar'd. —— Cre. E. 451. pl.19. S. C. adjudged for the Demandant. —— Noy 55. S. C. adjudged for the Demandant. —— See (X) pl. 7. S. P.

2. A Rent out of the same Land may be assigned in lieu of Dower without Deed. 12 H. 4. 17. b. 7 H. 6. 33. b.

3. The Assignment must be absolute, and not conditional, or subject to any Limitations. Co. Litt. 34. b. ad finem.

(B. a) What Things may be assigned in lieu of Dower.

[And how without Deed.]

[And what Actions be for such Things.]

[And Pleadings.]

1. An Affise lies for Rent assigned without Deed out of Land of Br. Dower, which she is dowable, (therefore it is in lieu of Dower.) 33 Br. Dowers, pl. 5. cites S. C. ——

H. 6. 2. b.

2. [But] an Affise lies not for Rent assigned without Deed out of other Land of which she is not dowable, (therefore it is void and not in lieu) 33 H. 6. 2. b. Perkins, S. 497.

Serjeants; and it is there said that the like Matter is 7 H. 6.

3. In Dower the Defendant pleaded that he had assigned to the Wife 20 Acres of Corn out of the Land in name of Reconcurrence of her Dowers; and held a good Bar, as well as of Rent, or any other Profit out of the Land. Mo. 59. pl. 167. Trin. 6 Eliz. Anon.

4. The Reservation of an Horse or Sheep is a good Reservation of Rent, yet Assignment of an Horse or Sheep in lieu of Dower is not good. For it is not of the Nature of the Soil. Mo. 59. pl. 167. Trin. 6 Eliz.

5. Common

6. In Dower brought by the Wife of Beamonte Matter of the Rolls, in the Time of E. 6. the Defendant said, that he himself before the Writ brought did often a Rent of 10l. per Annum to the Demandant, in Recompence of her Dower, upon which the Demandant did demur in Law; and the Cause was, because the Tenant had not leased what Estate he had in the Lands at the Time of the granting of the Rent, as to say that he was seised in Fee, and granted the said Rent; so as it might appear to the Court upon the Plea, that the Tenant had a lawful Power to grant such a Rent, which was granted by the whole Court, and the Demurrer holden good. 2 Le. 10. pl. 15. Hill. 20 Eliz. C. B. Beamonte v. Dean.


(C. a) In what Cases a Woman shall be twice endowed.

[Evacation.]

1. If a Woman be endowed, and after her Dower is evicted by an elder Title, he shall have a new Writ of Dower, and shall be endowed of the other two Parts. 43 Att. 32. admitted.

2. If a Woman brings a Writ of Dower against the Tenant of the Land, who vouches the Heir in the same Country, and the Woman recovers against the Heir if he hath, and if not against the Tenant, and the Woman sues Execution against the Heir, and after this is evicted by an elder Title, she shall have a Scire Facias upon the first Recovery against the Tenant to be endowed of the two Parts. 43 Att. 32.

3. The same Law if the first Endowment was in Chancery. 43 Att. 32. adjudged.

4. Feme Tenant of the King is endowed in Chancery during the Nomage of the Heir, and after the Heir has Livery, and after the Feme is evicted, she shall have Scire Facias to have the Land re-seised, and to be endowed of other two Parts, and when the Heir is vouched in the same Country the Feme shall recover Dower of the Land of the Heir. Br. Dower, pl. 65. cites 43 Att. 32.

5. If a Woman after the Death of her Husband entreat and agrees to Dower en Affumta Partis, or ad Offition Ecclesiæ, the is concluded to claim any Dower by the Common Law; but if she will, the may refuse the Dower ad Offition Ecclesiæ &c. and then she may be endowed according to the Course of the Common Law. Litt. S. 44.

6. If a Man seised of two Acres of Land in Fee by rightful Title, and of another Acre by Diflief, takes a Wite and dies, and his Heir enters and affigns
Dower.

affix the Acre which his Ancestor had by Dileisio unto the Wife in Name of Dower, in allowance of all the Freehold which her Husband had &c.
And the Dileisio enters into the Acre affixed unto her and puts her out, the shall be now endowed of the third Part of the two Acres which her Husband had by rightful Title, in such Manner as if the other Acre had never been in the Potleffion of her Husband &c. Perk. S. 419.

7. If Tenant in Tail make a Discontinuance in Fee, and the Discontinuance takes a Wife and hath Issue and died, and the Discontinuee is not feised of any other Thing during the Coverture, of which his Wife is dowerable, and his Issue enters, against whom his Mother brings a Writ of Dower and recovers, and hath Execution of the third Part by Metes and Bounds, and the Issue in Tail brings the Formacion against the Tenant in Dower, and she vouches the Issue of the Discontinuee, who enters into the Warranty and loisth, and the Demandant bad Execution. Now, the Tenant in Dower shall be new endowed of the third Part of the two Parts which remain &c. notwithstanding that his Issue hath enteoffed a Stranger of Part thereof or of all. For notwithstanding that the Potleffion which her Husband had (whereof he is dowerable) be defeasible, yet the shall have Dower thereof until it be defeated &c. Perk. S. 420.

3. If a Woman endowed loes by Action tried her Dower, if she prays Aid of him in Recover, the shall be new endowed of that which remaineth. F. N. B. 149. (M.)

9. If the Baron aliens Parcel of his Lands during the Coverture and dies, and the Heir enters into the Residue and allows his Mother Parcel of the Lands, which remain, in Recompence of all her Dower, and the after brings Action of Dower against the Alien of other Lands, he shall plead this Assignment and bar her of her Dower; But if the Executor of the Baron aligns to the Feme Parcel of the Lands alien'd in Recompence of her Dower, the Heir nor the other Feoffees of the Baron shall not plead it; Per Dyer. Mo. 25, 26. in pl. 86. Trin. 3 Eliz. said that it had been so adjudged.

10. B. feifet of Land in Fee takes to Wife J. and enteoff's C. in Fee, who takes Alice to Wife; C. dies, Alice is endowed, B. dies, J. recovers Dower against Alice and dies, Alice shall enjoy the Land again during Life. Co Litt. 42. a.

11. If she is endowed of the immediate Estate descended from the Baron to the Heir and the is impaled afterwards she shall vouch the Heir and shall be newly endow'd of other Lands which the Heir has; But if the is endowed by the Alien of the Baron or of the Heir, and the is after impaled, the shall not vouch the Alienie to be newly endow'd. 9 Rep. 17. b. Hill. 28 Eliz. per Cur. in Bedingfield's Case.

wouches the Heir, the Demandant may shew that the Heir has Lands descended to him in the same County (for to another County the Original does not extend) and pray that she may be endowed of his Estate, and this is for the Benefit of his Voucher to be newly endow'd.

V y y (D. a) What
(D. a) What Charges made by the Husband, or other, and upon what Things, the Wife shall avoid.

1. 8 Eliz. 251. a Man takes a Wife, having a Manor in which is a Custom, that the Lord, Supervisor, or Deputy, may demise by Copy, and devise, that two should make customary Estates for the Payment of his Debts, and dies, the two hold Courts in their own Name, and grant Copies in Reversion according to the Custom, the Wife hath one of the Copyholds assigned to her for her Dower, and per Curiam the Hall avoid this Grant.

2. Co. 4. 26 El. 24, the Lord of a Copyhold Manor, within which there were many Copyholders for Life, took Wife, a Copyholder died, and the Lord granted it to another, and died, and adjudged, that the Wife should not avoid this Grant in a Writ of Dower, because the Custom was before the Title of Dower, and the said Opinion of 8 El. cited contra.

3. If the Wife accepts Dower, of the Heir against Common Right, the Hall hold it subject to the Charges of her Husband. 18 D. 6. 27.

4. But otherwise it is if she be endowed against Common Right by the Sheriff. 18 D. 6. 27.

5. If the Husband grants a Rent out of four Manors, and dies, and his Wife is endowed by the Heir of one Manor in lieu of all, the Hall hold it discharged. 19 E. 3. Muir impedit 154 per Chorpse.

6. If a Man be seised of three Manors of equal Value and Wife, and charge one of the Manors with a Rent-charge and dies, the same by the Provision of the Law take a third Part of all the Manors and hold them discharged; but if she will accept the entire Manor charged, it is held that she shall hold it charged. Co. Litt. 175. a.

7. The Dower of a Wife who was married after a Statute or Recognizance acknowledged, shall be extended; but if the Title of Dower precede the Statute or Recognizance, it is not liable at all to such Statute or Recognizance. Jenk. 26. pl. 69. cites 8 E. 1 Fitzh. Affile, 417.

8. W. brought a Writ of Dower against B. C. Leefee for Years by Lease of the Husband rendering Rent before the Covert, pray'd to be
Dower.

be receiv'd for his Term. The Wife recovers and had Judgment. By the Court the Leafe of C. is sav'd by 21 H. 8. cap. 16, and the Court advised, that an Habere Facias Seifiam shall be awarded to the Sheriff to put the Wife in possession, with a Prorsus good Ten'. ed Termyn' annom'non expellatur. And Beamond said, that 3 Eliz. it was so said. Noy, 65. Whitley v. Beft.

9. Tenant in Dower shall not be driain'd for a Debt due to the King by the Husband in his Life-time in the Lands which he holds in Dower. Co. Litt. 31. a.

10. The Endowments by Metes and Bounds according to Common Right is more beneficent to the Wife than to be endow'd against Common Right; For there for shall hold the Land charged, in respect of a Charge made after her Title of Dower. Co. Litt. 32. b.

11. If Baron and Feme grant a Rent-charge by Fine out of Land, or make a Lease for Years, rendering Rent to the Baron and his Heirs, and afterwards the Feme recovers Dower, he shall hold the Land charg'd. 10 Rep. 49. b. Mich. 10 Jac. in Lampert's Case.

(E. a) Attendancy.

1. Tenant in Dower of a Mefonalty shall be attendant to the Heir for the third Part of that which the Rent is over.

2. [But] If a Woman be endowed of a Mefonalty, the Heir cannot detain the Woman for the third Part which she ought to pay him. 1 D. 4. 3.

3. Feme Tenant in Dower shall hold of the Heir pro particula, and he shall make Avowry for the Portion upon her, and it is a good Plea for her that the Heir holds by left Services. Br. Tenure, pl. 84. cites Fitzh. Avowry 173. 3 E. 3.

4. And if Great Grandfather, Grandfather, Father, and Son are, and the Lord gives the Services to the Grandfather and his Feme in Tail, and the Great Grandfather attains, and the Grandfather dies in the Life of the Great Grandfather, and the Feme has Issue, and the Great Grandfather dies, and the Issue enters and does the Services to his Mother, and after be and his Mother dies, and the Son enters and endows his Mother; Quere if the shall be attendant of any Services, because the Services which the Baron did are now suspended in the Tenancy by the deserting of the Land held by the Great Grandfather to the Issue in Tail, who is Heir to the Great Grandfather who was Tertenant. Br. Tenures, pl. 84. cites Fitzh. Avowry 173. 3 E. 3.

5. Where
5. Where a man gives in tail rendering certain services, and the
Dower takes Feme, and dies without issue, and the Feme is endowed, the
shall render the third part of the services, and the Donor may avow
for them; and yet the Tail is exdinct. Br. Tenures, pl. 82. cites to
E. 3. 159.

S. P. Br.
Dower, pl.
64. cites
34 E. 3. 15.

6. Where Tenant in Tail dies without issue, the Donor enters, the Feme
of the Tenant in Tail recovers Dower and has Execution, the shall render
the third part of the Services to the Donor. Br. Extinction, pl. 31.
cites 34 Aff. 15.

S. P. And
yet in the.
Cafes
the
Seigniory
was once
exdinct. 14 E. 2. For there is a Diversity between the Act of the Law,
as a dying without issue or without Heir &c. and the Act of the Party,
as Seigniory purchased in Fee &c. Br. Dower, pl. 64. cites
34 E. 2. 15. & 25 E. 3.

7. So where there is Lord and Tenant, and the Tenant dies without
Heir, fo that the Land escheats, and after the Feme of the Tenant is en-
dowed &c. Ibid.

8. Contra where the Lord purchases the Tenancy in Fee, and the Feme of
the Tenant is after endowed, the shall not render any thing; For the
two first Cales of the Death are the Act of the Law, and the Cafe of
the Purchase or suing Process of Forejudger in Writ of Mefne &c. are the
Acts of the Party and his Folly. Ibid.

9. Where Tenant in Tail dies without issue, and the Feme is en-
dowed, or if Lord and Tenant are, and the Tenant dies without
Heir, the Lord may enter by Escheat. And in the other Cafe the
Donor entered, the Feme, the Tenant, or the Feme of the Tenant in
Tail recovers Dower, and has Execution, the shall render the third Part of
the Services; For this is the Act of God or of the Law; Contra where
the Lord purchases the Land in Fee, and she is endowed, the shall render
nothing to the Lord, for it is his own Act and Folly. Br. Tenures,
pl. 33. cites 34 Aff. 15.

10. If a Man holds by Homage and Fealty, and 10 s. Rent, and makes
a Gift in Frankmarriage of the same Land so held with his Sister, and
after the Dower in the fourth Degree takes Feme and has Issue and dies,
and his Issue enters and endows the Mother of the Possession of his Father,
The Question was, if the Mother shall pay the third Part of the Rent
to the Heir as he pays over to the Donor? or whether she shall
hold this third Part discharged during her Life? It was argued that
the shall hold it discharged; But Keble was Opinion that she should
pay the third Part of the Rent to the Heir. Keilw. 124. a. pl. 80.

11. If there be Lord, Mefne, and Tenant, and the Mefne grants to the
Tenant to acquit him against the Lord and his Heirs; the Lord dies, his
Wife has the Seigniory esigned to her for her Dower, and dilinates
the Tenant, although the Grant was to acquit him against the Lord and
his Heirs only; yet because she continued the Estate of her Husband,
and the Reversion remained in the Heir, this Grant of Acquittal did

12. A Man makes a Gift in Tail, reserving 20 s. Rent, and dies, the
Dower takes Wife and dies without Issue; the Heir of the Dower enters and
endows the Wife; she is 10 in of the Estate of her Husband, that al-
though the Estate Tail be spent, and the Rent referred thereupon
determined, yet after she be endowed the shall be Attendant to the
Heir in respect of the said Rent; And so it is of Lord and Tenant,
the Wife that is endowed shall be Attendant for the due Services, but
if any Services be incroached, although the Incroachment shall bind
the Heir, yet the Wife shall be contributory, but for the Services of

(F. a) Ex
Dower.

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(F. a) Ex Affentu Patris &c.

1. An Infant being in Ward at the Age of 18 Years took Feme by the Ord-Ex
Affent of his Guardian, and endowed her ad aetatem Ecclesiae; in the
Word (ne) Anglice (not) which is not Sence, and to seems to
be misprinted.

2. Allignment of Dower Ex Affentu Patris, this shall be by Deed; Co. Litt. 76.
For otherwife the Franktenement of the Father cannot pass, and the
Affent lies not in Averment but in Speciality, and here Frankten-
ment passes without Livery of Seisin; quod nota. Br. Dower, pl. 7. cites a Deed of the
Father or Muter,

proving his Affent and Content, for his Freehold shall be bounden thereby, and Livery and Seisin
shall not be made thereof, and the Father may well make such a Deed unto his Son's Wife &c, and
we thin ancient Books such Affent and Content has been tried by Proofs, but the Law is contrary at this
Day. Perk. S. 442.

3. In the same Manner as there is Dower Ex Affentu Patris, in the
same Manner and Form there is Dower Ex Affentu Matris, mutatis
mutandis. Perk. S. 441.

4. But there is no Dower Ex Affentu Fratris nec Consanguini. Ibid. S. P. 169.
Such Dower
is good. —

5. Such Endowments ought to be made immediately after Affiance
made betwixt them at the Church Door, or in the Church, if the Mar-
rriages are used to be in the Church &c. Perk. S. 442.

the S. P. and Dower 167. is the S. C. of S. E. 2. and so likewise is pl. 165. but neither of them is
S. P. But Dower 19. cites Trin. 9 H 3. and is that on life to the Affent of the Mother &c. it was
found against the Demandant, by which it was barred. But Dower 144. cites 39 E. 2. is an In-
ference drawn from that Case, viz. That a Man cannot endow his Perme Ex Affentu of any other
than his Father; for that she shall not have Writ of Dower Ex Affentu Consanguini.

6. And yet it has been holden in Ancient Books, that where the Son Ex
Heir apparent unto his Father (and so he ought to be, for such End-
owment unto the Wife of the second Son is nothing worth) & if he marries against his Father's Will, and afterwards within eight Weeks
after the Marriage, the same Son endows his Wife, with the Affent of his Father, of the Lands and Tenements of the Father &c. it was holden that the same was a good Endowment &c. Perk. S. 443.

7. Where the Endowment Ex Affentu Patris, vel Matris, is good and
sufficient in Law, the Wife of the Son immediately after the Death of and Co. Lit-
her Husband, in the Life of the Husband's Father, may enter into the
L. S. P.

8. So if the Son endows his Wife with the Affent of the Father, of
Lands of the Father which he held jointly in Fee with a Stranger at the

9. So shall it be if such Endowment be made of Lands or Tenements
which the Father holds for the Term of his Life, at the Time of such End-
owment. Perk. S. 446.

10. But if the Father had been sealed in Tail of such Lands whereof
such Endowment is made at the Time of his Attent &c. he shall be
bounden.
bounden thereby during his Life; But the Issue in Tail shall not be bound thereby, nor a Woman who has Title to have Dower of the same Land before the Affent &c. As the Father's Wife which he had at the Time of the Affent, nor any Stranger who have ancient Title to the same Land &c. shall be bound by such endowment or Affent &c. Perk. S. 447.

11. If there be Father and Son, and the Father is seized of Land in Fee with his Wife in the Right of his Wife, and the Son endows his Wife of the same Land with the Affent of the Father, and the Son dies, leaving his Father, the Son's Wife shall not have Dower of this Land against the Father, yet the Father may make Feoffment of the same Land during the Coverture between him and his Wife, and it shall be good against him; and it has been said, that it is because that in such Case the Husband does presently disfruits himself of the Possession, but in the other Case he remains seized of the same Land during the Coverture, and in the right of his Wife; and when this Matter appears unto the Court, the Court, who is a third Perfon, shall out all the Son's Wife of her Dower, because otherwise the Court should do Wrong unto the Wife of the Father &c. Tamen quare, for that the Father cannot plead such Matter; but if it be in an Action in which Rescife lies, it the Wife be received upon the Default of her Husband, the may plead this Matter &c. yet notwithstanding that she is received, it seems that upon the Matter of Law the Son's Wife shall have the Dower which was aligned unto her by her Husband with the Affent of his Father &c. [during the Coverture.] Perk. S. 448.

12. Writ of Dower Ex Affentu Patris lies as well against the Guardian as against the Tenant of the Freehold. F. N. B. 150. (B).

13. If the Son endows his Wife at the Age of seven Years Ex Affentu Patris, if the before the Husband attain to the Age of nine Years, the Dower is good; But otherwise it is of an original absolute Disability. Co. Litt. 33. a.

14. Tenant for Life of a Carve of Land, the Reversion to the Father in Fee. The Son and Heir apparent endows his Wife of the Carve by the Affent of the Father. The Tenant for Life dies. The Husband dies. The Reversion was a Tenement in the Father, and yet this is no good Endowment Ex Affentu Patris, because the Father at the Time of the Affent had but a Reversion expectant upon a Freehold, whereas he could not have endow his own Wife, and though Tenant for Life died, living the Husband, yet it was ab initio non valet tradun Temporis non convulset. Co. Litt. 35. a. and Perk. 86. (which is the same Case as cited above.)

15. The youngest Son, and Heir apparent, cannot endow his Wife Ex Affentu Patris of Lands whereof the Father is seized in Fee, of the Nature of Borough English, because the Father may have another Son, and then the Husband is not Heir apparent, and it is in respect of the constant and perpetual Appearance, that the Son and Heir apparent may endow his Wife of his Father's Land, and so it is of Lands in Gavelkind, and this is the reason that Dower Ex Affentu Patris, or Confanguinei, is not good; For that altho' he is Heir apparent at that Time, yet for the common Possibility that he may have Issue, and every Issue that the Father may have after this his Issue, shall not exclude him, he is no such Heir apparent as the Law intends; So it must be such a Son and Heir apparent as must continue an Heir apparent. Co. Litt. 35. b.

16. Though the Freehold and Inheritance is in the Father, yet in respect of the constant and perpetual Appearance of the Heir in the Heir apparent does endow, and the Father does not assign; and therefore where
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where the Father did endow the Wife of his Son and Heir apparent, that Endowment was held void, because the Husband in that Case must endow, and the Father attaint. Co. Litt. 35. b.

17. If a Man endows his Wife Ex Allegatu Patris, and the Husband dies, the Wife may enter, or have a Writ of Dower, though the Father be living. Co. Litt. 35. a.

18. If a Wife be endowed Ex Allegatu Patris, and the Husband dies, the Wife has Election either to have her Dower at the Common Law, or at the Common Law, or to have a Writ of Dower at the Common Law, or to have the Dower Ex Allegatu Patris; if she bring a Writ of Dower at the Common Law, she shall never after claim her Dower Ex Allegatu Patris. Co. Litt. 145. a.

(G. a) De la plais beale.

1. In Dower, the Tenant vouches the Heir of the Baron in Ward of the Demandant for Cause of Nurture, and is for the Deed of the Ancestor of the Infant, and he was compelled to plead in Bar, because now the Feme may endow herself of the first Part, because Guardian by Nurture is always intended Socage Tenure, upon which Tenure this Endowment of the first &c. lies. Br. Dower, pl. 42. cites 21 E. 3. 39.

2. Contu of Tenure in Chivalry, and therefore she was barred. Br. Dower, pl. 42. cites 2 E. 3. 39.

3. If there be Lords, Moises and Tenant, and the Tenant holds of the Moisie by 3 d. and the Moise holds over by 20 d. and the Tenant takes a Wife, and the Moise releases unto the Tenant all the Right which he has in the Tenancy &c. and the Tenant dies, and his Wife is endowed by the Heirs of the third Part of the Tenancy, she shall be attendant unto him by 1 d. and not by the third Part of the 20 d. because that she shall be endowed of the Heft Poissflion which her Husband had during the Coverture &c. Perk. S. 428.

4. If the Husband has a Bailiwick &c. or a Fair, &c. as appendant unto his Manor within the same Precinct, of which Manor the Husband was feid in Fee during the Coverture, and held the same in Socage, now if the Wife be endowed of the Moiety of the Manor by the Bailiwick, she shall have the Profit of the Moiety of the Bailiwick &c. or of the Fair as appendant unto the Moiety of the Manor; But quære if the Bailiwick or Fair be disappendant in Fee from the Manor after the Death of the Husband, and before the Endowment, whether the shall then have the Moiety of the Profit of the Bailiwick or Fair &c. But if it seems she shall have the fame, because she shall be endowed of the heft Poissflion which her Husband had during the Coverture or Marriage &c. Perk. S. 436.

5. Where Judgment is given in a Writ of Dower that the Demandant shall be endowed de la plais Beale, she may take her Neighbours, and in their Presence endow herself by Metes and Bounds of the Fairest Part of the Tenements which the hath as Guardian in Socage, to have and to hold for Term of her Life. Litt. S. 49.

6. A Woman Guardian in Socage bringing a Writ of Dower against Guardian by Knight's Service (before 12 Car. 2. 24.) should upon his pleasing the whole Matter, have been adjudged to endow herself de la plais Beale, i.e. that is the Fairest of the Socage Land. But such Dowment could not be without Judgment; If the Socage Land were not sufficient for her whole Dower, she should retain for Part, and recover against the Guardian in Chivalry for the other Part. After Judgment as afo said, Litt. S. 42; Co. Litt. s. a. b — If Feme who has Title of Dower occupies the Land as
Dower.

Guardian in Socage by her own Right, and not as Guardian, she shall nore endow herself de la plus beste; For this is in a Judgment given in the King's Court. 5 Rep. 30. b. 51. a. in Coalter's Case.

(H. a) By Custom.

1. IN Affile the Tenant said, that the Land is within the Manor of D. in which is the Fee of L. where the Uriage has been Time out of Mind, that the Feme shall have the Whole in Dower durn sola fit, and if she marry that she shall forfeit it, and admitted. Br. Customs, pl. 67. cites 25 All. 11.

F. N. B. 150 (F) S. P.

2. Vill which is not a Borough or Incorporated may have a Custom that the Feme shall be endowed of the Whole, as in Gavelkind and others. Br. Customs, pl. 72. cites 21 E. 4. 53. 54.

3. In some Boroughs by Custom she shall have for her Dower all the Tenements which were her Husband's. Litt. S. 166.

4. The Custom of Kent is that the Wife shall be endowed of the Money of Gavelkind Land, and shall have her Dower by the marry again; Three Justices held the Plea good, and that she had not Election to be endowed at the third Part at the Common Law, but was tied to the Custom; But Anderson contra. Mo. 260. pl. 498. Patch. 30 Eliz. Anon.

Co. Litt. 55. b and 111. a. S. P. adjudg'd accordingly.


5. If a Custom be that a Feme shall be endowed of a Money of the Lands, yet the shall not be endowed of the Money of a Fair held on the same Land; Per Newdigate J. 2 Sid. 139. Hill. 1658. B. R.

(I. a) Quarantine.

She shall remain there 40 Days, of which the Day of her Death is accounted the First; and if upon her Husband's Death she departs from her House, she cannot return again within the 40 Days. 2 Lev. 19. 12. Hath. 153. per Holwitz Ch. J. cites D 76. Mich. 4 E 6. (S. pl. 32. Keritfibv y Keritfiby.)——If the Widow be holden from her Quarantine she shall her Visv de Quarantina habenda to the Sherif, by Virtue of which Writ the Sheriff may make a Process against the Defendant returnable.
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2. If she marries within the 40 Days she loses her Quarantine; For Co. Litt., then her Widowhood is past, and the Quarantine is appropriated to the Widow's Estate. 2 Inf. 17.

3. The Word Easwars in the Statue is taken for Sustenance. 2 Inf. 17, and Lord Coke there says, that There is an Opinion in the Books [and in Marg. cites 19 H. 6. 14. b. and Regist. 175.] that the Widow cannot kill any of the Oxen of the Husband's whilst she remains in the House; but observes that the Register says, Quod interim habeat rationabilia Estowia de Bonis corundem Mariorum, which Lord Coke says, seems to be an Exposition of this Branch. And that in this Case it seems to contain Meat, Drink, Garments and Habitation, though when refrained to Woods is figured House-bote, Hedge-bote and Plough-bote. 2 Inf. 17, 18.

4. Widow for 40 Days next after the Death of her Baron is by the Law allow'd her Quarantine to live in the House of her Baron, and to be furnish'd with Viuets there, and not for any longer Time. Per Omnes J. Jenk. 284. pl. 18.

(K. a) Against whom Dower lies.

1. In Dower the Tenant owneth'd, and the Voucher owneth'd the Heir of the Baron of the Demandant; the Demandant shew'd that the Heir had Assets by Descent in the same County. The Demandant shall not recover against the Heir but against the Tenant only; For there is no immediate Privity between the Heir and her; For she shall recover against the Heir only when the Tenant in Demesne vouches him. 9 Rep. 17. b per Cur. in Bedingfield's Case cites 18 E. 3. 36. b. Ex parte inde. Br. Dower, pl. 63. cites 29 All. 68.

3. Dower shall be brought against the Guardian where the Infant is in Co. Litt. 33. Ward, and not against the Infant, because the Guardian has Interests, a. S. P. Br. Dower, pl. 20. cites 46 E. 3. 19. 2. In Raisment of Ward it was agreed that Writ of Dower may be brought against the Baron alone, where the Baron is possessed of a Ward in Pure Usoris, and the Feme Mother of the Infant demands Dower; For in Writ of Dower against Guardian Voucher does not lie. Br. Dow.-, pl. 23. cites 48 E. 3. 20.

5. But Right of Ward shall be against both; For there Voucher lies. Br. Dower, pl. 23. cites 48 E. 3. 20.

6. Where there were Grandfather, Father, and Son, and the Grandfather held the King, the Father took Feme; The Grandfather died; The Father had Issue and died before Office found, and before any Entry, and after an Office was found for the King, that the Grandfather was seized, and died seized, and bold of the King, and that he had Issue, who had Issue him who now is Heir and within Age, by which the King seized and committed the Ward durante minore estate, and the

Feme
Dower.

1. Wis. 1 cap. 1. * A Writ of Dower (unde nihil habet) the Writ 49. 3 E. 1. * shall not abate by the Exception of the Tenant, that she has recovered her Dower of another before the Writ purchased, unless he can shew that he received Part of her Dower * of himself, and in the 4 same Town before the Writ purchased.

2. 1st Lib. 4 td. 5 321 b.

* This is misprinted for (311 b) servis is in Lib. 4 Cap. 15. 8 15.

* First it must be of the same Tenant, and not of another, tho' he be in the same Town: As if the Husband conveys A of White-are and B of Black-are, both in Dale, and the Wife recovers a Writ of Dower (unde nihil habet) against B, by the example of this Act, for he is not the same Tenant of whom she received her Dower.

2. 2nd. 4 Lib. 4 1st Lib. 262.

3. 2nd. 4 Lib. 4 1st Lib. 262.

4. 2nd. 4 Lib. 4 1st Lib. 262.

5. 2nd. 4 Lib. 4 1st Lib. 262.

6. 2nd. 4 Lib. 4 1st Lib. 262.

7. 2nd. 4 Lib. 4 1st Lib. 262.

(L. a) Writ and Abatement.

1. Wisum. 1 cap. 1. A Writ of Dower (unde nihil habet) the Writ 49. 3 E. 1. * shall not abate by the Exception of the Tenant, that she has recovered her Dower of another before the Writ purchased, unless he can shew that he received Part of her Dower * of himself, and in the 4 same Town before the Writ purchased.

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2. 2nd. 4 Lib. 4 1st Lib. 262.

3. 2nd. 4 Lib. 4 1st Lib. 262.

4. 2nd. 4 Lib. 4 1st Lib. 262.

5. 2nd. 4 Lib. 4 1st Lib. 262.

6. 2nd. 4 Lib. 4 1st Lib. 262.

7. 2nd. 4 Lib. 4 1st Lib. 262.

(F. a) Writ and Abatement.

3. In Dower, the Tenant pleaded Tenancy by Fine with one Tho. and the Demandant said, that after this Fine her Baron was seized and infused the Tenant, and that he is sole Tenant, and Ilifie taken thereupon, and found for the Demandant, by which the recover'd; But it was said, that all might be revers'd in B. R. Thel. Dig. 226. Lib. 16. cap. 7. S. 8. cites 3 E. 3. It. North. Maintenance de brief 14.

4. Dower in N, and the Tenant says that H. is a Hamlet of N. Judgment of the Writ, this is a good Plea; [But] if he brings another Writ in N, the Tenant shall not say that there are two N's, and none without Addition. Br. Brief, pl. 540. cites 3 E. 3.

5. In Dower of the third Part of a Manor where the Tenant pleaded Nontenure of Parcel, the Demandant was receiv'd to maintain that he was fully Tenants of her Demand, notwithstanding that Nontenure ought not to be alleged in Writ of Dower &c. Thel. Dig. 226. Lib. 16. cap. 7. S. 11. cites 4 E. 3. 159. Qw. 2.

6. Where a Fine takes a Manor in Allownace of all her Dowers of the Tenements of her Baron, the Writ of Wffe shall be brought against her as Tenant in Dower, and not as Lessor for Life, as well by the Heir of the Baron as by a Stranger; But otherwise it is, it upon Debate had between her and him in Reverion he receiveth the Manor by Accord of the Lease of him in Reverion to releaseth his Action of Dower. Thel. Dig. 179. Lib. 11. cap. 52. S. 9 cites Pack. 4 E. 3. 158.

7. In Dower, the Demand was as to Parcel of the Moteity, and of the third Part of the Residue, and the Tenant would have compell'd the Demandant to fly Caufe why he demanded the Moteity, but before Caufe flown the Tenant pleaded to the Residue in Abatement that he had received Parcel of her Dower, and Ilifie thereupon taken, and after the Demandant would not have beene Cause of the other Demand, because the Tenant had pleaded to the Writ for the Residue &c. Yet she was Compell'd by the Court to fly Caufe, or to Amend her Demand. Thel. Dig. 82. Lib. 16. cap. 1. S. 11. cites Hill 7 E. 3. 308. Dower 192.

8. In Dower unde Nihil habet it was pleaded to the Writ, that the Tenant himself had Affign'd her Dower to the Demandant in the same Vill of which the Demandant was seiz'd; The Demandant replied, that at the Time of his Affignment, the Tenant was not seiz'd of the Tenements of which Dower is now demanded, but one A. then hold them for Term of his Life, the Reverion expectant to you, and to their Tenements are come to you after the Death of the said A. &c. Judgment of this Writ be not good enough; upon which the Tenant was put to answer over. Thel. Dig. 225. Lib. 16. cap. 7. S. 3. cites Mich. 2 E. 2. Dower 124. and Hill. 12 E. 3. Dower 86.

9. In Dower by several Praecipes, the Name of one of the Tenants was left out in this Caufe, unde queritur, and also in the Summons, by which it was abated against all. Thel. Dig. 94. Lib. 10. cap. 6. S. 3. cites Hill. 12 E. 3 Brief 671.


11. It was adjudged that in Writ of Wffe brought against Tenant in Dower, it suffices to name the Feme by her proper Name and Surname, without naming her by her proper Name, with that Wife of such a one. Thel. Dig. 50. lib. 6. cap. 2. S. 3. cites Mich. 31 E. 3. Brief 326. & Patch. 32 E. 3. Brief 295.

12. In Dower against a Guardian, the Demand was of the third Part of a Carve of Land &c. The Tenant pleaded that the Demandant herself is seized of the third Part of this Carve, et non allocutum to all the Writ; because he does not shew How she is seized, or of whose Assignment or otherwise &c. by which the Tenant was put to answer to the two Parts. Thel. Dig. 149. lib. 11. cap. 35. S. 12. cites Trin. 39 E. 3. 22.

13. In Dower the Demand was of the third Part of 40 l. Rent. Br. Demand, pl. 47. cites 44 E. 3. 32.

14. So of the Moiety of Rent, and not of Sum certain. Ibid.

15. Dower was brought against the Earl of Warwick, and the Writ was De Libero Tenemento of J. W. her Husband in Terra Guver in Wales, and her Demand was De tertia Parte Terra Guver, and so he supposes the Land of Guver to be in Terra Guver, and yet good by Award. Br. Demand, pl. 1. cites 47 E. 3. 6.

16. So of the Manor of B. in B. Ibid.

17. And where Land is in Foresta de K. which is not of any Vill, the Writ shall be Precipe quod reddat &c. in Foresta de K. and not De Foresta. Ibid.

18. Dower if the third Part of 10 l. and did not demand five Marks, and so it ought to be quod nota. Br. Demand, pl. 51. cites 11 H. 4. 83.

19. In Dower the Demandant demanded the third Part of a Garden; For the Writ is general Rationabilia datam quam quae ei contingit de Libero Tenemento f. B. vix iuxta in N. &c. Per Marten, the Demand is good, because the Writ has passed the Chancery; But note that this Term is not in the Writ, but only Libero Tenemento &c. and the Opinion of the Court was, that the Writ was good as in Affile, by which the Tenant demanded the View &c. Br. Demand, pl. 8. cites 3 H. 6. 3.

20. In Wffe it was agreed by the Opinion of all the Court, that a Feme shall be endowed of a Villan appendant in Grofs, and the Writ shall be De Libero Tenemento. Br. Dower, pl. 91. cites 2 H. 6. 11.

21. Writ of the Moiety by Custum the Writ shall be General, and shall have special Declaration of the Custum for the Moiety. Br. General Brief, pl. 23.

22. In Dower the Demand was Medietatis 23 Acrarum Terræ, pro eo quod the Land est de Tenura in Gavelkind, secundum Consuetudinem ad Antiquum Usitatum quod de Mediate datari debit, and did not say De Tempore cujus contrar &c. and yet good, because the Courte is so, and it seems there, that the said say fiebe is Sole according to the Custum. Br. Dower, pl. 70. cites 2 E. 4. 17.

23. Dower against a Guardian shall be by Name of Guardian; and there it is a good Plea, that he is not Guardian. Br. Dower, pl. 94. cites 9 E. 4. 31.

24. In.
Dower.


25. Dower, and made the Demand of two Mills. Skrene demanded Judgment of the Writ; For where the makes Demand of two Mills they are only two Sorts of Mills and two Tofts, and have been always in the Life of the Baron, by which the Demand shall be of two Tofts &c. quod non negatur. Br. Demand, pl. 5. cites 14 H. 4. 35.

26. In Dower of the third Part of the Moiety of a Manor, and the Tenant demanded the View, by which the Tenant made her Demand of the third Part of the Manor of B. severing the other Moiety. Pigor said, now the Demand shall be of the third Part of all the Acres and Rent, and yet good as above per Cur. For where a Manor is parted between two Coparceners each has a Moiety of the Manor; Contra it seems where the one has all the Demeunes, and the other all the Services, but as long as the one has Land and Services, and the other likewise, each has a Moiety of the Manor. Br. Demand, pl. 10. cites 9 E 4. 5.

27. In Dower if the Tenant makes Default by which Grand Cape failed, the Demand shall make his Demand; For no Certainty appears before the Demand made, nor in Aliiue before the Plaint. Contra in Praecipe quod reddat. Br. Dower, pl. 96. cites 38 H. 6. 15.

28. A Writ of Dower unde Nihil habet lies in Case where a Woman takes her Husband, who is sole feided of Lands or Tenements to him and his Heirs in Fee Simple, or unto him and the Heirs of his Body &c. Of it the Husband during the Marriage be seised him and his Wife be solely feided in Fee Simple, or in Fee Tail of such Estate, that the Issue begotten between him and his Wife may inherit the same, or dies thereof, or be thereof diffeied and dies, his Wife shall have a Writ of Dower unde Nihil habet against him who is Tenant of the Freehold of the Land, or against him who is Guardian in Knight's Service of the Land. F. N. B. 147. (E).

29. Dower, the Writ was, Praecipe A. quod reddat E. Fulliam rationable datam from de terris &c. deditum B. Fulliam quandam viri sui &c. Exception was taken to the Writ, because it was not in this Manner; Praecipe A. quod reddat E. Fulliam que sat Uxor B. Fulliam &c. For in the Beginning of the Writ, the ought to be named Uxor of her Husband &c. for that is the Name whereby the claims her Dower; And the ought to be his lawful Wife, otherwise she may not claim any Dower. And the Court held that the Writ was ill; and that the Words in the Writ B. Fulliam quandam viri sui &c. are not sufficient. Cro. J. 217. pl. 4. Hill. 6 Jac. B. R. Fulliam v. Harris.

30. For the most Part Dower ad Olim Ecclesie, & Ex Affensu Patris en jure the Nature of a Dower at the Common; And for thele the Wife may have a Writ of Dower, although they be certain, as for the third Part at the Common Law. Co. Litt. 35. b.

31. Although the Guardian in Chivalry, or the Grantee of the King of a Wardship, has but a Chattle during the Minority of the Heir, and the Woman shall recover a Freehold in her Writ of Dower, yet after the Guardian as is before said has enter'd into the Land, That Writ lies against him, and not against the Heir who is Tenant of the Freehold, because the Law has truited the Guardian to plead for the Heir within Age, and that is in his Custody, and also for his own particular Interest, and by this Diversity all the Books be reconciled. Co. Litt. 38. b. 4 B 32. 50.
Dower.

32. So if the Guardian dies the Wife shall have a Writ of Dower against his Executors, and if there are two Executors and one of them alone takes the Profits, the Writ of Dower shall be maintaine'd against him only. Ca. Litt. 36. b.

32. In Dower there was Judgment by Default, and a Writ of Enquiry if the Husband died seised, and of what Estate either in Fee or Tail, and Judgment was given that she recover &c. and her Damages to 60 l. and a Writ of Error brought, and the Record being removed the Widow died; Adjudget that the Writ shall not abate by the Death of the Defendant in Error, though otherwife by the Death of the Plaintiff, and thereupon the Plaintiff in Error proceeded and aligned Errors. Yelv. 112. Mitch. 5 Jac. B. R. Bromley v. Littleton.

33 Dower is brought against a Guardian in Chancery, pending the Writ, the Hears come of age. The Writ of Dower abates, for the Guardianship ended by the Act of God; and the Guardian has nothing of which Dower may be render'd. Jenk. 170 in Cafe 32.

34. A Writ of Dower de Retoría & annimines Decimis, without guessing the Partereres is good; for the Demand in a Writ of Dower need not be so particular as in other Writs; for the Demandant has not the Charters lo us to be enabled to make a precise Demand; and as Dower is favoured in Laws, so are the Proceedings therein. St. 68. 92. 99. Hill. 23 Car. Thyn v. Thyn.

35. A Writ of Dower will lie De uno Croto; Per Roll Ch. J. Sty. 194. Hill. 1649.

36. Error align'd to reverse a Judgment in Dower was, that the Demand was de tertia parte decimarni Garbarum in C. whereas the Word Garba admits of divers Constructions, and signifies any Thing bound up in Bundles, so that it is uncertain what Kind of Tithes are demanded by that Word, but adjudget that it was certain enough, for the Word Garba is taken at Common Law to be Corn bound up, and here the Demand was of the third Part of the Tithes Garbarum Geranos. Sty. 236. 238. Mich. 1650. B. R. Fairfax v. Fairfax.

37. So where it was De Retoría de C. it was align'd for Error that it should be De Retoría Eccles. de C. but the Court held it well enough in a Writ of Dower, in which there is not such Certainty required as in a Precipe. Sty. 236. 238. Mich. 1650. Fairfax v. Fairfax.

(M. a) Proceedings and Pleadings.

1. Stat. Marlb. 12. IN Dower (unde nilib habet) four Days shall be given in the Year, and were if conveniently may be; so that they shall have five or six Days (at least) in the Year.

2. Writ of Dower by one Precipe against W. of Land in C. and by another Precipe against R. of Land in another Villa. R. made Default, and W. said that C. is not a Vill but a Hamlet. Judgment of the Writ, and held
held a good Plea in his Mouth, notwithstanding that the Fault was in the other Precipe, in which the Demandant had supplied it to be a Vill. Thel. Dig. 193. Lib. 13. cap. 1. S. 1. cites Mich. 18 E. 2. Brief 829.

3. If a Diǰessor or Aťator endows a Feme, she may plead it in Bar against the Heir of her Baron; and Brook says it seems to him that it is the same against others. Br. Dower, pl. 59. cites 12 Aff. 20.

4. In Affile the Tenant said, that her Baron was seised in Fee during the Eojisuals and died, and the Land descended to the Plaintiff within Age, and because it was held in Socage A. B. as next of Kin to the Infant unied, and we assigned Dower; Judgment if Affile. Br. Dower, pl. 63. cites 26 Aff. 68.

5. Dower against B Guardian of the Land, and Heir of K. The Defendant said, that the Fater of the Infant was J. of R. Judgment of the Writ, and in Case the Writ shall be good, we are ready to render Dower; Per Knivet, you cannot plead to the Writ and render all at one Time. The Demandant prayed Judgment, by which Seflin of the Land was awarded, and because the Demandant averred that he was not at all Times ready to render Dower, Inquest of Damages was awarded, and that the Execution cease till the Inquest shall be passed. Br. Dower, pl. 40. cites 38 E. 3. 33.

6. In Dower, the Tenant said that the Feme had married A. and living him married B. of whose Document she now demands, and A. is yet alive, & non allocatur; by which he added, and so not accepted in lawful Matrimony, by which nothing was entered but Né unques accouple &c. and Writ awarded to the Bishop to certify it; Quod Nta. Br. Dower, pl. 54. cites 39 E 3 15.

7. In Dower, the Demand was of the third Part of a Curse of Land; Clain. said, that she herself is seised of the third Part of this Curse; Judgment of thed Writ; Per Knivet J this is no Plea unless he had said of whose Assignment, or that she recovered it; For if it be by Diǰessor, yet the half have Dower of two Parts, by which he was compelled to answer to the two Parts. Br. Dower, pl. 55. cites 39 E. 3. 17.

8. Dower was brought by a Feme against two by several Precipes, and the one prayed Aid of the other as Coparcener, and so it seems that several Tenancy is a good Plea in Dower. Contra in Affile. Br. Dower, pl. 99. cites 39 E. 3. 4.

9. In Dower, the Feme justified to hold Evidences, because he was enfeint by her Baron, and detain them to the Use of the Infant, and the Tenant tendered Life that she was not enfeint by her Baron the Day of her Baron's Death, and the Life was not received, but only if she was enfeint the Day of the Death of her Baron, or not. Br. Hicques joins, pl. 6. cites 41 E. 3. 11.

10. A Protection does not lie in Dower, for this would tend to starve the Widow. The Feme Law is in a Quod ei deforme stirred brought by Tenant in Dower, where she has loft her Dower by Default. Jenk. 52. pl. 95. cites 43 E. 3. 6. by all the Counsell.

11. In Dower, the Feme contested and avoided a Recovery had against her Baron. Br. Confes and Avoid, pl. 9. cites 47 E. 3. 13.

12. In Dower, the Baron makes a Feoffment and offis the Feoff, and he recovers by Affile. The Baron dies. The Feme brought Dower, and the Feoffee pleased the Recovery in Affile against the Baron, and therefore the half not ratified in this Case; by which she said, that long Time before her Baron was seised que Dower la poiir, and the other & contra; and so the is dawable of the first Poſfession before the Recovery. Br. Dower, pl. 22. cites 47 E. 3 13.
13. Dower unde nihil habet, the Tenant came at the first Day and said, that he had been always ready to render Dower, and the Demandant averred, that at times before the Writ purchased he demanded Dower, and could not have it, and was received inasmuch as it was at the first Day; And it is said elsewhere, that this is inasmuch as the Heir is in by Title; But contra in Colinge, Aiel, and Mortdancefor, for this is to affirm the Title and Estate of the Tenant; Note the Diversity; For there such Averment shall not be taken. Br. Tout temps pritt. pl. 34. cites 2 H. 4. 7.

14. In Dower, the Tenant vouch'd Processe continued to the Sequitur, which was returned not served, and the Tenant was esigned, and at the Day made Default, and therefore Petit Cape was awarded, and yet per Hull clearly, he cannot save his Default; Quare. Br. Processe, pl. 29. cites 3 H. 4. 4.

15. In Dower, the Tenant said, that N. gave to the Baron and his first Feme for Life, the Remainder to this Tenant in the Tail, the Remainder in Fee to the right Heirs of the Baron, and after the first Feme died, and he married this Feme and died, and this Tenant entered as in his Remainder, and demanded Judgment of fuch Eate Dower &c. Till, said, the Plea amounted but to Ne unques Seifie que Dower la poit; But per Hank and Thinn, he ought to answer to the Plea by reason of the Fee in Remainder in the Baron, which is doubtful to the Lay-Gens; But where a Man leaves to a Baron for Term of Life, the Reversion to the Leftor, or the Remainder to a Stranger, there the Demandante may say that Seifie que Dower la poit; so a Diversity &c. For the Baron has not Fee. Br. Dower, pl. 33. cites 11 H. 4. 73.

16. Dower of the third Part of 20l. [Rent;} Norton said, your Baron never had any thing in the Rent but jointly with N, who is alive, Judgment if Dower, and was not compelled to swear whether he pleaded as Ter-tenant, or as Perorn of the Rent; And the Demandant said, that N, released to her Baron all his Right which he had in the Rent, and did not shew the Deed of Release, and therefore was compelled by the Court to plead that Seifie que Dower la poit, and so the did, and proved the Release in Evidence; Quod Nota, and fo to Iffue; Quare of this Iffue general. Contra of the special Matter. Br. Dower, pl. 34. cites 11 H. 4. 83.

17. In Dower; the Baron purchased Rent, and died before the Day of Payment, yet the Feme shall be endowed; and it the Tenant pleads that Baron Ne just unques Seifie que Dower la poit, the other shall not plead special Matter, but shall say that Seifie que Dower la poit, and shall give the Matter in Evidence. Br. Dower, pl. 35. cites 11 H. 4. 88.

18. It is no Plea in Dower that the Tenant at another Time brought Fornedon against the Baron of the Demandant, who upon Deed of Tailjoiced in Pais rendered the Land in Pays, pending the Writ, by which the Tenant entered and coveted the Tail; Judgment li Aétio; For Render does not bar a Stranger of a Mfine Eate, and also Fee-timppe cannot be rendered without Livery of Seifin. Br. Dower, pl. 37. cites 12 H. 4. 21.

19. In Dower, the Tenant pleaded Recovery in Affise against the Baron, and the Demandant said, that the Baron inform'd him during the Conërterme, and after disinfes him, of which Diffesfin be recovered; and the Tenant said, that he was servis till by the Baron disinfes, upon which he recovered, abique hoc that the Tenant any thing bad before the Recovery, and it seems that it ought to be, Abique hoc that he any thing had before the Diffesfin. Br. Traverser pr &c. pl. 52. cites 14 H. 4. 33.

20. In Dower, the Tenant pleads Tontenance by Fine with B. who is not Party to the Writ. The Demandant avers, that after the Fine her Husband was seised in Fee of this Land, and thereof inform'd the Tenant alone
Dower.

alone, and so he was sole Tenant. Illibie was taken upon this, and found for the Demandant. The Demandant had Judgment by Advice of Parliament. This is in Favour of Dower; otherwise in other Précipes, if there be not a Confeffion and Avoidance of the Joint Seifin, and an Avener of Sole Seifin on the Day of the Purchase of the Writ. 43 All. pl. 6. 14 H. 6. 8. 25. 17 E. 2. pl. 1. and 13. The Statute De conjunctim Feoffatis aids Jointenancy by Deed, but not by Fine; but the Law is as above. Jenk. 9. pl. 15. cites 3 E. 3.

21. Dower, and demanded the third Part of two Mills, and of other Land, the Tenant demanded Judgment of the Plant; for where he demanded of two Mills, there were only the Seite of two Mills at all Times during the Coverture, and were Tofts, and to the other Parcel alleged Taal in N. and conveyed Remitter to the Tenant during the Seifin of the Baron, and to the other Parcel that the Demandant detainted from him certain Evidences concerning the same Land, and if he would render the Evidences, he will, and at all Times has been, ready to render Dower. Br. Dower, pl. 39. cites 14 H. 4. 43.

22. In Dower, the Tenant pleaded Recovery in Affise against the Baron; Judgment it Affit; the Demandant said, that the Baron was seifed and espoused her, and seifed the Tenant, and after seiffed him, and he brought Affise, and recovered, and the Baron died, and prayed Dower; The Tenant said, that he was seifed till seiffed by the Baron, and after he recovered by Affise, abique hoc that the Baron was seifed before the Diffein que Dower la poit. The Demandant said, that she was seifed before que Dower la poit. Br. Dower, pl. 38. cites 14 H. 4. 33.

23. In Dower the Tenant demands the View; after the View had the Writ obates for false Latin; the Demandant brings another Writ of Dower for the same Land against the same Tenant, he shall not have the View in this Case; for Vitus non est Necessarius, and the Statute says, Non concedatur Vitus Nifi ubi est Necessarius. By the Julicines of both Benches' Jenk. 106. pl. 3. cites 3 H. 6. 34.

24. In Dower the Tenant said, that he was seifed till by the Baron seiffed, upon whom be re-entered; Judgment &c. The Demandant said, that before the Tenant any Thing had W. was seifed and espoused her Baron, by which he was seifed &c. and prayed Dower; And per Martin, it is an ill Replication; For it may be that all this was before the Coverture, and the Diffin, also, and then no Seifin in the Baron que Dower la poit. Br. Dower, pl. 95. cites 14 H. 6. 5. 6.

25. If it be pleaded that the Land was affigned to the Feme in Dower, the need not say that it was by Metes and Bounds; for it shall be intended a lawful Alignment, which is by Metes and Bounds. Br. Pleadings, pl. 145. cites 10 H. 6. 1.

26. In Dower it is no Plea to say that the Baron had nothing but for Life; for this amounts to general liff, that Ne unques Seifin que Dower la poit; Per Cur. Br. Dower, pl. 84. cites 10 H. 6. 17.

27. But it is a good Plea that the Baron had nothing but jointly in Fee with the Tenant who survived, by reason of the Fee Simple confessed in him. Br. Dower, pl. 84. cites 10 H. 6. 17.

28. Where the Tenant pleads a joint Estate made to the Baron and J. N. and that the Baron died, and J. N. survived, whose Estate he has, the Demandant shall not say that Seifin que Dower la poit, without showing how or to traverse that J. N. nothing had of the Footment of the Feeor, per Newton; which Brook lays seems to be Law. Br. Dower, pl. 48. cites 22 H. 6. 42.

29. In Dower Tenant to Parcel said, that 40 Acres Parcel &c. are in the Vill of D. of which he was not Tenant the Day of the Writ purchased, nor ever after, but J. N. was Tenant; Judgment of the Writ; and as to fix Mijjages in D. the Plaintiff detained from him certain Evidences concerning
concerning the same Land, and that he has been at all Times ready to render Dower in Cape the wandr render the Evidence; Judgment &c. and as to 20 Acres in another Vill, that N was seised and enfeoffed the Baron, and the Heir now Tenant, and the Baron died, and the Heir survived and held by Dower; Judgment &c. and as to the Land in P, he demanded the View, and was outed of the View; and the Reason seems to be because he has pleased to the rest, he has taken Notice; and the Plaintiff to the Part of which the Survivor was pleased, said that the Defendant released to his Father in his Life, and so Seised que Dower Ia poit prif, and it was held a good Plea; and to the Detainer of the Evidence Littleton said, this goes to all the Action; which was denied; and the Tenant was compelled to shew in certain what Evidence he detained, and so he did, viz. a Charter Special &c. Br. Dower, pl. 4. cites 33 H. 6. 51.

30. In Trespass it is not sufficient to say that the Tenant holds in Dower of the Document of A. B. but shall say that W. was seised in Fee and took her to Feme and died, and the Issue entered and endowed her; quod Curia conceitit. And by some he shall shew how he be held by Metes and Bounds; But per Prifon contra; For when it is alleged that he held in Dower, it shall be intended by Metes and Bounds. Br. Dower, pl. 56. cites 37 H. 6. 38.

31. In Dower the Tenant said, that S. was seised in Fee and enfeoffed him, and had to the Baron to hold at Will, which Estates be continued during his Life, abique hoc that he was seised of such Estates que Dower &c. and had all entered by Judgment, by Reason of the long Continuance of the Possession for doubt of the Lay Gents. Br. Dower, pl. 58. cites 39 H. 6. 9.

32. By which he said that the Baron during the Esponsals was thereof seised in Fee, and conveyed Estates to him, and that he endowed the Feme of it viz. of the third Part thereof, to which the Feme agreed, and the Demandant impared. Br. Dower, pl. 68. cites 5 E. 4. 22.

33. Dower unde nihil habet, the Tenant said that he was seised of two Missages and ten Acres of Land in Fee, and this assigned to the Demandant for her Dower, to which he agrees; & non allocatur without alleging Seisin in the Baron. Br. Dower, pl. 68. cites 5 E. 4. 22.

34. Dower against a Guardian shall be by Name of Guardian, and there it is a good Plea that he is not Guardian. Br. Dower, pl. 94. cites 9 E. 4. 31.

35. In Dower of the Moiety of the Manor of D in D. the Tenant said, that two Acres, Parcel of it, is in S. and is no Plea; For as the Demand is in D. the shall recover nothing but that which is in D. Br. Briof, pl. 216. (218.) cites 9 E. 4. 6.

36. And the same Year fol. 17. the Tenant was awarded to answer, and therefore no Plea to the Writ. Ibid.

37. In Dower the Tenant said, that he has been at all Times ready to render Dower, and yet is &c. and the Demandant said, that he, viz. the Baron died seised, and that such a Day and Year"he required the Tenant to endow her at D. and he refused &c. the Tenant said, that the same Day the Tenant offered the Feme to go with her to the Land, and to assign her Dower, and she refused, abique hoc that be refused, and the Court held the Issue good upon the Refusal upon this Special Pleading. Br. Dower, pl. 73. cites 13 E. 4. 7.

38. But if, he had said Generally that he did not refuse, some said that it should not be [a good] Plea, because he does not deny the Request. Br. Dower, pl. 73. cites 13 E. 4. 7.

39. In Dower the Tenant pleaded Ne unques Seifie que Dower la poit; and the Demandant said, that the Father of her Baron was seised in Fee, and died seised, and the Land descended to her Baron as Son and Heir; this
this Feme, Demandant, then being his Feme, and after the Baron, before any Entry made by him or any other, died, and so the dowable by the Law; and note, that she was compelled per Cur. to say that no Entry; for if any had entered she should have Dower, for then there is Possession in Fact, which tolls the Possession in Law, and after she concluded, and so she describ'd by the Law, and the Justices held the Conclusion good, and so she was not compelled to say, and So seiz'd of such Estate as Dower la pot, but to put it to the Law and to the Judgment of the Court, and so note, that a Feme shall be endowed of the Seizin and Possession in Law without Seizin in Fact; quod nota; For otherwise it is of Tenant by the Court; and the Reason seems to be insufficient as the Baron may enter in Feme Usuris, but the Feme cannot compel her Baron to enter into his Land; for if he should say ut supra, and so Seizin as Dower la pot, this Conclusion shall waive the Special Matter. Br. Dower, pl. 75 cites 21 E. 4. 60.

40. Error was Allign'd because the Tenant in the Writ of Dower pleaded that the Baron was not seiz'd of the Day of the Espousals, et unquam inde Potea, which was held a Confession of the Action in a manner, the same quere inde, and after because it appear'd by the Examination of the Clerk of C. B. that the Record there was not unquam inde poeta, therefore it was amended by the Statute per Judicium, and that the Demandant recover her Dower and Damages tax'd by the Inquest 201. accordingly to the first Judgment. Br. Error pl. 188. cites 22 E. 4. 45.

41. In Dower the Tenant said that the Baron was not seiz'd thereof the Day of the Espousals nor ever after, and the Jury found that they were seiz'd thereof the Day of the Espousals and ever after, the Verdict has not made the Plea good, but if the Plea had been that they were not seiz'd of the Day of the Espousals and the others contra, it and that it had been found that he had been seiz'd the Day of the Espousals, this Verdict had made the Plea good. Br. Verdict. pl. 81. cites 22 E. 4. 46.

42. In Dower the Tenant Vouches the Heir of the Husband in the same County; The Heir demands the Lien and denies it; This Issue shall be tried before the Demandant shall have Judgment in Dower. By all the Judges in the Exchequer Camber. Jenk. 176. pl. 52. cites 4 H. 7. Fitzh. Dower 19.

43. In this Case of Dower the Judgment varies; If it be found against the Heir that he has Lands in the same County, the Writ is brought, the Demandant in Dower shall have Judgment against the Heir; If the Issue be found for the Heir, the Demandant shall have Judgment against the Tenant. Jenk. 176. pl. 52. cites 28 E. 1. Voucher 241. 17 E. 3. 47. 19 E. 2. Fitzh. Receipt. 17. 16 E. 3. Fitzh. Variance 61. Judgment 165. 166.

44. The Process is Simous, Grand Cape and Petit Cape in the Common Pleas. F. N. B. 148. (D)

45. Dower, the Defendant pleaded that the Husband of the Demandant was alive at C. in K. The Feme replied that her Husband died at D. in the Parish of F. in the said County of K. upon which they were at Issue; on Day given to make Proofs, the Plaintiff examined her Witnesses in Court, the Defendant examined no Witnesses. Judgment was, the Plaintiff should recover her Dower. Mo. 14. pl. 35. Patch. 2 Eliz. Thorn v. Rolfe.

Proof at all of his being alive. And the Demandant recovered —— Bend. 56. and Judgment accordingly; —— And. 20. pl. 42. S. C. adjudged.

46. In
46 In Dower against several Defendants some confessed the Action, and others demanded the View. The Justices at first seem'd clear, that since they did not vary in Dilatories &c. they shall have the View. But 11 R. 2. and 46 E. 3. and 33 H. 6. being to the contrary, and 14 H. 6. 6. this being an Action which is favour'd in Law, the View at length was ouitted according to those Books, but the Court offered to seal a Bill of Exceptions, ad quod non fuit reponendum. D. 179. pl. 41. Hill. 2 Bliz. Herbert v. Vernon.

47. Dower by E. M. Tenant vouched as Leis for Life of a Lease of the Husband with Warranty, the Heir of the Husband in Ward to the King, for Caule of Gard, and prayed Aid to the King, and had it, and after a procedendo Judgment was given that the Demandant recover against the Tenant, and Tenant against the Heir, sed expectet Executio per Recondemnatione tertie Partis praedict against the Heir till he come to full Age, and till the Hands of the King be amoned. Dy. 236. pl. 7. Mich. 8 and 9 Eliz. Michell v. Nethercote.

48. The Demandant after the Death of her Husband entered into the Land in Demand, and continued the Possession of it five Years, and afterwards the Heir entered, upon which she brought Dower. It was agreed in that Case, that the Tenant needed not to plead Ten-tens pessit after his Re-entry, for the Time the Demandant had occupied the same, is a sufficient Recondemnce for the Damages. 3 Le. 52. pl. 75. Mich. 15 Eliz. C. B. Riches Cafe.

49. It was adjudged, that if the Sheriff assign'd Dower to the Wife by Writ to him directed, and does not return the Writ, yet the Wife is lawfully felted in Dower. Cro. E. 17. in pl. 8. cited Pauch. 25 Eliz. C. B. by Fenner to have been adjudg'd to Eliz. in Abbe-rough's cafe.

50. If Dower be demanded of Common certain, the Certainty must be proven. Godb. 21. pl. 27. Pauch. 26 Eliz. C. B.

51. In Dower, the Tenant pleaded Quod dedit & concessit unam Annualem reddittum &c. in Recondemnce of Dower, which he accepted &c. Per Walmley, As this Cafe is pleaded there is not any Affignment of the Rent for the Dower, and therefore it is not any Bar of Dower, for it is pleaded, Quod dedit &c concessit Annuaelem reddittum &c. and alio dedit &c concessit are good Words in the Deed, yet when the ' Tenant is to plead it, he is to pleading it in apt Words, Quod assignavit; for a Gift of Rent or Land is no Bar to Dow-er, and to that Purpose cited a Cafe in the Years of Ed. 2. in the Book at large, where it was pleaded, that the Son granted Land in Dower to his Feme Ex affenti Patris, and ruled that it was not good, for it ought to have been Assignavit; For in pleading every one ought to plead according to Law, and as it here pleaded the Feme may have a Writ of Annuity upon this Grant, which she cannot have if it were an Affignment, and the Words of the Deed being Dedict &c. the Intent of the Parties to have it a Grant does thereby appear, and the Tenant against whom it is, has pleaded it as a Grant; and if he has Election to use it as he will, (as in many Cases a Man shall have) yet he has here made his Election to have it as a Grant, and we may not take it otherwise, and Judgment accordingly. Cro. E. 452. pl. 19. Mich. 37 and 28 Eliz. C. B. Wentworth v. Wentworth.

52. In Dower, the Tenant appeared upon the Grand Cape, and being only Leis for Years of the Land he might plead Non-Tenure, but whether now he might wage his Law of Non-Summons so as the Writ be abated was doubted, because by the Wager of Law he takes upon himself the Tenancy, and affirms himself to be Tenant according to 33 H. 6. 2. per Priiot, to which it was answered by Rhodes and Wind-ham J. that here the Tenant being only Leis for Years is not at any
Dower.

any Mischief; For if Judgment and Execution be had against him, he
ought notwithstanding afterwards enter upon the Demandant. Le. 92.

53. Dower against W. and D. Upon the Grand Cape W. made De-
fault. D. affirmed that he is not Tenant of the Land, but that the De-
mandant's Husband leased to him for 50 Years, and that this Action is
brought by Cowin to him lose his Term, and pray'd to be receiv'd.
And per to. Cur. be shall be receiv'd, the he was Party to the Writ,
and that by the Statute of Gloucester, because he is in equal Mit-
chief; And they held clearly, that upon the Default of W. the Demand-
ant should not have a Judgment for a Moiety, the Cause of the
Receipt trenching to the Whole; And by all but Rhodes, if Judg-
ment had been given upon the Default of both, viz. W. and D. yet the
Term of D. should stand, but D. should be out of Possession, and put to his

54. A Writ of Dower was brought of Lands in the County of North-
umberland. The Parish Church wherein this Land lay was at New-
castle, which is a County by itself. Per Cur. the Proclamation of
Sammons ought to be made in the Parish Church Door, tho' in another County
than were the Land lies, and this by the Statute, of 31 El. Cro.

55. Tenant in Dower vouch'd the Heir of the Husband in the same Win. 58.
County, who presently entered into the Warranty, and said that he had no
Affairs; Judgment was given presently against Tenant with a Copy Ex-
ecution; And afterwards the Issue was tried and found that the Heir had
not Affairs, and the Wife had Execution. Cited Hutt. 72. as Nich. 28

56. Note, If a Man be feied of certain Lands, and takes Wife, and
after aliens the same Land with Warranty, and after the Feoffor and Fe-
office die, and the Wife of the Feoffor brings an Action of Dower against
the Issue of the Feoffor, and he vouches the Heir of the Feoffor, and hang-
ing the Voucher, and undertermined, and the Wife of the Feoffor brings
her Action of Dower against the Heir of the Feoffor, and demands the
third Part of that whereof her Husband was feied, and wiil not demand
the third Part of these two Parts of which her Husband was feied. It
was adjudged, that she should have no Judgment until fuch Time as
the other Plea was determined. Litt. S. 54.

57. The Reason why Tont Temps Prift is a good Plea in a Writ of
Dower brought against the Heir to bar her of the mean Values and
Damages is, because the Heir holds by title, and does no Wrong till a De-
mand. But in a Writ of Aiel, Comiaghe &c. where the Land and
Damages are to be recovered, there fuch Plea is not good; for there
the Tenant of the Land has no Title, but holds the Land by
Wrong, and the Feoffee of the Heir cannot at the first Day plead Tont
Temps Prift, because he had not Land all the Time since the Death of the
Ancestor. Co. Litt. 33. a.

58. In a Writ of Dower Unde Nihil habet, no Protection is allowable
because the Demandant has Nothing to live upon; but otherwise it is

59. If one grants a Rent-charg to a Man and his Heirs, and dies, and
his Wife brings a Writ of Dower against the Heir, and the Heir
in bar of her Dower claims the same to be an Annuity and no Rent-
charge, yet the Wife shall recover her Dower; For he cannot deter-
mine his Claim by Election, but by suing of a Writ of Annuity; nei-
ther can the Heir have after the Endowment an Annuity for the two
Parts; for that should not be according to the Deed of Grant; for ei-
ther the Whole must be a Rent-charg, or the Whole an Annuity.
Co. Litt. 144. b. 145. a.
60. *Ten Tenps Prifs* is a good Plea in a Writ of Dower brought against the Heir to bar her of the mean Values and Damages, the Reason is, Because the Heir holds by Title, and does no Wrong till a Demand be made. Co. Litr. 33. a. in Principio.

61. If Dower be brought against one who is not Tenant of the Freehold, the Tenant before Judgment shall be received, and upon Default of the Tenant he may finally alter Judgment. Brownl. 126. Mich. 6 Jac. Anon.

62. In Dower the Tenant after Appearance of the Juvy, but before they were sev'n, made Default, and a Petit Cape was awarded; at the Day in Bank the Tenant informed the Court that he is only Tenant for Life, and that the Reversion is in one P., who ought to be received to save his Title, and the Court ordered him at the Return of the Petit Cape to plead his Plea. Brownl. 126. Mich. 9 Jac. Ld. Morley's Cafe.

63. The Manner to make Summons in Dower, if the Land lies in one County and the Church in another County; Then upon the Statute the Sheriff ought to come to the next Church, though it be in another County, and there make Proclamation. 2 Brownl. 122. Mich. 9 Jac. C. B. Anon.

64. If Proclamation be made by the Sheriff on the Summons, at the Door of any of the Churches where the Lands lie, it is sufficient, and need not be at the Doors of all. Brownl. 126. Hill. 13 Jac. Allen v. Walter.

65. No Writ of Error lies before the Value be inquired of; for till then the Judgment is not perfect. Brownl. 127. Hill. 13 Jac. Glefold v. Carr.

66. In Dower of Lands in three Villages, Allen's Cafe was cited 14 Jac. C. B. that a Summons and Proclamation at the Church of one of them is good; and that the Summons must be 14 Days before the Return of the Writ. But in the Cafe between Cream and Rowland, that want of a Summons is not Error, but that otherwise no Grand Cape shall be awarded by the Statute 31 Eliz. cap. 3. Nov 22. Trin. 15 Jac. Har- nison v. Maffam.

67. In a Writ of Dower the Tenant demands the View, and the Dem- mandant counterpleads the View, Quod le Tenant n'ad Entry Nicht per le Baron; and thereupon the Tenant demurs; and it was adjudged a good Counterplea, and the Tenant oufht of his View. Hutt. 44. Hill. 18 Jac. Bridgehand v. Pott, and cites 9 E. 4. fol. 6. and 2 H. 4. 24.

68. Dower, the Tenant vouches the Heir in the same County, who ent- ered into the Warranty, and pleaded Rents per Deficient, upon which they were at Issue, and at the Nifi Prius made Default at the Day in Bank; Judgment was given against the Tenant; It was moved that it ought to have been conditional, viz. against the Heir for what he had in the same County, and if he had not any Elimate, then against the Ten- ant; But the Court held both Ways good. Cro. J 688. pl. 3. Trin. 21 Jac. B. R. Goldingham v. Somes.

Win. St.
S C adjourn. 
Ibid. SS.
S C the Court feem'd of Opinion that the Judgment might be conditional, but the Judgment read as it was. —— Hutt. 71. S. C. adjourned for the Demandant upon View of a Precedent of 38 & 39 Eliz. Rot. 1228. [or 1228. according to Cro. J]. Aftburnham v. Skinner.

69. In Dower against an Infant, he appeared by his Guardian, and pleaded that his Father who was Husband to the Demandant, was seized of a Messuage and certain Lands in Socage, and devised them to the Widow for her Support, and full Satisfaction of Demand, and that after the Death of his Father, she entered into the said Messuage and Lands, and was seized by Virtue of the Devise &c. The Widow replied by Pro- testation that he did not devise, and for Plea confessed the Seisin of the Husband
Dower.

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Husband and her Entry; but farther pleaded, that she entered as Guardian in Scein to the Infant, and that she disagreed to accept the Land by the Devey, and traversed the Entry and the Agreement. The Court said that this Bar was good, though it had been more pregnant to have alleged that she entered Virtue Legationis prædictæ, and so was sealed; and after it was said that the Replication was good without the Traverse; For this was not expressly set down, but that was merely the Consequence of the Plea, which in Truth was not traversable. Win. 100. Mich. 22 Jac. C. B. Baker v. Baker.

70. Error in Dower where the Defendant pleaded Ne unques Acouple in loyal Matrimon; Upon a Writ to the Bishop he certificat Quod copulata fuit in vero Matrimonio fect clandestino; & quod W. & E. Thori & mensae participatione mutant cohabitationem ad mortem prædictæ W. Error was alleged, that the Certificate does not answer to the Words of the Title, which is Quod ne unques accouple in loyal Matrimon. But resolved the Certificate was good; for vero Matrimonio (although clandestino) copulati is as good as Legitimo copulati Matrimonio, for they are all one by Intendment; and although it be Clandestino, yet it does not vitiate the Marriage; and when it is added, Thori & mensae participatione durante Vita cohabitationem, that proves they continued Husband and Wife during his Life. And Judgment was affirmed. Cro. C. 351. pl. 16. Hill. 9 Car. B. R. Wickham v. Enfield.

71. A Woman brings Dower against the Tenant of certain Land in H. in Com. Suff. ex dotacione A. vitr fui defuncti; The Tenant pleads a Feoffment of the Manor of Dale to certain Persons to the Use of the said Husband, and the Demandant for their Lives for her Joindre &c. The Remainder to a Stranger; This Plea is sufficient without saying, that after the Husband's Death the entered and claimed it for her Joindre; These Words are superfluous in this Case; for the said Joindre is a Bar Prima Facie to the Demandant in Dower) the Demandant replies, that the said Husband before the said Feoffment, had conveyed the same Manor to the Use of himself in Tail, Remainder to the Demandant for Life, Remainder to a Stranger in Tail; and that after the Death of her Husband, without Issue, she claimed the said Estate and entered, and by that was in her Remitter; the Tenant rejoins as abové, and does not traverse the Claim, and the said Entry and Remitter to be in of the said first Estate; The Demandant had Judgment affirmed in Error. The Demandant in the Replication need not traverse the said Entry after the Death of her Husband pleaded in Bar; For it is vain and impertinent; But the Tenant in the Rejoinder ought to maintain his Bar, and traverse her Entry, and claim by the former Estate Tail, Remainder to the Demandant for Life. This first Conveyance with a Remainder ur supra the should not waive because of the Prejudice of the said Remainder. Jenk. 334. pl. 72. cites Cro. J. 499. Wood's Cafe.

72. And though neither Day nor Place of Marriage was mentioned in the Bs. Certificate it was held not material; For it is not liable because the Certificate of the Bs. is conclusive. Ibid.

73. The Court was moved for a Supercedent to stay Proceedings upon the Grand Cape in Dower, Quia Errouse Emancipari, because the Return of the Summons was not according to the Statute 51 Eliz. cap. 2, which says, After Summons, 20thly, The Land lies in a Vill call'd H., and the Return is of a Proclamation of Summons at the Parish Church of F.; and it does not appear that the Land was in that Parish besides it was Proclamation lectum ecundum formam Statut. and it is not returned to be made on the Land; so the Grand Cape was superceded. Mod. 197. Hill. 26 & 27 Car. 2. C. B. Furnis v. Waterhouse. 74. Error
**Dower.**

74. Error to reverse a Judgment in C. B. in a Writ of Dower unde nil habet, because the View was not granted; and it was alleged, that although in a Writ of Right of Dower the View is grantable, yet in Dower unde nil habet it never was at the Common Law, because the Woman that had nothing to maintain her should not be delayed in the Recovery of her Right. Freem. Rep. 375. pl. 483. Mich. 1674. Atmull v. Atmull.

75. Dower unde nil habet the Tenant demanded the View; The Demandant counter-pleaded, because the Baron alienavit servientia predicta to the Tenant, & hoc etc. the Tenant demurred generally, and it was insisted for him that the Counter-plea was ill, and that it ought to have been Perflavour, for by the Word Alienavit it does not appear what Estate he had aliened; for a Lease for Years is an Alienation; but it was adjudged that Alienation implies all the whole Estate which be had, and the Statute Ed. 2. 43. ouits the Tenant of the View of the Lands which the Husband aliened to him, or to any of his Ancestors, and fo the Plea is in the very Words of the Statute, and good. 3 Lev. 220. Trin. 1 Jac. 2. C. B. Bernes & Ux v. Rich.

76. Tenant in Dower dies before Writ of Inquiry executed; Administrator cannot bring Scira Facias for the Damages and Meane Profits. 1 Salk. 252. pl. 1. Trin. 2 W. & M. in B. R. Mordant v. Thorold.

77. Detainer of Charters was pleaded after Imparlance, and on Demurrer Judgment was for the Plaintiff. Show. 274. Trin. 2 W. & M. Burdon v. Burdon.

78. In Dower upon Default Grand Cape issued, and Demandant suggested that her Husband died seized &c. and a Writ of Inquiry of the Value of the Lands, and 60 l. Damages were returned; it was moved to stay the filing this Writ of Inquiry because the Tenant had no Notice of it; but it was answered, that in real Actions Personal Notice is not to be given, but the Tenant is to take Notice, because the Writs, viz. the Summons are always executed on the Lands and not elsewhere; but per Cur. Personal Notice ought to be given of the Writ of Inquiry, and of the Execution thereof, for the Grand Cape is a Judgment, and thereby the Suit is determined at Common Law; the Damages for the Value of the Land is only an Addition by the Statute of Marlbridge, and therefore for want of Notice the Inquisition was discharged, and Refutation was awarded of the Damages levied. 3 Lev. 469. Hill. 6 W. 3. C. B. Perkins v. Lamb.


(N. a) Pleadings.
(N. a) Pleadings.

Where there must be a Protert or Monstrans of Deeds.

1. In Dower the Tenant would'd the Heir of full Age, he shall shew Deed as it is said; Quere. Br. Dower, pl. 98. cites 49 E. 3. 5.

2. In Dower the Tenant pleaded Jointure in the Baron with W. who Survived, and the Demandant pleaded a Releafe by W. to her Baron, and because she did not shew the Releafe all the Court councell'd her to plead Selfie que Dower, and to give this Matter on Releafe in Evidence, and yet the Deed does not belong to her, and so did. Br. Monstrans, pl. 37. cites 1 H. 4. 13.

3. But the Feme was not suffer'd to plead a Releafe in Fee made to her Baron Tenant for Life without shewing the Deed of Releafe; but she might say Selfie que Dower la poir, and give the Matter in Evidence; Per Paton, Weitbury, and Rolfe. Br. Monstrans, pl. 5. cites 11 H. 4. 83.

4. A Feme who is endow'd of Rent shall not have Affise without shewing the Deed of Commencement, for this belongs to the Heir in Reversion; Per Paton, Weitbury and Rolfe. Br. Monstrans, pl. 5. cites 3 H. 6. 20.

5. A Feme who demands Dower of Rent of the Baron need not shew Deed, for the Deed of Rent belongs to the Heir; Per Strange; Quod non negatur. Br. Monstrans, pl. 49. cites 7 H. 6. 1.

6. A Feme shall have Dower of a Rent-charge without shewing the Deed, because the Deed does not belong to her; Arg. Pl. C. 46. in the Case of Wimbilh v. Talbois.

(O. a) Judgment and Executions.

1. Stat. Merton, 20 E. 3. Of Widows which be deforced of their Dow-
er, or Quarantine of Lands whereof their of Merton ex-
tends to Copy-

hold, where
the Oxfarm
is, that Wo-
men are
dowable.


Ld Coke says he had read in an ancient and learned Reading upon the Statute 20 H. 3. cap. 1. that it extends only to a Writ of Dower, Unde subito habet, and not to a Writ of Right of Dower; For in no Writ of Right Damages are to be recovered. Co. Litt. 23 b.

2. Where a Man married infected A. and died, J. abated (without Br. Damages, Covic of the Feme) and endowed the Feme, and A. brought Affire against them, and all found at Fume, and the Plaintiff recovered two Parts, and S. C. cites 4 E. the
the Fee retained the third Part in Dower, and the Plaintiff recovered Damages, and the third Part of the Damages was recouped. Br. Dower, pl. 59 cites 12 All. 20.

3. Where a Feme brings Dower she shall not recover Damages, because the Baron was outlawed in Trespass, so that the Franktenement was void only. Br. Damages, pl. 93, cites 13 All. 4.

4. K. was endorsed by the King in Chancery, and among other Things a Rent referred by Patent to the King and his Successors upon Grant of a Fair to the Prior of B. and his Successors was assigned to her. Upon this Ausage there was a Scire Facias in the Exchequer, and had Judgment there to recover the Rent, the Arrears and Damages; but on Error brought in the Exchequer Chamber the Judgment was reverfed as to the Rent and Damages; because the ought not to have Judgment of the Rent being the Inheritance of the King, nor of Damages in the Scire Facias, but as to the Arrears the Judgment was affirmed, because they were due to her, and as to thefe the privilege was leged by her Eftate for Life to live in the Exchequer; Arg. Mo. 565, in pl. 770. cites 14 E. 3, the Countefs of Kent's Cafe.

5. In Dower, the Tenant said, that he has been as all Times ready to render Dower, and yet is, and the Demandant averred the contrary, by which the recovered Dower, and for Damages prayed the Inquest inquiring of the Damages, and could not have it; For it is an Illue joined between the Parties, which shall be tried by Nifi Prius; Per Cur. Br. Enquett, pl. 79 cites 34 E. 3, and Fitzh. Enquett, pl. 79.

6. If a Feme recovers in Dower, the cannot distrain for the Rent, nor such like, before Execution, and the Sheriff may put her in Seisin by Graves, Turf, or Beasts of the Land, but he cannot drive them out, but shall take Seisin by them and dismiss them there. Br. Executions, pl. 105, cites 49 E. 3, 21, 22.

7. Dower against the Tenant for Life of the Lease of the Heir of the Baron, who vouches the Heir to Warranty; The Demandant recovered against the Tenant, and be over in Value against the Heir. Br. Dower, pl. 10 cites 41 E. 3, 24.

8. But where the Tenant vouches the Heir to Warranty by the Deed of his Ancestor, there the Demandant recovered against the Vouchee, and the Tenant shall hold in Peace. Contra supra upon his own Deed, Note a Diversity. Br. Dower, pl. 10 cites 41 E. 3, 24.

9. But it is said in the next Note there ensuing, that in Dower against Tenant for Life of the Lease of the Baron, who vouches the Heir to Warranty, the Feme shall recover against the Tenant and be over in Value, and yet in this Case the Reversion made by the Ancestor is Cause of Warranty. Br. Dower, pl. 10 cites 41 E. 3, 24.

10. In Writ of Admeasurement of Dower, if the Tenant comes at the first Day ready to be admeasured, the Plaintiff shall not recover Damages; Quod Nota. Br. Admeasurement, pl. 1 cites 42 E. 3, 19.

11. Where a Feme is newly endorsed in Chancery, there shall not recover Damages; For those of the Chancery do not give Damages. Br. Damages, pl. 195 cites 42 All. 52 and 43 E. 3, 52.

12. In Dower, the Tenant made Default after Default, and the Demandant averred that her Baron died seized, and prayed Writ to inquire of Damages, and had it, and the Sheriff returned that the Inquest returned no Damages, and the Demandant prayed that he be amerced, because the Writ is not served; Per Thorpe, he shall not be amerced but where he returns illy of himself, and here he returned as the Jury found. Br. Dower, pl. 13 cites 44 E. 3, 3.

13. Scire Facias against the Baron and Feme upon Recovery in Dower against them. The Baron appeared, and the Feme made Default, and he said that he is sole Tenant, and the Feme had nothing; and the Opinion there
there was that he shall have the Plea well without his Feme, by which he was suffered to plead in Bar alone, and said, that after the Recovery the Demandant entered into the Land claiming the third Part, and delivered Seisin to the Defendant, who bad the two Parts by Name of all that which he did belong in Name of the third Part, rendering one Mark per Annum, and has received it and流程 Acquittance thereof; Judgment if Execution; and the Opinion was, that it is no Plea; For he who recovers Dower cannot enter into the third Part. Br. Scire Facias, pl. 36. cites 45 E. 3. 5.

14. In Dower, the Tenant came at the Summons and said that he has been at all Times ready to render Dower, and yet is and the Demandant said that he was not ready, and that her Baron died seised, and the first Averment of the Demandant cannot be taken, because the Tenant came at the Summons, and Writ to inquire of the Damages was awarded, and found that the Baron died seised, and Damages and &c. Per Tilleley, this is only Inquest of Office, where it ought to have been by Issue tried, and therefore the Demandant shall not have Judgment upon it; Contra per Thmn. Quære. Br. Enqueft, pl. 17. cites her Baron died seised; For this is not any Default in the Tenant. Br. Dower, pl. 52. cites 11 H. 4. 40. — If the Baron died seised the Feme shall recover Damages. Br. Damages, pl. 52. cites 11 H. 4. 40. 41.

But per Chyan and Hill, where the Tenant is at all times ready to render Dower the Demandant shall not recover Damages; For no Default is in the Tenant. Ibid. But in Cypange the Demandant shall recover Damages, tho' the Tenant be ready to render Dower; For he is not in by good Title, Contra of the Hear in Dower. Ibid.

15. In Dower against two, the one said he assigned 6 s. 8 d. Rent out of the Land to the Feme for her Life, the which she accepted &c. and the other said that he is, and at all Times has been, ready to render Dower; and it was held a good Affirmation, by which she said that she did not agree to the Affirmation and per Strange, the shall recover Dower against him immediately of the Moiety, tho' the Plea of the other be not yet tried; For this is as a Confession by the one, and a Plea in Bar by the other. Br. Dower, pl. 45. cites 7 H. 6. 33. 34.

16. Note, that where the Tenant confesses the Affirm, or pleads to * S. P. not withstanding the Tenant died seised, and otherwise she shall lose her Damages. Br. Dower pl. 78. cites 22 H. 6. 44.

ant of the Summisa shall maintain her Writ; For otherwise it can't appear upon Plea to the Writ whether the Baron died seised or not. Br. Dower, pl. 93. cites S. C. — Br. Summis. pl. 18. cites S. C.

17. In Dower, the Tenant said that he has been at all Times ready to render Dower, and yet is &c. and the Demandant said, that he, viz. the Baron died seised, and that such a Day and Year the required the Tenant to endow her at D. and be refused &c. The Tenant said, that the same Day the Tenant offer'd the Feme to go with her to the Land and to affix her Dower, and she refused absolute box that he was refused, and the Court held the Issue good upon the Refusal upon this Special Pleading. Br. Dower, pl. 73. cites 13 E. 4. 7.

18. And per Brian, J. he can't have several Judgments of one and the same Thing, but one intire Judgment; For by the first Plea the Demandant may recover Dower; but the other Justices were in a clear Opinion that she ought to have her Judgment immediately, and H. 18 E. 3. in Dower, she had Judgment to recover her Dower and Enqueft for the Damages. Br. Dower, pl. 73. cites 13 E. 4. 7.

19. In Dower, the Tenant Confess'd upon the Cause of Dower, and Br. Dower did not say that he has been at all Times ready &c. by which the De- pl. 49 cites
mandant pray'd Judgment had it and after said, that her Baron died seiz'd, and pray'd Damages and Writ of Inquiry of it, and had it notwithstanding the Averment is taken after Judgment where the Tenant cannot aver any thing; For it was said, that it shall be intend'd by his Contention that she is intituled to the Dower and Damages; For it is included that the Tenant is Deceased; But per tot. Cur. if the Tenant had come at the first Day and said that he has been at all Times ready to render &c. if the Demandant cannot aver the contrary the shall not recover any Damage. Br. Damages. pl. 79. cites 14 H. 8. 25.

20. Dower; the Tenant Vouch'd the Heir and prayed he might be summoned in the same County, and be was summoned and entered into the Warranty, and confessed the Dower; It was moved against whom the Judgment should be. And the Court was in great doubt, for it did not appear that the Heir had sufficient to render Dower, for it would be in vain, and a great Mitigation to the Demandant if they give Judgment for her, when perhaps the Heir had nothing, or not sufficient to render Dower; And they commanded Precedents in this Case to be searched. Cro. E. 46. pl. 1. Patch. 28 Eliz. C. B. Killigrew's Cafe.

After Judgment for the Plaintiff the may before the Execution awarded over, that her Husband was seiz'd, and so to have Damages; Per tot. Cur. Beth. 212. pl. 320. Mich. 11 Jac. C. B. Porter's Cafe.——Ibid. cites 14 H. 8. 95 and 26 H. 6. 44 b.

21. In Dower the Jury affes'd Damages, as in Cafe where the Husband died seiz'd the which Dying seiz'd was not found by the Verdict; and Exception being taken thereto, the Court said that the Demandant might pray Judgment of the Lands and release Damages, or by way aver that the Husband died seiz'd, and have a Writ to inquire of the Damages, which all the Prothonotaries agreed. Le. 192. pl. 118. Mich. 29 and 30 Eliz. C. B. Butler v. Ayres.

Nov. 65. Whitley v. Beth. S. C. accordingly, and the Court said that the Leafe of B. is fayed by the 21 H. 8. cap. 16.

D 284. p. 33 lays it is Common Experience, and the Precedents of C. B. are so.

Yelv. 112. Mich. 51 Jac. B. R. that if the Baron alters and retakes for life and dairi, the Feme shall have Dower, but no Damages of such dying seiz'd; For it was only of Frankentenement.

22. In Dower the Tenant made Default after Default; B. prayed to be receiv'd for his Term made to him before the Court, which was done; Then the Question was, how Execution should be? It was agreed, that the Judgment should be entered generally, that she should recover Seizin of the Mootiey of the Land (the Land being Gavelkind) and that the Writ should be special, that the Sheriff should not Out the Termor, but he should come upon the Land and demand Seizin for the Feme, and thereby she to have the Mootiey of the Rent, with the Reversion. Cro. E. 564. pl. 26. Patch. 59 Eliz. C. B. Wheatley v. Beth.

23. She shall recover Damages only where the Husband seiz'd, viz. of the Freehold and Inheritance; For tho' the Husband before the Title of Dower had made a Lease for Years, receiving a Rent, she shall recover a third Part of the Reversion with a third Part of the Rent and Damages; For the Words of the Statute are, De quibus Viri sui Obierint feliiri. Co. Litt. 32. b.

24. In some Cases where the Husband was sole seiz'd the Wife shan't be endow'd in severyly by Metes and Bounds; As for Example if a Man seized of Lands in Fee, took a Wife and seiz'd eight Persons, a Writ of Dower was brought against them eight Persons, and two confes the Action, and the other six plead in Bar and defend to Issue, the Demandant shall have Judgment to recover the third Part of the two Parts of the Land, in eight Parts to be divided, and after the Issue being found for the Demandant against the fix, the
the Demandant shall have Judgment to recover against them the third Part of six Parts in eight Parts to be divided, which is worthy the Observation. Co. Litt. 32. b.

25. In a Writ of Dower Ad Ostinnam Ecclesie, or Ex Affinis Patris, the shall recover no Damages, because she may enter, and the Words of the Statute are, Et Dotes suas habere non pollunt fine placito. Co. Litt. 32. b.

26. Some say, that the Demandant in a Writ of Dower that de-

lays or fail not recover Damages. Co. Litt. 32. b.

27. If the brings a Writ of Dower against the Heir, and the

Heir comes into Court upon Summonis the first Day, and pleads, that he

has been always ready, and yet is, to render Dower &c. If the Wife

has * [not] requested her Dower, the shall lose the mean Values and

her Damages; But if she have requested Dower she may plead it,

and illue may be thereupon taken. Co. Litt. 32. b.

Coke says it is holden in some Books that a Request en Pais is not sufficient, but he says, that the Law, and many Books are to the Contrary, and that if are the Words of the Statute, viz. Et Do-

tes suas habere non pollunt fine Placito. 2 Init. 52. b. 49.

28. If the Wife has Dower assigned to her in Chancery, the shall have no Damages; For the Words of the Statute be, Et vidue per Placitum recuperaverint &c. So it is if the Heir or his Feoffeassign Dower, and the Wife accepts it, the loseth Damages. Co. Litt.

33. a. 29. The Values and Damages are to be recovered against the Tenant in a Writ of Dower, as it appears in a Record between Benfield b.

Roule, where the Tenant as to a Parcel pleaded Nontenure, and for the Rehearsal, Detainment of Charters, upon which Pleas they were at

illue, and both illues found by the Jury against the Tenant, and found

further that the Husband died seised such a Day and Year, and had illue

a Son, and that the Demandant and the Son by six Years after the Death

of the Husband together took the Profits of the Land, and after the Son such

a Day and such a Year died without illue, after whose Death the Land

descended to the Tenant as Uncle and Heir to him, by Force whereof he

took entered and took the Profits until the purchasing of the original Writ,

and found the Value of the Land by the Year, and alsoe Damages for

the detaining of the Dower, and Costs, and upon this Verdict, after

often debating, the Demandant had Judgment to recover her Damages

for all the Time from the Death of her Husband without any Deposition.

Co. Litt. 33. a.

Baron. —— Mo. 83. pl. 215. S. C. adjudged accordingly.

30. A Man seised of Lands in Fee takes a Wife and grants a Rent-

charge, and after makes a Feoffment in Fee, and takes back an Estate Tail

died, the Wife recovers Dower against the illue in Tail by Reddition, the

Wife makes a Surmise that the Husband died seised, and prayed a

Writ to enquire of the Damages, and that is granted to her. In this Case she holds the Land charged with the Rent-charge, for by her

Prayer she accepts herself demandable of the second Estate, for of the first

Estate whereof the was dowable her Husband died not seised, and so

she has concluded herself, wherefore the Rent-charge be more to her Deter-

mination than the Damages beneficial to her, it is good for her in that

Case to make no such Prayer. Co. Litt. 33. a.

31. In a Writ of Adjudicament of Dower the Demandant shall re-

cover Damages, if the Tenant appears not the first Day, and yields to

Adjudicament, for the illues in the mean Time. 2 Init. 365.
Dower.

32. If Tenant in Dower be died seised, and the Defeisor makes a Feoffment, the Tenant in Dower shall recover all her Damages against the Possessor, for the is not within the Statute of Gloucester cap. 1, by which every one shall answer for their Time. 2 Brownl. 31. Hill. 8 Jac. C. B.

33. After Judgment for Part the Demandant may be Nonituit for the Restitution, and yet have Execution of that Part for which he had Judgment. Goddib. 166. pl. 231. Pauch. 8 Jac. C. B. Folliambe's Case.

34. Where a Reversion of Lands died seised for Years, rendering Rent, is granted to the Husband in Fee, who dies seised of this Reversion, the Widow shall be endowed of the Reversion and the Rent, but shall recover no Damages of the Tenant. Win. 8. Pauch. 12 Jac. C. B. Anon.

35. A seised of Land in Fee, makes Lease for Years rendering Rent, takes Wife and dies; The Wife shall have Judgment to have the third Part of this Land for her Dower, and shall have the third Part of this Rent, but Cessavit Executio for the Possession of the Land during the Lease. Jenk. 73. pl. 38.

36. Regularly where an Husband died seised the Wife shall recover her Dower, with Damages for the whole Time after her Husband's Death; but if he doth not die seised, then after her Demand, and the Tenant's Refuial to assign Dower to her, she shall recover Damages from the Time of the Refuial. Jenk. 45. pl. 85.

37. In Dower the Defendant pleads Non unque Seishe que Dower. It was found by the Jury that the Husband was seised, and died seised, and allses Damages to the Plaintiff generally. It was moved in Arreí of Judgment, that the Jurors did not inquire of the Value of the Land, and then Ultra valorem Terrae, tax Damages, as much as is the usual Court, as the Prothonotaries informed the Court, for the Statute of Merton gives Damages to the Wife, &c. Valorem Terrae, and the Statute of Glou. cap. 1. gives Costs of Suit; but the Court gave Judgment for the Plaintiff, although the Damages are given generally, and certainly intended for the Value of the Land; and there might be in the Case a Writ of Error. Hett. 141. Trin. 5 Car. C. B. Hawe's Case.

S. P. by

Haughton

J. mainder to the son in Tail, this is not a Dying seised in the Baron for the Feme to have Damages in Dower; Per Curiam; And so it was adjudged in Dame Egerton's Case. But the Baron ought to die seised of Estate Tail or Fee Simple which may descend to his Heir &c. Litt. Rep. 341. Trin. 6 Car. C. B. Anon.

38. If Baron makes a Feoffment to the Use of himself for Life, Re-
cited to have been ruled accordingly in 3 Bull. 270; * Hutt.


39. If a Feme brings a Writ of Dower, and recovers, and the De-

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cited to have been ruled accordingly in 3 Bull. 270; * Hutt.


39. If a Feme brings a Writ of Dower, and recovers, and the De-

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30. If Baron makes a Feoffment to the Use of himself for Life, Re-
cited to have been ruled accordingly in 3 Bull. 270; * Hutt.

Dower.

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after such Judgment &c. to ascertain which a Writ of Inquiry shall issue and Recognizance to inquire of the Mean Profits and Damages by Waif done after the first Judgment; upon Return whereof Judgment shall be given, and Execution awarded for them, and also for Costs of Suit.

and then the Defendant died intestate before the Damages acquired by a Writ of Inquiry. A Sci. Fa. was brought by the Administrator, supposing that the Executors a Recognizance to the Demandant according to the Statute vetio's Duty in her, co Infanti, and consequently the Executor or Administrator intituled, and therefore that he was regular to revive the Judgment by Sci. Fa. and so to proceed to a Writ of Inquiry, and after the Inquisition returned, and the Duty acquitted to execute the Recognizance. But it was answered, that the taking the mean Profits after the first Judgment was a personal Fact, and in Nature of a Trespass, and he died with the Person, and here is no Judgment for any Damages given to the Intestate; and that as to this Matter there is no Difference between a Sci. Fa. for Damages upon the Statute of Mortes, and upon the Statute of 19 & 20 Car. 2. for in both Cases the Judgment 2 ajudged the Damages ought to be computed in the Life-time of the Parties. And the Court was of that Opinion, and Holab Ch. J. gave another Reason, viz. That the Judgment given was in the Reality wholly, and an Administrator cannot have Execution of any Judgment but only in the Personalty, and Judgment accordingly. Carth. 153. Mordant v. Thorold — Per Holt. There can be no Suit on this Recognizance till there be a Judgment for these Damages, and consequently the Recognizance does not any ways affect it. The Sci. Fa. to ascertain the Damages must be at the Common Law, and the Common Law Rule is that Aetiis Personatis monitor cum Personis. Show. 97. S. C. — 1 Salk 34. pl. 1. S. C. adjudged. — 5 Mod 281. S. C. adjournatur. —

lev. 255. S. C. and the Court inclined to that Opinion; but adiuvare vult.


A Writ of Error was brought, and pending that Writ the Tenant in the original Action died. The Judgment was affirmed, and Execution S. C. issued against the Lands, and a Scire Facias against the Heir to show Caufe it, that why the Demandant should not have Damages; Adjourned, that no pending the Damages shall be recovered because the Judgment when the Tenant died was only competent as to the Land, and not as to the Damages, and they are distinct Judgments; and when the Tenant died before Judgment given the Land as to the Damages, this remains a Judgment at Common Law. Sid. 188. Pach. 16 Car. 2. B. R. Alesway v. Roberts.

was affirmed, and the Demandant brought Sci. Fa. against the Heir and the Aijenice for Damages, suggesting her Husband's dying feould, but the Court agreed that the Damages being given against the Deforcer only by the Death of the Heir, they are lost and are not a Lien on the Land which passes with it, and that the Heir, against whom the Judgment was had, was the Deforcer. —


42. Scire Facias in a Recognizance to pay Mean Profits if Judgment be affirmed does not lie for an Executor of Tenant in Dower. Show. pl. 1. S. C. 97. Trin. 2 W. & M. Mordant v. Thorold.

had been acquitted upon the Writ of Inquiry and Judgment, they had been veiled in the Intestate as a Debt, and the Administrator as a Debt; and the Administrator should have had them; but the dying before the final Judgment, and when the Damages were due to her only by way of Satisfaction for an Injury, which is in Nature of a Trespass, and the Writ of Inquiry being in Nature of a Personal Action for them, it dies with the Person, and a Scire Facias lies not for the Executor or Administrator.

(P. a)
1. In Dower Judgment was given upon Nihil dicti, and because the Baron died seized a Writ of Inquiry of Damages was awarded, by which it was found, that the third Part of the Land which the ought to have in Dower was of the Value of 8l. a Year, and that eight Years elapse from the Death of her Husband next before the Inquisition, and affixes Damages to 8l. and it appeared upon the Record, that after Judgment in the said Writ of Dower the Demandant had Execution on Habere Facias Sellman, and so upon the whole Record put together, it appears that Damages have been assized for eight Years where the Demandant has been seized for part of the said eight Years; whereupon the Tenant brought a Writ of Error, because Damages are affixed to the Time of the Inquisition, whereas they ought to be but to the Time of the Judgment only; fed non allocatur. Le. 56. pl. 71. Pach. 29 Eliz. C. B. Walker v. Nevil.

2. Another Error assigned was, because where it is found that the Land was of the Value of 8l. a Year they have assized Damages for eight Years, to 80l. beyond the Revenue; For according to the Rate and Value found by Verdict it did amount but to 64l. but that Error was not also allowed; for it may be, that by the long detaining of the Dower, the Demandants have sustaine'd more Damages than the bare Revenue &c. Le. 56. 57. pl. 57. Pach. 29 Eliz. C. B. Walker v. Nevil.

3. Another Error was assigned because Damages are assized for the whole eight Years after the Death of the Husband, where it appears that for Part of the said Years the Demandant was seized of the Lands by Force of the Judgment and Execution in the Writ of Dower, and upon that Matter the Writ of Error was allowed. Le. 57. pl. 71. Pach. 29 Eliz. C. B. Walker v. Nevil.

4. Writ of Dower was brought against an Infant and two others, and a Recovery had by Default. The Infant brought Error; but the Court seemed that it is not reversible, because it is not a Recovery in which he might have his Age. Mo. 342. pl. 465. Hill. 35. and Trin. 38 Eliz. Williams's Cafe.


Cro. E c68. 5. Another Error was assigned, viz. that he had nothing in the Land. The Court doubted, because the Damages were recovered to 200l and the Four Demandant being dead, her Executors brought Scire Facias against the Infants for the Damages. Mo. 342. pl. 465. Hill. 35. and Trin. 38 B. R. the Eliz. Williams's Cafe. S. C. and Fenner.] as to this second Error held, that he might well assign it for Error to discharge himself of the Damages, but the other Justices did not speak thereto; fed adjoinur. — S. C. cited per Cer
Dower.

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Cur. Roll Rep. 326. that the Tenant being within Age at the Time of the Recovery, the Judgment was erroneous by reason of the Damages recovered against him.

6. Dower is brought against an Heir being an Infant within Age. He makes Default. A Grand Cape issues. He makes Default again. The Demandant has Judgment. The Infant shall not reverse this Judgment, because a Default is imputed to the Infant in this Case, and his Infancy shall not force his Default as in other Cases; For if so, the Woman Demandant shall have no Sustenance during the Infant's Nonage; For the Infant will make Default, and afterwards when he has Judgment upon Default the Infant will reverse it. By all the Judges. Regularly Infancy excuses the Default of an Infant, but it does not hold in Dower for the Reason aforesaid. Jenk. 284. pl. 16. cites Mich. 9 Jac. C. B. Rot. 1611.

7. The Demand in Dower was of the third Part of two Missages in three Parts to be divided, and the Judgment was to recover Seisin of the third Part of the Tenements aforesaid, with the Appurtenances, to hold to him in Seiosity by Males and Bounds, and adjudged naught, because they are Tenants in Common, and the Judgment ought to be, to hold to him together and in Common; but if it had been in three Parts divided it had been good. Brownl. 127. Hill. 13 Jac. Gleitold v. Carr.

8. The Verse suggested that her Husband died seized in Fee of all the Lands out of which the demanded in Dower. Exception was taken that he died seized in Tail only; but per Cur. it is not material if he died so seized, and that the ought to have her Dower. Sty. 69. Mich. 23 Car. in Cofe of Thynn v. Thynn,

9. If the Jury afts Damages without finding the Husband died seized, the Demandant may pray Judgment of the Land, and release her Damages, or aver that her Husband died seized, and have a Writ to inquire of the Damages. 3 R. S. L. 17.

(Q. a) Admeasurement. In what Cases. And for whom.

1. Wisbm. 2. 13 E. 1. A Writ of Admeasurement of Dower shall be granted to a Guardian; neither shall the Heir, when he comes of full Age, be barred by the Suit of the Guardian if he sues against the Tenant in Dower seignely and by Collusion, but he may admeasure the Dower after. And as well in this Writ as in a Writ of Admeasurement of Pature, more Speedy Process shall be than has been used hitherto, so that when it is come into the great Distress, Day shall be given, wherein which two Counties may be held, at which open Proclamation shall be made, that the Defendant come in at the Day; at the which Day if he come in, the Plea shall go forward; and if he do not come, and the Proclamation be testified by the Sheriff, upon the Default they shall proceed to make Admeasurement.

2. The Writ of Admeasurement of Dower lies where the Heir when he is within Age endows the Wife of more than the ought to have Dower of, or if the Guardian endows the Wife of more than the third Part of the Land of which the ought to have Dower, then the Heir at his full Age may sue this Writ against the Wife, and thereby he shall be admeasured, and the Surplusage which the had in Dower shall be restored to the Heir, but in such Case there shall not be assigned unto any Land
Land to hold in Dower, but to take from her so much of the Land which amounts to above the third Part of all the Land of which the ought to be endowed. F. N. B. 149. (F).

3. The Lord of F. brought Writ of Admeasurement of Dower against M. Tenant in Dower, who said at the Grand Difgrefs that she is ready to be admeasured, and the Writ was, that she had more by 40s. per Annum than her third Part, and Writ was reflected to the Sheriff, who returned that she had more by 40s. per Annum &c. and because she ought to have extended the Land into three Parts, and to have returned how much be had beyond the third Part therefore ill, and Sicut Alias issued; Quod Nota. This is intended that where Issue is joined in this Writ, that this passes by Issue; But where it is by Niscnt Direere, as here, there it shall be by Extent by Writ before the Sheriff, and this as Militant, and not as Judge, for upon his Return Judgment shall be given of it in Bank. Br. Admeasurement, pl. 2. cites 44 E. 3. 10.

4. In Admeasurement of Dower, where it is made before the Sheriff the Sheriff is Judge; Arg. 6 Rep. 11. b. cites 44 E. 3. 10. Per Finchden, and 44 E. 3. 11. b.

5. If the Sheriff delivers the Moiety in Execution for the third Part, the Heir shall not have Affile by reason of the Recovery, but shall have Sci. Pa. against the Feme. Br. Dower, pl. 83. cites 22 R. 2.

6. If the Sheriff returns Nihil in Writ of Admeasurement of Dower, yet the Plaintiff shall have Judgment as if the Proceed had been returned served; Quod non negatur. Br. Admeasurement, pl. 7. cites 11 H. 6. 3.

7. If the Heir endows his Mother within Age of more than of the third Part, he cannot enter into the Surplusage at full Age, but shall have Writ of Admeasurement of Dower, per Kingsmill J. But per Rede Ch. J. he may enter, as upon Partition made within Age which is not equal. Quere. Br. Admeasurement, pl. 4. cites 21 H. 7. 29.

If the Heir endows his Mother within Age of more than of the third Part, he cannot enter into the Surplusage at full Age, but shall have Writ of Admeasurement of Dower, &c. Perf. S. 524.

If the Heir within Age be out of Ward, and affinns more Dower than he ought within Age, he may have an Admeasurement of Dower within Age for ever he cannot. 2 Ind. 569.

8. If the Heir within Age before the Guardian enters into the Land, he shall have the Writ of Admeasurement against the Wife by the Statue of Weltmiller 2. cap. 7. And if the Guardian brings the Writ and purfues it against the Wife, the Heir at his full Age by the same Statue shall have the Writ of Admeasurement of Dower against the Wife. F. N. B. 143. (F).

If the Heir before the Guardian enters endows the Wife more than she ought, and the Guardian affinns over his Estate; his Affiinee shall have no Writ of Admeasurement. Because it was a Thing in Action. Co. Litt. 59. a.

9. By Bracton, Lib. 4. cap. 17. If the he has Lands in Dower, in diverse Countries, there it ought to be Coram Justiciariis; And not there the Tenant shall have several Writs, viz. 16. In every Writ of Admeasurement all the Lands which the he has in the same County shall be named and admeasured. 2dly. If the he has Lands in several Countries there shall be several Writs, and several Extents of all the Lands of which the Party died seised, as it seems, yet he shall have one Count, and one Admeasurement;
Dower.

Measurement; Sed Quare how it shall be made. 13 El. 4. Admeasurement 17. Yet note 7 R. 2. Ibid. 4. The Defendant was to answer, notwithstanding the Exception. 7 R. 2. Admeasurement. 4. F. N. B. 148. (G) in the new notes there (d).
10. It the Wife after the Assignment of Dower improves the Land, and makes it better than it was at the Time of the Assignment; an Admeasurement does not lie of that Improvement. But if the Improvement be by Captivity of a Mine of Coals or of Lead, which are in the Land &c. which have been occupied in the Husband's Time, the Debt is the more; but she cannot dig new Mines; for that shall be Waffe if she do. F. N. B. 149. (C).
11. If a Guardian in Chivalry affigns too much for her Dower, the 2 Inf. 568. Heir shall have a Writ of Admeasurement by the Common Law. Co. S P. Litt. 39. a.
12. So it the Heir within Age affigns before the Guardian enters into the Land too much in Dower, the Guardian shall have a Writ of Admeasurement by the Statute of Wefim. 2. cap. 7. and in that Case he himself shall have a Writ of Admeasurement at full Age, and some have said, That in that Case he may have it within Age. Co. Litt. 39. a.

measurement of Dower, being a Real Action, lay for the Guardian at Common Law. 2 Inf. 367.

13. The Heir shall have an Admeasurement for the Assignment in the Life of his Ancestor by the Common Law. And a Writ of Admeasurement lies upon an Assignment in Chancery. Co. Litt. 39. a.
14. If the Heir within Age affigns Dower and dies, his Heir shall have the same Writ; but if the Ancestor of full Age, being Tenant in Fee-Simple, affigns Dower more than he ought, his Heir shall never avoid it, because he had full Power to assign as much as he would. 2 Inf. 368.
15. Although the Words of the Writ be in the present Time, Plur habet in deten &c. yet it is to be taken that she had more in Value at the Time of the Assignment of Dower; for if by her Industry and Policy it be made of greater Value afterward, no Writ of Admeasurement lies for this Improvement. 2 Inf. 368.
16. If in Dower the Sheriff gives Seisin on the Habere Facias Seisinam of more than a Moiety, the Heir cannot enter, nor maintain an Affile, but must have a Scire Facias to admeasure the Lands in the Return. 2 Rd. Raym. Rep. 1294, 1295. Arg. cites Br. Extent. 13. and Fitch. Execution 165.

(R. a) In What Cases Dower may be defeated.

1. 6 F. 1. cap. 7. Statute F a Woman sells or gives the Land which of Gloucester. she holdeth in Dower, the Heir or other Person to whom the Land ought to revert after her Death, shall have present Remedy to recover the Land by Writ of Entry.
2. Wefim. 2. 13 E. 1. cap. 4. If the Wife be wrongfully ende'd by the Guardian during the Minority of the Heir; the Heir when at full Age shall have Action to demand the Seisin of his Ancestor; but if she can shew that she had a Right to her Dower she shall retain it, and the Heir shall be grievously amerced according to the Discretion of the Justices.
3. Donor
3. Dower reserves a Rent upon the Tenant in Tail and dies, Wife is endow'd of the Rent, Tenant in Tail dies without Issue; The Wife shall not have Dower any longer. But otherwife of an Estate in Fee-Simple though Tenancy ejectavit, yet the Wife shall retain her Dower of the Seigniory. Per Dyer Arg. No. 39. pl. 126. Trin. 4 Eliz.

4 Wife of Feoffee on Condition is endow'd. Condition is broken. By Re-entry of Feoffor Dower is defeated. Le. 299. Arg. pl. 409. Mich. 28 Eliz. C. B.

(S. a) Relief in Equity.

1. If a Feme be indow'd in Chancery, and after the Land is recover'd against her, she may have Seire Facias there, to be indow'd de novo. Br. Jurisdict. pl. 114. cites 43 Aff. 32.

2. The Suit ought to be for the Dower by Petition in the Chancery, and not by Writ of Dower in Bank against the Committee of a Ward of the King, for the Advantage of the King. Br. Dower pl. 66. cites H. 7. 1. Per Brian.

3. A Bill was to prevent Dower because her Husband was past Memory at the Time of Marriage, but it was dismissed to Law. Toth. 81. cites 3. Jac. Pennington v. Cook.

4. In Dower, the Defendant pleaded that the Demandant was endow'd by Conveyance out of the Court of Wards, De dote Affignanda, which she accepted of; it was holden by the Court to be a void Affignment, and shall not bind, for that the Dower ought to be assigned out of the Chancery by Writ De dote Affignanda. Cro. E. 364. pl. 28. Mich. 35 & 36 Eliz. B. R. Stanfield v. Bynden.

5. The Lord Keeper declared that a Woman cannot have Dower of a Trust, but compelled the Defendant to answer who is Tenant to the Land, to enable her to bring her Writ of Dower. Toth. 163. cites Mich. 2. Car. Kemp v. Lady Reseby.

6. A. before his Marriage with B. was question'd for Tresfon, and thereupon made a Deed of his Lands to his younger Son, and then marries B. A. was acquitted, and dies. B. brings a Writ of Dower against the Heir, whereupon the said Conveyance is given in Evidence to bar her; Thereupon the brings a Bill here, and 'tis decreed that that Deed should not be given in Evidence. 3 Ch. R. 94. 1653. Robenson v. Fletcher.

his eldest Son in Fee, but falling into Trouble he conveyed them to C. his Younger Son, only to secure them against a Forfeiture. After A. was free of his Trouble he conveyed the Lands to B. and died. B. marries, and dies, and leaves a Widow, but no Child, and C. was his Heir, the Widow brought Dower at Law, but upon C.'s giving the Conveyance to him in Evidence, she was Non-suited. Whereupon she brought a Bill, and had a Decree, and a Commission to set out the thirds, and his Honour said, that tho' this was much controverted, yet Equity and Justice prevailed. Chan. Prec. 250. In Case of Lady Dudley v. Lord Dudley cited it as 6 May. 1655. Fletcher v. Robenson.———S. C. cited by Sir Joseph Jakel Master of the Rolls, Hill 1712. who said, that he took it out of the Register Books, and said, that C. executed a Declaration of Trust to A. and that the Deced to C. was decreed to be set aside as against the Widow. 2 Wms's Rep 652 in Case of Sutton v. Sutton.——S. C. of Fletcher v. Robenson cited 3 Wms's Rep 251. Hill. 1753. in Case of Chaplin v. Chaplin.———And Ibid. 253. Chancellor Talbot said, that this was a strange Case and a most extraordinary Trust, for if the Father, the Cefury one Trust, should have cause for a Performance of that Trust he could never have recovered, but the Son should have held the Land dischag'd, it being a fraudulent Trust made to protect the Ethic against a Forfeiture. This probably was a short Note of the Case for the private Use of some Gentlemen, and can be of Service to no other.——Chan. Prec. 250. S. C. Lord C. Talbot in the Case of Att. Gen. v. Scott, calls this an obfcur Case.

7. Devise of Leave and other Personal Estates of a considerable Value in Trust, that his Wife should thereout have during her Life 100 l. per Autumn in lieu and Discharge of her Dower, decreed to Issue out of
Dower.

of the Personal Estate only if sufficient, but if not, then to be supplied out of the Real Estate. Fin. R. 134. Mich. 26 Car. 2. Lequire v. Lequire.

7. The Trust of a Term to attend the Inheritance shall not be severed therefrom for Dower, or any other Consideration, except for Payment of Debts. 2 Freem. Rep. 66. pl. 77. Trin. 1681. Tiffin v. Tiffin.

8. Infant Tenant relieved where Dower was unequally set forth by the Sheriff. 2 Chan. Cases 160. Hill. 35 and 36 Car. 2. Holby v. Holby.


10. The Wife joins with her Husband in a Mortgage, and levies a Fine to the Intent to Bar her Dower, and in Consideration thereof the Husband agrees the Wife shall have the Redemption of the Mortgage, and the Husband afterwards mortgages this Estate twice more. The Court took this agreement to be fraudulent, as against the subsequent Mortgages, so far as to intitle the Wife to the whole Equity of Redemption; but in regard the Wife, in Confidence of this Agreement, had levied the Fine, and thereby barred her Dower, and the Husband and Wife being both living, the Court decreed that after the Husband's Death, the Wife, in Case she should happen to survive him, should enjoy her Dower; and whereas the Mortgages proceeded, that the Decree might only be, that she should enjoy her Dower notwithstanding the Fine, and she not know against whom to bring her Writ of Dower; And therefore decreed the Dower to her. Vern. 294. 295. pl. 287. Hill. 1684. Dolin v. Colman.

11. If there be a Mortgage by the Ancestor of the Baron upon the whole Estate, Equity will permit her to redeem paying her Proportion according to the Value of Thirds for Life, and there is no precedent in Equity to the contrary; Arg. and Agreed by the other Side, and that the Reason is, because the Mortgagee has no Interest but to have his Money, and Equity is to execute all these Agreements, but never where there is a Purchaser, or where the Interest of the Mortgage is affigned to the Heir between herself and the Mortgagee. S. C. cited by Ed. C. Talbot, Mich. 1734. Cases in Equity in Ed. Talbot's

Time 150. in Case of Attorney Gen. v. Scott.—Ch. Prec. 53. Arg.—Per Ed. Wright ibid. 152.

12. A gives his Wife a Legacy and devised to her part of his Real Estate during her Widowhood, and devised the Residue of his whole Estate to B. for Life, Remainder to his first Son &c. Per Somers C. this must be taken to be in Satisfaction of Dower, and a Collateral Satisfaction may be a good Bar to Dower in Equity, tho' pleadable at Law, and decreed accordingly; but this Decree was afterwards reversed by Wright K. 2 Vern. 385. pl. 327. Mich. 1699. Lawrence v. Lawrence.


Devise of Lands to the Wife is no Bar of Dower unless it be said to be in Satisfaction of her Dower. Ch. Prec. 137. Mich.


13. Dower being an Interest that does not arise by any Contract but by Implication of Law, it ought to stand or fall according to the Right
Dower.


14. A settled Lands to the use of himself for Life, Remainder to Trustees for 99 Years for raising 200 l. a-Piece for L. and M. Daughters of B., his Son, Remainder to the said B. and the Heirs of his Body &c. Remainder to his own Right Heirs; Provided, that, if the Heirs of the Body of B. pay L. and M. 200l. a-piece at 21, or Days of Marriage, then the Term to be void. B. died leaving no Issue but L. and M. The Widow of B. brought Dower and had Judgment, but could have, no Benefit at Law till the Determination of the Term, and therefore brought a Bill in Equity to set aside the Term, infiting that L. and M. were now Heirs of the Body of B. and the Estate vested in them, which was equal to the Payment of the Money, and so the Trust of the Term being satisfied, the Term ought not to stand in the Way and so it is all one as if the Money was paid at the Time and then by the express Proviso it ought to be void; But the Court dismissed the Bill without Costs. 2 Freem. Rep. 233. pl. 304. Mich. 1699. Brown v. Gibbs.

15. In Case of a Term kept on Foot to protect a Purchase and attend the Inheritance, there is no Relief against a Purchaser, and perhaps I could not relieve against an Heir; Per Ld. Somers. Ch. Prec. 67. Mich. 1696. Lady Radnor v. Rotheram.


—Ld. Somers said the Court went not on the Reason of his being a Purchaser, Ch. Prec. 99—Matter of the Rolls thought it was decreed purely in Favour of a Purchaser. Ch. Prec. 249. 1705—Bill. 1732. Sir Jof. Jekyll Matter of the Rolls cited the Case of Lady Bodmin v. Vandenberghe, since reported by the Name of Lady Radnor v. Rotheram, and that after the different Opinion of two Chancellors, (Jeffries and Somers) it was settled by the Judgment of this Court, and affirmed by the House of Lords in that Case, that a Dowrefes shall not have the Benefit of a Trust-Term to attend the Inheritance against a Purchaser; And said it seems, that by the same Reason that the Shall not have it as against a Purchaser of the legal Estate, so the shall not be relieved against a Purchaser of the Inheritance of a Trust-Estate, for in both Cases the Purchase ought to be void. 2 Wms's Rep 639 in Case of Sutton v. Sutton.——Show. Parl. Cases 69. 70. S. C. by Name of Lady Radnor v. Vandenberghe.

The Matter of the Rolls cited the Case of Brown v. Gibbes decreed by Ld. Somers, and also the Case of Upper v. Williams decreed by Ld. K. Wright, tho' contrary to his own Opinion, he thinking himself bound by the Case of Lady Bodmin v. Vandenberghe; And said, that the same Question afterwars was to be considered by the late Matter of the Rolls, in the Case of Lady Donley v. Lord Dudley, and that he in a solemn Argument, and great Deliberation, decreed for the Dowrefes; And that to did the Ld. Harcourt, Patch. 1711. (not in 1710 as mentioned in Abr. Eru. Cases 216 in the Case of Riffard v. Riffard; and that upon a Bill of Review in the Case of Upper v. Williams, he was of Opinion of the Dowrefes, and over-ruled a Demurrer, and that afterwards the Defendant submitting, a Decree was made by Consent, fixing a Sum, for the Arrears of Dower, and giving her Petition, agreeable to Ld. Hale's Opinion in Hard. 439, and to all the Resolutions in the Case of Tenant by the Curtesy; So that a Dowrefe Shall have the Benefit of a Trust-Term attend on the Inheritance against the Heir, and that this Points seems settled as to Dowrefes and Tenants by the Curtesy. 2 Wms's. Rep 639 640. Hill. 1752 in Case of Sutton v. Sutton.


16. By Marriage Settlement a Term was limited in Trust for raising Daughter's Portions, proviso on Payment by the Heir the Term to cease. The Husband dies leaving only two Daughters. The Wife gets Judgments in Dower with a Cyflet Eexecuto during the Term Ld. Somers denied to set aside the Term, for that would be to relieve her against the very Judgment upon which she founds her Right of Reliefs, and she must be content with the Eexecuto as the Law gives it. Ch. Prec. 97. Mich. 1699. Brown v. Gibbs.

But where the Trust of a Term was for raising Daughters Portions and Maintenance in the mean Time, and Annuities to others for Lives; after which followed this Clause, That the Trustees may, shall and will permit the Defer and Perkems take from Time to Time shall have Right to the Premises, by virtue of a second, any Life herein before limited &c. from Time to Time to have, receive, and take to her and
Dower.

and their own Use and Benefits, the Recovery of the Rents and Profits which shall remain over and above, or after the Performance of the said Trusts &c. — Proofs, the Term to cease &c. on Payment or securing &c. to the good living of the Trustee by the Person or Persons that shall have Rights to the Freehold &c. The Dowrels had brought a Writ of Dower at Law and recovered, but with a Cefer Execution during the Term, and on a Bill by her to remove the Term, the Master of the Rolls decreed that she should have the Benefit of the Trust of the Term, as to a third Part of the Profits, above the Charge of the Annuites during their Respective Continuance, and after the Determination of all a third Part of the whole Profits for Dower, and the Trustees to account to her Accordingly, et vire versa. Ch. Prec. 241. Pauch. 1705. Ld. Dudley, v. Lady Dudley. — Abr. Eq. Cases 219. pl. 5. S. C. — S. C. cited by the Master of the Rolls, Hill. 1732. 2 Wms's. Rep. 649. in Cae of Sutton v. Sutton. — S. C. cited by Ld. Ch. Talbot Cales in Equsi in Ld. Talbot's time 140. Mich. 1735. in Cae of Attorney Gen. v. Scott. — S. C. cited Arg. 3 Wms's. Rep. 252.


18. But in such Cae, if the Husband had assign'd over the Term which * S. C. cited he had Power to do, he had been barred; for there had been a Par- chasor in the Cae. Ch. Prec. 137. Hill. 1700. * Palmes v. Danby. 1732, and said, that it was a Mortgage for Years (though not so reported) but that the Question is there flated generally, Whether a Dowrels had a Right to redeem a Mortgage at that Ld. Keeper Wright declared she had; And his Honour said, that he saw no Reason for a Difference between a Mortgage in Fee and for Years as to the Dowrels's redeeming in a Court of Equity. 2 Wms's. Rep 648, 649. in Cae of Sutton v. Sutton.

19. Dower cannot be assign'd in Chancery except it was in the Cae of Chivalry and Wardship &c. But if the Heir in Pursuance of a Decree there assigns Dower, the Wife is in by the Heir's Assignment, and not by the Decree. 2 7 Mod. 43 Trin. 1 Ann. B. R. Smith v. Angel.

20. The Master was Guardian of the Infant Heir, and received the Rents and Profits of the Estate of which he was intitled to Dower, but it was never assign'd; But Ld. Chancellor held, that the want of a formal Assignment of Dower is nothing in Equity; For it still the Right in Conscience is the same; And if the Heir brings a Bill against the Master for an Account of the Profits, it is most just that a Court of Equity should in the Account allow a third of the Profits for the Right of Dower. Wms's. Rep. 118. to 122. Pauch. 1710. D. Hamilton v. Ld. Mohun.

21. A. the Father sold Land to J. S. and granted a 99 Years Term of Ld. Wright other Lands as a collateral Security. A. died. B. his Son entered and died. M. the Widow of B. recovered a third of those Lands for her Dower. On a Bill by J. S. to be relieved against that Recovery, the ab. Ch. Quesstion was, Whether a Dowrels shall be relieved in Equity against a Term of 99 Years granted by her Baron by Virtue of a Power in the Deed of Settlement on his Father, who by that D. ed was only Tenant for Life, Remainder in Tail to his Son (the Baron) with Power to grant a Term of 99 Years of Lands in five Parishes? Wright K. de- creed Equity to be bought upon the 99 Years Term, and to the came by Widow would be evicted of Dower. 2 Vern. 278. pl. 342. Trin. 1700, and 2 Vern. 680. pl. 605. Hill. 1711. Williams v. Wray.

22. Lands

and on solemn Argument he reverenced Ld. Wright's Decree, and ordered that the Plaintiff, the Lady Williams, having recovered Dower at Law, the Trust Termined up by Sir B. Wray should not stand in her way in Equity. Wms's. Rep. 137 to 139. Hill. 1710. S. C.
22. Lands in Fee are devised to J. S. in Trust to pay the Devisee's Debts and Legacies, and to educate B. until 21 or Marriage, and then to settle the same on B. and the Heirs of his Body. B. after 21 married M. and some Years after died, the Estate Tail not being settled according to the Will. M. brought her Bill, praying the Aid of Equity to help her to her Dower, and the same was decreed to her by the Master of the Rolls. 2 Wms's Rep. 632. 651. Hill. 1732. Sutton v. Sutton, alias, Banks v. Sutton.

And the Matter of the Rolls found that he did not know, nor could find any Inference, where a Dower of an Estate of Redemption was controverted and adjudged against the Dowref. Ibid. 631. — The Editor at the End of the Ppg. 631. refers to the Case of the Attorney-General v. Sect & al., 12 Nor 1775, when upon a Bill for Sale of an Estate, the Lord Talbot determined that a Wife should not have a Dower of an equitable Estate devised to the Husband who had mortgaged it to the Defendant.

23. And though in the Case above the Lands were in Mortgage at the Death of the Devisee to W. R. in Fee, so that B. was intended to an Equity of Redemption only, yet the Matter of the Rolls decreed her the Arrears of her Dower from her Husband's Death, "the allowing the third of the Mortgage Money unsatisfied at that Time, and her Dower to be set out, if the Parties differ. 2 Wms's Rep. 632. to 651. Hill. 1732. Sutton v. Sutton.

24. The Widow of a Tenant in Tail of a Trust, to whom the legal Estate is by the Will of the Donor directed to be conveyed at his Age of 21, and he living to that Age is intituled to Dower; Per Sir Joseph Jekyll Matter of the Rolls. 2 Wms's Rep. 647. Hill. 1732. in Case of Banks v. Sutton.

25. A Dowref shall be aided in Equity against a Trust-Term attendant on the Inheritance; Per Sir Joseph Jekyll Matter of the Rolls. 2 Wms's Rep. 646. Hill. 1732. in Case of Banks v. Sutton.

27. As Dowfer is more favoured in Law, Reason and Equity, than Curref, therefore every Precedent for Tenant by the Curtesy of a Trust is an Authority for Dower of a Trust; Per the Matter of the Rolls. 2 Wms's Rep. 644. Hill. 1732. in Case of Sutton v. Sutton.

25. A Dowref shall have the Benefit of a Trust-Term against an Heir or Devifee, but not against a Purchafor; Per Sir Joseph Jekyll Matter of the Rolls. 2 Wms's Rep. 639. Hill. 1732. in Case of Banks v. Sutton.

26. The Lady Handby the Grandmother of P. C. being seised in Fee, conveyed divers Lands to the Use and Intent that certain Trusteef, in the Deed named, should receive and enjoy a Rent-charge of 301. per Ann. to them and their Heirs, with Power to detain for the said Rent, and to enter and hold the Land on Nonpayment for 40 Days; and then the said Rent was to be to the Use of P. C. in Tail Male, Remainder to the Use of the same Perfons that had the Land in Fee. P. C. to whom this Eftate Tail was limited in the Rent died, leaving Ifue Sir J. C. who intermarried with the Plaintiff the Lady C. and afterwards died without Ifue Male; whereupon one Querry was, Whether the Plaintiff, the Lady C. was dowerable of this Rent of which her Husband died in Tail Male? After much Debate and Consideration, Ld. C. Talbot was of Opinion, that the Case of a Trust-Term, set up in Opposition to Dower, was nothing like the pretence; for there the Judgment is, that the Plaintiff in Dower shall recover
Droit de Recto, or [Writ of Right.]

but cessor Executio during the Term, and if the Trusts of such Term are satisfied and at an End, the Term ought not to subsist in Equity to stop a favourite Right at Law as Dower, whereas in the Case of a Trust there is no Judgment at Law that the Wife shall recover her Dower, for the Husband had no legal Estate, nor consequently any Thing of which the Wife is dowable; And in the Case of a Purcha- 
sor, may even with Notice, the Court would not relieve a Dowress agai

29. Lands in Coparcenary descended upon A. and B.—A. died in about 8 Months after, before any Receipt of Rent or Partition made. The Widow of A. brought a Bill against B. and others, charging, that De-
fendants had got Possession of all the Title-Deeds, whereby she was disabled to sue for Dower at Law, and therefore prayed to have Dow-
er assigned Here. Defendants demurred, because Dower is a Right merely at Law, and triable by Jury, and that no Impediment was sug-
gested why she could not recover there; and it was inflected, that for 
Detainer of Dower Damages were to be assailed by a Jury, and that 
the was not intitled to the Possession of the Deeds, but that they be-
longed to the Defendant; But Ld. Chancellor over-ruled the Demur-
er upon both Points, saying, that in this Case A. dying before Re-
cipt of Rent or Partition, she could not recover without the Deeds; 
and that as A’s Estate was complicated the must here for a Partition, or 
else the must at every six Months End sue such as held jointly with 
herself the Profits, as well for her Share as for Damages for Detainer, which he thought absurd and unreasonable. Cases in Equ. 

For more of Dower in General, See Titlttctty, and other Proper 

Tites.

Droit de Recto, or [Writ of Right.]

(A) Who shall have it.

 Fol 636.

1. A Parson shall not have it, because he has not any absolute Br. Droit de Recto, 
Fec. 33 Edw. 3. Aed del Rep 103.

Parson nor Prebendary cannot have a Writ of Right, but a Juris Utrum. — If a Parson prays Aed in Writ of Right of the Patron and Ordinary, and they will not join, there, per Hill, the Parson may join his Right, and Judgment shall be given. Br. Droit de Recto, p. 686. cites 29 E. 3. 34. and

Firth. Scirc Facias. 1752.—Ibid. p. 39. cites 3 C.

41 2. A
Droit de Recto, or [Writ of Right.]

2. A Pretender shall not have a Writ of Right, for he has not an higher Estate than a Parson. Contra 33 Ed. 3. Add del Roy 103.

3. A Dean of a free Chapel shall have a Writ of Right, though he hath no College or Common Seal, for he has an absolute Fee. 33 Ed. 3. Add del Roy 103.

4. An Abbot shall have this Writ, for he hath the mere Right. 10 Ed. 4. 16. 8 P. 6. 24. b.

5. Tenant in Fee determinable, who has but a base Fee, as where he has an Estate to him and his Heirs so long as J. S. shall have title of his Body, may maintain a Writ of Right Patent, for he cannot have other Writ in the Right, as Tenant in Tail, or a Parson may.

6. If Tenant in Tail brings Writ of Right, the Tenant may say, That he has nothing but to him and the Heirs of his Body. Br. Droit de Recto, pl. 31. cites 5 E. 4. 2.

7. If Tenant for Life, the Remainder over in Fee loses by Default, he in Remainder shall not have Writ of Right, for he never had Possession. Br. Droit de Recto, pl. 41. cites Litt. lib. 3. cap. 8.

8. But if he had entered upon Tenant for Life, and he had lost by Default, there he shall have Writ of Right upon this Possession. Ibid.

9. None can sue or maintain such Writ of Right Patent but they who have an Estate in Fee Simple, as Tenant in Fee Simple, or Abbess, or Prior, or Bishop, or Master of an Hospital; and a Body Politick, as Mayor and Commonalty, or Bailiffs and Commonalty &c. and such Bodies Politick may have such Writs for their Possessions. But Parsons, Vicars, or Chantery Priests, or Prebendaries, who have Patrons and Ordinaries over them, cannot maintain this Writ of Right Patent, but another Writ which is called Juris Uttram. F. N. B. 5. (C)

(A. 2) What shall be said Writs of Right.

S. P. S. of 1. QUO JURE, and Ne injuria existat, are Writs of Right. Br. Droit de Recto, pl. 31. cites 5 E. 4. 2.

Land, and of Customs and Services, Quod permittas in Dedit, Right of Ad文书, Writ of Sala Medendi, and Battle, or Grand Affile lies; and a writ of Writ of Right of Ward, Cessorie, Effectus, and Right upon Disclaimer, which are for the Seigniory, and the True Law of Writ of Major, as of Common Right. Br. Droit de Recto, pl. 34. cites F. N. B. — — And Writ of Rationalitv Partis is a Writ of Right in its Nature. Co.Litt. 158. b.

2. Note. That a Writ of Formedon in Defender is admitted a Writ of Right in its Nature, and ordered as a Writ of Right, and not as an Action possessory; quod nota. Br. Droit de Recto, pl. 33. cites 18 E. 4. 23.


(B) Against
(B) Against whom it lies.

1. A Lessee for Life cannot join the Wife upon the mere Right. 20 P. 6 46.
2. A Parson cannot join the Wife upon the mere Right, for the Weakness of his Estate. 20 P. 6 46.

(C) Of what Things and Estates it lies, and at what Time.

Of what Seisin it lies.

1. If Tenant for Life surrenders to the Remainder-man in Fee, (as it seems to be intended not in Tail) this is a sufficient Seisin to have a Writ of Right. 42 C. 3. 9 b.
2. If an Estate be to two, and the Heirs of one, and he that has the Fee, (it seems that it should be he that has not the Fee) survives, and dies, and a Stranger abates, the Heir may have Right. 42 C. 3. 9 b.
3. If Tenant for Life grants his Estate to the Remainder-man in Fee, he may have a Writ of Right. 44 C. 3. 31 b.
4. A Man aliened pending Prætia-quod reddat against him &c. and S.P. Ibid. after left by Judgment; the Feoffee has not any Remedy by Writ of Right, nor in other Manner; For the Recovery has Relation to the Title of the Writ. Br. Droit de Réto, pl. 24. cites 12 Aff. 41.
5. But if the Tenant brings Writ of Error, and is restored, the Alienor may enter. Ibid.
6. Alien, if a Man gives in Tail or in Fee upon Condition by Deed indicated, the Condition is broken; and after Distant is had, yet the De-Donor, Feoffee, or his Heir may enter; for he has no other Remedy upon Condition but to enter; for he cannot have Writ of Right; for he cannot join the Mise upon the mere Right upon this Feoffice; The Reason seems to be inasmuch as by the Feoffment the Right departs, and also Condition is not a Right but a Title, and upon Title without Right never lies Writ of Right; quod nota. Br. Droit de Réto, pl. 25. cites 33 Aff. 11.
8. In a Writ of Right the Demanidant must count of a Seisin in himself or his Ancestors, and it was in the same King's Time as he counts in his Count. Litt. S. 514.

in the Time of Limitation, he cannot maintain a Writ of Right; For the Seisin of him of whom the Demanidant purchased the Land &c. avails nothing. Co Litt. 393 a.

9. Diffesior died seised, and his Heir enters and is diffesied by A. B. the first Diffesior relieves to the second Diffesior all his Right, the Son of
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the first Differeit enters, the second Dififerior brought Writ of Right, and yet the Entry of the Heir of the Dififerior was lawful to the Poifion; but by the Release of the firft Differeiie the second Dififerior got the beft Right. Br. Droft de Recto, pl. 52. cites 9 H. 7. 25.

* This is misprinted, and should be 12 (B)


S. P. — But Ibid. Marg. cites Trin. 3 E. 3. (153). First. Here de fon Fee, pl. 5. that Writ of Right of a Rent-Charge is maintaineable. — Co. Litt. 160. a. oblects that some have infered from Litt. S. 226 that it lies of a Rent Seek, or a Rent-Charge, though they are against common Right; but that in those Actions there mentiont, (as Affile of Montdant, ftir Writ Apel and Confringe, and all other manner of Real Actions) it is to be understood after Stefhin had by some of the Demandant's Ancestors; For without an actual Sefin or Sefin in Deed none of these are maintainable. — First. Here de fon Fee, pl. 27. cites Patch. 15 E. 2, where it was agreed, that in Writ of Right of a Rent-Charge, the Demandant shall be received to have his Writ without Shewing Speci- alty; (which is an Admission that it lies of a Rent-Charge). — But First. Droft. pl. 51. cites 4 E. 5. It Not. that it lies not of a Rent-Sck, or Rent-Charge, nor of any Rent unles of Rent-Service. Per Herle.

12. If the Guardian of the College which now is, was ever feised he ought to count upon a Sefin within 30 Years; But upon the Sefin of his Predecessor he ought to count of a Sefin within 60 Years, as another common Perfon; For the change of the Tenfe of such a Sefin is as the dying feised, and defective of a common Perfon. Le. 153. pl. 212. Trin. 31 Eliz. C. B. All Souls Scholars in Oxon v. Tamworth.

13. A Writ of Right does not lie of an Office; For at the Common Law an Affile did not lie of it, but now it doth by the Statute of Wm. 2. cap. 25. For it was not Liberum Tenementum, but the Party grieved was put to his Quod Permittat; And of this Opinion was the whole Court. Le. 169. pl. 236. Mich. 30 & 31 Eliz. C. B. Salway v. Lufon.

14. A Writ of Right was brought by Cuflos & Collegium of All-Souls in Oxon; and the Writ was Quod clamant tenere de nobis in Liberam param & perpetueM Meminitor. Quod clamant effe jus & Hereditatem quam &. And except ons were taken to the Writ. First, It ought to be in Liberam Meminitor, and not puram & perpetuum. Secondly, It ought to be Meminitor with a double ee. Thirdly, They ought not to shew any Tenure in Special, but generally Tenent de nobis. Fourthly, For that they say not in jure Collegii; Sed non Allocatur. For the first is but Surplusage, and not material; The Second the common Courte is lo, and therefore it is good. Thirdly, they did well to express the Tenure; for otherwile it might be taken for a Tenure in Capite, which they do well to avoid. Fourthly, When the Writ is by Cuflos & Collegium, this cannot be but in Jure Collegii, as in their Incorporation; for they have no other Capacity, and the Precedents are both Ways. Cro. E. 323. pl. 1. Patch. 33 Eliz. C. B. The Warden of All-Souls College in Oxon v. Tamworth.

15. Lands are let to A. for Life, the Remainder to B. for Life, the Remainder to the right Heirs of A. A dies, B enters and dies, a Stranger intrudes; the Heir of A. shall have a Writ of Right of the Sefin which A had as Tenent for Life. Co. Litt. 281 a.

16. Lands are let to A. and B. and to the Heir of A. A dies, a Recovery is bad against B. the Heir of A. shall have a Writ of Right of the Whole; for every Jointnent is feised per my & per tont. Co. Litt. 281 a.

17. If Lands be given in Tail the Remainder to A. in Fee, the Dones dies without Issue, his Wife previoust enjoint, A enters, the Issue is born, and
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and enters upon him and dies, without Issue. A shall have a Writ of Right of the Seisin which he had. Co. Litt. 281. a.

16. If Lands be given in Tail to A, the Remainder to his right Heirs, A. dies without Issue, the collateral Heir of A. shall have a Writ of Right of the Seisin of A.' Co. Litt. 281. a.

(D) Proceedings. And of joining the Mise, and by what Persons.

1. **NOTÉ, that the four Knights chose 16 of themselves and of others to try the great Assise, and the Sheriff returned that there were not so many Knights there, by which Proces was directed to the four Knights to choose of the County next adjoining.** Br. Droit de Recto, pl. 40. cites 33 E. 1. and Fitzh. Trial, pl. 97.

2. **Right of Advowson was brought by the King, the Tenant shall not tender the half Mark, nor shall Judgment final be given against the King.** Br. Droit de Recto, pl. 43. cites 20 E. 3.

3. **Release of the Demandant himself, or of other Aecessor Collateral, is a good Bar without joining the Mise, and Judgment final shall be given.** Br. Droit de Recto, pl. 43. cites 20 E. 3. and Fitzh. Droit 21.

4. **The Tenant before any Issue may tender the Half Mark to have the Seisin inquired.** Br. Droit de Recto, pl. 37. cites 34 E. 3. and Fitzh. Judgment 256.

5. **In Writ of Right the Tenant joined the Mise, and Writ issued to make four Knights to come to the Grand Assise returnable Quadrana Martini, and at the fourth Day one of the four Knights came and bad Day over.** Br. Droit de Recto, pl. 3. cites 42 E. 3. 14.

6. **Droit by two against the Baron and Feme of a House, six Acres &c. and the Baron and Feme came in proper Person and defended Fort and Force, and the Right of the Demandant all attreenched and their Seisin &c. all entered as of Fee and of Right &c. and namely of a House &c. and put himself in God and the Grand Assise of our Lord the King, the which of them have the best Right to hold the House &c. to them and to their Heirs in four Usuoris as they hold, or the Demandants to have as they demanded, and atter the Baron made Default, and the Feme was received and joined the Mise, ut supra; and atter he made Default, and Judgetment final was given against him, that the Demandants recover Seisin &c. to hold in Common to them and their Heirs for ever, quit of the Baron and Feme and their Heirs. And it is said there that the Feme in this Cafe is outted of all Actions. Br. Droit de Recto, pl. 4. cites 44 E. 3. 24.† Quere the Meaning of the Word.

* This seems misprinted for 44 E. 3. 28. a. pl. 7. — Fitzh. Judgment, pl. 99. cites 44 E. 3. 28. 2. 2.

7. **Droit; the Defendant made Default by which came two at the second Default and were received and vouched, which Vouched came and pleaded at the Grand Assise, and the Writ issued to the Sheriff to return four Knights, returnable at a certain Day, at which Day the Vouched and one of the Progenes were dead, by which Restummons issued to the other returnable at a certain Day, at which Day he was exsessed; Per Culpepper, the Proces is discontinued; because the Death does not come in by Return of the Sheriff, and yet he was awarded to anwser; by which he joined the Mise, and the Writ issued to make the four Knights come, and it was returned that there were not four Knights but Burgess; and for Insufficiency of the Return, he was amerced, and other issued ut supra, returnable &c. at which Day the Sheriff returned it, by which

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which they were demanded and came to the Bar with their Swords by their Sides, and were charged well and lawfully to be twelve Knights Gladiis cinctis of themselves, and of others who best knew and could say true between the Demandant and the Vouchee, and was commanded by the Justices that the Parties go into a Chamber with the Knights to elect and declare their Challenge to the other cibos of the four Knights; For after the Return of the Panel made by the four Knights, the Parties shall not have Challenge to the Panel nor to the Polls before the Justices. Br. Droit de Recto, pl. 6. cites 7 H. 4. 3. 20. and 39 E. 3. accordingly.

8. In Writ of Right upon Disclaimer Acceptance of Rent in Pais after the Disclaimer is a good Bar; Agreed Arguendo. Br. Droit de Recto, pl. 47. cites 21 H. 6. 25.

9. Warrant of Attorney in Writ of Right offered to Littleton was refused, because the Party himself did not come in Person to record it; For he said that Writ of Right was stronger than a Fine; for it was in Writ of Right. Br. Garrant, de Attorney, pl. 32. cites 7 E. 4. 9.

10. Tenants for Life may join specially, viz. That he has better Right to hold for Term of Life, the Reversion regardant to W. S. &c. than the Demandant has to demand &c. Br. Droit de Recto, pl. 15. cites 9 E. 4. 36. Per Littleton.

11. A Man brought a Writ of Droit close in Ancient Demise, and made Protestation to sue in Nature of a Writ of Rights at the Common Law; The Tenant joined the Mife upon the mere Right, and upon that removed the Record by Accedas ad Curiam; but because that is no Caufe, a Proceedendo was awarded to the Bailiffs. Dy. 111. pl. 47. Hill I & 2 P. & M. Abbot v. Stafford.

12. It was holden by the Justices in this Case, That it is a good Challenge in a Writ of Right to the four Knights, that they are not Gladiis Cintii; and a Challenge to them must be made upon their Appearance; For after they are once sworn they are not challengeable; Also the four Knights are to make the Panel, and they need not put their Names to the Return of it, as the Sheriff shall do, for this is not within the Statute of York; and they ought to return but twelve Persons besides themselves to be of the Grand Assize. Mo. 67. pl. 181. Trin. 6 Eliz. Squire v. Read.

13. In Writ of Right it was ruled per Cor. 11t, That the Demo- Mark ought to be tender'd at the joining of the Mife, and yet the Judges in the present Caufe took it at the Appearance of the Jury. 2dly, The Tenant ought to commence in the giving of Evidence. 3dly, The Jury cannot give a Special Verdict. Mo. 762. pl. 1057. Trin. 3 Jac. C. B. Andrews v. Ld. Cromwell.

Spyrits v. Read. —— Ibid says the same Order was observed between Newburgh and Thornhill in Com' Dorset, 9 Eliz. —— Ibid. Marg. cites the same Order observed for Land in Com' Hereford, Trin. 28 Eliz. in Case of Haydon v. Ibrave.

14. A Writ of Right of Advowson a Purchafor cannot have, without alleging a Presentation in his own Time. 2 Inftr. 356.

Dal. 68. pl. 36. S. C. in toto dem Verbis.

D. 247. b. pl. 75. Hill. 8 Eliz. S. P. because the Mife is joined and proved by him first.

(E) Pleadings.
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(E) Pleadings.

1. A Szie; it was said, that in Writ of Right of Seisin of his Ancestor, Loaf Seisin is a good Plea. Quere if it shall be pleaded, or if the Half Mark shall be tendered to inquire of it. Br. Droit de Recto, pl. 49. cites 5 Aff. 1.

2. Recto: Praecipe in Capite of 20 Acres of Land quas clamat Tenore de Regis in Capite, the Tenant shall not have Pleas that the Land is held of J. N. and not of the King; but the Lord, if he be present, may demand his Count; but the Tenant may take it by Protestation and Answer. Br. Droit de Recto, pl. 9. cites 38 E. 3. 13.


4. In a Writ of Right, if the Tenant pleads a Release of Ancestor by whom the Demandant claims, this is only to the Affile or Battle; but it it be of an Ancestor Collateral, this is a Bar; But it teems that this is intended where the Release is with Warranty, for otherwise there is no Case Ex Parte of a Collateral Ancestor which never has Right. Br. Droit de Recto, pl. 6. cites 7 H. 4. 19.

5. In Writ of Right there are several Defences, one at first, and Br. Defence, then may demand Oyer of the Writ, and then Defence after the Count, pl. 7. cites 3. C. and may couch or plead in Bar, and after the Replication made, to make Defence and answer to it; Nota, per Newton. Br. Droit de Recto, pl. 11. cites 21 H. 6. 26.

6. Praecipe in Capite, the Tenant shall not say by Plea that the Land is held of another, and not of the King, but shall take it by Protestation, and plead other Matter. Br. Droit de Recto, pl. 19. cites 27 H. 6. 27.

7. Debt in Writ of Right the Mise is joined, and the Tenant gave in Evidence a Release made in another County, the Grand Affile ought to find it; For it is said elsewhere, that nothing may be pleaded in this Action but Collateral Warranty, but all others shall be given in Evidence. Br. Droit de Recto, pl. 48. cites 9 E. 4. 40.

8. In Writ of Right, the Demandant of the Seisin of his Ancestor, or of himself, this shall not be traversed, but the Tenant may render the Half Mark to inquire of the Seisin. Br. Droit de Recto, pl. 32. cites 10 E. 4. 9.

9. But if such Recovery in Writ of Right be pleaded in Bar in other Action, there the Demandant may traverse the Seisin by way of falsifying; Quere inde if it be against Prives. Br. Droit de Recto, pl. 32. cites 10 E. 4. 9.

10. But at this Day Issue may be tendered upon the Seisin by the new Statute of Limitation, 32 H. 8. cap. 2. Br. Droit de Recto, pl. 32. cites 10 E. 4. 9.

11. Collateral Warranty is a good Bar in Writ of Right, and it shall not be tried by Grand Affile, but by Jury; for it is not upon the Right, but upon the Deed. Br. Droit de Recto, pl. 42. cites F. N. B. fol. 1.

12. Error upon a Judgment in Wales in a Quod ei desoecrat in nature of a Writ of Right. Error assigned was, that the Illue is not well joined, because he pleaded be hos majus jus tenendi Tenementa praedicta than the Plaintiff, and he does not say ibi & Haredibus ibus, ac-
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according to the usual Course; for it may be that he was Tenant for Life, or Tenant in Tail, and therefore because he did not shew in Certainty que Estate it was ill; fed non allocatur; for the Court would not intend he had a leffer Estate than in Fee, and if he were but Ten-
nant for Life, it was at his own Peril to plead in that Manner, for it is a Forfeiture of his Estate; and it was held to be no Error. Cro. C. 178, 179. pl. 2. Hill. 5 Car. B. R. Griffith v. Jenkins. 13. In a Writ of Right there ought to be a Double Defence, viz. [a-
gainst] the Plaintiff's Right, and to maintain his own Right; Arg. and items admitted. Cro. C. 310, 311. Trin. 9 Car. B. R.

(F) Necessary or not. In what Cases.

1. Mortdancetor; Note by Award, that where the Father dies seised, the Heir enters, and a Stranger recovers against him by Writ of Entry ad Terminum qui pretedit by Default, the Heir may have Mortdancetor though the Recovery was by Default, and shall not be put to Writ of Right; and so fee that upon every Recovery by Default a Man is not put to his Writ of Right. Br. Droit de Recto, pl. 23. cites 11 Att. 17.

2. If Precipe quod reddat be brought against Tenant for Life, who vouch-
es a Stranger, and the Demandant counterpleads, and it is found for the Demandant, he in the Reversion has no Remedy but by Writ of Right. Br. Droit de Recto, pl. 30. cites 5 E. 4. 2.

3. So where the Vouchee enters into the Warranty and loses by Action tried or by Default. Br. Droit de Recto, pl. 30. cites 5 E. 4. 2.

(G) Judgment Final.

1. R I G H T of Advouson brought by the King; Judgment Final shall not be given against the King. Br. Droit de Recto, pl. 43. cites 20 E. 3.

2. Where the Defendant joins the Mife, and Day is given to him till the next Week, and he makes Default at the third Day after &c. Judgment Final was given upon the Default. Br. Droit de Recto, pl. 43. cites Fitzh. Droit. pl. 15. —— And this fee in Droit in Fitzh. 27. Itin. North. but Judgment shall be that he shall recover. 33 E. 3. Ibid.

3. Judgment final was given against a Feme Covett after she was receiv'd and join'd the Mife and made Default, and the was bair'd of Action for ever. Br. Judgment, pl. 45. cites 44 E. 3.

4. Droit, the Court was informed that the Tenant had only in Tail, and therefore they would not give Judgment final. And from hence it seems that Judgment final shall bind the Tenant in Tail and his Hiuie. And it was said, that it was for fear of barring the Issue in Tail; and they took Advivement. Br. Droit de Recto, pl. 46 cites 3 H. 6. 55.

5. In Writ of Right, the Tenant vouch'd one who was taken and en-
tered into the Warranty, and the Demandant counted, and be made De-
fence and joined the Mife, and the Demandant imparded till the next Day, 25.
Droit de Recto, or [Writ of Right.]

at which Day the Vouche did not come, by which upon good Argument Judgment final was given for the Demandant against the Vouchee to hold quit, but common Judgment in Error was given for the Tenant against the Vouchee, and not Judgment final. Br. Droit de Recto, pl. 27. cites 10 H. 6. 2.

6. Writ of Right, if the Demandant be nonsuited after Appearance, or after Mise joined, Judgment final shall be given 18 E. 2. and 10 E. 2. and 1 E. 3. & concordat 13 H. 4. 8. Fitzh. Judgment, 245. and in other Cases, Judgment final shall not be given unless they be joined, unless in Special Cases as here. Br. Droit de Recto, pl. 60. cites 11 H. 6. 9.

7. Judgment final shall not be given against an Infant within Age, per Danby and Yelverton, but Choke and Littleton contra. And Littleton said that the Opinion of him and his Compinnions was, that if a Feme Covert be received in Writ of Right in default of her Baron and joins the Mise, and it is found for the Demandant, yet the Demandant shall not have Judgment, and this for the Advantage of the Baron.

Br. Judgment, pl. 48. cites 9 E. 4. 16.

8. Writ of Right against an Infant within Age, who appear'd by Guardian, and vouched one who entered into the Warranty and joined the Mise, and after made Default. Catesby prayed Judgment final against the Tenant, and had it upon great Debate. Br. Droit de Recto, pl. 15. cites 9 E. 4. 36.

9. But it is said that if he had joined the Mise himself, Judgment final should not be given against him. And per Choke. When he vouches, he loses the Benefit of his Age, as if he had pleaded in Bar.

Br. Droit de Recto, pl. 15. cites 9 E. 4. 36.

against an Infant; Contra per Choke and Littleton. Br. Droit de Recto, pl. 17. cites 9 E. 4. 10.

10. The Tenant shall have Judgment final against the Demandant if it passes for him. Br. Droit de Recto, pl. 15. cites 9 E. 4. 36.

11. Droit, Illue was joined upon the mere Right upon the grand Affidavit of Fiz, and Nis Prouis issued, and at the Day the Tenant made Default, and the Demandant prayed Judgment final. Br. Droit de Recto, pl. 28. cites 12 H. 7. 10.

12. For if the Demandant be nonsuited after the Mise joined, the Tenant shall have Judgment final. Br. Droit de Recto, pl. 28. cites 12 H. 7. 10.

13. And if the Tenant has Day to impair to another Day in the same Term, and makes Default at the Day, the Demandant shall have Judgment final. Br Droit de Recto, pl. 28. cites 12 H. 7. 10.

14. But by Default of the Tenant at the Nis Prouis, the Demandant cannot have but only Petit Cape, by which he sued Petit Cape. Br. Droit de Recto, pl. 28. cites 12 H. 7. 10.

15. And if the Tenant joins the Mise by Champion, and at the Day appears, and his Champion not, Judgment final shall be given. Br. Droit de Recto, pl. 28. cites 12 H. 7. 10.

16. And if the Tenant at the Day of the Return of the Petit Cape cannot save his Default, Judgment final shall be given. Br. Droit de Recto, pl. 28. cites 12 H. 7. 10.

17. And per Vavisor if the Demandant makes Default after the Mise join'd he shall be bar'd for ever. Br. Droit de Recto, pl. 28. cites 12 H. 7. 10.

18. Note, per Fitzherbert J. Judgment final shall not be given in Br. Judgment of Right, but after the Mise joined. Br. Droit de Recto, pl. 44. cites S. C.

16. cites 26 H. 8. 8.
Droit de Recto.

Br. Jbjudgmeni., pl. 44, of Right, and the Damandant recovers against the Tenant and the Ten-ant over in Value the Judgment shall not be final for the Tenant a-gainst the Voucher's Quod Nota. Br. Droil de Recto, pl. 16, cit. 26, H. 8, 8.

20. In a Writ of Right the Tenant chose Trial by Battel, but when every Thing was prepar'd and perform'd, and the Day and Place appoint- ed for the Battel, the Damendant being solely call'd, made Default, whereupon Final Judgment was against him. D. 301, 302. a Trin. 13 Eliz. Thevin v. Paramour.

The Reporter says he was of Counsel with the Damendant, and that the Nonfuit was by reason of an Agreement made between the Parties by the Justices.

21. In Writ of Right the Issue was join'd on the meer Right, and when the Jury came to the Bar to give their Verdict, the Damendant was called, but did not appear, whereupon the Tenant pray'd the Court to record the Nonfuit, and so it was done. Per Cur. all is one as it he had appear'd; For this Nonfuit is peregrory for ever by reason that the Issue is join'd upon the meer Right, but had the Issue been join'd upon any Colla- teral Point it had been otherwise. Gouldsb. 90. pl. 1. Trin. 39 Eliz. Heiden v. Smithwick.

22. In Quod ei deforocis in Wales in the Nature of a Writ of Right, according to the Courge there the Mife was join'd upon the meer Right, and Venire Facias return'd and 12 were Sworn, and before Verdict the Demendant was Nonfuted, and thereupon Judgment Final was given. The Damendant afterwards brought another Quod ei deforocis. The Tenant pleaded the first Judgment in Bar. The Demendant demurr'd, and Judgment was given against him, whereupon Damendant brought Writ of Error, but Judgment was affirm'd. Resolv'd, 1st, that tho' by the Statute of Rutland 12 E. 1. Trial in Wales in Writ of Right shall be by 12 Common Jurors, yet Judgment final shall be given as before the Statute, and tho' the Manner and Dignity of the Trial be alter'd, yet the Judgment remains. 2dly, If Judgment final be given in Writ of Right where it ought not, yet it shall bind till it be reversed. 3dly, If the Tenant after the Mife joined makes Default, Judgment final shall not be given, (as F. N. B. 6. holds) but Petit Cape (null ifue; For peradventure he may have his Default. 5 Rep. 85. b. Trin. 38 Eliz. B. R. Penrryn's Cafe.

been have to reverse the first Judgment, and if it had been reversed, yet it had not reversed the second Judgment; For the second Judgment was Collateral and independent, and it is executed. And in a Writ of Right, if the Tenant before the Mife joined loxys by Default, he may have a Writ of Right against the Damendant, who has Execution against him upon the said Judg- ment by Default.

23. Seeing the Mife is join'd upon the meer Right, tho' the Verdict of the Grand Affize be given upon another Point, yet Judgment final shall be given. Co. Litt. 295. b.

But see Pen- ryn's Cafe. the third Resolution, e contra.

24. So if alter the Mife joined the Tenant makes a Default, or con- fesses the Affize, or if the Demendant be Nonfuit. Co. Litt. 295. b.

25. The Form of the Final Judgment is Quod tenens tenent Tor- ravi illam & Haredibus suis in Pace verhis pateUion & Haredes suas in Perpetuum. Co. Litt. 295. b.
Durefs of Imprisonment.

(A) What Things may be avoided by Durefs.

26. The Statute of 34 E. 1. nor the Statute of 4 H. 7. as to Co. Litt. Fines extends to Nonclaim upon a Judgment in a Writ of Right, 254. b. S. P. and to the Common Law in this Case remains to this Day, viz. that Claim must be made within a Year and a Day after Judgment. Co. Litt. 262. a.

For more of Droit de Reço in General, See other proper Titles.


3. Formedon in Defender; the Tenant said that he made the same Gift by Durefs of Imprisonment done to him by the Father of the Demandant to make the Gift; Judgment &c. and a good Plea, by which the other said, that at large and not by Durefs; Prit. Br. Durefs, pl. 3. 3. cites 41 E. 3. 9.

4. Feoffment by Durefs or Menace is not void, but voidable. Br. Feoffment de terre, pl. 48. cites 18 E. 4. 27.

5. A Man may avoid a Bond made upon the Statute 23 H. 8. cap. 6. of Recognizance by Durefs, and, yet this is matter of Record. Br. Durefs, pl. 19. cites F. N. B. 10. 120.

6. Declaration of Uses (on a Fine) by a Man in Durefs, denied to be good; Per Anderson 2 Le. 159. pl. 193. 21 Eliz. in the Star-Chamber. Anon.

should be admitted to levy Fines, they shoul] thereby be barred, because the Law intends such Persons are at Liberty when they acknowledge Fines, 17 Ed. 3. 52. 78. 17 Aff. 17. Well's. Symb. S. 11.

7. Fine Covert by Durefs in a Lease with her Husband, the fame shall bind her. 3 Le. 72. Per Manwood J. pl. 110. Hill. 20 Eliz. C. B. Northampton's Cafe.

8. N. brought Debt upon Arrerages of Account; the Defendant showed that before the Account, the Plaintiff of his own Wrong did imprison the Defendant, and assigned Auditors to him being in Prison, and in the Account was made by Durefs of Imprisonment, and the fame was holden
Durefs.

den a good Plea by all the Justices of both the Beuches; and Judgment was given accordingly. Le. 13. pl. 17. Hill. 25 Eliz. B. R. Northumberland's Cafe.

Against a Deed inroll'd a Man shall not take Averment that it was by Durefs; for this is contrary to the Record. Roll Abr. 862. Ettoppel A. pl. 2. cites 16 H. 7. 3.

9. f. 3. by Deed inroll'd in Chancery, bargained and sold a House and certain Lands to the Plaintiff, and after took the Goods again, and would avoid this Bargain and Sale inroll'd, by Durefs of Improviment. Godfrey said, it cannot be avoided by such mute Matter in Fact, cited 17 Ed. 4. 5. 39 Hen. 6. 32. 13 Ed. Ettoppel 18. 48 Eliz. 4. 33. For being inroll'd it is a Thing of Record. Morgan contra; and he said a Deed inroll'd is no Record, but a Thing recorded 16 H. 7. 3. and cited Browne and Welton's Opinion in one Morley's Cafe accordingly. The Court said the Cafe was doubtful, and they would advise; but afterwards they conceived it would be hard to avoid the Deed by Durefs, but no Judgment was given, because the Parties agreed. Cro. E. 88. pl. 12. Hill. 30 Eliz. B. R. Hamond v. Barker.

Br. Faits Enroll. pl. 17. cites 16 H. 7. 5. S. P. per Curiam.

10. If a Party menace me, except I will 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 voluntary, but shall rather make Contraction that my Mind and Courage is not to enter into the greater Bond for any Menace, and yet that I enter by Compulsion notwithstanding in the letter. Bacon's Elements 81.

11. If I will draw any Consideration to myself, 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 Durefs is discharged, and yet if it had moved from the Durefsor who had paid 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 been good, and yet the Bond shall be avoided by Durefs. Bacon's Elements 81.

12. A Feasment, it made by Durefs, and the Party himself delivers Satisfy; or in Cafe a Gift of Goods be made, and be himself delivers them, the same are avoidable at any Time by Entry Action &c. but if they deliver it not with their Hand, as in a Feasment, by Letter of Attorney, or in a Grant of a Rent, Assignment &c. nothing at all paleth. Finch's Law 102. 103.

13. A Feasment by one by Durefs is not void but voidable by Entry or Action, and that only by Prives in Blood invariable, and not by Privies in Law or Ettare. A Bond made by him cannot be avoided by Durefs on Non eft factam. A Feasment by Letter of Attorney by Durefs is void, and the Feoffee a Dissipate. 2 Inst. 452. 483.


15. If the Defendant is arrested, and in Execution, and A. becomes bound for him to the Plaintiff, and the Defendant gives A. a Judgment for his Counter-Security, it is good though no Attorney be present, and it is not within the common Rule of Court, because not given to the Person himself but to a third Person; Per Holt Ch. J. 5 Mod. 144. Nich. 7 W. 3. Churchy v. Rolle.

16. In Cafe of a pretended real Discharge of the Bailiffs before a Warrant of Attorney executed by one under an Arrest for a just Debt. Holt Ch. J. declared he would be well satisfied by Affidavits that the Bailiffs were so discharged, as that if the Defendant had refused to execute the Warrant they would not come again and seize on him, and that he would have Reason to believe before he would let the Judgment stand. 7 Mod. 159. Hill. 1 Ann. B. R. Gidden v. Drury.

17. If
Durefs. 317

17. If A. be arrested on Process out of C. B. or any inferior Court, and gives a Warrant to confess a Judgment in this Court while in Custody, no Attorney being there present, we can examine and set aside this Judgment; otherwise where it is to confess a Judgment in another Court. 1 Salk. 402. Mich. 2 Ann. B. R. Anon.

(B) What shall be Durefs.

To avoid a Thing.

[And though made on another Person.]

1. If a Man be lawfully in Prison, yet if he makes an Obligation against his Agreement and Will, he may avoid it by Durefs.

Debt upon Obligation the Defendant pleaded that it was made by Durefs, and

43 C. 3. 10. b. 6.

2. Otherwise if he does it of his good Will. 43 C. 3. 10. b. 11 D. 4. 6. b.

the Plaintiff said that he was his Receiver and Affixed Auditors to him to hear his Account who committed him to Gaol for Arrears, and there he made this Obligation for his Deliverance of his own Will; and held a good Piece; by which the Defendant pleaded other Issue, for this is not by Durefs. Br. Durefs, pl. 4. cites 43 E. 3. 10.

3. If a Man makes a Deed by Durefs done to him by taking of S. P. award his Cattle, though there be no Durefs done to his Person, yet this shall avoid a Deed. 20 Att. 14. Adjudged.


4. A Servant shall not avoid a Deed made by Durefs to his Master. Nor shall a Man avoid a Deed by

Durefs to his Servant. 2 Brownl. 276. Mich. 7 Jac C. B. Anon.

5. A Son shall avoid his Deed by Durefs to his Father. 7 Jac. B. per Coke.

Durefs of Imprisonment of his Son. 2 Brownl. 276. Anon. —— Per Wyllis, if the Durefs be to a Father or Brother and a Son enters into Bond, this is a Durefs to the Son and he may plead it; but per Twidde a Man shall in no Case avoid his Deed by a Durefs to another, let him be related, How he will. Freem. Rep. 531. pl. 440. Mich. 1675. in Case of Wayne v. Sands.

6. The Baron shall avoid a Deed made by Durefs to his Wife. S. P. per

7 Jac. B. per Coke.


[6.] A Man shall not avoid a Deed by Durefs to a Stranger. 7 Jac. B. per Curiam. 7 Jac. B. where the Obligation is joint and several.

Durefs.

7. If A. and B. make an Obligation by reas of Durefs done to A. B. shall not abd this Obligation, though A. may, because he shall not abd it by Durels to a Stranger. 8. 7. 3. B. per Curt.

8. If a Purviant of the High Commission, upon a Satt, and by their Command imprisons a Man until he enters into a Bond to appear in the Court of Audience, this Obligation may be avoided by Durels, because the Satt there was upon a Contract, ot which they had not original Convanse, and therefore the Imprisonment ungood. 8. 5. B. between Cufford and Hanly, per Curtains resolved.

9. In Affise it was found that the Comity upon Statute Merchant after Execution seid against him takes the Comiff at Force, and fows him that he shall render him the Land, and of his own Will be relefs all Actions of Debt and Trefpefs, and after he of his own Will surrender the Land, and this Oath he took for fear of Death; and therefore notwithstanding the Surrender was made at large, yet because it was done by rea of Durefs before, therefore Perning adjudged it a Difefifn, when the Comiff entred by such Surrender. Br. Durels, pl. 11. cites 14 Aff. 20.

10. If a Releafe be made at D. it is a good Plea that a Stranger me-naced him at 8. by reas of he menaced him at D. Br. Faits, pl. 81. cites 43. E. 3. 19.

11. A Writing made by Durels, and delivered at-large was adjudged void, Anno R. 2. Per Rolf. Br. Durels, pl. 20. (bis) cites 8 H. 6. 7.

12. Durels cannot be to a Body Politick, but may be to a Mayor, to do a Thing belonging to his Office, by the left Opinion; for he is Head of the Corporation. [And] Imprisonment of the natural Body in a Pillory is imprisonment of all the Body. For intire. Br. Durels, pl. 18. cites 21 E. 4. 8. 14. 15.

13. Where a Man is imprisoned by Capias &c. by the Law, and makes an Obligation for his Deliverance; this is good, and not by Du-

14. In Replevin, if a Man be condemned to me and in Execution, and makes to me an Obligation for his Deliverance, this Obligation is not by Durels. Br. Durels, pl. 17. cites 12 E. 4. 7.

15. If I menace you in one County to make an Obligation of 20 l. and after at another Day I find you in another County, and I demand if you will make the Obligation to me, and you make the Deed according to my first Request in the first County, this Obligation is avoidable because it has its Respect, and was made by Reason of the first Menace in the other County. Per Frowike Ch. J. Kelw. 52. b. pl. 7. Trin. 19 H. 7. in Cafe of Keble v. Vernon.

16. A. is imprisoned till be promises to enter into an Obligation who does it when he is at large, yet he may pleed this to be per Durels. D. 143. b. Mag. pl. 56. cites Mich. 23 Eliz. per Meade.

17. Debt upon an Obligation was brought by B. against U. and H. who pleaded the Statute of 23 H. 6. and shewed that U. was in Execu-
tion, and that the Bond was made for his Deliverance against the Statute; The Plaintiff replied, and said, that at the Time of the making of the said Bond, the said U. fut sui juris, and at large, abigne bec that he was in Prison tempore confessionis scripti praeedit modo & forma &c. Egerton Solicitor moved, that the Traverle was not good; for if a Man
Prifona, It Man Bond adjudged Bows Pnlun 2 corporal 2diy4 ilf, Man-Inlt. Bond if Promifej and the had ought the makes for Becaufe ihall Brown 58. 23. R. Member, but his a be &c. V.Walls himfelf, nor Sheriff' Vernon, Lloyd. well though the Adams. Writ and was 745, an Debt to may and was 4b2. and to Fenner, joined, the which tuue Hough, Durels, wagon. And Adams was kept 646. Attachment the the the Queen's Council attending the Court of Requests at Weftminifter; It cap.9. S.G. was the Opinion of the Court, that this was not lawful, but taken by Durefs, and fo avoidable, because that Court had not any Power by the Statue, or by the Common Law; It was adjudged for the Defendant. Cro. E. 646. pl. 58. Mich. 40 & 41 Eliz. Stepeny v. Lloyd.

19. Debt by a Sheriff on a Bond for the Appearance of T. &c. the Defendant pleaded, that W. sued out a Capias which was deliver'd to the Plaintiff (Sheriff of Oxford) who made a Warrant to the Bailiff of the Liberty of H. to arrest the said T. and that one J. S. put his own Name in as a special Bailiff to arrest him; and that he did arrest him at D. in the said County, and carried him to R. in the County of Berks, and there kept him till he and T. gave the said Bond; adjudged an ill Plea, for though the Bond was made by Durefs as all the Court agreed, and that the Defendant might well have pleaded it and relied upon it, yet it is not within the Statue 23 H. 6. nor is the Defendant aided thereby. For T. never was in the Sheriff's Custody after the Arrest; And the Bond taken out of the County is by Durefs, but not within the Statue. Cro. E. 745. 746. pl. 23. Hill. 42 Eliz. B. R. Brown v. Adams.

20. If a Man menace me, that he will imprison or hurt in Body my Father, or my Child, except I make such an Obligation, I shall avoid this Durefs as well as if it had been to my own Perfon. Bacon's Elements 66. Because Persona Conjuncta equiparatur Interesse pro-pria.

21. Ancienfly there was a Writ of Dum fuit in Prifona, where an Alienation was made by Durefs, and that for the party himself. 2 Init. 432.

22. Every Restraint of a Man's Liberty is an Imprisonment, tho' he be not within the Walls of any Common Prifon. 2 Init. 432.

23. Durefs per minus aut Capia metus are fufficient to avoid a Man's own Act in four Cales, viz. 1st, For fear of Lofs of Life, 2dly, Of Lofs of Member. 3dly, Of Mayhem, and 4thly, Of Imprisonment; otherwife it is for fear of Battery, which may be very light, or burning of his House, or taking away or destroying of his Goods, or the like, for there he may have Satisfaction by Recovery of Dama ges. 2 Init. 483.

24. Durefs where is a Man is compelled to do a Thing by Impri- sionment, or Fear of some bodily Hurt threatened to himself, * not to his Father, Mother &c. as Lofs of Life and Member, or though it be but of Imprisonment; for Imprisonment is a corporal pain, and one may bee imprisoned that he may dye of it. Otherwise it is of a Menace to break or burn down ones House, for that is but the Lofs of one's Goods. Finch's Law. 102.

25. If a Man be imprisoned by Order of Law, the Plaintiff may take 8. P. 5t. a Seizure of him, or a Bond for his Satisfaction, and for the Deliverance of the Defendant notwithstanding that Imprisonment, for this is bind's; and not by Durefs, because he was in Prifon by Courfe of Law; for it is not
Durefs.

Durtious may for that of his own Accord fine Duratia Imprisonmenti without laying abique hoc that it was per Duratia Imprisonmenti. 2 Le. 239. pl. 530 Mich. 32 Eliz. C. B. Knight v. Norton. And 1Brad. says it was to holden in B. R.

26 Debt on an Obligation of 40 l. conditioned to pay 24 l. The Defendant pleaded, that W. R. was imprisoned by Coivin of the Plaintiff, and detain'd there in Danger of his Life, against Law, until the said W. R. should pay the said 24 l. or become bound with a surety for Paymenc thereof; whereupon, to enlarge the said W. R. and to avoid Danger of his Life, he and the said Defendant as Surety for the said W. R. entered into the said Bond &c. Adjudg'd to be no Plea for the Surety, tho' it had been a good Plea for W. R. For none shall avoid his own Bond for the Imprisonment or Danger of any but of himself only. Cro. J. 187. pl. 8. Mich. 5 Jac. B. R. Huicome v. Standing.


29. If a Man be imprisoned upon a formal Suit, tho' there was no just Caufe of Suit yet if he give a Bond for his Release he shall not avoid it by a Durefs; For 'tis Incarceratio Legitima, that is by Law, tho' the Plaintiff did untruly procure it. Hob. 266. pl. 352. in Cafe of Waterer v. Freeman.

30. An Agreement for surrendering of a Copyhold (tho' made when the Party was in Prison) upon Bonds for Performance thereof. Toth. 66. 3 Car. Wadbroke v. Cheeke.

31. In Debt upon a Bond of 10 l. and by Durefs pleaded, the Cafe upon Evidence was, that the Plaintiff charged the Defendant with Felony for stealing a Horfe, and procured a Warrant to a Contable, whereby he was taken, and being in Custody, upon Promife of the Plaintiff to discharge him sealed the Bond, and was thereupon immediately discharged, and it appeared that the Horfe was the Defendant's Horfe; And Roll directed the Jury, that these Proceedings being due to cover the Deceiz, the Bond was gotten by Durefs, whereupon the Plaintiff was nonfuit. All. 92. Mich. 24 Car. B. R. Anon.

32. A Man having no good Caufe of Action causes another to be arrest, and to be detained in Prison until he be made a releaft, with Menaces that he should be there and rot if he would not Seal a Releaf, upon which a Releaf was executed, and the Man was discharged. On Evidence at Guildhall Bridgman Ch. J. held, that the Party there being in Custody by the King's Writ, this was no Durefs to be pleaded in Avoidance of a Deed, and being arrested without Caufe he may have an Action, but he offered to have it found specially if Baldwin the Counfel would pray it but he did not, and to the Jury gave their Verdict
Verdict that it was a good Release. Lev. 68. 69. Trin. 14 Car. 3. at Guildhall. Anon.

33. If a Bond be given by Force or Terror, the not so as to make it to be per Dures, it ought to be set aside, or at least not carry'd into an Execution; Per Wright K. 2 Vern. 467. pl. 447. Petch. 1795. in Case of Attorney Gen. ad Relationem Collart & Dutrie Sochon.


35. A Man arrested and under Confinement of the Bailiff gives a Warrant of Attorney to confess a Judgment, and no Attorney by, it is always taken to be by Durefs; But if a Man that has been long in Gaol, voluntarily confesses a Judgment to his Creditor that comes to him, that Judgment is good, though no Attorney is by; And if one imprisoned in B. R. confesses Judgment or Action to another, it is good, As it Declaration be delivered to one in Custody of the Marthail, and he confesses the Action and gives Judgment, then no Attorney by, yet it is good; Per Holt Ch. J. 7 Mod. 115. Mich. 1 Ann. B. R. Anon.

36. A Barre was attach'd on the Thames by Process out of Windsor Court, and the Manager or Governor of the Barre gave a Bail Bond for his Master to appear in Windsor Court, to answer in a Plea of Trespasses. The Question was, whether this was a Bond obtained by Durefs, and therefore void, but the Bond was adjudged good. 11 Mod. 291. Hill. 7 Ann. B. R. Summer v. Ferrymans.

37. A Bond shall never be avoided by Durefs but when the Person is * Become put in some Terror, and So when his Goods and Chattels are taken illegally or irregularly, but in such Cases he may avoid his Bond; Arg. 11 Mod. 222. Hill. 7 Ann. B. R. But ibid. Powell J. said, that they taken. Perk. Man cannot avoid a Bond by Durefs to his * Goods, but only to his 3. 18.

Peron; But the Reporter adds a Quere.

(C) By whom being made.

A Stranger.

1. Durefs by a Stranger by Procurement of the Party that shall have the Benefit, is a good Cause to avoid 22. 43 C.

2. Durefs of Imprisonment by the Master to his Servant, to make an Obligation to the Obligee, is good Cause to avoid the Decd. 6 H. 4. 5. adjudged.
(D) Pleadings.

Br. Durefs.

1. **WRIT of Error upon a Judgment in Re-dissipat given against him at the Suit of the Father of the Defendant, and the Defendant pleaded a Release of all the Right, and of all Actions and Demands made to his Father; And the Plaintiff said, that this was made by Durefs of Imprisonment; and the Defendant said, that he was imprisoned by Virtue of the same Condemnation, and made the Release for his Deliverance, alleging hoc that he was otherwise imprisoned; Prift; Judgment &c. and the other said, be imprisoned him De for tort Deniijii^, and without such Causes till be made the Release &c. Prift. and the other c contra. Br. Durefs, pl. 6. cites 11 H. 4. 6.

2. Where a Man avoids a Deed by Durefs at D. in another County, it is no Plea nor Evidence for the Party to say that he never came to D. for the Place is [not] traversable there; For it it be by Durefs in any Place it is sufficient. Br. Traversc per &c. pl. 53. cites 14 H. 4. 35.

3. If a Man makes Writing by Durefs or Menace, and makes Deliverance of it at large; there the Deliverance ceases him to say that it was made by Durefs &c. by the best Opinion. Br. Deliverance, pl. 17. cites 3 H. 6. 16. and 35 H. 6. 18.

4. Debt upon Obligation; Chock said, the Plaintiff took and imprisoned him at T. and from thence brought him to C. by Force of which Imprisonment he made the Obligation &c. There two Imprisonments are double; Quod Curia conciliat. Br. Durefs, pl. 7. cites 38 H. 6. 13.

5. By which he said, that he took and imprisoned him at T ut supra, till be agreed to make to him the Obligation, by Force of which Imprisonment he made the Obligation at C. and a good Plea. Per Moile. Br. Durefs, pl. 7. cites 38 H. 6. 13.

6. Debt upon Obligation upon a Covent Seal, it is no Plea that A. B. C. D. &c. Eight Persons, Chanons &c. made the Covent tempore &c. who were imprisoned by the Abbot at D. till they sealed it, and so by Durefs &c. For this is double; For it is several imprisonments in each of them; But it is a good Plea to say that the Abbot imprisoned the Covent till they made the Deed, and if they sealed it against their Will, or not knowing, this is not the Deed of the Covent; and the other fact that they sealed it at large, and not by Durefs; Quare as to the Doubleties, it there be a Diverallery between Menace by speaking of one and the same Words to them altogether, and Imprisonment of them in one and the same Place. Br. Durefs, pl. 8. cites 38 H. 6. 27.

7. Debt upon Obligation; the Defendant said, that the Plaintiff imprisoned him at D. and the Defendant ibidem per durantium imprisonamentis fecit Obligationem, and the Plaintiff challenged it, inasmuch as this Word (ibidem) is not certain, but because this shall have Relation to D. and also this is the usual Entry, therefore well. Br. Durefs, pl. 15. cites 4 E. 4. 17.

8. In Replevin, if a Man condemned to me, and in Execution, and makes to me an Obligation for his Deliverance, this Obligation is nor by Durefs, per Brian. Per Littleton, if the Defendant pleads that it was by Durefs, and the Plaintiff traverses it, it shall be found against him, but repel l

Durefs.
Ejectment.

1. Solicitor and Agents in Ejectment were committed till they find a Plaintiff able to pay the Costs, or pay the Costs themselves.

2. Ejectment is a mixt Actio; it is Real in respect of the Lands, and Personal in respect of the Damages and Costs; Per Holt J. Cumb. 250. Pash. 6 W. & M. in B. R. Barwick v Fenwood.

3. The Court will take Notice that an Ejectment is only a fictitious Proceeding for recovering the Possession which cannot be well obtained otherwise, and the Entry laid in the Declaration, or controverted by the Defendant, is not an Entry that is real, for it shall neither avoid a Fine nor be sufficient Evidence to support Trespasses for the mean Profits. 1 Salk. 246. Patch. 6 W. & M. in B. R. Smart v Williams.

4. It is a great Abuse in Ejectments that People make nominal Lessees, Persons not in Revenum Natura, or at best not known to the Defendant, fo that thereby he may lose his Costs; and per omnes, the Attorney that does so ought to pay Costs, and in the principal Case an Attorney was put to answer Interrogatories for such Practice per Cur. 6 Mod. 509. Mich. 3 Ann. B. R. Anon.

Where a Marriage may be avoided by Durefs, See Baron and Feme (A) pl. 5. and the Notes there, and see Tit. Marriage (H. a) per totum.
(B) What is, or shall be said to be an Outlier.

1. **Taking** the whole Profits by one Tenant in Common is no Ejectment, but it he drive out of the Land any of the Cattle of the other Tenant in Common, or not suffer him to enter or occupy the Land, this is an Ejectment or Expulsion, whereupon he may have an Ejectment Firma for the one Moiety, and recover Damages for the Entry, but not for the mean Profits Co. Litt. 199 b.

2. Ejectment of Part of a great Cliefe is Ejectment of all. Lat. 82. Paich. 1 Car. Calby v. Fisher.

3. Where a Lease is to try a Title if my Cattle come upon the Ground and are permitted by me to rest there a long Time I shall be an Ejector, otherwise if a small Time. Clavt. 29. pl. 50. Althia. 10. 19. Calv. Vernon. Judge. Rawcliff v. Booth.

4. Our Room, or a third Part of a Manor, is good finding enough. Mar. 98. pl. 168. Trin. 17. Car. C. B. Juxon v. Andrews. Ejectment by Mortgage was argued to be an admitting himself to be out of Possession, for the Ejectment complains of a torment Entry and an Outter, and this being a Matter of Record he is elopped to lay e contra; non allocatur; For first, per Car. an Ejectment as it is in common Practice is but a signified Actio, to which the Lessor of the Plaintiff, who is a principal Person, is not a Party; and not being a Party, this cannot be given in Evidence as an Effeclipse against him, and therefore he cannot maintain an Action for the mean Profits, without an actual Entry, but the Leesee may. Skinn. 424. Paich. 6 W. & M. in B. R. Andrew Newport's Café.

(C) Of bringing Ejectment by Way of Leafe.

See Clavt. 6 to 1. **When** a Leafe is made to bring an Ejectment of Land in divers Men's Hands, they must enter into one of the Parcels and leave one in that Place, then he must go to another and leave one there, and so on, and when he has made the last Entry, he seals and delivers the Leafe, and then those that were left must come out of the Land, and this is a good executing the Leafe. Brownl. 128. Weeks v. Meefy.

2. Leafe by Copyholder for more than one Year, without Licence or Custom, is not good to try a Title in Ejectment, but he will be Non-fruit on his own Evidence, and such Leffer will be taken to he a Diffessor; Per tot. Cur. Brownl. 133. Paich. 8 Jac. Cramporn v. Freshwater.
Ejectment.

3. Lease by two Husbands and their Wives to try a Title in Ejectment, and the same executed by Letter of Attorney &c. they must be sealed by the Wives as well as the Husbands, and the Entry by the Attorney ought to be in all their Names. 2 Blit. 13. Mich. 10 Jac. Chamberlain v. Ewer.

4. When a Lease is to be executed by Letter of Attorney, the Course is this, that the Lefflor do seal the Lease only and the Letter of Attorney, and delivers the Letter of Attorney but not the Lease, for the Attorney must deliver that upon the Land. Brownl. 150. PaSch. 12 Jac. Petition v. Reel.

5. By the Ancient Law, Lands and Tenements were never recovered in any personal Action, but antiently the Writs of Entry and Affize were the usual Means for the Recovery of the Possession, and these lay only against the Freeholder, because the Estate for Years was heretofore only a precarious Possession, and therefore to have Actions against such Perions was to no Purpose; because such Terms were generally deserted or determined before any intricate Title could be decided; besides these Possessions being to precarious, the Possessors were not trusted with the Defence of the Interest of the Land, and if they were oulted they could only have recovered Damages for the Loss of their Possessions, and if oulted by their Leffors they could seek only a Remedy from their Covenants.

Thus the Law continued till the 14 H. 4. and then it began to be resolved that an Habere Facias Possessionem would lie to recover the Term itself.

It seems that the long Terms about this Time had their Beginning, and that since such Leases could not by Law recover the Land itself, therefore they used to go into Equity against the Leffors for a Specific Performance; and against Strangers, to have Perpetual Injunctions to quiet their Possessions: This drawing the Business into the Courts of Equity obliged the Courts of Law to come to a Resolution, that they should recover the Land itself in an Habere Facias Possessionem.

But this Resolution brought on a new Method of Trial unknown before to the Common Law, for then it became usual for a Man that had a Right of Entry into any Lands to seal Leases of Ejezsum on the Lands, and then any Peron that next entered on the Freehold was an Ejector; and the Convenience that arose from this Method was, They could try the Title etatis quotes whereas, if the Plaintiff was barred in an Affize, he was put to his Writ of Right, but this was a Means of turning a Man out of Possession because such Plaintiff would recover his Term without any Notice to the Tenant in Possession, and therefore the Courts of Justice would not suffer that they should lose their Possessions without any Opportunity to defend them; wherefore the Court made it a Standing Rule, that no Plaintiff should proceed in Ejectment to recover his Lands against such a casual and titular Ejector, without delivering the Tenant in Possession a Declaration, and making him an Ejector and proper Defendant if he pleased.

This was a proper Rule of Court and in its Power to form; for otherwise the Court would be made instrumenal in doing an Injury to a third Peron, because a Declaration might otherwise be delivered to a Stranger, a faint Defence be made, and a Verdict, Judgment and Execution obtained without the Tenant's having any Notice of it; But it is not to be doubted but that such Actions were brought at first against the real Ejectors that resided in the Possession; but because any Peron that came into the Land Animo Possessenda, was equally an Ejector with him that resided, the Action in Strictness of Law might be brought against him, but because this (as has been said) turned to the Injury of the residing Possessor, the Rule was made that he should
should have Notice of it, and therefore they would not give Judgment in Ejectment unless an Affidavit was made, that the Tenant in Possession was served with a Copy of the Declaration. But the Ancient Custom was, that such Leases were actually to be sealed and delivered, because otherwise the Plaintiff would maintain no Title to the Term, and were also obliged to be sealed on the Land itself, because it was Maintenance to convey out of Possession, and therefore in relation to the Quickness of the Remedy the Assize had the Advantage, because none of this Preparation was required before-hand, for the Writ of Assize came down to the Assizes and the Jury was there warned, the Cause tried and Judgment given, yet the Method in Ejectment from the Convenience of the repeated Trials notwithstanding the previous Preparations, was generally preferred.

Thus it stood till the Time of the Lord Ch J. Rolls, and he invented the Rule now in Use, which is that if the Defendant comes into the Room of the co-final Ejector, he should enter into a Rule to contest Lease, Entry and Onset, and should stand upon the Title only. This Rule was reasonable, because when the Plaintiff had made his Lease upon the Land any third Perfon that came upon the Land Animo pojfedendi in Strictness of Law, was an Ejector, therefore when any other Ejector was placed in his stead, it was very reasonable in the Court to impose Terms upon him, and therefore the proper Terms were, that he should not stand on the Proof of an actual Entry, Demise, and actual Onset, because this was no more than a Form of bringing the Title in question, it was not fit that the Plaintiff should be non-suited for want of prov'g the formal Demise fet forth in the Declaration when the casual Ejector would have let the Judgment go by Default. Ld. Ch. Bar. Gilb. Law of Ejeotments 2.

(D) Rules.

1. Exception taken in Ejectment because the Original boro Title the same Day the Ejectment was made, and adjudged good per tot. Cur. Brownl. 129. Trin. 13 Jac. Beamont v. Coke.

2. In Ejectment we rarely grant a New Tryal, for they may try the Title over-again; Per Withers. J. Cumb. 18. Pasch. 2 Jac. 2. B. R.

3. Fifteen Days between Title and Return need not be in a Scire Facias on a Judgment in Ejectment because an Ejeotment is a mixt Action. Cumb. 65. Mich. 3 Jac. 2. B. R. Carr v. Mogg.

4. In Case of Ejeotment it is always deny'd to amend the Memorandum; Per Thomon. Cumb. 74. Hill. 3 & 4 Jac. 2. B. R.

5. The Demise being laid before the Leofor of the Plaintiff had any Title, the Court was moved for Leave to amend the Declaration and alter the Time of the Demise, not non-locutus; For the altering the Time will make it a new Demise. Carth. 178. Hill. 2 & 3 W. & M. in B. R. Bennet v. Gandy.

6. But where a Demise was made by the Rectors and Scholars of Exeter College generally, which was to try they Right of the Rectohip, but which could not be done upon that Declaration, and so not good,
Ejectment.

it was ordered upon Motion to alter the Demise in the Declaration, and lay it to be made by Painter Rehor of Exeter, and the Scholars of the same. Carth. 185. Hill. 2 & 3 W. & M. in B. R. Philips v. Bury.

7. Tho' the Lessee is Principal by the Course of the Court, yet legally he is a Stranger to the Record, and therefore cannot be adjourned; & Per Holt Ch. J. Cumb. 249. Patch. 6 W. & M. in B. R. Smartle v. Williams.

8. In Ejectment for empty Houses, a Lease was sealed upon the Land, and a Declaration delivered to the casual Ejector, and Judgment and Execution had, yet because they had not moved for a peremptory Rule to plead, the Judgment was set aside, and in such Case there must be Affidavit of the Sealing of the Lease, Entry &c. 1 Salk. 255. pl. 3. Hill. 8 W. 3. B. R. Smartley v. Henden.

9. And where a Judgment in Ejectment was by Confession, an Amendment of the Time of the Demise was made in the Declaration cited Carth. 401. Patch. 9 W. 3. B. R. as the Case of Part v. Caviley; But that being a Judgment by Consent of Parties, was held no Authority in the principal Case of Puleston v. Warburton.

10. Libel was denied to be amended and made Brevi, cited by the Reporter. Carth. 402. Patch. 9 W. 3. B. R. as the Case of Thompson v. Leech.

11. After a whole Term elapsed without doing any Thing the Plaintiff must give new Notice. 1 Salk. 257. pl. 9. Trin. 15 W. 3. B. R. Anon.

12. No Body can complain of an Irregularity in an Ejectment but the Tenant in Possession, or the Landlord. 1 Salk. 256. pl. 7. Hill.

13. The Court will not make a Rule for naming a good Lessee in Ejectment, unless there were a Nontuit or Verdict against Plaintiff, in a former Trial. 12. Mod. 445. Hill. 12 W. 3. Anon.

(E) As to the Delivery.

1. It is sufficient upon an Action of Trespass and Ejectment brought, to try the Title of Land, if the Tenant in Possession of the Land, have a Copy of the Declaration in Ejectment delivered to him or his Wife, altho' he be but an Under-Tenant of the Land, and altho' no Notice thereof is given to the proper Tenant, or to the Owner of the Land, whose Title is concerned. 23 Hill. Car. B. R. and Patch. 24 Car. B. R. For the Possession of the Land is only recoverable in this Action, and that doth chiefly concern the Tenant in Possession of it; and it is the Property in Law that is to defend the Title. 21. L. P. R. 237.

2. Declaration in Ejectment delivered to a Servant is ill in B. R. but it is allowed in C. B. Cumb. 47. Such Service and Acknowledgment of the Tenant that he receiv'd it, is sufficient 1 Salk. 255. Hill. 10. W. 3. B. R. Anon.

3. Declaration in Ejectment had been delivered to one to whom the Keys were given to let the House, and Per Cur. not good, because it should be to the Tenant in Possession, and he is only a Servant, and Plaintiff is not without Remedy, for he may sign a Lease on the Land. 12. Mod. 313. Mich. 11 W. 3. Anon.
(F) As to the Term expiring.

1. In Ejectment, if the Term expires, pending the Suit, the Plaintiff shall go on to recover Damages; For though the Action is at an End quoad the Possession, yet it continues for the Damages after the Term ended; Arg. 3 Mod. 249. cites 1 Inf. 285.

2. Tenant for Years has Judgment in Ejectment, and the Term incurs, then he brings a Scire Facias quare Execucionem habe rot debet of the Land and his Damages and Costs, and a Demurrer to the Scire Facias, and the Court held the Scire Facias ill; For though he may have a Scire Facias for Damages and Costs, yet this being for the Term likewise which was incurred it was ill, and a new Scire Facias ought to be; Afterwards, in the next Term, it was argued by Holt, that the Scire Facias was good for the Damages, but not allowed. A new Scire Facias was granted. Skin. 161. pl. 10. Hill. 35 Car. 2. B. R. Sedgewith v. Groton.

3. The Court compelled the Defendant to consent to the Enlargement of a Term in an Ejectment Leafe. Comb. 50. Patch. 3 Jac. 2. B. R. Dighton v. Greenvill.

--- S. C. cited Carth. 400. --- Denied to be enlarged without Parties Consent, where the Party was hung up by Injunction, so that the Term expired. 1 Salk 247 pl. 8. Patch. 12 W. 5. B. R. Anon. --- After a Special Verdict in Ejectment the Term expired, and the Court refused to enlarge it without the Defendant's Consent. Carth. 402. Patch. 9 W. 3. B. R. cites it as the Case of Hutchins v. Buffet, but that in the Cafe of Dighton v. Greenvill, the Term was enlarged though the Defendant refused to consent.

4. Leafe for five Years, and Verdict for Plaintiff, but he was delayed of Judgment and Execution by Injunction out of Chancery till the Term expired. Upon Motion to renew the Term, it was said to have been done in the Cafe of Dangerfield v. Greenvill, and it was frequently done in the Exchequer, and Gould J. said, that in Sir John Rolt's Cafe, they held it might be done by Consent, but not otherwise; But the Motion was deny'd. 6 Mod. 130. Patch. 3 Ann. B. R. Anon.

--- (G) Where a second &c. Ejectment is brought.

--- Ibid. 106. 1. MOTION to stay Proceedings on a second Ejectment, the Costs of the first not being paid; Per Cur. we never grant this without an Affidavit that it is the same Land, the same Leilfor, and the same Title. Comb. 59. Trin. 3 Jac. 2. B. R.

--- Plaintiff recovered but had no Costs, then Defendant brought Ejectment; The Plaintiff in the first Action prayed his Costs before he pleaded, but denied, because he had no Vexation, the Verdict being for him; but had the Verdict been against him, or he had been non-suited, he must have paid Costs before he brought a new Action. 4 Mod. 379. Hill. 6 W. & M. in B. R. Roberts v. Cook.
Ejectment.

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2. It is a known Maxim in Law, that a Man may try his Title as often as he pleases in an Ejectment; and therefore Lord Cowper denied to grant a perpetual Injunction (after several Trials) to stop all further Proceedings in Law. 10 Mod. 1. Trin. 8 Ann. in Canc. Anon.

3. Where a Plaintiff brought a second Ejectment, it was ordered he should not proceed unless he paid the Costs of the first. 8 Mod. 226. Hill. 10 Geo. Crundell v. Bodily.

(H) Of altering the Defendant or Plaintiff.

1. If one moves that the Title of Land belong to him, and that the Plaintiff made an Ejector of his own, and thereupon prays that giving Security to the Ejector to have him harmless be may defend the Title, this Court of C. B. will grant it, but not compel the Plaintiff to confeis Leafe, Entry, and Outier, except he will be Ejector himself; But it is otherwise in B. R. for there in both Cases they will compel him to confeis Leafe, Entry and Outier; Per Pintent Prothomotary. But quere &c. Sry. 368. Hill. 1652. C. B. Anon.

2. After Declaration delivered, and before Plea pleaded, he that had the Title moved the Court to alter the Plaintiff, he being a Witnes in the Cause, and the Court agreed on Payment of Costs, and giving Security for new Costs, and this as it seems without Imparlance. Sid. 24. pl. 5. Hill. 12 Car. 2. C. B. Anon.

3. No Man is to be admitted Tenant or Defendant in Ejectment, by the Common Rule, unless he has been in Possession, or received Rents, and not a mere Stranger; Per Holt Ch. J. Cumb. 209. Trin. 5 W. & M. in B. R.

4. Landlord may be joined a Defendant if he requires it, but is not compellable. 1 Salk. 256. pl. 6. Trin. 11 W. 3. B. R. Underhill v. Durham.

5. It is due of Right to Tenant in Possession, or Landlord, to be made Defendants, and so a pretended Wife, but who denied the Marriage was made Defendant. 7 Mod. 70. Mich. 1 Ann. B. R. Fenwick v. Gravenor.

6. Trustees are not to be joined with the Tenant as Defendants in Ejectment without their Consent. Cumb. 332. Trin. 7 W. 3. B. R. Jones Lefice of Pride v. Carwithen.

7. A Peer interested made Defendant in Ejectment with Tenant in Possession, which the Court thought reasonable, and said there may be several Costs notwithstanding. Cumb. 339. Trin. 7 W. 3. B. R. Jones Lefice of Pride v. Carwithen.

8. 11 Geo. 2. cap. 19. § 13. Landlord may make himself Defendant by joining with the Tenant to whom such Declaration in Ejectment shall be delivered, in Case he shall appear; but in Case such Tenant shall refuse or neglect to appear, Judgment shall be given against the casual Ejector for want of such Appearance; but if the Landlord of any Part of the Lands, Tenements &c. for which such Ejectment was brought, shall desire to appear by himself, and consent to enter into the like Rule that, by the Court of the Court, the Tenant in Possession, in Case he be had appeared, or else have done, then the Court where such Ejectment shall be brought, shall and may permit such Landlord so to do, and order a Story of Execution upon such Judgment against the casual Ejector, until they shall make further Order thereon.

Where the Act says, that in Case judgment in Ejectment be had against the Tenant in Possession, the Tenant in Possession shall be required to appear by himself, and consent to enter into the like Rule that, by the Court, the Tenant in Possession, in Case he be had appeared, or else have done, then the Court where such Ejectment shall be brought, shall and may permit such Landlord so to do, and order a Story of Execution upon such Judgment against the casual Ejector, until they shall make further Order thereon.

may move, that Execution may be stayed on entering into a Rule to become Defendant himself in another
other Ejectment &c. yet in Case Judgment is signed so late in the Term that the Landlord cannot apply for a Stay of Execution, yet upon Application by the Landlord as soon as may be, the Court will set aside the Execution, upon this Judgment, although the Words are only (Stay Execution) M. 12 Geo. 2. in B. R. in Case of Sir Wm. Clayton v. Boone.

Before this Act the Rule of Court upon the Tenant's, in Possession, refusing or neglecting to appear was, that the Landlord might be made Defendant was the Tenant, but not alone, till this Act, and the Case in 12 Mod. 11, cited to the contrary was denied to be Law; Per Cur. M. 12 Geo. 2. B. R. in Case of Sir Wm. Clayton v. Boone.

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(I) Ejector. Who.

1. If a Feme Covert eject one, and after the Husband asents, yet the Husband is no Ejector; For an Ejectment is made in an Infant, and hath not a Continuance. Otherwife of a Differisit; Per Anderion J. Noy 52. Broth v. Archer.

2. A Servant dwelling with the pretended Owner of a House, of which Ejeament is brought, is a sufficient Trespassor or Ejector against whom to bring the Ejeament. Brownl. 143. Mich. 6 Jac. Wilson v. Waddell.

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(K) Of what it lies.


2. Ejeament lies de Pastura ad Centum Oves; Per Wray and Southcote; For if Precipe quod reddat lies as is held in 27 H. 8. he may have Ejeament. Dal. 95. pl. 20. Anno 15 Aliz. B. R. Anon.

3. Leefee for Years of Tythes shall have Ejeament of Tithe set out and afterwards carried away; For by the setting out the Property is in the Parson. Ow. 94. Mich. 14 & 15 Eliz. Tottenham v. Bedingfield.

4. A Leafe was of a Garden containing three Roos of Land. Leefee brings Ejeament, and declares for three Roos of Land. Meade and Windham J. but Dyer e contra held the Declaration good; For that this Action is in Nature of Trespass, and the Party may elect to declare as here he does, or of the Ejeament of a Garden; For a Garden may be used at one Time for a Garden, and at another Time be plow'd and sown with Corn; but they conceived the better Order of Pleading had been to have declared, that he was ejected of a Garden containing three Roos of Land, as in the Leafe is specified. Godb. 6. pl. 7. Hill. 23 Eliz. C. B. Anon.

5. Ejeament de quadruum Fabrica was held good; Hardr. 58. mentions it as a Case cited by Wray Ch. J as adjudg'd 29 Eliz.


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the Jury found the Defendant Guilty of two Parts of it; Per Manwood Judgment ought to be for the Plaintiff; For Omne Majus consist in se Minus; But per Shoot of the Count had
Ejectment.

had been of two Parts of an Houfe, and the Defendant had pleaded Not Guilty, and the
Jury had found him Guilty, the Plaintiff should not have Judgment. Sav. 27 pl. 65, Pach. 24
Eliz. Anon.— If a Man has Pafte bat to Part of a Houfe, he may well declare for the Whole in an
Ejectment, and the Jury ought to find each Part or so many Foot of the Houfe, and he shall have
Judgment and Execution accordingly; Per Poflefen, and not deni'd per Cur. Comb. 101. Mich.
4 Jac. 2. B. R. Anon.

7. Ejecline, both lie of a Copyhold Estate; it lies of a Lefe made —Le. 328.
by a Copyholder, but not of a Demife made by the Lord of a Copy-
holder by Copy of Court Roll. Cro. E. 224. pl. 9. Pach. 33 Eliz.
B. R. Cole v. Wall and Bernard.

8. It was adjudged that an Ejeclione firmæ lies not of a Lease;
although a Name be given unto it, but it ought to be demand-
ed by a certain Number of Acres; And for this Caufe a former judg-
ment was rever'd. Cro. E. 339. pl. 3. Mich. 36 & 37 Eliz. B. R.
Jordan v. Cleabourn.

9. Ejeclione was brought de una Virgata terre, but adjudged that
it does not lie. Cro. E. 339. at the End of pl. 3, in a Nova cites

10. Ejeclione firmæ de una Pecia terre vocat. M. furlong, una Pecia
terre vocat. Ablshroke, una Gardino vocat, Munishing-Garden, quæ
omnes & singula parcelle terre jacent in W. It was aligned for Error
that Pecia terre is uncertain, and fo the Declaration not good. And the
Ex-
\[\text{\textbf{11. If it lies of a Park Quere? without saying so many Acres.}}
\]

\[\text{\textbf{12. It lies de Cottagio; adjudged. Cro. E. 218. pl. 9. Pach. 43}}
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\[\text{\textbf{13. Ejeclione firmæ de pomario. After Verdict it was moved, That}}
\]

\[\text{\textbf{14. Ejectment lies not of a Copyhold, unless the Plaintiff declare the}}
\]

11. If it lies of a Park Quere? without saying so many Acres.
v. Brow.

12. It lies de Cottagio; adjudged. Cro. E. 218. pl. 9. Pach. 43
Erectia a Word

Common Law. Cro. C. 155. per Jones and Brampton, in pl. 10. — An Ejectment does lie of a
Cottage, because the Description of the Thing by that Name is sufficient, and certain enough to
Said that an Ejeclione firmæ does not lie de una Pecia Terra although it was added, Containing by
Estimation half an Acre of Land vocat &c. it is not good, but he ought to shew the Longitude
and Latitude.

13. Ejeclione firmæ de pomario. After Verdict it was moved, That
an Ejeclione firmæ lies not thereof, nor more than a Precipe quod
reddat. Sed non allocatet: for this Action is but Personal, wherein
Damages are the Principal; And although it is usual in this Case to
award an Habere Faciæ Possessionem, yet it is well enough, and com-
pries sufficient Certainty. Wherefore it was adjudged for the Plant-
tiff. Cro. E. 854. pl. 15. Trin. 43 & 44 Eliz. B. R. Wright
v. Wheatley.

Precipe ought to be. And Popham said, that 16 Eliz. an Ejeclion was brought de Pomario, and
judged accordingly; For an Ejeclion is but an Action of Trefpas in its Nature. — S. C cited
Roll Rep. 55. in pl. 29. — Lev. 58. S. P. mention'd as resolved upon View of Precedents in
C. B.

Nov. 37. S. C. and
adjudge'd well
brought; For it need
not be de-
manded by
the Name of a Gar-
den as a

14. Ejectment lies not of a Copyhold, unless the Plaintiff declare the
Custom, the Lefe and the Ejeclion. Mo. 679. pl. 927. Hill. 45

Eve, e contra, for that shall come of the other Side. — In such he ought to shew the Eelate of his
Leifor, and the Licence of Leifor, and the especial Custom to warrant it. Cro. E. 469. pl. 26
Hill. 58 Eliz. B. R. Wells v. Partridge.

15. Ejectment
Ejectment.

15. Ejectment was brought of Land, and a Coelest in the same Land, and though it was objected that it was bis pettium, yet it was held good. Because it is a Personal Action, and he demands nothing certainly. Cro. J. 21. pl. 1. Hill. 1 Jac. B. R. Harbottle v. Peacock.


18. Ejectment was brought de Aqua Curfu, called Lothar in L. and declares upon a Lease made by D. de quodan Rivelus & Aqua curfu; and by the Opinion of the whole Court the Judgment was reversed, for Rivelus feu Aqua curfu lies nor in the Demand, nor doth a Precipe lie of it, nor can Livery and Selin be made of it, for it cannot be given in Possession; but it appears by 12 H. 7. 4. the Action ought to be of so many Acres of Land Aqua cooperta. Brownl. 142. 143. Mich. 6 Jac. Challoner v. Thomas.


19. An Ejectment will well lie of a Strange, for a Precipe lies of them, and a Woman shall be endowed of the third Part of them, as it is in 11 E. 3. But if the Land under the Water or River do not pertain to the Plaintiff, but the River only, then upon a Disturbance his Remedy is only by Action upon the Cave, upon any Diversion of it, and not otherwise. Quod not. Brownl. 143. in S. C.

Ejectment lies not of Common of Pasture or of Sheep-gate. Brownl. 129. in Cave of Weekes v. Metey says it was so Adjudg'd. Patch. 9 Jac.

20. Ejectment lies not of Common of Pasture or of Sheep-gate. Brownl. 129. in Cave of Weekes v. Metey says it was so Adjudg'd. Patch. 9 Jac.

Ejectment.

23. An Ejectment lies of Underwood, tho' a Precipe does not.

24. An Ejectment cannot be of a Manor because there cannot be an Ejectment of Acres it is sufficient. For Richardfon and Hurton J. Het. 81.

25. Ejection Firma of a Lease of Tithes appertaining to such a Chap. Jo. 321. pl. 46; it was said it did not lie of Tithes only, but that it might of 6 Badwyn Wine, such a Rectory, or such a Chapel, and of the Tithes therunto be, S. C. but longing, so as he may be ejected from a Thing in Possession whereof thought that an Habere Facias Possessionem may be, but not of Tithes only; Caufa Ejectment advisa vult. But afterwards adjudg'd for the Plaintiff. Cro. C. 301. pl. 4. Paich. 9 Car. B. R. Baldwin v. Wine.

26. A Judgment in B. R. in Ireland in an Ejection Firma, brought Cro. J. 116 there de Psicaria in such a River, was reversed in B. R. here, because Hill 4 Jac. an Ejection Firma lies not thereon, no more of than a Common Apest of Molineus, or a Kent; Arg. and the Court held that Ejectment would v. Molineus: not lie of a Fithery. Cro. C. 492. pl. 17. Mich. 13 Car. B. R. S. D. double'd. An Ejectment will not lie of a Fithery, nor in any Cafe but where there may be an Entry and Expulsion; and that cannot be of a Fithery, officially in this Cafe, where it was of a Fithery in the River Tine, which cannot pass by the Name of so many Acres Aquo co opere, because it is not like a Pond, where the very Soil is the Property of another; but this is only a Freehold to Fish in that River.

27. In Ejection it was doubted whether it well lie de uno Crofo; But Sty. 194, because it is a Word of uncertain Signification. Sty. 30. 364. Trin. 23 Car. and Hill 1652. Athwirth v. Stailey.

28. An Ejectment lies not of 3000 Acres of Wapes, because the Word Wafe is uncertain, and may contain Land of of any Quality, and the Sheriff will be at a Loss what Land to deliver; Adjudg'd. Hardr. 57. 58. Paich. 1658. Hancock v. Price.

29. Ejection was brought inter alia de uno Stabulo. It was moved Keb. 276 that it did not lie, but upon View of Preifidents, in C. B. of Recoveries suffered de Stabulo, it was resolv'd that it well lies. Lev. 58. Whitacre v. Dares, S. C. Hill. 13 & 14 Car. 2. Dacres's Cafe.


31. An
Ejectment.

31. An Ejectment lies not de Pannage, which is but a Privilege to take Pannage; Adjudg'd. Lev. 212. Hill. 16 & 17 Car. 2. Prelim. v. Stern.

32. Ejectment lies of a Close if a Name be given to it; Per Cur. S. P. per Cur that it lies of a Close containing 3 Acres of Land, and that so it has been adjudg'd here, because it is sufficient for the Sheriff to give Possession upon; but that otherwise it lies not. If it does not say how many Acres it is ill. Sid. 239. at the End of pl. 26, cites it as adjudg'd. Mich. 18 Car. 2.

33. Where a Statute is extended it cannot be tried in an Ejectment if it be satisfied or not, but the only Remedy is by Scire Facias ad Comp. or Bill in Chancery; but where Land is extended on an Ejectment the Debt and yearly Value appears on Record, and it may be well known when the Debt is paid, and may come in Evidence on a Trial in Ejectment. Vern. 50. pl. 49. Patch. 1682. Arg. E. of Huntington v. Greenvill.


35. De Miners Carbonum in Parochia de D. &c. generally not saying How many Mines &c. Upon Error brought the Court inclined that the Judgment was erroneous; but then the Plaintiff produced several Precedents in Durham, and alleged that all the Entries in Durham in Ejectments for Coal Mines were the same as in this Case; so the Judgment was affirmed. Carth. 277. Patch. 5 W. & M. in B. R. Andrews v. Whittingham.

36. An Ejectment was brought in the Exchequer de minatis Decinantis and upon Not Guilty pleaded, Verdict for the Plaintiff; And Mr. Cheffyre, about five or six Years ago, moved in Arreit of Judgment, that an Ejectment would not lie for small Tithes, 11S, Because Eggs are small Tithes, and it is absurd to say, that an Ejectment would lie of an Egg. 2dly, Because the Sheriff does not know of what he is to deliver Possession upon an Habere Facias Possessionem, sed non allocutur; because it has been adjudg'd, that an Ejectment lies of Wood, being Tithe, and by the same Reason for an Egg; And therefore by all the Barons Judgment was given for the Plaintiff and cited 11 Rep. 25. Ex Relatione M'ti Cheffhire. 2 Ld. Raym. Rep. 789. Trin. 1 Ann. Camell v. Claverie.

(L) Of what it lies. By what Name or Description.


2. An Ejecutio Firmæ was brought de uno Cubiculo, and Exception was taken to it; but the Exception was disallowed. The Declaration was Special, viz. Of a Leaf unius Cubiculi, per annum unius Cubiculi, being in such a Houfe in the middle Story of the said Houfe. And the Declaration was helden good enough; and the Word Cubiculwm is a more apt Word than the Word Camera; and such was the Opinion
Opinion of Wray Ch. 3 Le. 216. pl. 275. Trin. 30 Eliz. B. R. Anon.

3. And it was said that Ejecttione Firme brought de una Rooma had been adjudged good in this Court. 3 Le. 210. in S. C.

4. Ejecttione Firme; The Declaration was De una Meffaggio five 3 Le. 228. Tenemento and four Acres of Land to the same belonging; The Court held clearly that no Judgment should be given for the Meffaggio, and Land cannot be properly-faid to belong to an Houfe; yet it was good for the four Acres. The Plaintiff releas'd his Damages, and Judgment was given accordingly. Cro. E. 186. pl. 8. Trin. 32 Eliz. B. R.

Wood v. Payne.

the same belonging) are meerly void; and Plaintiff recovered Damages and had Judgment.

Ejectment de Meffaggio five Tenemento is not good for the Uncertainty. Poph. 197. Mich. 2 Car. Anon. — S. P. and a Judgment in C. B. was rever'd for the Uncertainty. Noy 86. Rochetter v. Richhouse. — Cro. 1. 125. in pl. 9. cites S. P. to have been adjudged ill. — Sid. 295. pl. 17. Trin. 16 Car. 2. B. R. Barbury v. Yeomans S. P. ruled accordingly. And it was said per Curiam, that, as this Case is, the Plaintiff cannot ali himself by releas'g the Party as perhaps he might if there had been Lands also in the Declaration. But Twidwell said, that if it had been de uno Meffaggio five Tenemento vocato the Black Swan &c. it had been good; because that would have a contrario. — 2 Koh. 82. pl. 81. S. C. — 2 Mod. 238. Trin 4 Jac. 2. B. R. Hexham v. Coniers. S. P. adjudged accordingly; for Tenemento is a Word of an uncertain Signification; it may be an Adowment, a House or Land, but Meffaggio five Tenemento called the Black Swan, would be good. — So de Burgagio five Tenemento is not good any more than de Meffaggio five Tenemento; adjudged. Poph. 293. Mich. 2 Car. B. R. Rochetter v. Richhouse.

But pro uno Meffaggio five Burgagio in Hay infra muros the Court held it to be good, and that, an Ejectment lies well de Burgagio; and that Meffaggio & Burgagium signify the same Thing in a Borough. Hardr. 173. pl. 2. Mich. 12 Car. 2. in Scacc. Davers v. Wellington.

5. Ejecttione Firme of seven Clofes, one called Green Mead, and so * Cro E. gave to the other several Names; is well enough; for when a Name 339. pl. 2. is given to every Clofe, although the * Contents of the Acres are not mentioned, viz. So many of Land, so many of Pasture &c. it is sufficient, though it were more formal to express the Acres; and it is dam

bourn, S. P. aided by the Statute of Jeofails, and the Court is a Time to the Truth. And Popham Attorney said, he had known it to be sufficient; and the Plaintiff had Judgment. Cro. E. 235. pl. 1. Patch.


given to it, & adJoinditur. — Godb. 55. pl. 66. Mich. 28 & 29 Eliz. B. R. the Number of Acres ought to be for th'o; and says that so it was adjudged in a Shrophire Cafe. — In Ejectment of a Clofe if he does not give it a Name, nor declare of what Nature the Land is, it is not good; Per Roll Ch. J. St. 193. 194. Hill. 1649. Acers v. French.

6. An Ejectment lies not de Coquina, (Anglice a Kitchen) because of it was said the Uncertainty, for any Room by Uage may be made a Kitchen. at Ber that

Adjudged, though a Cafe in 2 Jac. was cited, where it was adjudged that it lay pro Coquina. Noy 109. Trin. 2 Jac. Ford v. Lerk.

held not good, but that it ha' been adjudged here by Bill to be good enough; but Coke said it seems to be good enough by Writ. — S. C. cited Roll Rep. 55. in pl. 29. to have been adjudged not good.

7. An Ejectment lies not of a Clofe containing three Acres without Roll Rep. because of what Nature the Acres are, as Land, Meadow, Pasture, or Wood &c. because the Possession is to be recovered by Habeare Factor v. Savill, Possessionem, and must follow the Form of other Writs of like Nature, as a Writ of Right, of Ward, Ejectment de Gard &c. Adjudged and Judgment arreid accordingly, though the Name of the Plaintiff Clofe was inserted in the Declaration. 11 Rep. 55. Mich. 12 Jac. The Name and Qua

serve without the Quality, and Certainty ought to be comprized, because the Possession is to be re-
8. De una pecie Pafurae conten. 201. Acres Terra five plus five

Minus jacet inter terras B. This after Verdict given was held ill,


2. An Ejecution did not lie de 50 Acres Montana, because that may

contain Arable, Wood, Paffure, or other Species. Upon a Writ of

Error upon a Judgment out of Ireland, it was for this Reason reverfed.

Palm 100 Patch. 17 Jac. Stafford v. Macdonough.

12. A Judgment in Ejeclione Firmæ was reverfed, because the Declar-

ation was of a Meffuage, and of 40 Acres of Land, Meadow and Paf-

fure thereto appertaining, and it was not set forth how much there was


Nichols.

13. Ejeclion de uno Reiporitorio was found for the Plaintiff. Upon

Error brought Crooke and Berkley held, that Reiporitum should be

intended a Warehouse, but Brampton and Jones held that it was un-

certain, and the greater Opinion of the Judges at Serjeant's-Inn was,

that it was not good, whereupon Berkley retraced his Opinion, and

the Judgment was reverfed. Jo. 454. pl. 2. Patch. 16 Car. B. R.

Sripp v. Rawlffon.

Ejecution was brought de quatuor Molendinis, without expressing

whether they were Wind-Mills or Water-Mills. Hales said, that it is well

enough; the Precedents in the Register are so. Mod. 90. pl. 55.


15. The Ejecution Likewise was of fo many Acres 'fiampnor' & Broune',

not expressing how many of each. Cur. That has always been held good.


16. An Ejecution lies de quodam Loco vocat the Vesly in D. for this

is a sufficient Description, fo that Execution may be had thereon; Ad-

judged. 3 Lev. 96, 97. Hill 34 Car. 2. Hutchinson v. Pulier.

17. Ejecution of five Clofes of Arable and Paffure, called

containing 20 Acres in D. Upon Not Guilty pleaded Verdict was for

the Plaintiff, but Judgment was arrested, because Ejecution lies not of

20 Acres of Arable and Paffure, without expressing how much of the one,

and how much of the other, and Claufum does not help the Matter; Fattin-

ga is a known Meafure, fo is Bwatt, Hida, Carua, but Claufum is

not fo certain in Law, and the adding a Name to the Clofe is nothing,

and Holt Ch. J. affirmed Savil's Cafe for Law. 1 Salk. 254. pl. 1.

Patch. 4 W. & M. in B. R. Knight v. Syns.

18. The Court deemed clear of Opinion, that a Church is demandable

by the Name of a Meffuage, but said they would hear the Counsel again

as to that. 1 Salk. 256. pl. 7. Hill 11 W. 3. C. B. Hollingworth v.

Brewifter.

19. A Writ of Error was brought upon a Judgment given in an E-

jecution Firme in Ireland, and it was alligned for Error, that the Ej-

cution was brought (inter alia) of 4000 Acres of Montana', which Word
Ejectment.

Word it was said was of an uncertain Signification, and did only denote the Situation, and not any particular Sort of Land; and after divers Arguments at the Bar, the Judges of this Court wrote to the Judges of Ireland to inform them, 11th. Whether Mountain-Land signified only Land so situated, or that it signified any particular Sort of Land. 2dly, Whether Land had usually been demanded in a Practise by that Name, and Fines usually levied of Land by that Name. 3dly, Whether Ejectments had been usually brought of Land by that Name; to which Letter the Ch. J. of B. R. and the Ch. J. of C. B. and the Ch. B. of the Exchequer, and several others of the Irish Judges, sent back an Answer, and to the first Quære said, that Mountain-Land did not only signify Land so situated, but also coarse barren Land, whether it was covered with Furze, Heath, or Stony; and the Lord Chancellor of Ireland, in Answer to a Letter which Parker Ch. J. wrote to him upon this Matter said, that Mountain-Land signified coarse barren Land, whether it was Mountainous or not, and that he knew some such Land called by that Name, which was no High Grounds. To the second Quære the Judges answered, that Fines had been levied, and Recoveries suffered of Land by that Name, in the Reign of Jac. I. and in every succeeding Reign, none of which had been called in Question, and sent over very many Precedents of the same. And to the third Quære they answered, that Ejectments had been frequently brought of Land by that Name, many Precedents whereof they also sent over, upon which Reactions this Court affirmed the Judgment given in Ireland, and denied the Judgment of Reversal in Hardincock's Case, 2 Roll Rep. 189. to be Law. MS. Rep. Mich. 4 Geo. B. R. Earl of Kildare v. Fisher.

(M) For whom it lies.

1. If A. ejects B. and after C. ejects A. there B shall not have Writ of Ejectment against C. the second Ejector, Per Kyrk, which Thorp agreed; For the first Owner shall not have Trepass against the second Trepassor. Br. Ejectioae &c. pl. 8. cites 33 All. 9.

2. Ejectment of Ward, where he who ejects me aliens to another, yet I shall have Ejection Custodes against him who ejects me; Per Hank. quod non negatur, and yet a Man shall recover the Land by Ejectment of Ward. Br. Ejectioae, pl. 2. cites 12 H. 4. 10.

3. If a Lease for Years be made at Lammas to commence at Michaelmas, the Lefsee cannot have Ejectioae Firmae before Michaelmas. Br. Surrender, pl. 21. cites 37 H. 6. 17.

4. Lefsee for Years of Copyholder may have Ejectment before Admission of Copyholder or any Pretentment that he is Heir. N. B. in this Case 19 Years were incurred in Infancy, and after the Court was not held in several Years, and then the Steward refused to admit. Le. 100. pl. 123. Patch. 30 Eliz. B. R. Rumney v. Eves.

5. If a Leafe for Years be made at Lammas to commence at Michaelmas, the Lefsee cannot have Ejectioae Firmae before Michaelmas. Br. Surrender, pl. 21. cites 37 H. 6. 17.

Mo. 550. pl. 709 Hill. 59 Eliz. B. R. Stepe r v. Gibson —— Ruled, that the Leafe was good before Admission, but otherwise of a Surrender before Admittance. Mo. 596. pl. 915. Patch. 55 Eliz. Bullock v. Dibley.
6. If a Stranger enters on the Queen's Farm, he gains an EJcement for Years, and if he makes a Leaf to another, his Lease may maintain an EJcement. 3 Le. 266. pl. 265. Patch. 30 Eliz. in the Exchequer, Anon.

7. Copyholder of Inheritance of a Manor in the Hands of the King is ousted; it was held, that he has not gained an EJcement as he may make a Leaf for Years, upon which his Lease may maintain an EJcement, but he hath but a Possession against all Strangers. 3 Le. 221. pl. 294. Patch. 30 Eliz. B. R. Anderson v. Heyward.

8. Lease of the King may bring an EJcement, though the King be not put out of Possession; per Fenner, to which Popham agreed. Cro. E. 332. pl. 9. Trin. 36 Eliz. B. R. in Case of Lee v. Norris.

9. If Copyholder makes a Leaf for a Year warranted by the Custom, Leilee shall maintain an EJcement, and per Popham, he shall maintain it tho' the Leaf was not warranted by the Custom. Mo. 569. pl. 776. Trin. 41. Eliz. B. R. Sparke's Case.

It was ruled by Holt Ch. J. at Rye, in Surry, Summer Term, 42 & 44 Eliz. B. R. Milliner v. Robinson, W. 5. upon Evidence at a Trial, that Copyholder's may join in EJcement and Holt said that this Case in Mo. 682. pl. 159. is not Law. Le Ruy. Rep. 726. Bone v. Jane.
11. Land devised to Perfons in Trust to let Leaves, and distribute the Profits to twenty of the pooreft Kindred of Devifor, the twenty poor Kindred have only a Confidence, and not an Intereft, fo it the Land no Power to make Leaf to try Title in Ejectment. No. 753. pl. 1040. Mich. 2. Jac. Griffith v. Smith.

of his Land during the Minority of his Heir, the Truflees cannot make a Leaf to try the Title; Per Whitlock J. Lat. 39. cites it as Resolved 41 Eliz. Pigot's Cae. Cro. Eliz. 744. Pigot v. Garnet. — The Reafon is because they have an Authority only, and not an Intereft. Per Whitlock J. Lat. 153.

12. If a Copyholder without Licence makes a Leaf for Years, the Leafee which enters by Colour of that is a Difeffor, and a Difeffor cannot maintain Ejectment. 2 Brownl. 40. Hill. 8 Jac. C. B. in the Cafe of Petty v. Evans.

13. Leafee of a Guardian in Socage shall have Ejectione Firme. And he'm good tho' not flown in the Writ that the Heir was within Age at the Time &c. But note, that the Nonage of the Heir ap- peard in the Declaration, and Judgment affirmed. Nov. 156. Simmonds v. Barham.

14. Leaf in Writing is delivered upon the Land; and it was Had bent a Dre Dattis, now when the Leafee is upon the Land afterwards in the fame Day, it is a Difeffor, but his Continuance there the next Day by Virtue of that Leafe purges the Difeffor, and now he is Adjudg-rightfully in of the Leafee only, and fo may maintain an Ejectment. Clayt. 27. pl. 47. Aug. 10 Car. Crawley J. Metcalf v. Stavely.


cites Blunden v. Baugh.


18. Lease for Years makes a Leaf at Will; Leaf at Will is Ousfed; Leaf at Will is Ousfed; Leaf for Years may maintain Ejectione Firme, cites 9 H. 7. other- wife if Leafee for Years makes a Leaf for Years, and Leafee is Outed. Per Bridgmen. Ch. J. Cart. Pasch. 18. Car. 2. C. B. Roll Rep 2. R. Stone

cites 28 5 Pasch. 12 Jac. B. v Grubbin

ed c. Contra as to Ousfed of Leafee at Will — — 3 Bull. 217. S. C. and Coke Ch. J. said it had been so ruled; and says that clearly upon a Possifion in Law, a Man shall never maintain an Ejectment but he must have an actual Possifion.


Trin. 2 W. & M. in Cafe of Dighton v. Greenwills. — But in Cafe of a Statute Merkant it is otherwise; For there is no need of a Liberate; Per Car. Vent. 41. S. C.

20. Vendee of Commissioners of Bankrupts cannot maintain Ejectment Vent 360. by his Leafee before Inrolment, tho' the Deed be int'l'd after the Action
Ejectment.


It was so Ruled at a Trial at Bar. Mod. 217. Ogil. v. Ld. Arlington.


22. Assignment of a Term by Commissioners of Bankruptcy was made to a Creditor, who before Inroll of the Deed of Assignment, made a Lease to the Delendant, and then the Deed was Inrolled; Per Cur. such a Lease cannot maintain an Ejectment, because the Lease could not have been before the Inroll; the Words of the Statute are, that Commissioners may sell by Deed Inrolled, to without Inroll no Sale. Vide tamen. 2 Co. 26. a. 12. Mod. 3. Mich. 2 W. & M. Elliot and Danby.

(N) Against whom it lies.


2. Where Distress makes a Ejectioe referring Rent, this Rent shall not make him Parnor of the Land; quod nota Per Cur. Br. Parner de Profits, pl. 15. cites 39 H. 6. 44.

3. If Master of the Cattle appoint his Servant to look to the Cattlä being there, the Master and not the Servant shall be the Ejector, but where no Servant is so appointed, if a Stranger come over the Ground while my Cattle are there he shall be the Ejector. Clayt. 29. pl. 50. Affifa Mar. 10 Car. Vernon J. Rawellis v. Booth.

4. Ejectioe lies not for Lease for Recovery of his Term against Feoffor, because he came to the Land by Title of Feoffment, and not by Torr, but Quare Eject infræ Terminium is given by Stat. W. 2. cap. 24. per Vaughan Ch. J. Vaugh. 127. Patch. 21 Car. 2. C. B. in Case of Hayes v. Bickerstaff.

(O) In what Cases it lies.

1. WITHOUT Possessio in the Time of the Oussfer a Man shall not have an Ejectioe. Kelw. 130. a. pl. 99. Cæsus incerti Temporis.

2. In an Ejectioe Firmæ there ought to be a Right in Fact, and it is not sufficient to be by Estoppel. Per Anderson. Godb. 15. pl. 22. Patch. 25 Eliz. C. B. in Skipwith's Cafe.

3. In an Ejectioe Firmæ it was observed by the Court for an infallible Rule, That what may be reduced by a real Action may be reduced by an Entry, (as in one Acre in the Name of more). Noy. 108. Trin. 2 Jac. C. B. Nichol's Cafe.

4. Rent
Ejectment.

4. Rent granted in Fee with Proviso the Grantee may enter and retain till he be satisfied of the Profits, he may make Lease to try the Title in Ejectment. Lev. 170. Trin. 17 Car. 2. B. R. Jenmott v. Cooly.

5. If a Sheriff sells a Term on a Fieri Facias he cannot and must not put the Perfon out of Possession and the Vendee in, but the Vendee must bring his Ejectment, per Car. 2 Show. 83. pl. 74. Hill. 31 & 32 Car. 2. B. R. The King v. Dean and Bird.

(P) What is Title sufficient.

1. W R I T of Ejectment of Ward lies of Rent without Possession or Seisin; For there is Possession in Law, because it cannot be received till the Rent-Day. Contra of Land. Br. Ejectione &c: pl. 9. cites 11 H. 4. 64, 65.

2. If Parson leave his Rents for Years by Parol it is good, and Leafe shall have Tithes and Offerings as Incident, and it is good though there is no Parsonage Houfe, and but only Church and Church-Yard, and if such Leafe be outed he shall have Ejectione Firmæ. Br. Leafe, pl. 15. cites 15 H. 7, 8. And the same Law is of a Hundred. Ibid. cites Trin. 6 H. 8.

3. Upon Evidence it was agreed, that if a Leafe for Years be made to A. and delivered to B. to the Use of A. and B. enters to the Use of A. If B. be ejected, A. may have an Ejectione Firmæ. Noy. 43. Purrell v. Billhop.

4. Ejection of a Leafe of Tithes and 6eems it not by Deed; and because Tithes cannot pass without Deed, after Verdict for the Plaintiff Exception was taken for this Cause and ruled to be Ill, and Judgment for the Defendant. Cro. J. 613. pl. 3. Patch. 19 Jac. B. R. Swadding v. Piers.


but all these Books state it as a Rent granted in Fee; But Sid 162. Jenet v. Cowley, S. C. states it as a Rent for Years.

6. A. Leafe for three Years demifes to B. for five Years who brings an Ejectment, and declares against the first Leffer for five Years; and upon the Evidence it appeared, that he had Right but for three Years, because A. that leased to him had no more; and the Court were of Opinion, that the Plaintiff could have no Judgment. Freem. Rep. 400. pl. 522. Trin. 1675. Roe v. Williamson.

7. Payment of Rent to the Leffer or to any for his Use is a sufficient Title for the Plaintiff, if the Defendant has no Title at all but Possession.
Ejectment.

tion; Held per Scroggs Ch. J. 2 Show. 126. pl. 105. Trin. 32 Car. 2.

8. If a Leafe holds over his Term, an Action of Trespass cannot be
brought without an actual Entry. 5 Mod. 384. Hill. 9 W. 3. B. R.
Anon.

9. If H. has Possession of Land for 20 Years uninterrupted, and B. gains
Possession, upon which H. brings Ejectment; though H. is Plaintiff
yet his Possession for 20 Years will be a good Title for him, as well as
if H. had been then in Possession; because Possession for 20 Years now
by Virtue of the Statue of 21 Jac. 1. cap. 16. is like a Defect at
Common Law which tolls the Entry. Ruled by Holt Ch. J. Summ.

10. Cozy que Trust of a Remainder executed by the Statute 27 H. 8.
of Uyes has Estate sufficient to make a Leafe. Gibb. 11. 18. Pach.
1 Geo. 2. B. R. Shaw v. Weigh.

(Q.) Pleadings. Declaration.

1. If a Leafe is dated the 28th Day, and it is sealed on the Land af
ter the Commencement of the Term, viz. the 29th Day, and the
Ejectment is suppos'd and laid to be the 30th Day, this is well enough,
though the Leafe did not enter on the 30th Day but the Day before;

2. The Plaintiff counts of a Leafe of the fourth Part of a House
in N. in four Parts to be divided, by Force of which he entered in
Tenement pradif; and was inde Possessionatus until the Defendant did
eject him de Tenementis pradifi; and held good. Cro. E. 286. pl. 2.

3. Exception to a Declaration in an Ejectione Firmae because it was
a Possessione sua (inde) eject; where it ought to be according to the
Supposal of the Writ. Quod a Firma sua eject, all the Justices held
that the Word (inde) had Relation to the Farm, and shall be as much
as if he had said, a Possessione Firmae; and the Declaration was ruled
to be good notwithstanding the Exception. Godb. 71. pl. 85. Mich.

4. Also it was of three Clofes, naming them with a, viz. containing
by Liffimation 30 Acres, which was objected did contain no Certainty,
where he ought to have alleged in Fact, that they did contain so
many Acres. But it was helden by all the Justices, that although he
does not put in the Declaration the Certainty of the Acres, if he
gives a certain Name to them, as Green-Clofe &c. that it is good. Godb.
71. in S. C.

5. In an Ejectione Firmae Exception was taken because the Plaintiff
in his Declaration did not say extra tenet; for in every Case where a
Man is to recover Possession he ought to say extra tenet. But all the
Justices agreed, that in an Ejectione Firmae those Words were not
material; for if the Defendant put out the Plaintiff it is sufficient to
maintain this Action. And Kempe Secondary said, that so were all
the Ancient Precedents; although of late Times it has been used to
say in the Declaration extra tenet; and the Declaration was helden
to be good without those Words. Godb. 60. pl. 72. Mich. 28 & 29
Eliz. B. R. Anon.

6. In
6. In Ejectment the Plaintiff declared, Quod cum R. D. per Indentorum falsam gerunt. dat. 20. May dimissit &c. Exception was taken that he ought to have laid idem Die & Amo; for though the Indenture bears Date as above yet, it may be, it was delivered at another Day, and then it begins to be a Demise. But Judgment was given for the Plaintiff. 2 Le. 117. pl. 157. Patch. 30 Eliz. B. R. Cony v. Cholmley.

he let by Indenture of such a Date, it shall be always intended to be delivered at the same Time wherein it bare Date; if it be not shown with a Prima Deliberation at another Day; and he who pleads a Deed of such a Date, cannot by Replication, or other Pleading, maintain to be delivered at another Time, for it would be a Departure, as 4 H. 7. 26. Dy. 167. 221. Wherefore it was adjudged for the Plaintiff. —— Ibid. 902. pl. 7. Trin. 44 Eliz. B. R. House v. Laxton, S. P. by all the Justices prater Gandy.

7. Ejectione Firmæ by H. against C. The Plaintiff declared upon a Leaf for Years, to have and to hold to him from the Sealing and Delivery of it; and declared that the Sealing and Delivery was 1 May, and the Ejectment the same Day; and this Matter was moved in Arreit of Judgment, that the Ejectment could not be suppos'd the same Day, for the Leaf did not begin till the next Day ensuing the Sealing &c. But the Exception was not allowed by the Court; for where the Leaf is to begin from the Time of the Sealing and Delivery, or by these Words, for 21 Years next following the Ejectment may be supposed to be the same Day; for the Beginning of the Leaf is presently upon the Sealing and Delivery, and such a Leaf shall end the same Time and Hour as it began. 4 Le. 144. pl. 255. Trin. 31 Eliz. B. R. Higham v. Cooke.

8. Ejectio Firmæ of a Leaf made 20 Aug. from Mich. then left Ante datum hujus Indenture, and he shows when the Indenture was the Date of it, which was laid to be not good, because it does not appear when the Leaf began; But the Court held it good, and the Words Ante Datum Indenturæ shall be void, and the Beginning of the Leaf appears certain enough, and Judgment for the Plaintiff. Cro. E. 666. pl. 5. Patch. 40 Eliz. B. R. Darrel v. Middleton.

9. Ejectio Firmæ: The Plaintiff declared of a Lease for Years, Hodendorum a die Datus virtute suis diminuvis he entered and was paified until the Defendant ejected him. It was moved in Arreit of Judgment, that the Declaration was not good, because the Time of the Entry was not alleged; for if he entered on the Day of the Demise he a Dilinquent, and then the Action not maintainable; Adjournatur; but afterwards it was resolved that for that Cause the Declaration was ill, and adjudged for the Defendant. Cro. E. 766. pl. 4. Trin. 42 Eliz. and Trin. 43 Eliz. B. R. Douglass v. Shank.

10. In Ejectment the Plaintiff declared of a Lease for Years of a House and 30 Acres of Land in D. and that if S. did let to him the said Mepings and 30 Acres, by the Name of his House in B. and 10 Acres of Land there five plus five minus; it was moved in Arreit of Judgment, because that 30 Acres cannot pass by the Name of 10 Acres five plus five minus, and 30 the Plaintiff has not conveyed to him 30 Acres; for when 10 Acres are leased to him five plus five minus, those Words ought to have a reasonable Construction to pass a reasonable Quantity, either more or less, and not 20 or 30 Acres more. Yelverton agreed; for the Word 10 Acres five plus five minus, ought to be intended of a reasonable Quantity, more or less by a Quarter of an Acre, or two or three at the most; but if it be three Acres less than ten the Lease must be content with it; Quod Fenner and Crook concurred; and Judgment was laid. Ow. 133. Trin. 43 Eliz. C. B. Day v. Fynn.
11. In Ejectment the Plaintiff declared of a Leaf the 6th September, and that he was possessed, and that Poolea fictus 4th September the Defendant ejected him. This Declaration was held good by three Justices, and that it is sufficient that he declared of his Possession Virtute Dimissionis, and that he was afterwards ejected, and the Viz. the 4th September is void and repugnant. Arg. Sid. 8. cites it as Cro. J. 96, 27.

12. Efection Firmæ was brought upon a Leaf made 1 Jan. 3 Jac. Habend. a datu Indenture predict, and the Ejection was the same Day. Resolved, the Date is the Time of the Delivery, and it differs from the Time or Day of Delivery, wherefore the Ejection alleged poletæ the same Day, is good enough; Adjudged for the Plaintiff. Cro. J. 135. pl. 10. Mich. 4 Jac. B. R. Osborn v. Rider.

13. The Leaf was dated 8 May, 7 Jac. and the Ejection was laid 13 May, 7 Jac. and the Action was brought in Earley Term following, Adjudged that if the Ejection is proved at any Time after the Leaf, and before the Action brought, it is sufficient, though it was laid at a certain Time which the Plaintiff could not prove; but because the Plaintiff failed to prove this the Plaintiff was Non-fulit. Buit. 122. Palech. 9 Jac. Hall v. King.

14. In Efection Firmæ, the Course of C. B. is, where the Defendant appears, then to Count, and after Imparlance to make a second Count by way of Recital; but the first ought to contain the Substance of the Matter. In the first Count in this Cafe the leaf is alleged to be made 25 Mar. 6 Jac. and afterwards the Ejection, the said 6 Jac. without mentioning the Day of the Ejection; The second Count mentions the Ejection to be the 26th of March 6 Jac. and the Efection Firmæ was brought in the 7 Jac. The Plaintiff had Judgment affirmed in Error; A certain Day of the Ejection is not necessary to be alleged in the Count; It will suffice to say Poolea &c. Jenk. 341. pl. 98. cites Cro. J. 311. pl. 11. Mich. 10 Jac. Merrel v. Smith.

15. An Ejection lies not de omnibus &c. omnino Decimis in W. without saying Garbavum, Reni, Lane, Agnellorum, or some other Certainity of the Nature or Quality of the Tithes, so that a certain Judgment may be given, or Execution by Habere Facias Possessionem be had thereof; and tho' the certain Number thereof shall not be expressed (for the Fruitfulnes or Barrennes may be more or less) yet the certain Kinds ought to be thowed, and all the Tithing may conflit in Modo Decimandi by Payment of an Annual Sum in Satisfaction thereof, of which no Ejection lies; for the Statute of 32 H. 8. cap. 7. which gives the Action for Tithes, gives it as they should or might do for Land; and in an Action for Lands, the Plaintiff ought to thow the Quality or Nature thereof, as arable Land, Meadow, Pasture &c. adjudg'd, 11 Rep. 25. b. Trin. 12 Jac. Harpur's Cafe.

16. Original in Ejection was against A. and three others; Plaintiff counts against 3 of the Defendants, and no Summa cum against the fourth; Judgment was fluid; Per rot. Cur. Brownl. 129. Trin. 13 Jac. cites Goodhall v. Hill.

17. Ejection
17. Ejectione Firmae of a Lease 21 Off. 4 Jac. Et quod postea
seilcet codeni 21 Off. Anno 3. Jac. supradict. he ejected him. It was
moved, that the Ejection being alleged to be a Year before the
Lease is void, but three Justices, Tanfield contra, held it to be
good, because the Words be, Poilse ailect codeni 21 Die Oct. and
therefore there needed not any Year to be mentioned, and the
Addition of a Year not mentioned before, and repugnant to the Day
mentioned is idle, and shall be taken for null. Cro. J. 154. pl. 4.

18. Ejectione Firmae of two Cloes, called the Higher G. and the Lower
G. containing three Acres of Land; it was said the Words containing
three Acres of Land were uncertain, and Davill's Cafe, 11 Rep.
was vouch'd; but adjudged by three Justices, contra Houghton that
the Ejectione Firmae did lie, and this Cafe differs from Savill's for
there neither the Quantity nor the Quality of the Land is mention
But here, the saying containing three Acres of Land, and the
Cloes being named it is certain enough what Nature of Land it is,
and altho' the Cloes do contain more then three Acres, he shall recov
Wikes v. Sparrow.

19. In Ejectment, the Plaintiff declared on a Lease made to him
by one J. C. dated 1st Jan. 15 Jac. and sealed and delivered 5th
Jan. following, to hold from Christians last past for two Years; the
Jury found the Lease and a Letter of Attorney to execute it, (viz.)
that the Lesse was feilced in Fee of the Lands, and being so seilced;
he made, signd, and seal'd an Indenture of Demise in hoc Verba 
but did not deliver it as his Deed to the Plaintiff on the 5th Day of
Jan. but by a Letter of Attorney bearing Date on that Day be gave
full Power to M. M. his Attorney to enter on the Lands in his
Name, and after Possession taken to deliver the said Indenture to the
Plaintiff, by Virtue whereof he entered, and immediately afterwards
delivered the Lease to the Plaintiff as the Deed of the Lessee.
It was objected, that this Declaration was ill, for the Plaintiff de
clared on a Lease made to him by J. C. which if so, then the Let
ter of Attorney had been idle, and to no purpoe; but adjudged good,
and that it was the Lease of the Lessee. Brownl. 128. Trin. 16

20. Ejectione Firmae of a Lease of Tithes, and does not shew that it
was by Deed, and because Tithes cannot pass without Deed, after
Verdict for the Plaintiff, Exception being taken for the Plaintiff, was
ruled to be ill, and adjudged for the Defendant. Cro. J. 613. pl.

21. Ejectione Firmae of a Lease made by the Lady Morley to the Palm. 267.
Plaintiff, 1st Mai 14. Jac. for five Years, if she is so long lived, and
that he entered and was possed, and that the Defendant possed, viz. 6
Mai, entered upon him and ejected him a termino suo pradict non
null.
Ejectment.

It was said the Declaration was not good, because there
is not any Averment of the Life of the Leafe at the Time of the Action
brought. Three Justices contra, Chamberlain held it good enough, for
his shewing that the Defendant ejected him a termino nondum fini-
nito, implies the Lady was alive; judgment was for the Plaintiff, and

22. If in Ejectment the Plaintiff of a Lease the 2nd May 20 Jac.
habend' a primo Die Maii for three Years, Virtute cujus he entered and
was possessed, quoniam poledra, sedet eis' Die & Anno the Defendant
ejected him, this is well enough, for his Entry being laid to be Virtute
Dimissionis, the poledra eis' Die &c. refers to the Day of the Leafe made
Adjudged in B. R. and that Judgment affirmed in Cam. See a Writ of Error accordingly; tho' it was objected, that the eis' Die &c. referred to the last Antecedent, and so the Ejectment was
Rutter v. Mills.

23. Judgment was for the Plaintiff in Ejectment brought in Ire-
lend, and Error aligned was, that the Plaintiff had declared on a
Lease made to him to commence at a Day to come, Virtute cujus he en-
tered and was possessed, and did not shew when he entered, either before
or after the Day on which the Leafe was to commence. Sed non allocatus, because he said Virtute cujus &c. But Ley Ch. J. said that
if he had said Praetextu cujus it had been otherwise. 2 Roll Rep.

24. If the first Declaration in the Common Pleas is vixias, and the
second is as it ought to be, the first is not amendable in this Case; For the first Declaration is the Foundation, and the second is only
by way of Recital. Jenk. 325. at the End of pl. 41.

And so it was between Bill and
Hart and this fame
'Term be-
tween Spark, and . . . where it was shewed quod concepisc per eandem Indent' where he had not
spoke of any Indenture before. ibid.

26. It was resolved, that an Ejecttione Firmæ of 40 Acres of Land
in Ejection is not good, for the Demand ought to be certain. Ley 82.

27. The Declaration was of a Millage and 40 Acres of Land, Mea-
dow and Pasture thereto appertaining, and it was not distinguished how
much there was in Land, how much in Meadow, and how much in
Pasture, therefore the Judgment was reversed. Cro. C. 573. pl. 13.

28. In Error of a Judgment in Ireland, the Error aligned was, that
the Plaintiff declared upon a Demise made 12 Juni &c. Habendam a
Prædicto duodecimo Dies Juxta, (which must be the 13th Day of the
same Month) &c.; and virtute cujus quidem Dimissionis he entered
&c. and that the Defendant possedis sedet eodem duodecimo Dies Juxta,
die ejus biv &c. So that it appears upon the Face of the Declaration
that the Defendant entered before the Plaintiff had a lite; for the Leafe
commenced on the 13th of June, and the Entry was on the 12th of
that Month; Per Curiam, the Plaintiff entered at a Dissolver by his own
floccing, and thenceupon Judgment was reversed. 3 Mad. 193. Pazch.
4 Jac. 2 B. R. Evans v. Crockett.
29. A. B. and C. Jointenants join in the Lease of a House to J. S. to commence from Michaelmas last, afterwards on the same Day B. and C. without A. demise the same House to J. S. to commence from the same Time, and for the same Number of Years as in the Lease made by all three, and in Ejectment by J. S. he declares upon both these Leases. Refolv'd, that the Declaration was not Double, for when the three demised the Whole, and afterwards two of them demised all the same thing, this is a Surrender of the first Lease, and a new Lease of their two Parts, and the old Lease continues as to the third Part of A. and to J. S. entered, and was pollified by both Leases, viz. of the third Part of A. by the first Lease, and of the two Parts of B. and C. by the second Lease. 3 Lev. 117. Patch. 34 Car. 2. in Cam. Seace. Turbervill v. Stockton.

30. In Ejectment the Plaintiff declared that Frances Ford, and Elizabeth, dimiferent, and put no Sure-name to Elizabeth. After Verdict for the Plaintiff it was moved, that this was a joint Demise, and no Sure-name being given to one of the Parties the Declaration was void; and the Court held it void for the Uncertainty, and so Judgment was arrested. From Rep. 136. pl. 167. Patch. 1674. Carter v. Weit.

31. Declaration in Ejectment mentions the Demise to be for 11 Years Habendum from the same Day on which the Entry is alledged to be, and ill. Cumb. 83. Patch. 4 Jac. 2. B. R. Stephen v. Groker.

32. Declaration recited an Original; and an Original was produced which was after the Demise. And the Prothonotary informed the Court, that this was frequently allowed, and that no Memorandum of the Originals bearing Text within the Term was used to be made upon the Record. 2 Vent. 174. Patch. 2 W. & M. C. B. Tunfall v. Brend.

33. A Fine was levied in Hillary Term, and an Ejectment brought; A Lease by an Ohio, upon the Title, and the Demise was laid before the Fine took Effect, and an Alliance of a Bankrupt's Estate before In- volution, by which nothing polled till Involvement, and upon which an Ejectment was brought, was denied to be amended; and per Holt Ch. J. it is not amendable, because no other Lease than what was laid was confessed. Show. 206. Patch. 3 W. & M. Bennett v. Gandy.

34. Two or three several Demises from several Persons may be laid in one Declaration in Ejectment. Cumb. 290. Trin. 6 W. & M. in B. R.

Tenements predicated so demised by the aforesaid several Parties for seven Years, and lays in his Declaration, that the Defendant entered into all the aforesaid Tenements &c. (the Plaintiff) is a firma sua predicta (in the Singular Number) eject. expulit &c. Per Cur. it is well enough, Redding v. Gango. Card. 244. Patch. 4 W. & M. in B. R. Furdin v. Moor.

35. Error on a Judgment in C. B. in Ejectment. The Error alleged was, that the Declaration was on two Demises, and there was no Habend in the First, but afterwards the second Demise was Habend. S. C. the Tenement pridicit, which as it was urged, did not extend to both the Court was Demises, nor would it be good in Case of a Grant, and the Judgment of several Demises by is intire quod recuperet Terminos predicti; but per Cur. it is well enough,
Ejectment.

The Judgment was affirmed. *Comb. 190. Patch. 4 W. & M. in B. R. Moor v. Parndon.

26. If two Tenants in Common are dispossessed, their Leases in Ejectment must declare upon two several Demises. *Comb. 279. Titn. & M. Moor v. Parndon.

27. The Demise was on the Fifteenth Day of Hill. Term, and the Declaration was of the same Hill. Term, both which relate to the first Day, and to the Action was brought before the Title accrued, or at least on the very first Day, which cannot be, because the Law allows no Fractions of Days. But per Cur. this being alter a Verdict the Ch. J. said, that if the Plaintiff in Error would take Advantage of this Matter he should have alleged *Damnation, and procured the original Writ to be certified, and if that was returnable before the Plaintiff's Title it would have been Error. *Carth. 283. Mich. 5 W. & M. in B. R. Cook v. Darbyson.

28. Ejectment was brought as of the last Term, and the Demise was laid in October. The Tenant does not appear. Holt said, he would not grant a Rule for Judgment against the casual Ejector, where it appears upon the Record, that the Ejectment was brought before Title accrued, though the Practice may have been so. *Comb. 345. Mich. 7 W. 3. B. R. *Clayton v. *———.

29. Ejectment of Lands in Suffolk upon the Demise of the Corporation of Bury. Upon Not Guilty pleaded a Verdict was given for the Plaintiff. But it was moved in arrest of Judgment in C. B. that it does not appear upon the Record that the Lease was by Deed. And the Prothonotaries there certified, that the Practice was (notwithstanding the common Rule) of conveying Leases, Entry, and Quitter in Ejectment) for Things Incorporal, as Tenures, or upon Demises of Corporations, to lay the Demise by Deed. But it was adjudged in C. B. that it was aided by Verdict. And Judgment was given there for the Plaintiff. Upon which Error was brought in B. R., and that Judgment was affirmed. And Holt Ch. J. said, that at this Day the Cafe of 2 *Cao. 613. *Standing v. *Hill is not Law. *Ld. Rayn. Rep. 136. Hill. 8 & 9 W. 3. *Partridge v. *Ball.

30. In Ejectment the Plaintiff declared upon two several Demises ba- lendum Tenementa praelita &c. by Virtue whereof he entered and was pos- sessed, quoadque the Defendant entered in Tenements, and the Plaintiff expul- sit et amovit a termino suo praelitae inde nondum finito &c. Mr. Northey moved in arrest of Judgment, that Tenementa praelitera was uncertain, and therefore ill, for it did not appear which. The same of Termino suo praelitae inde nondum finito, which makes the former Objection the stronger, because it complains but of one. But the Court held the first to be well enough, and that it would extend to both; And as to the other, if it had been omitted, the Declaration had been well enough, and

41. Per totam Curiam, by the Courf of this Court there can be no Alteration in the Declaration in the Issue from the fift Declaration delivered, only in the Defendant's Name. And a Rule was made, that the Issue should be made according to the Declaration delivered against the Casual Ejector. Ld. Raym. Rep. 1411. Mich. 12 Geo. in Cade of Bafs v. Bradford.

42. In Ejectment the Plaintiff declar'd of the Manor of Queenborough, with the Appurtenances, 400 Acres of Land, and Common of Pasture for all Manner of Cattle, and for the Restory and Accomany, with the Appurtenances, and for all, and all Manner of Titles, and held good. Hill. 6 Geo. 2. B. and affirm'd in Error in the Exchequer Chamber Trin. 8 & 9 Geo. 2. and afterwards in the House of Lords 12th March 1737. Doct (on the Denifle of Savil) v. Borlace.

43. In Ejectment the Plaintiff declared of 100 Acres of Marsh, and one Beaf-gate, with the Appurtenances; After Judgment a Write of Error was brought, and the Error assign'd was, that the Declaration was ill for the Uncertainty what is meant by the Word (Beaf-gate). On the contrary a Cade was cited, where so many Acres of (Alder-Carves) in the County of Norfolk was held good, because it was a Term well known in that Country. And in the Cade of Metcalf v. Roc. Mich. 9 Geo. 2. Ten Acres of Pasture and Beaf-gate was held good. The Court held the Ejectment was well laid, and said there was no Difference between Cattle-gate in the Cade of Roc v. Metcalf, and Beaf-gate in the preffent Cade. And no Name well understood in the particular Place to denote a certain Sort or Quantity of Land is good; And per Lee Ch. J. so many Acres of (Mountain) in Ireland is good. And the Judgment was affirm'd. Hill. 11 Geo. 2. B. R. Benington v. Goodtitle.

(R) Plea. Replication.

1. Ejectione custodiz by the Lord, the Defendant said, that he is Tenant by the Charter of the fame Land, by which be enter'd &c. the Plaintiff said that the Land was fpecally tailed to the fame and her first Baron, and to the Heir of their two Bodies, and a good Replication. Br. Ejectione &c. pl. 12. cites 46 E. 3. 3.

2. It is a good Plea in Abatement that the Plaintiff has other Ejefi- one Firms pending for the fame Land in the Common Pleas. Mo. 339. pl. 710. Trin. 39 Eliz. Digby v. Vernon.

3. Ancient Demefne is a good Plea. 5 Rep. 195. Hill. 43 Eliz. C. B. Alden's Cade.


133. Trin. 9 Jac. Pats v. Chitty.

to's Cade, S. C. adjudged accordingly.

4 U 6. Expiry.
Ejectment.

6. 

Expiration of the Term is no Plea in Ejectione Firma; Per Jermin. Lat. 206. Trin. 3 Car. Dale v. Penhalerick.

7. In Ejectment by A. against B. the Court was moved for C. that he will have B. harmles, and pray that giving B. Security to do so, B. may be ordered by Rule of Court to plead as C. should direct B. and that B. be not suffered to contest a Judgment ; Per Roll Ch. J. it is out of the way for you to give such Security, for there yet appeared no Collusion, but you shall be made a Party to defend the Title, and then move again. Sty. 382. Pach. 1653. Ricot v. St. John.

8. If Judgment in Ejectment be signed in a Country Cause for want of Plea, but no Possession delivered, a Judge in his Chamber at any Time before the Affides, may compel the Plaintiff to accept a Plea, but if Possession is delivered he is without Remedy; Per Holt Ch. J. 2 Salk. 516. pl. 9. Mich. 9 W. 3. B. R. Anon.

9. In Ejectment Plea of Ancient Custom was allowed to be well, without an Affidavit to verify the Fact, and such Plea had been before allowed to be good in Earl Coningsby's Case: 2 Ld. Raym. Rep. 1418. Trin. 12 Geo. B. R. Goodright v. Shuflil.

(S) Bar.

1. A Recovery in one Ejectment is a Bar in another; Per Anderson Ch. J. especially (as Periam J. said) if the Party relies on the Eitoppel. 3 Le. 194. pl. 242. Mich. 29 Eliz. C. B. Anon.


3. A Bar in one Ejectione Firma is a Bar in another for the same Ejectment, but not for another or new Ejectment. Mar. 59. pl. 92. Mich. 15 Car. Anon.

4. If the Plaintiff dies, the Court will suppose any other Person of the same Name to be the Plaintiff, and they take Notice judicially that the Leffor of the Plaintiff is the Perion interested, and therefore they punifh the Plaintiff if he releas the Action or the Damages. Mod. 252: Trin. 29 Car. 2. C. B. Addifon v. Otway.

(T) Abatement.

1. If Ejectment of Ward be brought against two, and the one dies, yet the Writ is good against the other, per Thinn, and Hull of the same Opinion; For this is in Nature of Trespass; Quod Nota; by which Skene who pleaded this Matter imparled. Br. Ejeftione &c. pl. 2. cites 12 H. 4. 10.
Ejectment.

2. Ejectione Custod1 of Land in E. the Defendant said that the Land is in C. and not in E. Judgment of the Writ, and Plaintiff prayed Leave to inquire a better Writ. Br. Ejectione &c. pl. 4. cites 14 H. 4. 16.

3. In Ejectione Firmae, the Omision of this Clause, Et Bona & Ca\(\text{\textsuperscript{tal}}\)la queruntis ad vallon &c. is not material, and the Writ is good without this Clause. Thel. Dig. 94. lib. 10. cap. 6. S. 17. cites Plowden Fol. 199. 228.

4. Leases for Years brings an Ejectione Firmae; The Lessor being but Tenant for Life dies, pending the Writ; The Writ does not abate. The Plaintiff may have Judgment and a Writ of Execution. Jenk. 293. pl. 38.

5. If an Ejectment be brought against two, and Issue be joined, and then one of them dies, and a Venire is awarded as to the two Defendants, and a Verdict against two, yet upon Surrender of the Death of one of them upon the Roll, the Plaintiff shall have Judgment for the Whole against the other; cites Cro. J. 330. 274. 2 Keb. 845. because this Action is grounded upon Torts, which are several in their Nature, and one may be found Guilty, and the other acquitted; Per Cur. Lord Raym. Rep. 717. Hill. 13 W. 3. in Cafe of Gree v. Rolle and Newell.

(U) Verdict. How the Jury may find.

1. Ejectione Firmae; The Plaintiff declared of Ejectment of 100 Acres of Land; and in Evidence stored a Lease of 40 Acres only; It was ruled to be good for so much as was comprised in the Lease, and for the Remainder the Jury may find the Defendant not guilty. Cro. E. 13. pl. 4. Hill. 25 Eliz. C. B. Guy v. Rand.


But where an Affile was brought of a Park containing 60 Acres, and the Jury found the Difference of 50 only; it was adjudged against the Plaintiff for the Whole. But the Reporter says not here, that the Park was a Thing intire. D. 115. b. Marg. pl. 67. cites 29 Eliz.

Lady Baskervill's Cafe.

3. In Ejectment the Plaintiff declared on a Lease of a Messiage, ten Acres of Land, 20 Acres of Meadow, 20 Acres of Pasture, by the Name of one Messilage and 10 Acres of Meadow, be it more or less, and upon Not Guilty pleaded had a Verdict, but Nil capiat per Billiam entered, cause upon the Matter disclosed by the Plaintiff himself in the Declaration he cannot have his Execution of the Quantity found by the Verdict; For in the Lease there are only 10 Acres denominated, and those Words (more or less) cannot in Judgment of Law extend to 30 or 40 Acres, it being impossible by common Intendment, and the rather because the Land demanded by the Declaration is of another Nature than what is mentioned in the Per Nonten, which goes only to the Meadow, and the Declaration to the Arable Land or Pasture. Yelv. 166. Mich. 7 Jac. B. R. Anon.

4. The Declaration was of a fourth Part of a fifth Part in five Parts to be divided; and the Title of the Plaintiff upon the Evidence was only of the third Part of the fourth Part of the fifth Part into five Parts to be divided, which is only a third Part of that which is demanded in the
the Declaration, and it was said that the Plaintiff could not have Ver-
dict, because the Verdict in such Case ought to agree with the Decla-
ratiot. But per Cur. the Verdict may be taken according to the Title; and so it was. Sid. 229. pl. 26. Mich. 16 Car. 2. B. R. Ablett v. Skinner.

(W) Judgment.

1. Judgment was forthwith given because the Lease determined the same Day, and Execution awarded immediately. Cro. J. 227.
2. If one Coparcener brings Ejectment for the Whole, the Judgment shall be for the Whole. Roll Rep. 336. pl. 6. Trin. 14 Jac. B. R. Cooper v. Franklyn.
3. Judgment in Ejectment in C. B. was quod Querens recuperet, and the Words good Defendens capiatur are omitted, and on the Exception Judgment was revered; for they said in this Judgment so entered, there is no Return of Damages nor a Capiatur, and so the King is cozened of the Fine, and the Defendant barred of bringing his Writ of Error. Sty. 346. Mich. 1652. Aëton v. Ayres.
4. In Case of Judgment against the causal Ejector there ought to be a Latitat sued out against, and common Bail filed for the causal Eje-
tor, and Judgment was set aside for want of it. 2 Show. 249. pl. 253. Mich. 34 Car. 2. B. R. Bouchier v. Friend.
5. Affidavit of the Delivery of a Copy of a Declaration in Eje-
ctment to A. and B. Tenants in Possession of the Premises, or of Part thereof; Ruled that there should be Judgment for so much as was in their Possession. Comb. 102. Paich. 1 W. & M. B. R. Anon.
6. To have Judgment signed against the causal Ejecutor all Things must be very fair of the Plaintiff’s Side; for the Defendant loses his Possession by a fictitious Proceeding; Per Cur. 7 Mod. 130. Hill.
7. Ejectment to recover the Possession of the Quakers Meeting-House. None of them would receive the Declaration, and the House was open only on Sundays, and Delivery is not good on that Day, so the Plain-
tiff took a Judgment by Confession of the nominal Lessee; but it was set aside because it cannot be entered on his Confession, which, in PÆt, is the Confession of the Plaintiff himself. 8 Mod. 109. Mich. 9 Geo.
Cooper v. Beale.
8. If Tenant in Possession appears and pleads, and afterwards with-
draws his Plea, and confesses Judgment, the Plaintiff may enter Judg-
ment against the Tenant in Possession; Per rot. Cur. But whether he may in this Case enter it against the causal Ejector the Court was di-
vided; Adjournatur. 8 Mod. 118. Hill. 9 Geo. Smith v. Jones.
10. Judgment was in Ejectment of two several Demises of two several Tenements, and the Entry was quod recuperet Terminius suum in Tenen-
tum predictum. It was urged that it should be taken reddendo Singula
Singula; But if the Plaintiff had two several Terms in one and the same
Ejectment.

(X) What shall be recovered, and the Effect thereof.

1. In Writ of Ejectment Caused by the Plaintiff shall not have Judgment to recover the Land and Damages where the Herewithin Age, but to recover all in Damages, and shall have Seisin of the Land; but at this Day he shall recover Possession of the Land. Br. Ejectment, pl. 13, cites 30 E. 3. 11.

2. In Ejectment of a Term for Years, the Term expired before Judgment given. Though the Plaintiff cannot have Judgment to recover the Land, yet he shall have Judgment of Damages; but otherwise it is in Actions where Frankneteneme is to be recovered; And Plaintiff had Judgment. Sav. 28. pl. 66. Trin. 24 Eliz. Booth v. Ld. Cromwell.

3. By a Recovery in an Ejectment the Possession is bound. 3 Le. 194. It binds the Right, and makes a Title in the Plaintiff. 1 Salk. 258. Mich. 1 Ann. B. R. Withers v. Harris.


5. A feited of Land purchases a House and other Land, and pulls Cro. E. 222. S. C. Melia his own Land, though the Demandant has Title but to part of the Lot, viz. House, Part only being on the Land demanded, yet Judgment was so much that he shall recover the House. Lat. 62, 63. Patch. 1 Car. Henys v. Stroud.

according to the Verdict. —— Poph. 14. S. C.

6. If Tenant in Common sells a Lease in Ejectment, he shall recover He shall on-put in Possession of no more, and in such Case the Sheriff shall give the same Execution as he would do of Rent upon Affite. 12 Mod. 657, Hill. 13 W. 3. in Case of Johnson v. Allen.

7. Ejectment for an Acre of Land in D. and S. and it lies only in D. yet Plaintiff shall recover; if it be for an Acre in D. and Part of it lies in S. he shall recover what lies in D. it for a whole Acre, and he has Title only to the 4th Part, he shall recover the 4th Part; Arg. and not denied by the Court. 3 Lev. 334. Trin. 4 W. & M. in C. B. Goodwin v. Blackman.

8. Holt Ch. J. said, that it was held in this Court in the Case of Sargent v. Loyd, that the Plaintiff might enter pending the Writ of Error upon the Judgment in Ejectment, if he could find the Possession empty. For the Writ of Error binds the Court, but not the Right of the Party; But he must take Care that he do not enter with Force. 2 Ld. Raym. Rep. 808. Mich. 1 Ann.
(Y) Judgment Stayed.

1. Judgments in Ejectment against casual Ejectors for want of an Appearance shall be set aside, and Restitution granted if no Latent hath been sued out against, nor Common Bail filed for such casual Ejector, or nominal Defendant, within 14 Days after such Appearance; Per Cur. L. P. R. 83. cites Trin. 4 W. & M.

2. If Notice in Ejectment be given to an Under-Tenant, and he does not acquiesce his Landlord therewith, but suffers Judgment to go against him, the Court upon Motion will not suffer Execution to be taken out till the Right be tried. 12 Mod. 211. Mich. 10 W. 3. Anon.

3. If Judgment be against the casual Ejector, and it be made appear that no Declaration was rightly served, the Court will set it aside; And it at Common Law an Ejectment had been against one that had nothing in the Land, and upon Judgment against him another is turned out of Possession, there was no Remedy for the right Owner but Trespasses or a Writ of Deciet, and this still is all the Certainty a Man has of his Possession, and now all we can do is to set such Recovery aside, and to punish the Offender; Per Holt Ch. J. 12 Mod. 655. Hill. 13 W. 3. in Case of Sir William Clayton v. Boone.

4. But upon Affidavit that Defendant was a Soldier, and so intitled to Protection by Law, it was ordered that he should give Security for Payment of the Rent for the future. 10 Mod. 383. Hill. 3 Geo. 1. B. R. Smith v. Parkes.

5. The Court usually lays Proceedings in Ejectment on reasonable Terms at any Time before Execution executed, and where the Ejectment was for Nonpayment of Rent the Plaintiff had Judgment, but the Proceedings were Stayd on bringing in the Rent and Costs within three Days. 8 Mod. 545. Hill. 11 Geo. Philips v. Doclittle.

(Z) Writ of Error.

In Ejectment the Plaintiff declared of a Lease of the 4th Part of an House in N. in four Parts to be divided, by Force of which he was into a Tenant and Parcel prædici, and was in the Possession of the Defendant did eject him de Tenementis prædici, whereas he ought to suppose the Entry in the fourth Part, and the Ejectment of the 4th Part; The Court said, De Tenementis prædici shall not be intended the whole Tenement, but of the 4th Part, and the Judgment affirmed. Cro. E. 286. pl. 3. 34 Eliz. B. R. Rawfon v. Maynard.

2. A Writ of Error may be brought before the Writ of Inquiry be returned in an Ejectment, for in that Action the Judgment is compleat at the Common Law before it be returned, for the Judgment is but to gain Possession, and so it is in Dower; But otherwise in Trespasses, where Damages only are to be recovered, for in such Case the Judgment
ment is not perfect till the Writ of Inquiry is returned, nor can be made up before, as in the principal Case it may; Per Roll Ch. J. Sty. 109. Trin. 24 Car. Glede v. Dadeney.


4. 16 & 17. Car. 2. cap. 3. S. 3. 4. Execution shall not be stayed by Writ of Error upon any Judgment after Verdict in Fictitious FIR-m&auml;, unless the Plaintiff in such Writ become bound to the Defendant in such a Sum as the Court, to whom the Writ is directed, shall think, fit, that if the Judgment be affirmed, or the Writ discontinued in his Default, or he be Non-suit, he shall pay such Damages and Sums of Money, to ascertain which a Writ of Inquiry shall issue to inquire of the mesne Profits and Damages by Waste done after the first Judgment as shall be awarded, and Costs of Suit.

5. A had Judgment in Ejection in C. B. and Execution of his Damages and Costs. B. brings Error, and the Judgment is affirmed. Whereupon A. prays his Costs for his Delay and Charges, but could not have them; For no Costs were in such Case at Common Law, under Statute 3 H. 7. 10, gives Costs only where Error is brought in the Delay of Execution. So 19 H. 7. 25. and here, tho' he had not Execution of the Term, yet he had it of his Costs. Vent 88. Trin. 22 Car. 2. B. R. Foot v. Berkley.

6. After a Recovery in Ejection the bringing a Writ of Error is no Bar to an Action of Tripos for the mesne Profits, but that it may be brought pending such Writ of Error. 12 Mod. 138. Mich. 9 W. 3. Donlord v. Ellis.

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(A a) Of Confessing Leafe Entry and Ouffer.

1. If the Leafe is defective, we can give no Judgment, and the Rule of Court does not bind the Defendant to confess the Leafe otherwise than you have made it; Per Roll Ch. J. Sty. 343. Mich. 1652. Theobald v. Conquest.

2. In Ejection the Lessor of the Plaintiff had Title to enter for Vent. 332. a Condition broken for Non-Payment of Rent. Leafe, Entry and Ouffer was confess'd, and the Court was mov'd, that in regard the Lessor had such a special Title, and no Estate until Entry, whether cliued to the such an Entry should be supply'd by the General Collection, or that contrary, there should be an actual Entry; and held that it should be supply'd tho' Leafe was by the General collection. Vent. 248. Mich. 25 Car. 2. B. R. Anon.

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1 Salk. 259. pl. 17. March 26. 1702. held by Holt Ch. J. at the Affidavit, that in such Case Entry and Ouffer is not necessary, tho' it had been held otherwise before the Time of Hule Ch. J. 2. Ld. Raym. Rep. 750. S. C. ruled by Holt Ch. J. accordingly, tho' he said he formerly doubted of it, and referred it as a Point for his Opinion, and cau'd it to be mov'd in B. R. where the other Judges held that the General Collection of Entry by the Defendant was good enough.

3. If A. lets to B. and B. lets to C. to try the Title, the Confes. This Rule tion of the Leafe Entry and Ouffer extends only to the Leafe made to
4. Where the Defendant in Ejectment appears, and confesses Lease Entry and Outier, that shall be sufficient to prove an actual Entry in any Case where an actual Entry is required; and if Scroggs said it was always held by Ch. J. Hale, because it shall be taken an Entry to all Intentions. Freem. Rep. 468. pl. 643. Trin. 1678. Winch v. Huddleston.

5. In an Ejectment, where there are divers Defendants which are to confess Lease Entry and Outier, if every one do not appear at the Trial, the Plaintiff, cannot proceed against the rest but must be Nonsuit. Vent. 355. Trin. 33 Car. 2. B. R.

6. For not appearing at the Trial to confess Lease Entry and Outier, there was Judgment against the Casual Ejector, but set aside, because no Bail was filed. 2 Show. 201. Pach. 34 Car. 2. B. R. Honor v. Gale.

7. Where an Entry is required, and even necessary, the Confession of Lease Entry and Outier does supply it, (tho' no Actual Entry,) Per Scroggs Ch. J. who said it was the Opinion of all the Judges. 2 Show. 201. pl. 204. Pach. 35 Car. 2. B. R. Honor v. Gale.

8. Eyres J. much doubted whether the Rules of confessing Lease Entry and Outier, be good in an Inferior Court, but they should proceed the ancient Way. Cumb. 208. Trin. 5 W. & M. in B. R. Anon.

9. Ejectment for two Messuages, two Gardens, 70 Acres of Land, 15 of Meadow, and 30 of Paiture, in D. The Plaintiff deliver'd Declarations to two Tenants only, and as to the Lands in their Possession the Defendant entre'd into the Common Rule, but because he had made several small Purchases in that Partih, and the Plaintiff claim'd only 20 Acres lately granted to him by Leafe from the Bishop of Gloucester, therefore he mov'd by his Counsel, that the Plaintiff might give a Note in Writing before the first Day of the next Term, what Lands in particular he claimed, and where such lay, and in whose Possession &c. or otherwise might not proceed to Trial at next Assizes; for Defendant not knowing what Lands Plaintiff would claim, could not tell what Purchase Deeds to produce at the Trial; Sed non allocatur. 4 Mod. 214. Pach. 5 W. & M. in B. R. Gwynn v. Pie.

10. In Ejectment the Defendant by the Leffer of the Plaintiff to the Plaintiff was laid to be the 27th of April 1697, which Time was not come at the Time of the Trial; but the Tenant had enter'd into the common Rule to confess Lease Entry and Outier; And the Court compell'd the Defendant to confess Lease Entry and Outier, otherwise the Plaintiff would have been non suit, and then he would have had Judgment against the casual Ejector, although it was objected, that the Plaintiff could not have Judgment though the Verdict were found for him. Ruled by the Court of B. R. upon a Trial at Bar. Ld. Raym. Rep. 728, 729. Anon. cites Mich. 8 Will. B. R.

11. In Case of Tenants in Common there must be an actual Outier of one by the other, or else he shall not be compell'd to confess Lease Entry and Outier. Per Holt, 7 Mod. 39. Trin. 1 Ann. B. R. Anon. claiming only as Tenant in Common, and the other brings an Ejectment, it will be hard to enforce the Defendant.
Election.

Defendant who has done nothing, but as Tenant in Common, to contest Leafé, Entry and Outter

12. In Ejectment if Defendant has not Regular Notice of Trial the way is not to contest Leafé Entry and Outter but to oppose Judgment against the Casual Ejector 7 Mod. 118. Mich. 1 Ann. B. R. Anon.

13. If Defendant will not appear, and confess Leafé Entry and Outter, the Course is to call him and his Attorney, if he be within the Rule, and then to call the Plaintiff himself and nonuit him, and then upon Return of the Poleta Judgment will be given against the casual Ejector; and the Matter will tax Costs upon the Rule for confessing Leafé Entry and Outter, and if these are demanded of the Defendant and not paid, the Court on Affidavit will grant an Attackement. 1 Salk. 259. pl. 14. Trin. 2 Ann. B. R. Turner v. Barnaby.

14. In Ejectment against several if some confess Leafé Entry and Outter, and others do not, the Plaintiff may go on as to the former, and be nonuit as to the latter, but the Caufe of the Nonuit must be exprezzed in the Record, viz. because those Defendants would not confess Leafé &c. and on the Return of the Poleta the Court would be informed what Lands were in the Possession of those Defendants, that the Judgment might be entered against the casual Ejector as to them. 2 Salk. 436. pl. 6. Pasch. 4 Ann. B. R. Greeves v. — If one confess Leafé Entry and Outter for as much of the Premises as are in his Possession, the Jury shall inquire against him alone for so much, and if the other will not appear, or not confess &c. there shall be Judgment for so much of the Premises as are in his Possession; Judgment against the casual Ejector; Per Holt Ch. J. 12 Mod. 636. Hill. 15 W. 5. in Case of Gree v. Roll. — C. brought an Ejectment against S. B. and G. F. appeared, and confessed Leafé Entry and Outter; S. and G. did not appear nor confess Leafé Entry and Outter; upon which, by the Direction of Holt Ch. J. at the Summer Assizes at Hoffham in Suffolk, 12 W. 5, a Verdict was given by the Jury for the Plaintiff against F. generally; and Verdict was given against the Plaintiff for S. and G. and Indorsement was made upon the Poleta, that this Verdict was for S. and G. because they did not appear and confess Leafé Entry and Outter; and for this Reason that they should not have Costs against the Plaintiff, and that the Plaintiff should have Judgment against the casual Ejector for such Lands as were in the Possession of S. and G. Lord Raym. Rep. 729. Claxmore v. Searle &c. 

For more of Ejectment in General, See other Proper Titles.

Election.

(A) In what Cases an Election is given by Law. 357

If A. sels in Fee of 100 Acres, encoffs B. of 18 of the 100 Mo. St. Acres, (without assigning which of the 100 Acres he encoffs him of) to hold to B. and his Heirs at Election of B. and his Heirs Baileck v. when he please; this is a void Froffiment to that this cannot be made judg. 100 Mo. St. 4 Y
made good by any Election, because a Livery cannot operate in futuro, but ought to pass the Freehold presently or never, and therefore the Easement void. Dy. 11 Eliz. 281. 19. adjudged. —- S. C. cited per Curiam 2 Rep. 36. b. —— Hob. 174. cites S. C.

2. If a common Person grants to the Mayor and Burgesses of C. the Moiety of a Yard Land in a Great Waste without Certainty in what Part of the Waste they should have the same, or the special Name of the Land, or how it was bounded, or without any certain Description of it, so as the same ought to be reduced to Certainty by Election, the Corporation must not make their Election by Attorney, but after they are resolved upon the Land they must make a special Warrant of Attorney, reciting the Grant to them, and in what Part of the said Waste their Grant should take Effect, East, West &c. or by Botellas &c. according to which Direction the Attorney is to enter &c. Le. 30. pl. 36. Trin. 27 Eliz. B. R. in Sir Walter Hungerford's Cafe.

3. Sir R. H. bargains and sells to three Persons several Manors (which are Part in Demesnes, Part Copyhold, and Part in Lease for Years with Leases referred) and the Reversions and Remainder of them with all Rent referred Habend. to them and their Assigns after the Death of Sir R. H. for 17 Years &c. Afterwards Sir R. H. covenants to stand seised of the Premises to the Use of himself for Life, and to the Heirs of his Body, and dies; no Attorney is made to the Bargainees. Refolv'd, the Bargainees have an Election to take this as a Demise at the Common Law or by Bargain and Sale by 27 H. 8. without Attornement; and though the Leilées or Bargainees have entered generally, yet their Election remains to them still notwithstanding the Death of the Leilor and the Alteration of the Estate by the second Indenture; for they had an Intercit in them presently. 2 Rep. 35. b. 36. a. Pach. 37 Eliz. in the Court of Wards. Sir Rowl. Hayward's Cafe.

4. If the Tenant in Seignage holds by Fealty and 10 s. or a Pair of Gilt Spurs, if the Heir be not, so soon as conveniently he may, all Circumstances considered, after the Death of his Ancestor ready upon the Land to pay his Reliefs, the Lord may disclaim for which of them he will; for upon Default of the Tenant the Election is given to the Lord. 2 Roll Tenure (L. a) pl. 7. cites Co. Litt. 91. (A. 2.) Rules
Election.

(A. 2) Rules and Notes, as to Election.

1. If your Act may work two Ways, both aising out of your Interest; Election is given to the Patient to use it either Way but not both Ways to one entire Thing and one entire Act. Hob. 159. cites 2 Rep. 35. 37 Eliz. Sir Rowland Heyward's Case.

2. If the Act will work two Ways, the one by an Interest, and the other by Authority or Power, and the Act be indifferent, the Law will attribute it to the Interest and not to the Authority. Hob. 159. in pl. 193. Mich. 10 Jac.

3. But where Interest and Authority meet, if the Party declares clearly that his Will is that this Act shall take effect by his Authority or Power, there it shall prevail against the Interest, for Modus & Convenient vocalist legem. Hob. 160.

4. And where the Party doth not make an express Declaration, yet if his Act do import a Necessity to work by his Power, or else to be wholly void, the Benignity of the Law will give Way to effect the Meaning of the Party. Hob. 160. in Case of Colt v. Glover.

5. When Election creates the Interest nothing passes till Election, so where no Election can be, no Interest can arise. Hob. 174. Hill. 12 Jac. in Case of Stukely v. Butler.

(B) Who shall have it.

1. If a Man leaves Land for Years, reserving weekly nine Quarters of Wheat, or the Value thereof as it shall then be sold in the Market of 12. if the Lessee pays neither of these at the Time appointed, the Lessor may have his Action at his Election for the Wheat only, or for the Value only, for though the Lessee might have paid any of them at his Election at the Day, yet after the Day the Law gives the Election to the Lessor. 5 Ta. 2. R. between Lord Denny and Parrish, adjudged.

2. If a Man bargains and sells 300 Cords of Wood out of his Woods to another and his Assigns, to be perceived by the Appointment of the Bargainer, if the Bargainer does not assign it within a convenient Time after Request made by the Bargaineer or his Grantee, they may take it without Appointment. Co. 5. Palmer 24. b. revised. 43 El. 2. R.

3. When a Thing is granted, or concludes conditionally, as 20 s. per Annum, or a Robe Price 20 s. to be paid at such a Day, there at the Day the Debtor may pay the one or the other at his Election, but if he does not pay at the Day, the Creditor, or the Grantee, after the Day, has Election to demand the one or the other; Per Catesby, quad
Election.

quod Moyle and Littleton J. conceirant. Br. Dette, pl. 112. cites
9 E. 4 36.

Dal. 73.
pl 54 S. C.
in toidem
Vebis.

4. A Man has three Daughters, and covenants with J. S. that he shall have the Disposition in Marriage of one of them; the Election is in the Father of which of the Daughters the other shall have the Marriage, and he is not to deliver the Daughter till Request; but upon Request he is to deliver the Daughter to J. S. otherwise he cannot have the Effect of the Covenant; Held by all the Justices. Mo. 72.

pl. 197. Trin. 6 Eliz.

S. C. cited
Vent. 271.
Trin. 27
Car. 2. B. R. Grantee cannot take them, but must supply his Grant out of the Residue. 5 Rep. 27 a. Patch. 43 Eliz. B. R. the second Resolution in Sir Tho. Palmer's Cafe.

where the Cafe was that A. covenanted with J. S. that J. S. should elect 20 of the bell Trees out of his Wood to be taken within 11 Years; And the Breach was assigned, that the Defendant had cut Trees within the Time; upon which it was demurred and relied upon the second Resolution in 5 Rep. Sir Thomas Palmer's Cafe. But here the Court were of Opinion for the Plaintiff, for by the Covenant he has 11 Years Time to elect, and by cutting any Trees in the mean Time, the Latitude of his Election is abridged. And Hale said that the Cafe in 5 Rep. there if the Grantee can have the Number of his Cords of Wood, he has the Effect of his Grant; but Trees differ in Value exceedingly from each other.

6. Note, as to Elections these Diversities following; 1st. When nothing passes to the Feoffee or Grantee before Election to have the one Thing or the other, the Election ought to be made in the Life of the Parties, and the Heir or Executor cannot make Election. But when an Estate or Interest passes immediately to the Feoffee,Donee, or Grantee, there Election may be made by them, or by their Heirs or Executors. Co. Litt. 145 a.

7. 2dly, When one and the same Thing passes to the Donee or Grantee, and the Donee or Grantee has Election in what Manner or Degree he will take this, there the Interests passes immediately, and the Party, his Heirs or Executors may make Election when they will. Co. Litt. 145 a.

9. 3dly, When Election is given to several Persons, there the first Election made by any of the Persons shall stand. Co. Litt. 145 a.

9. 4thly, In Cafe an Election be given of two several Things always be which is the first Agent, and which ought to do the first All, shall have the Election. As if a Man grants a Rent of 20 s. or a Robe to one and to his Heirs, the Grantor shall have the Election; for he is the first Agent by payment of the one, or delivery of the other. So it a Man makes a Lease rendering a Rent or a Robe, the Lessee shall have Election, caufa qua supra, and with this agree the Books in the

* Margin. But if I give unto you one of my Horses in my Stable, there you shall have Election, for you shall be first Agent by taking or Seifure of one of them. And if one grant to another 20 Loads of Hard, or 20 Loads of Maple to be taken in his Wood of D. there the Grantee shall have Election, for he ought to do the first Act, viz. to fell and take the same. Co. Litt. 145 b.

10. 5thly. When the Thing granted is of Things annual, and are to have continuance, there the Election remains to the Grantor, (in Cafe where the Law gives to him Election) as well after the Day as before, otherwise it is when the Things are to be performed annual Time; And therefore if I grant to another for Life an Annuity or a Robe at the Foot of Easement, and both are behind, the Grantee ought to bring his Writ of Annuity
Election.

If a man leases a fine come eco quo il ad de son dvene of an houfe and 100 acres of land in D, where he hath there an houfe and 118 acres, the feeantor may elect which 100 acres he will have, for the election is given to him by the fine. N. 37 Cl. B. R. between Morris and Lefolay, agreed.

1. If a man leases a fine come eco quo il ad de son done of an houfe and 100 acres of land in D, where he hath there an houfe and 118 acres, the feeantor may elect which 100 acres he will have, for the election is given to him by the fine. N. 37 Cl. B. R. between Morris and Lefolay, agreed.

2. But in the said cafe, if the feeantor renders it back to the concom for certain years, the concom hath the election given him which 100 acres he will have, and he may elect. N. 37 Cl. B. R. between Morris and Lefolay, per curiam.

3. If a man gives two acres to one, to hold one for life the other in fee, the donee hath election. Com. Ranegar and Fog. 6 b.
4. If a Man leases a fine Town ecco gr. of an House and
100 Acres of Land in D. (where he hath there 118 Acres,) and the
Conlee render to the Confor for 100 Years, and after the Confor
dies, his Executor may elect which of the 100 Acres he will have,
because this was a Thing in Interest in the Executor. 27 El.
B. between Morris and Levey, agreed per Curiam.
5. If a Man gives one of his Horses to A. and B. and after A. dies,
per B. may elect, because this was a Thing in Interest in them,
and no express Election limited. Mich. 37 El. B. between Morris
and Levey, per Curiam.
6. But if a Man gives one of his Horses to be elected by A. and
B. if A. dies before Election B. cannot elect. 27 El. B.
between Morris and Levey, per Curiam.
7. In Case of two Grantees the first named shall have Election Mo.
85. in pl. 215. Patch. 7 Eliz. C. B.
Bendl. 148.
8. Feeoliment of a House and 17 Acres of Land, Parcel of a Waife, the
Benefit, and not his Heirs, must make his Election, or he the Grant
St. pl. 215.
Bullock v. Burdet, S. C. adjudged. — And 11. pl. 24. S. C. agreed that the Election by the
Heir was not good. — S. C. cited 2 Rep. 36 b. per Curiam.
9. Upon Estates executed to Uses of a Thing uncertain, the Court
thought that the Election ought to be made by the Feelee or Conuee
to the Use, and this as well since the 27 H. S. as before; because E-
lelions being given to the Grantees for their Benefit, the Feelee be-
fore the 27 H. S. was the sole Party who was intended to be benefited
by the Grant in Judgment of the Common Law, and Ceifye que Use
had no Interest but such as the Chancery allowed in Conscience, and
now since 27 H. S. Ceifye que Use has the Possession in such Quality
and Form as he had the Use, and if he had not the Use till Election,
he shall not have the Possession till Election, and if the Election was
not incident to his Use before 27 H. S. it is not given to his Possession
since 27 H. S. But Quere, for in the principal Case the Election is li-
mitied to the Use, and so that the Possession of all paffes to the Feeleess,
and the Use is distributary by Election, and therefore it seems reason-
able that be, who is to take the Use, is to make the Election. Mo. 102.
10. Sir T. S. was feised of a Manor, and aliened the Manor except one
Close, Parcel of the said Manor, called N. and there were two Clofes, Par-
cel of the said Manor, called N. the one containing nine Acres, the other three
Acres. The Court held, that the Alienee should not chuse which of
the said Clofes he would have, but the Alienor or Feelee should
have the Election which of the said Clofes he should pafs. Le. 263.
pl. 360. 20 Eliz. C. B. Sir Thomas Lee's Cafe.
11. If a Man devifies two Acres of Land out of four Acres lying to-
gether, the Devifee shall have Election. D. 280. b. Marg. pl. 17. cites
12. If a Man sells Trees growing upon his Land, excepting six Oaks,
the Exception is to have the Election, and if there be a Time limited, he
must do it during such Time, but if he fly the Time, then the other shall
elect; But where no Time is limited, and Vendor does not elect
which he will have left standing, it is doubtful if the other may elect;
but it is clear, that if the Grantee requires Vendor to make his Election,
and Vendor refuses to elect, the Vendor shall elect, leaving the Number
of Trees excepted for the Vendor; But where no Request is, nor Time
limited, it is doubtful if Vendee may do so, agreed by the Jufites.
2 Bulk. 7. Mich. 10 Jac. in Case of Billingley v. Herfey.
13. A.
Election.

13. A leaves to B. 40 Acres, Parcel of 60, and before B. makes his Election B. dies; and the Question was, Whether this Leaf was not void by the Death of B. or whether his Executor might make his Election? The Court held, that an Election might be made by the Executor, and distinguished between the Case of a Lease for Years and a Feoffment; for in Case of a Feoffment it is void, because a Livery cannot operate in futuro. Freem. Rep. 530. pl. 713. Mich. 1680. Jones v. Cherney.

14. Election is descendible or Not, according to the Nature of the Thing, if it be merely Personal it cannot descend; Per Powel J. Lutw. 803. Trin. 11 W. 3, in Case of Eastcourt v. Weckes.

15. Where an Eligible Estate passes the Heir cannot make Election, as Feoffment of two Acres, habend' the one for Life, and the other in Fee, the Heir shall not make Election, but the Leetor shall have all; Per Doderidge J. 2 Roll. Rep. 435. Mich. 22 Jac. B. R. in Case of Hurd v. Foy.

(D) What shall be said an Election.

1. If a Man gives two Acres to another, to hold the one for Life, and the other in Fee, and the Devisee after makes a Feoffment of one Acre, this is an Election to have the Fee in that. Com. 6 b.

2. If a Man leaves two Acres for Life, the Remainder of one Acre in Fee, and after licences the Leetor to cut Trees in one Acre, this is an Election that he shall have the Fee in the other Acre. Com. 6 b.

3. Devise was that he see A. well provided for, or else give her 20 l. A. lived with the Devisee two Years, and then went away; his keeping A. two Years is an Election. Palm. 76. Hill. 17 Jac. B. R. Shaw's Cafe.

4. A Reservation was of Money or Turkeys on a Leafe for Years, Leetor's bringing an Action for the Money is an Election. Lutw. 635. Mich. 9 W. 3. Letten v. Winne.

(E) Where the Election shall be perpetual;

[Or is determined or not.]

1. If a Man delivers Obligation to A. to the Use of B. and B. when he hears of it refuses it, he cannot after by Agreement make this a good Deed; for the Refusall is premeritory. P. 5 Ja. B. per Curtiam.

in such Case the Obliger, in Action brought upon this Obligation, cannot plead Non est Pactum, because it was once his Deed, and cites Bendil 73. in Tawe's Cafe, and D. 1 Eliz. fol. 167.

2. Trespafs
Emblems.

2. Trespasses quare Vi & Armis Arbas suppedit, the Defendant said, that the Plaintiff sold to him all his Wood in such a half Elder, to be abated in two Years, and said, that he came to abate them, and warn the Vendor to chafe his Trees, and he would not, by which the Defendant, when he could no longer stay, abated the Trees except the 40 Oaks, and admitted for a good justification. Br. Refraction, pl. 3. cites 44 R. 3. 43.

3. It a Man grants to pay to me 10 l. at Christmas, or to attend upon me at Christmas, there if he does not do the one nor the other, the Money shall be paid afterwards &c. for now the Election is determined; for he cannot attend at Christmas when the Feast is past, therefore then the Sum is due, and it shall be paid &c. Br. Rette, pl. 112. cites 9 R. 4. 36.


5. Condition of a Bond was to pay 20 Kine or 30 l. in Money within a Month at Election. The Obligee makes no Election in the Month, Per tot. Cur. Election must be made within the Month, and Convenient Time allowed for Provision of one of the Things. No. 241. pl. 377. Nich. 29 Eliz. Kernet's Cafe.

6. When an Election is coupled with an Interest, such Election is despicable. Per Powel J. Lutw. 803. Trin. 11 W. 3 cites Sir Rowland Heywood's Cafe.

7. Grantor cannot by his own Act or Default either Subvert or derogate from his Grant. 5 Rep. 24. b Sir Thomas Palmer's Cafe.

In what Cafes Grantee has Election to make it a Rent or Annuity. See tit Annuity (F. 2) What shall determine, such Power of Election. See Ibid. (F. 3)

For more of Election in General, See other proper Titles.

Emblems.

(A) Who shall have them.

Geo. 488. I flessee at Will fows the Land, and after determines his (bk.) pl. 10. I will, the Lessee shall have the Corn. To. 5. Oland Eliz. B. R. 116. agreed. To. Let. 54. 9. because he loseth his Kent.


2. [So]
Emblements.

2. [So] If a Copyholder durante Vitulature sows the Land, and after before severance takes husband, the Lord shall have the Corn, because his Estate determines by her own Act. P. 38 Cl. 19 R. between Oland v. Burdwick, adjudged. Co. 5. 116 b. 

Cafe. Co. Litt. 55 b.

3. If there be Lefsee for Years, upon Condition that if he does not sows the Land, and after does sows, the Lessor shall have the Corn, P. 38 Cl. 19 R. held by Clutch. Co. 5. 116 b. Co. Litt. 55 b.

4. [So] If there be Lefsee for Years, upon Condition that he enters for such a Term, that his Estate shall cease, if he sows the Land, and alter does not sows, the Lessor shall the Corn, P. 38 Cl. 19 R. by two against one.

If a Lease

be made for seven Years, and he sows the Land, and after for the Condition, by which his Estate for seven Years is ended before the Severance of the Corn, he shall not have the Corn, but the Lessor. P. 38 Cl. 19 R. by two against one.

End of the Term, to have it for Life, and Leefsee sows the Land the last Year, but performs not the Condition, P. 13. contra one. Leefsee shall not have the Corn, P. 461. (bis) in a case of Oland v. Burdwick. 

in S. C. Where the Leefsee enters for a Term, or by True Paramount, or by Limitation of the Estate, the Lessor shall have the Corn. Cro. E. 461. (bis) in the Case of Oland v. Burdwick. 

— He that enters for Condition broken is by relation in of his first Estate, and as if the Possession had never been out of him, and to he that enters shall have the Emblements; Arg. and to this Opinion the Court Sten'd to incline. 5 Roll R. 468. Mich. 27. 

S. C. Co. Oland v. Burdwick, 

5. So if Leefsee for Years or Life sows the Land, and after sows before Severance, the Feerror shall have the Corn, P. 38 Cl. 19 R. by Popham.

6. So if Leefsee for Life or Years sows the Land, and after aliens in Fee before Severance, the Leefsee entering for a Forepart, shall have the Corn, P. 38 Cl. 19 R. per Popham.

Agreed by all. — In Treasur it is not denied where my Tenant for Life aliens in Fee, and I enter, that I shall have the Emblements upon the Land which were sworn waste between the Alienation and the Entry. Br. Emblements, pl. 2. cites 40 E. 3.

7. [But] If a Lease be made to Baron and Feeman during the S. P. by Coverture, and the Baron sows, and after they are divorced Cau- ta, the Baron shall the Corn, because the Judgment is the Act of Law. Co. 5. 116 b.


8. And in this Case if the Divorce be at the Suit of the Baron, S. P. by Fenner, to which Popham and Clench agreed. E. 461. (bis) in Case of Oland v. Burdwick.
Emblems.

Hob. 132.
Pl. 174.
Trin. 13.
Jac. S. P.

9. If Tenant for Life, or for the Life of another, owes, and after his Estate determines by the Death of Ceiluy que vie before Severance, the Lessee or his Executors shall have the Corn. Co. Lit. 35. b. For the Corn is Frutes industrials, and this is given to encourage Industry, and Charge for the Publick Good. Hobert’s Reports 178.

10. If a Copyholder durante viduiate leaves for one Year, and the Lessee fows the Land, and after the Copyholder takes Husband, yet the Lessee shall have the Corn; for her Act shall not prejudice a third Person. P. 38 Cl. B. R. between Oland and Bardwick, agreed.

11. If Tenant at Will fows the Land, and after surrenders the Land to the Lessee before Severance, and the Lessee accepts it, the Lessee shall have the Corn, and not the Tenant at Will, though this is not properly a Surrender for the Weakness of his Estate, yet this is a Relinquishment of his Estate, and so it is determined by his own Act. B. 31. 32 Cl. B. R. between Weper and Handall, admitted.

12. If Tenant for Years, &c, leaves, and dies before Severance, yet the Executor of the Lessee shall have the Corn for the Uncertainty of the Determination of his Estate, and it would be inconvenient that the Land should not be managed.

13. If Lessee for Life leaves for Years, &c, and the Lessee for Years fows, and after the Lessee for Life dies before Severance, yet the Executor of the Lessee for Years shall have the Corn for the Uncertainty of the Determination of his Estate, Co. 5. Oland 116.

14. If a seised in Fee has a Wife, &c, Daughter, his Wife previend enters, and dies, and the Daughter enters, and fows the Land, and before Severance a Son is born, yet the Daughter shall have the Corn because her Estate was lawful, and defeated by the Act of God, and it is for the Good of the Commonwealth that the Land be fowed. Co. Lit. 35. b.

15. If the Baron be seised in Fee, or for Life, &c, and fows the Land, and dies, or his Wife dies before Severance, yet he or his Executor shall have the Corn. Co. Lit. 55. b.

16. If there be Baron and Feme Joinants for Life, &c, and the Baron fows the Land, and dies before Severance, his Executor shall have the Emblems and not the Feme, for it seems there is no Divercity between this and where the Baron is seised in the Right of the Feme. Dibitaurie, 99. 5. &n. B. between Skell and Arnold. Dy. 15 Cl. 316. 2. Contra Co. Lit. 55. b.

17. If
Emblements.

17. If a Feme failed in Fee or for Life of Land, and sows it, and after takes Husband, who dies before Severance, it seems the Wife shall have them; and not the Executor or Administrator of the Baron, because the Baron did not sow them.

18. If the Baron sows of a Copyhold in Fee sows it, and after surrenders to the Use of the Feme, who is admitted accordingly, and after the Baron dies before Severance, it seems that the Wife shall have the Emblements, and not the Executor or Administrator of the Baron, because the Baron passed the Emblements with the Land to the Feme, as annexed to the Land, and therefore the Perkilege which the Land gave to him which sowed is taken away by the Surrender, and so all as if the Feme had sowed it, or purchased the Land sowed of a Stranger.

19. If the Baron sows the Land, and dies before Severance, and his Wife is endowed of this Land, so sowed, for her third Part, the shall have the Emblements, and not the Heir nor Executor, for she is to have the Land, heris curta five inculta cum Fructibus & Redditibus. Bracton, Lib. 2. Fol. 96. S. 2.

20. If Tenant by Statute Merchant sows the Land, and before A. is bound to B. and sows the Land; B.

extends the Lands which are delivered unto him in Execution; it was adjudged in this Case, that the Corvisses should have the Corn sowed. 2 Le. 14. pl. 75. Trin. 29 Eliz. C. B. Barden v. Withington. — The same in Case of a Remotance. Ibid.

21. If A. sows in Fee of Land sows it with Grain, and after grants it to B. for Life, the Remainder to C. and after B. dies before pl. 174.

Severance, C. shall have the Corn, and not the Executors of B. for the Reason of Industry and Charge in B. is wanting. Hol- 15. 464.

tere's Reports 178. per Curiam.

Popham and Gaudy Justices, in Case of Knevet v. Poole. —— S. P. Arg. Gouldsh. 144. and agreed by Gaudy J.

So if A. had devised it to B. for Life, the Remainder to C. for Life, and B. dies before the Corn is several. Why and Share held that C. should have the Emblements, for by the Devile of the Land they pass with it; but if B. had granted them to another it had been otherwise; For by the Grant they are Quittt Chattels severed from the Land; but Clench doubted; For he conceived that the Executor of the first Tenant for Life shall have them at Chattels vested in him; And he said, if Land be sown, and then the Land is devised to J. S. for Life only, and before Severance the Devile dies, his Executor shall have the Corn, and not the Riveritancer, which Cafe Why and Share denied; but said if it were so, it is like the Case of a Remainder, and Popham Attorney being demanded his Opin- 367. fol. 728.


22. If Leesle at Will sows the Land with Grain, Roors, Flax, Hemp, or other annual Profit, and the Leesle enters before Se- 55. b.

verance, yet he shall have it: Co. Lit. 55. b.

23. But if the Leesle plants young Fruit Trees, or young Oaks, Aldes, or Elms &c. or sows the Land with Acorns, and after before Severance the Leesle at Will is put out of the Land by the Leesle, yet the Leesle shall not have cycle, because they render not any annual or present Profit. Co. Lit. 55. b.

24. If Leesle at Will by good Husbandry or Industry, either by overfloving or making of Trenches, or compassing of Marshes, or by digging out of Sudses or ditch like, makes the Grals to grow in greater Abundance, yet if the Leesle enters and ejects him, the Leesle shall not have the Grass, because the Grass is the natural Profit of the Land. Co. Lit. 56.
Emblements.

25. So if Lessor at Will sows the Land with Hay-Seed, and by this increases the Grains, and the Lessor enters and ejects him, yet the Lessor shall not have it. Co. Lit. 26.


27. If a Villein leaves his Land, and the Lessor sows the Land and dies, the Lord of the Villein enters, he shall have the Emblements. The Reason seems to be inasmuch as the Lord enters by Title; for he who recovers Land or enters by Title shall have the Emblements. Br. Emblements, pl. 25. cites 30 E. 1. and Fitzh. Villagen, pl. 45.

28. Baron leissed in Jure Uxorius leissed the Land for seven Years and died within the Term. The Wife entered and intituled G. but did not oult the Terminor, and yet this is a good Feeblent; for by his Death the Term is void; but it the Terminor sev'd the Land in the Life-time of the Baron, and the Baron died before Severance, the Terminus shall have the Emblements. Br. Leafes, pl. 24. cites 7 Aff. 19.

29. Baron and Feme Tenants in Tailor sowed the Land, the Baron died before Severance, the Feme shall have the Emblements, and not the Executor of the Baron. Br. Emblements, pl. 15. cites 8 Aff. 21.

30. Contra if they had been sever'd in the Life of the Baron, or if the Baron had sold or devised them in his Life; Quere. For Brook says, it seems to him that the Executor shall have them. Br. Emblements, pl. 15. cites 8 Aff. 21.

31. In Trespasses it was adjudged, that where the Lord seizes the Copyholder of his Tenant for not doing of the Services, that the Tenant shall have the Corn which were sever'd before the Seifure, and the Lord shall have the Corn growing at the Time of the Seifing. Br. Emblements, pl. 4. cites 42 E. 3. 25.

32. Copyholder seizes the Lands, and afterwards committed a Forfeiture; the Lord enter'd and adjudged that he should have the Corn. 4 Rep. 21. b. in Brown's Case, cites 42 E. 3. 25. a. b.

33. In Trespasses it was agreed, that if a Man leaves to two for Life, the one dies, the Lessor enters and leaves to W. who sows the Land, the other first Lessor enter'd upon him and took the Goods, and well. Br. Emblements, pl. 5. cites 46 E. 3. 32.

34. If Baron seized in Jure Uxorius, or a Man seized for Term de autier vie sows the Land, and the Feme dies, or Ceaseth que vie dies, he in Reverion or the Heir enters, and he who res-out his him, and the other brought Affise and recover'd his Damages, yet he who sev'd shall have the Crop; For the other has recover'd Damages which suffices for the Tort. Br. Emblements, pl. 16. cites 46 Aff. 2.

35. If Tenant in Devoir sows the Land and takes Baron, who makes his Executor and dies before Severance of the Corn, the Feme shall have the Emblements, and not the Executor of the Baron. Br. Emblements, 26 cites lib. Fundamenti Legum. fol. 72.

36. Contra if the Baron sows the Land and dies before Severance, there the Executor of the Baron shall have the Emblements, the Reason seems to be inasmuch as he who did the Labour and Costs of the Emblements shall have them. Br. Emblements, pl. 26.

37. A Man seizes in Jure Uxorius seizes the Land for Term of Years, the Baron died, the Feme entered, the Tenant shall have the Emblements. Br. Emblements, pl. 6. cites 7 H. 4. 17.

38. So in all Cases where a Leafe is determinable for the Life of a Min. Br. Emblements, pl. 6. cites 7 H. 4. 17.

39. If Tenant at Will be ousted he shall have the Corn, but if he plows the Land or commingles it, and be ousted before the sowing, he shall lose the Plowing and the Commingling; quod non negatur. Br. Tenant per Copie, pl. 3. cites 11 H. 4. 90.


Br. Forfeiture de Terres, pl. 109. cites S. C.
Emblems.

40. If Tenant at Will sows the Land and after is ousted, he shall have the Emblems. But if he plow or composes the Land, and is ousted before the sowing, he shall lose the Cost of the Plowing and Composture. Br. Emblems, cit. 7. cites 11 H. 4. 90.

41. If a Man makes a Lease at Will and the Lessor is outlaw’d, whereby the Will is determin’d the King shall have the Profits, but the Lessor at Will shall have the Emblems; but if the Lessor at Will be outlaw’d the King shall have the Emblems. 5 Rep. 116. b. Hill. 44 Eliz. B. R. per Curiam in Oland’s Cafe, and cites 9 H. 6. 20. & 21.

42. In Affiff he it was said, that he who recovers Land sown by * Affiff * S. P. and therefore the Affiff repaired the Damage to 40s. and no more, in consideration that the Land was sown. Br. Emblems, pl. 11. cites 24 E. 3. 50.

43. Where a Man sows the Land and dies before Severance, the Executor shall have the Emblems and not the Heir; quod nota. Br. Emblems, pl. 9. cites 21 H. 6. 30.

44. It was held for clear Law, that if a Man disposses me, and sows the Land, and after he severs the Corn, and I re-enter, I shall have the Emblems. Br. Emblems, pl. 1. cites 27 H. 6. 1. Patton’s Cafe.

45. So of Trees sown; for these were once annexed &c. Br. Emblems, pl. 1. cites 25 H. 6. 1.

46. Note for Law in a Quare Impedit, if a Parson dies before the Conception of his Son, his Successor shall have the Emblems and the Tenths growing, by the Law of Holy Church; Per Littleton. Br. Dean and Chapter, pl. 1. cites 34 H. 6. 28.

47. In Trespa’s the Defendant said, that he was seised till by the Plaintiff dispossed, who sowed the Land and cut it, and the Defendant re-enter’d upon him and carried it away; and a good Plea by the Opinion of the Court; for per Danby, when the Dispossessor re-enters he shall punish all Myne Trespa’s; For the Possessor shall be adjudged continued in him Ab Initio. Br. Emblems, pl. 12. cites 37 H. 6. 67.

48. But per Billing Servant, if the Dispossessor re-enters before the cutting or Severance of the Emblems he shall have the Emblems; for they are annexed to the Frankenement; But if he enters after Severance or cutting, the Dispossessor shall have them, for they are Chattels vested in him by the Regress, but the Dispossessor may take them Damage-Feasant. And Brooke says, it seems to him that what Billing said was good Law; For a Man cannot know one Sheaf of Corn from another. Br. Emblems, pl. 12. cites 37 H. 6. 67.

49. In Trespa’s; a Man leased Land at Will, the Lessor sowed the Land, the Lessor enfeoff’d B. the Lessor sowed the Emblems, and the Feoffee took them; or if the Feoffee sever them and take them, yet the Tenant at Will shall have them; for the Feoffee cannot take them unless for Damage-Feasant. Br. Emblems, pl. 13. cites 37 H. 6. 25.

50. And per Forfeiture and Danby, Tenant at Will, and for Life, pur anent Vie, and Tenant in Tail, shall have the Emblems by the Statute of Merton cap. 2. and Tenant in Fee Simple shall have it by Common Law. Br. Emblems, pl. 13. cites 37 H. 6. 25.

51. If Lessor at Will is ousted, and after the Lessor, Tenant for Life, dies, the Lessor shall have the Corn; Per Gawdy J. Godd. 145. cites 38 H. 6.

52. If my Father be dispossed, the Dispossessor cuts Trees, the Father dies, and the Heir enters and finds the Trees upon the Land, I shall have
Emblements.

have it; Per Townsend; which Catesby and Brian denied. Br. Emblems, pl. 17. cites 2 H. 7. 2.

53. If two feamblets fow their Land, and one lets his Moity for Years, and the other, that did not let, dies, the other shall have the Corn as Survivor. Arg. Ow. 162.

Br. Emble-
m ents, pl. 18. cites S. C. accordingly, and that it was the Folly of the Difeffer he had not entered before the Severance of them. ——— Br. Prop-

54. If Difeffer sows the Land, and after fers the Emblements, and the Difeffer re-enters, he shall not have the Emblements; for they came of the Manurance of the Party. Br. Chattlels, pl. 10. cites H. 7. 16. 17.


The Difeffer may take the Emblements be they severed or not; Per Patron. Br. Emblements, pl. 12. cites 15 H. 6.

56. But he shall have that which is severed before his Entry which comes of the Nature of the Land, as Hay made of the Grafs, trees cut and made into Bawins. Br. Chattlels, pl. 10. cites Emblem s 5 H. 7. 16. 17.


58. But by the Reporter, he cannot take them if they are carried off the Land; for one Apple or Nut cannot be known from another any more than Money. Ibid.

59. And by him, where the Difeffers re-enters and oufis him, and severs them, and the Difeffer re-enters, he shall have them by Reason of his Entry before Se-

verance. Ibid.

60. And if Feoffee of the Difeffer sows the Land he shall be in the same Plight of it, and no better, as the Difeffer himself. Ibid. cites S. C. accordingly ——— Br. Property, pl. 18. cites S. C.

61. And if Feoffee upon Condition severs the Corn means between the Condition broken, and the Re-entry for the Condition broken, he shall have the Corn, and not he who enter’d. Ibid.

59. If
Emblements.

59. If Leslee at Will be outlawed in a Personal Action, the King shall have the Profits after, but the Leslee shall have the Emblements; But if Leslee is outlawed in a Personal Action the King shall have the Emblements. 5 Rep. 116. b. Hill. 44 Eliz. R. R. Oland's Cafe.

60. A Man devised Land, which was sowed, for Life, the Remainder in Fee, and the Devisee died, and the Devisee for Life also died before the Sev'rance, and it was adjudged that the Executor of the Tenant for Life shall not have that, but he in Remainder. Win. 51. cited to be so adjudged 18 Eliz. Allens Cafe.

61. A. gives Bond that B. shall enjoy a Leave of Black-Acre immediately after his Death; The Corn on the Death of A. belongs to A's Executors. 4 Le. 1. pl. 1. Hill. 20 Eliz. Launton's Cafe.

62. A. lets Land at Will to B. and afterwards B. agreed to surrender the Land and his Intereif to A. A. enter'd and let it to Defendant, who took the Corn. The Question was, if this was a Surrender, (I agree to Surrender my Land) if it imports an Act to be done in Futuro or in the present Time? Judgment pro Quer. Cro. E. 156. pl. 39. Mich. 31 & 32 Eliz. B. R. Sweeper v. Randall. Owen. 102. James v. Portman.

63. A. and B. are Jointenants; A. by Confent of B. occupies the Land alone, and takes the Profits to his own Use. A. by this is Tenant at Will to B. and if A. dies the Emblements shall go to the S. C. but Administrator of A. but if B. had only paid to A. I will not occupy it, this would be no Affirm that A. should have all, nor would it differently give any Thing to A. Cro. E. 314. pl. 7. Hill. 36 Eliz. B. R. Geanes v. Portman.

should occupy it solely, then the Emblements would not survive.

64. If a Leave be made for seven Years upon a Condition on the Part of the Leslee, at the End of the seven Years to be performed, to have it for Life, the Leslee the last Year sows the Land, and performs not the Condition, it was said, that he shall have the Emblements, but Popham and Ferner denied it. And Judgment was given for the Defendant. Cro. E. 467. (bis) pl. 10. Patch. 38 Eliz. B. R. in Cafe of Oland v. Burdwick.

65. Tenant for Life, the Remainder in Fee; Tenant for Life made a Leave for Years; to H. who is ou'd by a Stranger, the Devisee made a Leave for Years, his Leslee fow'd the Land; Tenant for Life died; that the It was adjudged, that the Corn belon'd to H. the Leslee for Years of the Tenant for Life. Cro. E. 453. pl. 12. Hill. 38 Eliz. B. R. Knevett v. Poole.

66. When the Estate of him that sows the Land is determin'd by his own Act by a Casualty, and when by the Act of the Law, or by another Man, makes a Difference as to the having the Emblements; Per Clench J. Cro. E. 460. (bis) pl. 10. Patch. 38 Eliz. B. R. Oland v. Burdwick.

67. If Leslee for Life sows the Land and after prays in aid of a Stranger, now if the Leslee enters he shall have the Corn. Per Popham. Godb. 190. in pl. 126. Hill. 43 Eliz.

68. A Man seizes for Life, or in Fee or Tail in his Wife's Right or his own, and sows it with Corn, or any Manner of Grain, and dies before
Emblems.

fore Harvest, it shall go to the Executor of the Husband, and not to the Wife or Heir that shall have the Land; But Grass ready to cut, Apples, Pears &c. upon the Trees, shall go to the Wife or Heir. Went. Off. Ex. 59.

69. If Land sow'd with Corn, Saffron, Hemp &c. or planted with Hops, or having Grass ready to be cut be sold or conveyed, it shall all go to the Purchaser of the Land unless excepted, tho' never so near Reaping or Cutting, or Gathering. Went Off. Ex. 59.

70. Roots of Carrots, Potatoes, Turnips, Skirretts &c. sown by him that had the Inheritance of the Garden or Land, it feems shall go to the Heir, and not to the Executors; For the Profitable Part is the Root which is hidden within the Ground, and cannot be come at without breaking the Soil, which the Executors cannot lawfully do; But as for Melons which are above Ground, the Executors may take them, yet as for Artichokes, thro' the Fruit be above the Ground, yet it feems they have not such yearly Setting or Manurance as should fever them in Interest from the Soil, therefore they shall go with it to the Heir. Went. Off. Ex 63.

71. Albeit the Leffor, determines his Will before the Corn &c. be ripe, yet because the State of the Leffees is uncertain, and therefore left the Ground should be unmanured, which should be hurtful to the Commonwealth, he shall reap the Corn, which he sowed, in Peace. Litt. S. 68, and Co. Litt. 55. a. b.

72. A man after Judgment given against him sow'd the Land, and afterwards brought a Writ of Error to reverse the said Judgment, but it was affirm'd; he shall not take the Emblems; Adjudg'd per tot. Cur. 2 Boll. 213. Pach. 12 Jac. Wicks v. Jordan.

73. If A. sowed Land sows it with Corn, and then conveys it to B. for Life, Remainder to C. for Life, and B. dies before the Corn is reaped, now C. shall have it, and not the Executors of B. though his Estate was uncertain; agreed per Cur. Hob. 132. pl. 174. Trin. 13 Jac. in Case of Grantham v. Hawley.

74. The Leffor conveys the with the Leffes his Executors &c. that he should carry away to his own Use such Corn as should be growing on the Land at the End of the Term; afterwards he conveyed the Reversion to the Plaintiff, and the Executors of the Leffee sowed the Land, and sold the Corn growing on it at the end of the Term to the Defendant; it was objected, that the Leffor had never any Property in this Corn, and therefore could not grant it away; but adjudged that the very Right was paffed when it should happen; for though the Leffor had not any actual Property in the Corn, yet he had a Right in Possess, becaufe of the Lands out of which it proceeds, and the Words in the Lease are sufficient to pass the Property, as soon as the Corn is growing on the Land. Nelf. Abr. 702. pl. 9. cites Hob. 132. [pl. 174. Trin. 13 Jac.] Grantham v. Hawley.

75. A Man was soweded of Land in Fee and sowed the Land, and devised that to J. S. and before Severance he died, and whether the Devifee shall have the Corn, or the Executor of the Devifor was the Question; and by Hobert, Winch and Hutton, the Devifee shall have, and not the Executor of the Devifor. Win. 51. Mich. 20 Jac. C. B. Spencer's Cafe.

76. If a Man devifed Land, and after sows it and dies, in this Cafe the Devifee shall have the Corn, and not the Executor of the Devifor, Winch. J. said it had been so adjudged. Win. 52. Mich. 20 Jac. C. B. in Spencer's Cafe.

77. Hops growing out of the old Roots shall go to the Executor or Administrator, because they grow by the Manurance and Industry of the
Enfant.

the Owner and so are like Emblements. Cro. C. 515. pl. 13. Mich. and Hemp.

If Sheriff on a Fieri Facias sells Corn growing, the Vendee cannot justify an Entry on the Land to reap it till such time as the Corn is ripe. Per Twifden J. Vent. 222. Trin. 24 Car. 2. B. R. in Cafe of Perrot v. Bridges.

Tenant at Sufferance sows the Land, and afterwards Judgment is recovered against him, and the Corn s'd thereupon and sold by the Sheriff (standing) then the Trespass lies for the Landlord against the Sheriff and his Officers. L. P. R. 512. cites 32 Car. 2. Sir John Banks's Cafe.

Baron and Feme Jointents for Life, Baron sows the Land and dies before Severance; The Court propos'd to each to take a Moiety. Per Ld. Somers. 2 Vern. 322. pl. 311. Mich. 1694. Rowney's Cafe.

But where Strangers are Jointents the Emblements will go to the Survivor, it was admitted. Arg. 2 Vern. 323. pl. 311. Mich. 1694. in Rowney's Cafe.

A. Tenant for Life Remainder to B. his Wife for Life for Jointure, Remainder to A. in Fee. A. devises his Remainder in Fee to B. and died in May, leaving Hops in the Ground, which were cultured at great Charge in February, and gathered in August. Quære, Whether they belonged to B. the Wife or to Executor of A. The Matter of the Rolls at first inclined to think the Hops belonged to B. in Right of her Rent and Emblements; But in regard of Cases cited as adjudged that In Cafe of Dower, the half have the Emblements, because Dower is considered as an Exercice or Continuance of the Estate of the Husband, but a Jointure is not, he afterwards declared that the Hops and Corn growing at the Testator's Death were Emblements, and ought to be accounted for as Part of the Testator's Estate. MS. Rep. Trin. 1734. Canc. Fisher v. Forbes.

For more of Emblements in General, See Devise, and other Proper Titles.

Enfans.

(A) What Infants in respect of their Office &c. or for other collateral Respect, cannot avoid their own Acts.

If the King consents to an Act of Parliament during his Minority, yet he cannot after avoid this Act, because the King as King cannot be a Minor; for as King he is Body Politick. Co. Lit. 43. [a. ad finem.]

5 C 2. 80
374. Enfant.

(2.) Infant. Favour'd.

1. THE common Principle is, that an Infant in all Things which found in his Benefit shall have Favour and Preference in Law, as well as another Man, but shall not be prejudiced by any Thing in his Disadvantage. D. 136. b. 137. a. pl. 22. Hill. 3 & 4 P. & M.

2. Tenant for Life of full Age, and Remainder-man an Infant levy a Fine, and afterwards the Infant releaseth the Fine as to him the Inheritance, he shall not enter for the Forfeiture because he join'd in the Fine, and is attainted to it. 2 Le. 108. pl. 139. Trin. 30. Eliz. C. B. Piggot v. Ruffel.

It is a defeasible Forfeiture; Arg. admitted. Godb. 364. Trin. 2 Car. B. R. Ahsfield v. Ahsfield.


4. An Infant was relieved against a Slip by his Counsel in Mispleading. 3 Ch. R. 24. 20 Car. 2. Savage v. Whitebread.

(B) What Acts of an Infant are void, and what voidable.

1. If an Infant in Ward to Guardian in Socage incoffs the Guardian, this is void for the Decree that the Law intends in him that hath the Command of him, and the Breath of Truitt which the Law reposest in him. 35 All. 8. adjudged.

2. If an Infant surrenders a Leave for Years to him in Reversion, this is void, and cannot be made good by any Agreement at full Age. Rich. 13 Car. B. R. between Fluid and Gregory, per Curiam, resolved upon a Trial at Bar.

3. But...
3. But if an Infant being a Lessee for Years, to begin at a Day to Cro. C. 502. come, accepts a new future Interest for the same Term, and at full pl. 2. S. C. Age when the Term begins, enters into the Land and accepts the hold that the new Lease, and claims in by it, this Agreement to the new Term shall be a Surrender in Law of the first Estate. P. 13 Car. B. R. between Fluid and Gregory, per Curiam, upon a Trial at Bar; but a special Verdict was found of this among other Things, and after Cro. 14 Car. B. R., upon Argument at the Bar, adjudged per Curiam upon this Point, because it could not be for the Benefit of the Infant, and therefore the Law adjudged it void ab initio. Interc. Cr. 13 Car. Rotuli 1154.

4. Dum suiet infra aetatem was brought of Land and Rent against the Alienes of the Father of the Demandant, and the Writ was admitted to lie of the Rent, and yet, by some, the Grant of an Infant was void, and not voidable, which is not so, as appears here; For then Action does not lie, and also the Delivery of the Deed cannot be void but voidable. Br. Dum suiet &c. pl. 1. cites 46 E. 3. 34.

5. If an Infant leaves a Fine, he shall have a Writ of Error during his Nonage, and assig. it for Error. 12 Rep. 122. Mich. 12 Jac. cites F. N. B. 121.

6. If an Infant makes a Lease for Years without reserving any Rent, it is void, and not voidable only, because there is no Consideration, but if any Rent is reserved it is only voidable; Agreed by all except Gawdy. No. 105. pl. 248. Patch. 17 Eliz. B. R. the 7th Resolution in Cafe of Lane v. Cowper. Cro. 1. 522. pl. 1. Ketley's Cafe, S. C. & S. F. if an Infant takes a Lease for Years rendering Kent, it is only voidable at Election; For if it be to his Benefit, be that Benefit apparent or implied, it shall be void in no Cafe Prima Facie, as 21 H. 6. b. but he may at his Election make it void; For before the Rent-Day be may be held according to the Land, and then an Action of Debt will not lie against him; Held per Cur. Brownl. 120. Patch. 11 Jac. Ketelie's Cafe. Elliot, S. C. the Court were all clear of Opinion that the Infant Lease was liable to the Rent, and so Judgment was given for the Plaintiff.

7. If an Infant makes a Lease for Years, and the Lease does not lie, at the Election of the Infant to charge him in Allife, or to bring Debt for the Rent, or to accept the Rent at his full Age, as 7 Ed. 4. 6. and other Books be ; Per three Justices. Cro. C. 303. pl. 6. Patch. 9 Car. B. R. in Cafe of Blunden v. Baugh, and Ibid. 366. agreed per Richardion Ch. J.

8. If an Infant makes a Lease for Years rendering Rent, and the Lease pub. but it is at the Election of the Infant to charge him in Allife, or to bring Debt for the Rent, or to accept the Rent at his full Age, as

9. If an Infant makes a Lease for Years rendering a Rose or a Pepper-Corn, or any such like Trifle, the Lease is void; Arg. cites Fitch. Tit. Entry Congable 26. Mod. 263. Trin. 29 Car. 2. in Cafe of Barker v. Keate.

10. An Infant's Deed is not void, but only voidable, for which Reason an Infant cannot plead Non est Factum to his Deed, as a Deed Covert may. 3 Wms's Rep. 208. Mich. 1733. Nightingale & al. v. Ferrets.

(B. 2)
(B. 2) Bound. In what Cases.

1. In Allife, Baron and Feme purchased the Land in Fee, and after the Baron attorned to his youngest Son in Fee within Age, and after the Baron and Feme entered into the Tenements of the Allent of the Feoffee, who was yet within Age, and after the Feme continued Seisin and died, and the eldest Son entered at Heir, and the youngest, who was infelid, brought Allife and recovered by Award; for the Allent was void, because he was within Age, and to the Entry of the Baron and Feme a Diffidfin; Quod Nota. Br. Allife, pl. 169. cites 11 Aff. 14.


3. He who dies within Age may enter, but he shall not have Writ of Dam num infra etat end till he comes of full Age; Quod Nota. Br. Dum furt &c. pl. 3. cites 39 H. 6. 42.

4. If an Infant commands J. N. to make an Obligation in his Name, and to deliver it as his Deed, this is not his Deed; For the Command of an Infant is void; Contra if he himself delivers it. Br. Covernur. pl. 50. cites 14 E. 4. 3.

5. If an Infant be to make a Presentation it shall not be payed for his Nonage, for the Cure of Souls is to be regarded, and therefore if in such Case he doth forseafe in six Months, the Ordinary shall collate; Per Manwwood J. 3 Lc. 46. pl. 66. Mich. 5 Eliz. C. B. Anon.

6. Infant shall be bound by the Statute of * C effu unt and + Waif &c. tho' the Statutes are general, for the fritt is an Injury to the Lord, and the other to the Leifor, and he himfelf acquires the Estate, and he that hath Policy to acquire is by Law presumd to have Reafon to defend the fame Thing; Per Wallih. Pl. C. 364. b. Mich. 4 & 5 Eliz. in Lord Zouch's Cafe.

* 3 Mod. 222. Arg.
—Per Eyre J. Show.
83. Contra.
+ Committing Waif by Infant is a

Forfeiture because it is against a Statute, and if Leifor recovers the place waifed, the Infant shall not enter again; Arg. Godb. 365.

7. Infant Lord has Title to enter for Mortmain, but enters not within the Year, or does not enter into the Land of the Villein before the Villein has alien'd the Land, he shall be bound by Leaces, because he had not but Title to the Thing which never was in him; Per Wallih. Pl. C. 364. b. Mich. 4 & 5 Eliz. in Ld. Zouch's Cafe.


9. A. of full Age, and B. within Age, Jointenants, are disjaced by C. C. levies a Fine, and after Proclamation 3 Years pais. A. dies. B. shall have other five Years after his full Age for the Whole; Per Bendloes. J. Pl. C. 367. Mich. 4 & 5 Eliz. Stowell v. Zouch.

10. Where
Enfant.

10. Where an Infant made a Conveyance by Bargain and Sale to Queen Eliz. it was not aided by the Stat. 18 Eliz. [cap 2.] Cited by Coke Ch. J. Cro. J. 364. pl. 2. as adjudg'd in 30 Eliz. in Rawle's Cafe.

11. Form Obligato of full Age marries an Infant, in Debts on the Bond Age was denied. Nov. 69. 39 Eliz. Deedes v. Nokes.

12. Infant keeps an Host; his Guests are robb'd; No Action lies against the Infant, Sec Actions (D) pl. 3. cites 40 & 41 Eliz. Crofts v. Andrews.

13. Tho' a Feoffment by Infant Tenant for Life or Years be not such a Ferleiture but that the Infant may enter again upon the Leisfor, yet it it be by Matter of Record, as it he levies a Fine, he shall never enter again; Arg. Godb. 365. cites 8 Rep. 44. [Hill. 45 Eliz.] Whittingham's Cafe.

14. If an Infant bargains and sells Lands by Deed indented and inserted, he may avoid it any Time. 2 Inst. 673.


16. Express Custums may bind an Infant Copyholder; Per Eyres J. Show. 83. Hill. 1 W. & M. in Cafe of King v. Dullifton cites Le. contra Ibid. 266. Seeke's Cafe, of the Lords appointing one to receive the Profits during Nonage; and so it is in the Cafe of an Office, a Condition ex a General profe will bind an Infant. Ibid. cites 8 Rep. 44 Whittingham's Cafe.

(B. 3) Acts of Infant avoided when.

1. It is a Common known Rule, that all such Gifts, Grants or Deeds made by an Infant, which do not take Effect by Delivery of his Hand are void; But such Gifts, Grants or Deed made by an Infant by Matter in Deed, or in Writing, which take Effect by Delivery of his own Hand are voidable by himself, and his Heirs, and by whomsoever shall have his Estate. Perk. 6. S. 12.

2. If an Infant brings Error to reverse a Fine levied by him, if the Inspeciton be had, and Witneces produced to prove the Intancy, the Revertal may be after full Age, or after his Decease by his Heir. No. 844. pl. 1139. Paich. 13 Jac. Keecth with's Cafe.

3. A Diversity is to be observed between Matters of Record done or suffered by an Infant, and Matters en fait; for Matters en fait he shall avoid either within Age, or at full Age, as has been said; but Matters of Record, as Statutes-Merchants, and of the Staple, Recognizances knowledge by him, or a Fine levied by him, Recovery against him by Default in real Action (laving in Dower) must be avoided by him, viz. Statutes &c. by Audita Querela, and the Fine and Recovery by Writ of Error during his Minority, and the like; and the Reason thereof is, because they are judicial Acts, and taken by a Court or a Judge, therefore the Nonage of the Party to avoid the
the same, shall be tried by Inspection of Judges, and not by the Country. And for that his Nonage must be tried by Inspection, this cannot be done after his full Age; and so is the Law clearly holden at this Day, though there be some Difference in our Books. But if the Age be inspected by the Judges, and recorded that he is within Age, albeit he come of full Age before the Reversal, yet may it be reversed after his full Age. Co. Litt. 380 b.

But a Common Recovery may; for this shall not be tried by Inspection, as in Case of a Fine. Cro. El. 42; Hill. C. B. Barrow v. Parrot.

B. R. Holland v. Dauntsey — The bringing a Writ of Error during his Nonage is not sufficient, but the Fine by Judgment in the Writ of Error must be reversed during his Nonage. Godd 123. L. 141. 29 Eliz.

(B. 4) Acts of Infants; avoided by whom.

1. If two Jointenants are, and the one is an Infant, and he makes Feoffment of his Part, the other cannot enter; for none shall avoid an Act done by an Infant but he who is privy in Blood. Br. Entre Cong. pl. 47, cites 39 H. 6. 42.

2. None shall take Advantage of the Infancy of his Ancestor, but he that has Right descended to him from the same Ancestor; but the Heir of an Infant may take Benefit of a Condition, though no Right descended to him from the same Ancestor. 8 Rep. 44 a. Hill. 45 Eliz. Whittingham's Case.

3. Privies in Blood, as the Heir General or Special, may avoid a Conveyance made by their Ancestor during his Nonage. 8 Rep. 42. b. Hill. 45 Eliz. in the Star-Chamber, in Whittingham's Case.

4. As if an Infant feized in Fee makes a Feoffment and dies, his Heir shall enter. 8 Rep. 42. b. in S. C.

5. So if seised in Tail Mote, and he makes a Feoffment and dies, his Son being Heir General and Special may enter. 8 Rep. 43. a. in S. C.

6. And if he has no Sons, but only Daughters, isis Brother being his Special Heir per Fornam Doni made to his Father, may avoid the Feoffment, because he is privy in Blood, and has the Land by Decent. 8 Rep. 43. a. in S. C.

7. But Privies in Estate cannot avoid a Conveyance made by an Infant. 8 Rep. 43 a. in S. C.

8. As if Tenant in Tail, being within Age, makes a Feoffment and dies without Issue, the Donor shall not enter, because he was privy only in Estate, and no Right accrued to him by the Death of the Donee. 8 Rep. 43 a. in S. C.

9. So if there be two Jointenants within Age, and one of them makes a Feoffment in Fee of his Moiety, and dies, the Survivor cannot enter; For by the Feoffment the Jointure was severed so long as the Feoffment continued in Force, and therefore the Heir of the Feoffor may have
have a Dum suit infra Aetatem, or enter into the Moiety. 8 Rep. 43.
a in S. C.
10. But if both had joined in the Feoffment, and one had died, the
Right had survived to the other, and he should have had the Land
from the first Feoffor. 8 Rep. 43 a. in S. C.
11. If a Man within Age, seised in the Right of his Wife, makes a
Feoffment and dies, his Heir cannot enter, because no Right descends
to him, but inasmuch as the Baron, if he had lived, might have en-
tered in the Life of his Wife only, and not in respect of any Right
which he himself had, the Wife might in such Case have entered in her
own Right. 8 Rep. 43. b. in S. C.
12. But if the Feone, being only Tenant in Tail, and the Baron within
Age had made a Gift in Tail to another, by which the Baron gained a
new Reversion in Fee, and died, the Wife might enter, or the Heir of the
Baron, who had a new Reversion descended to him; but if the Heir
had entered, and defeated the Tail given by the Infant, his Estate va-
nished, and by Operation of Law the Fee was immediately seised of her
old Estate. 8 Rep. 43. b.
13. Fruites in Law, as the Lord by Echieat, shall not avoid a Con-
veyance made by an Infant. 8 Rep. 44. a.
14. As if an Infant makes a Feoffment and dies without Heirs, the
Lord shall not avoid it; Per Curiam agreed; but because it appeared
the Feoffment was executed by Letter of Attorney made by the Infant, it
was resolved to be void, and that the Land should Echieat to the
Queen. 8 Rep. 42. 45. Whittingham's Case.
15. Where an Incroachment of a Water Course was made in the In-
fancy of the Ancestor, who after full Age acquired under it 21 Years,
the such Incumbrance was urged, yet Ld. Cowper took no Notice of it
for the above reason. G. Equ. R. 4. Hill. 6 Ann. in Canc. Ld. Guern-
sey v. Rodbridges.

(E. 5) How Relievable after Age, and in what Cases.

1. If an Infant within Age seised of Rent purchases the Land, and
aliens the Land within Age he shall have Election if he will
demand the Land or the Rent; Per Kyrton, quod non negatur. Br.
Coverture pl. 12. cites 46. E. 3. 33; 34.
2. If an Infant be bound in a Recognizance he has no Remedy to avoid
it by his Nonage; but the Court ought not to take him to be bound,
if they can perceive it, quod nota. Br. Coverture pl. 23. cites 8 H.
6. 30.
3. If an Infant makes a Gift or a Lease rendering Rent, and accepts
the Rent at full Age, this is a good bar in Dum suit infra Aetatem. Br.
Dum luit, &c. pl. 8. cites 22 H. 6. 24.
4. If a Guardian pleads an ill Plea where he might have pleaded a good one,
by which the Infant loses, the Infant shall have Writ of Difceit at his
full Age, and recover all in Damages against the Guardian; and there-
fore the Court cannot accept a Guardian but such as is sufficient to
render the Infant Damages at his full Age. And in this Case the In-
fant here is at no Mischief; for he shall recover in Value against the
Vouchee, and the same Law where the Guardian vouches illly, he
shall
shall render Damages to the Infant. Br. Droit de Recto. pl. 15. cites 
9 E. 4. 36.
5. Where an Infant assigns Dower to his Mother more than the third 
Part, he cannot enter into the Surplusage at full Age, but is put to his 
Writ of Appearance of Dower. Per King's case. But per Rode Ch. 
J. he may enter as upon Partition made within Age which is equal, 
Quere. Br. Entre Cong. pl. 44. cites 21 H. 7. 29.
6. If an Infant makes a Feoffment, he may enter either within Age or 
at full Age; and if he dies, his Heir may enter or have a Damn. Full infra 
7. An Infant who is bound in a Statute Staple or the like shall re-
verie it by Audita Querela at full Age, or within Age. Br. Cover-
ture pl. 64. cites F. N. B. 104.
8. Infant is not relieviable by Audita Querela after full Age against a 
Statute by him entered into. No. 75. pl. 236. Mich. 7 & 8 Eliz. 
Worlcy's Cafe.
9. Infant acknowledged a Recognizance, and upon Audita Querela 
upon Inspection he was adjudged within Age, and had Scire Facias ag-
ainst the Conulee, and upon one Nihil returned Judgment was that 
Recognizance be discharged where two Nihil's ought to be returned or 
Scire Feeli, and for this Judgment was reversed for Error, and now the 
Infant is of full Age and cannot have a new Audita Querela; 
but he shall have a special Writ recting all the Matter, and so be re-
lieved; tho' Judgment be reversed, yet the Depositions of Witneffes 
10. Lands of an Infant was charged by his Father's Will for pay-
ment of Portions to younger Children, who bring a Bill praving that the 
Trustees may be Decreed to sell &c. The Infant, while a Minor de-
ferred that the Trust Estate might not be fold, and offered to subjeft other 
Lands not within the Trust, by which means a Sale was delayed; Dec-
reed per Lords Commissioners to hold him to his Offer, for if he would have departed from it he should immediately on his coming of 
Age have applied to the Court to have retraced his offer and amended 
his Answer, but now he had Acquiefced under the Answer about four 
Years. 2 Vern. 224. pl. 206. Patch. 1691. Cecil v. E. of Sa-
lisbury.

(C) What All done by an Infant shall bind him.

Contract.

1. If an Infant in Reversion accepts a Lease for Life of Tenant 
in Dower, but never takes the Profits, and at full Age disagrees 
to the Lease, (*) this shall not bar him of his Action of Waft, for 
Wait done in the mean time. 30 E. 3. 16.
2. If a Man lends an Infant 10l. to Pay at a certain Day, this 
* Fol. 729.
Contract shall not bind him. 39 E. 3. 20. b. admitted by the Mic. 
3. If an Infant makes a Contract pro Vieta & Vellito, this shall 
bind him.

Fitzh. Ar-
bitrement, 
pl. 4. cites 
S. C. & S. P. 

[So] If an Infant makes a Contract for his Table he may be 
charged in an Action upon this Contract. 18 E. 4. 2. 10 H.
5. So
6. If an Infant is a Mercer and hath a Shop in a Town, and Colr. 1. 494.
there buys and sells, and he contracts to pay a certain Sum to J. S.
for certain Wares sold to him by J. S. to re-sell, yet he is not charge-
able upon this Contract, for this trading is not immediately nec-
essary to Virtue & Vestitum, Trin. 10 Fa. B. R. between Hill and Whittemham, in a Writ of Error per Curiam, and the
Judgment given before a contra reversed, for if he shall be bound
thereby, Infants might be infinitely prejudiced, and buy and sell
and live by the Loss.
ment restored accordingly. — D. 104, b. Marg. pl. 13. cites S. C. adjudged and Judgment re-
verted accordingly. — Nov 21, 22. S.P. obiter, accordingly that the Infant is not bound.

7. If an Infant makes a Contract pro Ficta or Vestitum, and
enters into a single Bill for Payment thereof, this shall bind him,
though he be out of his Law thereby.
where it was for Virtuists and Clothes necessary, delivered to him and suitable to his Quality, and
they should be intended to be for his own Use though not so alleged.

8. But if the Infant enters into an Obligation with a Penalty for
Payment thereof, this Obligation shall not bind him. Patch. 32.
Citiy. B. R. by three Justices. Mich. 11 Ja. Capwell's Cafe,
per Curiam.
Ruffell v. Lee, S. P. Arg. cites Co. Litt. ut supra; and Cro. E. 920. S. P. held accordingly, and the
Court in the principal Case was of the same Opinion. Godb. 219 pl. 161. Mich. 11 Ja. C. B.
Reevey v. Cuffer, S. P. agreed per Cur. But it is said there that If when he comes to full Age he
enters into an Obligation for Necessaries which he had when he was within Age, the Law is now
taken to be that the same shall bind him. — and ibid. cites Randall's Case 44 Eliza, adjudged,
that an Obligation with a Penalty for Money borrowed within Age is absolutely void. — But
per Wray if an Infant had been bound in an Obligation with a Surety, and afterwards at his full
Age he in Consideration thereof promises to keep his Surety harmless, an Action lies on such Promise;
For the Infant cannot plead Non est Factum. Le 114. in pl. 156. cites Mich. 23 & 29 Eliza.
Edmonds's Cafe.

9. But an Infant may bind himself in an Affummpit for Payment
thereof, and an Action upon the Case lies against him upon the
Promise; for this is but in Nature of an Action of Debt, and there-
fore where Debt lies, an Action upon the Case lies against him,
but perhaps it would be otherwise upon a Collateral Promise.
Baker of Law is not to be regarded; for a Man of full Age
shall by such Action be out of thereof. Trin. 15 Ja. B. R. be-
tween Tillet and Buckstone, Rot. 1774. adjudged, that an Action upon
the Case lay against an Infant upon Promise of Payment for
Beer and Billets. Mich. 2 Car. Regis, between Diversal and
Clar, agreed per Curiam. Conten, Mich. 11 Ja. B. per Cur-

Account in which an Infant is not chargeable, for the Law allows him not such Discretion, but it
Enfants.

10. If an Infant promises another, that if he will find him Meat, Drink and Walking, and pay for his Schooling, that he will pay 7 l. yearly, an Action upon the Café lies upon this Promise, for Learning is as necessary as other Things, and though it is not mentioned what Learning this was, yet it shall be understood what was fit for him, till it be shown to the contrary on the other Part; and though he to whom the Promise was made does not instruct him, but pays another for it, the Promise of Repayment thereof is good; and it appears that the Learning, Meat, Drink and Walking could not be afforded for a less Sum than 7 l. Rich. 4 Car. B. R. between Pickering and Gunning adjudged, this being moved in Arrest of Judgment, to which Intra Qua. 3 Car. Rot. 918. by him for Necessaries, though it was objected that Damages are to be recovered in it, and that Debt only would lie. Lat. 169. Trin. 3 Car. Wood v. Witherick. —— Noy 87, S. C. & S. P. agreed per Curiam.

11. If an Infant binds himself he shall not avoid it; Per Markham. Newt. said this is by Custom; But per Markham, this is by the Common Law; For it is for his Benefit to be instructed to gain his Living. For as the Matter may have Action of Covenant against the Apprentice to serve him, so shall the Prentice have against him to instruct him. But per Newton, Covenant by an Infant is void by the Common Law. But per Afuce J. an Infant may be an Apprentice by Indenture; for it is for his Benefit. But Patton J. denied these Cafes. So Newton and Patton against Afuce and Markham. And it was agreed, that an Infant may be constrained to serve but not to be an Apprentice. Br. Covert. pl. 25 cites 21 H. 6. 31.


13. An Infant be at Table with me for 12. d. for the Week, or byps Clath of me for his Robes, Debt lies, and Nonage is no Plea; for those are Necessaries; for he cannot live without Meat, Drink and Vesture. Br. Covert. pl. 51. cites 18 E. 4. 12.


15. Infant has Eschat on Condition to be performed by him; if the Condition be broken during his Minority, the Land is lost for ever. 8 Rep. 44. b. Hill. 45 Eliz. Whittingham's Cafe.

16. Debt on Escape against an Infant Causer that suffers a Prisoner to escape out of Execution, will lie upon the Statute of W. 2. 11. 2 Inf. 382.

17. Infant Ideot (so found by Office) leaves a Fine to A. and declares the Ue of it by Indentures, and good. 10 Rep. 24. b. Mich. 10 Jac. B. R.
18. An Infant shall not be charged upon his Promise for the Board of Roll Rep.,
a Stranger, though otherwise it shall be for his own Board; Agreed by
Coke and Crooke. 3 Balth. 118. Trin. 14 Jac. in a Note.

19. Assumpsit by Executor, in Consideration the Testator would buy
and pay for the Defendant 24 Yards of Lace, 11 Yards of Velvet, and three
Yards of Broad-Cloth, and make him a Cloak, Defendant promised to S. C. & S. P.
pay so much as he should pay for the Wares, and also to make him, should harbor for
the making of the Cloak; and further declared that the
Defendant was induced to the Testator 27l. for a Doublet and a
Pair of Velvet Hose made for him, which he promised to pay but had not.
The Defendant said, that at the Time of the several Promises he was in Age; adjudged for the Defendant, because it does not appear, that this Cloak, Doublet and Hose were for the Defendant himself; nor if it had been so averred, yet it not being averred that it was necessary and convenient Apparel for him to wear according to his Efi-
sate and Degree, therefore the Promise did not bind him, Cro. J.

20. Infant and another of full Age covenanted the one with the other,
though the Infant is not bound, yet the other is. Sid. 446. pl. 5.
Pauf. 22 Car. 2. B. R. Farnham v. Atkins.
21. Where it has been held that the Deeds of Infants are not void
but voidable, the Meaning is, that Non eff Faliuit cannot be pleaded,
because they have the Form though not the Operation of Deeds, and
therefore are not void upon that Account, without shewing some spe-
cial Matter to make them of no Efficacy; per Curiam. 3 Mod. 310.
Trin. 2 W. & M. in B. R. in Cafe of Thompton v. Leach.
Therefore it is void
in itself, yet
it shall not be avoided by pleading Non eff Pactum, but by shewing his Infancy. 3 Mod. 411. Trin.
2 W. & M. in B. R. in Cafe of Thompton v. Leach. —— But he may say, Non concincit &c. per
Vray Ch. J. 2 Le. 218. in Hurstofon's Cafe.

22. If one deliver Goods to an Infant on a Contrac&; knowing him to be an Infant, the Infant shall not be charg'd in Trover and Con-
version for them; for by such Way all the Infants in England should be
ruined. Sid. 129. Pauf. 15 Car. 2. in the Exchequer Chamber, in
Cafe of Manby v. Scott.
23. But if the delivery of Goods be to a Female, not knowing her to be
a Feme Covert, or to an Infant not knowing him to be an Infant it will be
otherwise. Sid. 129. in case of Manby v. Scott.
24. Some have endeavoured to distinguish between a Deed which gives
only Authority to do a Thing, and such which conveys an Interest by the
delivery of the Deed itself, that the first is void and the other voidable:
but the Reason is the same to make both void, only where a Feo-
ment is made by an Infant it is voidable, because of the Solemnty of the
Conveyance; per Curiam. 3 Mod. 311. Trin. 2 W. & M. in B.
R. in Cafe of Thompton v. Leach.
25. An Infant being Bail and taken in Execution it is discretionary to
discharge him on Bail or not. Cart. 273. Trin. 5 W. & M. in B.
R. Lord v. Eagle.
26. A lends an Infant Money and Infant lays it out in Neceffaries, 1 Salk. 287;
yet the Infant is not liable, per Treby Ch. J. 1 Salk. 279. pl. 4.
27. Covenant lies not against Apprentice being an Infant. 7 Mod. 163.
Unleft by
15. Pauf. 1 Ann. B. R. Lyly's Cafe.
28. William
Enfants.

28. William Pengelly an Infant Apprentice in Exeter goes to the Angel in Gauntton with one R. D. and there abides for several Days together on Pretence of a Courtship &c. In an Action brought by one Periam, the Landlord, for the Provursions and Necessaries found for Pengelly the Plaintiff was nonsuited, for it was at his Peril to entertain another Man's Apprentice, and he might have had an Action for it; besides the ill Consequence this would bring it such Things should be allowed to Infants, these Things not being for Necessaries, though it was objected the Plaintiff was an Inn-keeper; But it was made out that the Plaintiff was privy to the Courtship &c. Devonshire Afsizes in the Summer. 1708.

(D) Acts done by an Infant.

What Acts are void.

For being

1. If an Infant leaves for Years, and the Lessee enters, the Infant may have Trespasses against him. 18 E. 4. 1 b. 4 v.

2. If he leaves for Years, rending Rent, it is at his Election to affirm the Lessee, or to have Trespasses against the Lessee for the Occupation. 18 E. 4. 2.

3. If an Infant exchanges with another, if the other enters the Infant may have an Artist. 18 E. 4. 2.

4. If he sells Goods, it is at his Election to make it void, for he may have Trespasses, or Debt for the Money. 18 E. 4. 2.

5. If a Trespass be done to an Infant, and he submits to an Award, the Award made by them shall not bind but at his Election.


6. If a Man makes a Deed of Feoffment to an Infant, and the Infant makes a Letter of Attorney to another to take Livery for him, this is good, because it is for his Benefit. Disputat. * 21 P. 6. 31. But Brooke in abridging it, Title Facts, 31. Seems that it is good. Hist. 11 Car. V. B. between Pagryman and Groby, per Currion, upon Evidence at the Bar, related, upon a Trial which concerned Sir John Mountaine and Dame Gorges, the being but of the Age of 11 Years at the making of the Letter of Attorney.

* Br. Fairly, pl. 51. cites S. C. and Afton J. held it good, because it is for his Advantage;
But Paulson J. e contra. But Brooke says that the Law seems to be with Afton. — S. C. cited Noy 150.
7. If the King alien land, parcel of his Dutchy of Lancaster, within Age, there he may void it by Nonage, for he has the Dutchy as Duke, and not as King; Cont of the Land which he has as King; For the King cannot be disabled by Nonage as a common Per son shall be. Br. Prerogative, pl. 132. cites 1 E. 6. & concordat Anno 6 and 26 E. 3. rit. Age 8.

8. If a Man insoffs an Infant, and after enters into the Land by the A fFent of the Infant, and continues Seisin, and dies seizid, yet the Entry of the Heir of the Feilor is not lawful, for his Father was a Diffensor, and the A fFent of the Infant was void. Br. Cover ture, pl. 34. cites 11 Aff. 14.

9. In Mortdancer for it was held clearly, that Release of an Infant of all the Right in Lands of which he was never seizid is void, so that another who is of half Blood shall have the Land as Heir of their common Ancestor, if he who released dies without Issue; But otherwise it is void of a Fe sment; the reason of the Diversity seems by reason of the Livery of the Land this is only voidable, and the other is void. Br. Cover ture, pl. 40. cites 34 Aff. 10.

10. If an Infant accounts before Auditors of Receipt, he shall be bound, Per Newton; Quere. But note, that this is Matter of Record. Br. Arbitrement, pl. 43. cites 10 H. 6. 14.

11. In Praecipe quod reddat, Nonage at the Time of the Devife is a good Plea, if a Man claims by Devife by Testament of J. N. if he was within Age at the Time of the Devife; For an Infant cannot devife. Br. Cover ture, pl. 30. cites 37 H. 6. 5.


13. E. 4. 2.

14. Contra where he himself delivers it, Quod sit Concessum; For the Com mand is void. Ibid.

15. If an Infant delivers a Horse, or bails Goods, Tref pafs does not lie for him. Br. Tref pafs, pl. 338. cites 18 E. 4. 1. 2.

16. If an Infant makes Grant of an Advowfion by his Deed, and at his full Age be confirm the same Grant, yet it is not good, for the first Grant was void. Br. Cover ture, pl. 1. cites 26 H. 8. 2.


18. So of Fe sment and Livery made by the Infant himself, and not by Br. Fe sment Attorney, this is voidable, and not void; Note the Diversity. And to see that Livery of a Deed of an Infant is not like to the Livery of Land, or Goods by him. Ibid.

19. infant makes a Will, and publishes it, and dies at full Age, it is of no Effect. Pl. C. 344. Trin. 10 Eliz. in Cafe of Brett v. Rig den.

20. Lead.
21. Surrender of Copyhold was made by Infant to the Use of a Stranger, who was admitted; The Infant shall enter at full Age; For this is no Bar nor Discontinuance. Mo. 597. pl. 814. Hill 35 Eliz. Gooles v. Grane.

22. Surrender of a Copyhold by Infant of five Years of Age allowed by this Court, tho' Lord of the Manor intimated he never heard of any Admittance in that Manor at such an Age. 2 Chm. Rep. 393. 2 Jac. 2. Naylor v. Strode.

23. If an Infant bargain and sell his Land for Money for Commons, or Teaching, it is good with Averment; if for Money otherwise, if it be proved, it is avoidable; if for Money recited, and not paid, it is void; and yet in the Cafe of a Man of full Age the Recital sufficeth. Ld. Bacon on the Statute of Uses, 355.

24. If a Lease for Life be made to an Infant, and be by Charter of Feoffment aliens in Fee, the Breach of this Condition in Law is no absolute Forfeiture of his Estate. Co. Litt. 233. b.

25. So on a Condition in Law given by Statute, which gives an Entry only; As if an Infant aliens by Charter of Feoffment in Mortmain, this is no Bar to the Infant. Co. Litt. 233. b.

26. Exchange by Infant of Lands is not void, but voidable only. Co. Litt. 51. b.

27. Lease of Land to an Infant if for his Benefit is voidable only at his Election; But he may make it void by retuling or waving the Land before the Rent Day comes; For then no Action of Debts will lie againall him; But the Infant coming to Age before the Rent-Day, and it not being showed that the Rent was of greater Value than the Land, in Debts for Rent against Leefee it was adjudged for the Plaintiff. Cro. J. 320. pl. 1 Pach. 10 Jac. B. R. Ketley's Cafe.

28. Money paid by an Infant with his own Hands, in Consideration of an Horse agreed to be told him for that and a further sum, is voidable to be recovered again by an Action of Account; Per Hobert Ch. J. Hob. 77. pl. 98. Autfin v. Gervas.

29. If Infant makes Feoffment in Fee and dies without Heir, the Feoffment is unavoidable; Per Bridgman. Bridg. 44. Mich. 13 Jac. cites E. 3. 13. 6. H. 4. 3. 7 H. 5. 9. 39 H. 6. 42. But they

30. Two Jointants in Fee, one of them being an Infant makes a Feoffment in Fee and dies without Heir, the Survivor shall not enter; But if both within Age make Feoffments, one Joint Right remains in them, and therefore if one dies the Right will survive, and the Survivor may enter into all; Arg. Bridg. 44. Mich. 13 Jac.


But they

must inc fte- feral Writs of Dam fur a Alter- For the Nonage of the one is not the Nonage of the other. Ibid — But the Jointancy is favored. But 35 Aff. pl. 15, where the Jointancy is not favored it is otherwise; Agreed. Koll. R. 442 in Cafe of Smallman v. Agburrow.
31. If an Infant grants a Rent-charge out of his Land, it is not voidable, but ipso facto void; for if the Grantee discharges the Rent, the Infant may have an Action of Trespass against him; Per Curiam. *S. P.* 4. 2. S. P. 3 Mod. 310. Trin. 2 W. & M.

32. A Lease of Land by Infant rendering Rent is good till Disagreement; but if without Rend. it is void; Arg. Show. 299. Mich. 3 only in the Election of the Lessee to avoid it for the In- fancy of his Lessee; Per Twyden J. Sid. 42. in pl. S. Pauch. 13 Car. 2. B. R.

33. The Difference taken that the Deed of an Infant (as Letter of Attorney, whereby he gives an Authority,) is void, but where he passes any Interest, (as Bond &c.) is only voidable, is not agreeable to Reason; For by that means the Infant would be more prejudiced in palling his Estate than he would in giving a bare Authority which cannot be maintain'd; Per Holt Ch. J. Camb. 468. Hill. 10 W. 3. B. R in Cafe of Thompson v. Leach.

(E) What [Acts are] voidable.

[As to Chattels.]

1. An Infant delivers Goods to his own Use, this is only voidable, for he shall not have Trespass against the Bailee. 18. D. 6. 2.

2. If an Infant gives a Horse, and does not deliver the Horse with his Hands, and the Donee takes the Horse by Force of the Gift, the Infant shall have an Action of Trespass. But if an Infant be an Executor, the Pay- ment of the Debt of the Testator by him is good and effectual. &c. Hands, it is only voidable to be recoc. if an Infant delivers Goods with his own Hands Trespass does not lie. Lat. 10 cites it as adjudged Pauch. 52 Eliz.-S. P. Mod. 137. by Hide J. cites 21 H. 7. 37. 26 H. 8. 2. But if an Infant gives or sells Goods, and the Vendor or Donee takes them by Force of the Gift or Sale, the Infant may have an Action of Trespass against him.

(F) What shall bind him.

1. If an Infant Administrator, being above 17 Years of Age, by the Assent of his Friends, sells a Lease for Years that he does for Land as Administrator, to the Intent with the Money to pay the Debts of the Testator, and discharge the Debts of the Infant himself, which were for his Apparel and Diet, this shall bind the Infant. 14 Pa. in Camera Stellata, resolved by Hobart and Canfield, and decreed by the Court between two Swans Plantiffs, and Barraden and Watkins Defendants; But it would have been otherwise, as they agreed, if the Infant had been under 17 Years of Age, for before this Age he cannot administer by the Civil Law.
Enfint.

2. If A. be bound to B. in 100 l. for Payment of 52 l. at the end of one half Year after, and after B. dies, making three Executors, and after the Obligation is satisfied one of the Executors comes to the Age of 18, and then accepts the 52 l. in full Satisfaction of the said Obligation, and makes a Release of the said Obligation, per this does not discharge the Obligation, because the Release is made by an Infant, and by the Forfeiture the 100 l. was a Debt of the Testator, and the 52 l. cannot be a Satisfaction of the 100 l. and in Equity there may be a good Cause to take the Forfeiture, and in an Action of Debt against an Executor he may plead a Judgment upon an Obligation inserted in [Bar, ultra quae he has not Assers, which shows that the Sum lodged is the Debt, and an Infant Executor cannot release the Debt of the Testator without a Satisfaction. Mich. 13 Car. B. R. between Knivetone and Starbath adjudged upon a Demurrer, Incurate Trin. 13 Car. Rot. 962. but this was against the Opinion of Coke.

3. If an Infant by Indenture to levy a Fine, and that it shall be to certain Uses, and after he levies the Fine, and dies within Age, the Limitation of the Uses shall bind the Heir of the Infant, as well as the Infant himself, so long as the Fine continues not recovered. Trin. 13 Car. B. R. between Spring and Sir John Colc, Master of the Rolls and others, in a Writ of Error upon a Judgment in Bancon in a Purse Inquest, adjudged per Curiam, without Question as to this. Incurate, D ich. 11 Car.

 Fol. 727.

(G) What judicial Acts done by an Infant shall bind him.

See Tr. Recovery Common (D) per to-tum.

1. If an Infant by his Guardians suffers a Common Recovery, he being Tenant to the Precipe, this shall bind him, so that he shall not avoid it in a Writ of Error, for by Indemnity he shall have Repayment in Value, and if this be not for the good of the Infant, he may have his Repayment over against his Guardians. Patch. 9 Car. B. R. between the Earl of Newport and G. Duke of Buckingham, adjudged in a Writ of Error to reverse such a Common Recovery suffered in Banca, and then several Precedents were cited of such Common Recoveries suffered by Infants, and then said, that much Land depending upon such Recoveries, and all the said Precedents are in nature of Judgments.

2. [Bur] if an Infant suffers a Common Recovery, in which he comes in as Vouchee in proper Perfon, and not by Guardian or Attorney, this is erroneous, and may be reversed for this Cause in a Writ of Error, for this is more strongly Error than if it had been by Attorney, insomuch as he cannot have any Remedy against any he be deceived. Dill, 1650 between Alet and Walker, per Curiam ruled, that this shall not bind the Infant, and that he may reverse it for this Cause in a Writ of Error, but it was adjudged that he could not avoid it himself by Entry without a Writ of Error. Incurate Trin. 1649. Rot. 200. upon a special Verdict in Esse.

Sty. 246.
A Common Recovery was suffered, in which a Vene Covert was vouchee, and under Age, and appeared by Attorney, and the same was reversed in a Writ of Error Nifi Causa at the End of the Term. 5 Mod. 209, 210. Patch. S W. 3. Stokes v. Oliver.

3. It
Enfant.

3. It was said for Law, that if Possession be in an Infant Plaintiff in Allfs, the Alls shall be awarded, because he cannot know nor chuse his Possession and Title &c. Br. Coverture, pl. 29. cites 24 E. 3. 24.

4. But if Recovery be pleaded against him without Possession, this is also as strong as against a Man of full Age. Ibid.

5. So of a Fine if be stress Part of the Fine. Ibid.

6. Note per Finch in Practice quod reddat, that if an Infant be not suited in Writ of Right, yet he may have Writ of Possession after, by reason of his Infancy. Br. Droit de Reésto, pl. 2. cites 41 E. 3. 12.

7. If an Infant be barred in Alls upon Verdict at large, because they did not find a Dovorce which was not given in Evidence, yet the Infant shall be bound by it; For Matter of Record shall bind an Infant who has appeared to it, the Record being in Force, as strong as it shall bind a Man of full Age. Br. Coverture, pl. 15. cites 7 H. 4. 23.

8. In Secre Facts ad Oponentem Fall. After a Judgment of Debt upon a Release thereof, it was agreed that none shall be bound by a Recognition, as Mainpernor thereof, if he be within Age; For if he was bound he has no Remedy. Br. Age, pl. 20. cites 8 H. 6. 30.

9. If an Infant does Trespass, and puts himself in Arbitrement &c. who give their Award that &c. this shall bind the Infant, for this is for his Advantage to excuse him of the Trespass of which the Law charges him; Per Strange. Brooke says Quere inde; For it may be that the Award is of greater Recompence than the Law will give in the Action. Br. Coverture, pl. 62. cites 10 H. 6. 14.

10. And per Newton, if an Infant be Receiver, and enters into Account before Auditors, he shall be charged in Debt upon Account, Per Newton, which Brooke says he believes is Law; For it does not appear of Record now if the was within Age or not, and it seems that he cannot have for Plea in Debt upon Account, that he was within Age at the Time of the Account; For it is a Judgment passed before against him; Quere. Br. Coverture, pl. 62. cites 10 H. 6. 14.

11. To avoid Recognizances or Statutes entered into by an Infant, he must bring his Audita Quæstia during his Infancy, for there is no Remedy after. Arg. 2 And. 158. in pl. 97. Patch. 42 Eliz. But he may avoid a Bond after full Age, by pleading Infancy at the Time. Ibid.

12. In Writ of Right, an Infant may join the Wife and try it by Battle, for he may perform it by Champion, and not in proper Person; But in Appeal he shall not join Battle; For this shall be done in proper Person. Br. Droit de Reésto, pl. 15. cites 9 E. 4. 36.

13. An Infant is not bound by Failure of Record pleaded in Alls to be Diffieror as another Man is, and yet the Statute is general, but it ought to have a reasonable Construision; Per Hawes, quod non negatur. Br. Coverture, pl. 44. cites 4 H. 7. 11.

14. The Justices seemed to incline that if Judgment by default of a real Action of Land, be given against an Infant, that it shall bind him. But no Rule was given in the Case. Godb. 80. pl. 94. Mich. 28 & 29 Eliz. Anon.

15. S. Tépant in Tail covenanted in Consideration of the Marriage of his Eldest Son, to stand seised to the Use of himself for Life, and after to the Use of his Eldest Son for Life, and after to the Use of the first Son of his eldest Son which should be in Tail; and afterwards his Eldest Son had issue G. S. his Eldest. The Grandfather would fell Part of the Land, and allure more in Recompence to the Son, and the Purchasers would not take any Assurance unless the Infant who was but four Years old would suffer a Recovery, and to satisfy the Purchasers it was prayed that a Guardian might be allowed the Infant, and that a Recovery might be had against him as Voucke, which the Court agreed unto, and admitted two Gentlemen there present to be Guardians for him, (the Infant being brought into Court,) and be by his Guardians appeared.
Enfant.

16. Infant confessed a judgment, and an Action of Debt in B. R. was brought against him, and now he brought Audita Querela during his Nonage. Popham Ch. J. was clear that Audita Querela does not lie upon Action of Debt in this Court, as it would lie upon a Recognizance or Statute acknowledged, but that the Parcy shall have Error, but not in B. R. but in the Exchequer Chamber by the Statute of 27 Eliz. Mo. 460. pl. 642. Mich. 38 & 39 Eliz. B. R. Randal's Cafe.

18. An Infant Tenant in Tail suffer'd a Recovery by his Guardian; The Court held, that the same should bind him, because he might have Remedy over against the Guardian by Action upon the Estate. But otherwise if he suffer a Recovery by Attorney, for that is void, because he has not any Remedy over against him, as it was adjudged 4 Jac. in Cafe of Holland v. Lee. Godb. 161. pl. 225. Mich. 7 Jac. C. B. Zouch v. Michill.

19. An Infant, who wanted only nine Weeks to be of full Age, acknowledged a Fine before Commissioners, who by the Inspection could not tell whether he was of Age or not; the Fine was reversed. 2 Built. 320. Hill. 12 Jac. Requiub v. Requiub.

20. In an Affile the Defendant pleaded in Bar a Recovery against the Plaintiff in a former Affile; The Demandant said he was an Infant, and that he was not Tenant at the Time of the said Recovery, but that 1 Jac. S. was Tenant, and the Recovery was a Recovery by Default; Refolved, 1st. That a Recovery is not to facred a Thing but that it might be falsified; 2dly, That because in this Case, the Infant cannot have Error or attain, therefore he shall satisfy; and the rather in this Case because the is a Title and Judgment pleaded against an Infant where his Title is not discovered. Cro. J. 464. pl. 13. Hill. 15 Jac. B. R. Hollord v. Platt.

21. An Infant Widow brought a Writ of Error to reverse a Fine levied by her of her Lands whilist she was Covert Baron, and it was moved that a Guardian be allign'd her to prosecute for her, and that she might be inspected by the Court, and the Inspection be recorded; and an Affidavit was made by one in Court, that he knew the Infant there present, and the Time of her Birth and baptism, and wore the Times precisly; the Church-Book was also produced in Court, and proved by Oath, wherein the Time of her baptism was entred, and that she was the same Person; upon which she by her own Election Attwood an Attorney of this Court allign'd her for their Guardian, and the Affidavits were ordered by the Court to be recorded, and the Inspection to be entred, and a Scire Facia's awarded against the Heir. Sty. 427. Trin. 1653. Sheriff's Cafe.

22. Error to reverse a Fine for Infancy; now it was moved, That the Party being in Court the might be inspected and the Inspection recorded; and there was produced and read a Copy of the Register-Book sworn to be a true one, and several Affidavits of her Age. Garia. Let the Inspection be now recorded; The Issue of her Infancy may be tried at any Time hereafter, though she comes of Age. Vent. 69. Patch. 22 Car. 2. B. R. Couin's Cafe.

25. P. married J. B. an Heirefs, and afterwards Sir H. P. (Father of P.) and an ignorant Carpenter took the Conjuance of a Fine of the said J. being under Age, and by Indenture the Ule was limited to P. and his Wife for their two Lives, the Remainder to the Heirs of the Survivor; about two Years after the Wife died without Issue; and B. as
Heir to her prayed the Relief of the Court. Upon Examination it appeared that Sir H. P. did examine the Woman whether she were willing to lay the Fine? and asked the Husband and herWhether she were of Age or not? both answered that she was. She afterwards being privately examined touching her Consent, answered as before, and that she had no Constraint upon her by her Husband; but she was not there questioned concerning her Age. All agreed, that there was no Way to fet the Fine aside. Mod. 246, 247. pl. 6. Patch. 29 Car. 2. C. B. Barrow v. Parrot.

the Fine; but if the Wife had been alive and till under Age, they might bring her in Corpus and inspect her, and set aside the Fine upon a Motion; for perhaps the Husband would not suffer the Bringing or Proceeding in a Writ of Error.

26. An Infant was Bail and taken in Execution, whereupon he brought Audita Querela, and Witnelles swore to his Infancy. But per Cur. it is a Matter of Discretion either to admit him to Bail, or refuse it. He being in Execution; But had the Audita Querela been brought before, he must have had a Superfideas of course, to he was not bail'd then; But afterwards in Michaelmas Term upon producing a Copy of the Register of his Age out of Yorkshire, and examining the Witnelles again he was discharged by the Court. Carth. 278. Trin. 5 W. & M. in B. R. Loyd v. Eagle.

27. A devotes Lands to Trustees until Debts paid, and then to an Infant and his Heirs. Defendant enters and levies a Fine, and five Years pafs: Infant when of Age brought an Ejection, but was barred because the Trustees should have entred; Equity will relieve and not suffer an Infant to be barred by Laches of the Trustees; nor to he barred of a Trust Etitle during his Infancy. The Infant in this Case shall recover the mean Profits. 2 Vern. 368. pl. 331. Mich. 1699. Allen v. Sayer.

28. The Father Tenant for Life, Remainder to the Son in Tail with Remainder over. The Son is an Infant, and on an advantageous Proposal for the Son's Marriage, the Father and Infant Son join in Marriage Articles, and the Father only covenants, that within a Year after the Son's coming to Age the Father and Son will join in a Fine and Recovery of the Family Etitle to divers Ufes. The Infant Son sells the Deed, and within a Year after he comes to Age, joins with his Father in a Fine and Recovery; the Infant Son's sealing of these Articles is not sufficient to declare the Ufes of the Fine and Recovery. 3 Wms's Rep. 206. pl. 31. Mich. 1733. Nightingale v. Ferrers.

(G. 2) Bound by what Contract.

1. WHERE an Infant was charged for Apparel some of which was beyond his Rank, and some not, and the Plaintiff in his plea for what Part, whether for the Necessary or Unnecessary; Per Graydy J. it shall be intended for the necessary Apparel. Goldsb. 168. pl. 99. Hill. 43 Eliz. Mackereil v. Batchelor.

for 41. for Part &c. and they did not know for which Part, therefore they could not have Judgment for any Part; but otherwise he should have Judgment for those Contracts which were allow'd of. A Taylor fees an Infant for the making Apparel not convenient for the Quality of the Infant. He need not over that convenient, because he does not provide the Materials, but only the Making and Necessaries thereto, as Lining &c. See Lat. 157. Trin. 2 Car. Delavall v. Clare — It will come Tume enough in the Replication. Jo. 146. Vere v. Delavall. —— Nov. 85. S. C. adjudge'd for the Plaintiff.
2. An Action was brought against an Infant who attended the Earl of Efflex in his Chamber, and it was for 40. l. for a Satin Doublet and Hose, with Silver and Gold Lace, and a Velvet Coat and Hose to his own Use; he pleaded Infancy, and though he was sued by the Addition of Gentleman, yet the Court held that these were not proper Cloaths for a Gentleman, but above his Degree, and so the Action would not lie against him for those Things, as not agreeable to his Rank, but for a Fustian Doublet and Cloth Hose, it lay, being Necelfaries. Goldsb. 168. pl. 99. Hill. 43 Eliz. Mackerell v. Batchelor.

3. Infant buys a Horfe and pays Part of the Confederation Money with his own hand, this is not void but voidable only, (being delivered by his own Hands) and to be recovered again by an Action of Account. Hob. 69. 77. Auffin v. Jervas.


5. If Infant has Houses it is Necelisary to repair them, and yet Contraft for Repairs will not bind him, for no Contract binds but what concerns his Perfon; Per Haughton J. 2 Roll Rep. 271. Mich. 29 Jac. B. R. Torell's Cafe.


7. Case by a Farrier for Medicines apply'd to Defendant's Hores, for which Defendant promis'd to pay. Defendant pleads that at the Time of the supposed Promif[e] he was an Infant under the Age of 21. Plaintiff reply'd, that the Medicines were necelisary for the Defendant's Hores. Defendant demurred, and had Judgment; For tho' the Phylick might be necelisary for the Hores, yet the Horses were not necelisary for Defendant, and as an Infant's Contract is binding for Things necelisary only for his Perfon, such Necelisary should have been put in Issue that the Court might have judged of it. M. 12 Geo. 2. B. R. Cloves v. Brooks.

8. In an Action upon a Quantum Meruit for Diet, Lodging, and Apparel, the Evidence was, that the Defendant being an Infant was fent with a Ruilla Merchant beyond Sea by his Mother, who did agree to pay him fo much for Diet, Washing, and Apparel, and the Merchant in Ruilla committed the Care of the Infant to the Plaintiff, and promis'd to pay him for his Diet, Lodging, and Apparel; And Rolf directed the Jury, that if an Infant comes to a Stranger and boards him, there is a Contraft in Law implied that he should pay for his Board, as much as it is worth, but if another undertakes to pay for his Boarding, this Express Agreement takes away the implied Contraft, and the Verdict was accordingly found for Defendant. All. 94. Mich. 24 Car. B. R. Duncombe v. Turkridge.

9. Ailumpfit was brought for Labour and Medicines in curing the De- fendant of a Difeane&c. who pleaded Infancy; The Plaintiff reply'd, it was for Necelisaries generally; Adjudged upon Demurrer that the Replication in this general Form without fearing how, or in what Manner, was good. Carth. 110. Hill. 2 W. & M. in B. R. Hug- gins v. Wilfeman.

It an Infant should promis'e to give an unreasonable Price for Necelisaries, it would not be good to bind him; Arg. to Mod. 85. Pach 11 Ann. B. R. in Cafe of Mitchel v. Reynolds.

For here the Infant is a Trader, and the Bill of Exchange was drawn in Course of Trade, and not for any Necelisaries. Ibid. 11. Infant
Infant.


12. No Difference between Money lent to an Infant, and he buys Necessaries, or if a Stranger buys them for him; for in both Cases it will come in Issue whether the Goods were convenient for his Degree and Quality; But because the Plaintiff had laid the Venue where the Money was lent, and not where the Necessaries were bought, Judgment was given against him. Cumb. 482. Trin. 10 W. 3. B. R. Ellis v. Ellis.

5 Mod. 363. S. C. but reported there as not good for the Money lent, but only for what Money Plaintiff laid out for Necessaries for the Infant, who (it says) was dead, and this left is according to 1 Salk. 279 Darby v. Doughty. 3 W. & M. in C. B. that of Ellis v. Ellis was Trin. 10 W. 3. B. R. — Hill 10 Ann. B. R. * a Judgment in C. B. agreeing with that of Ellis v. Ellis as reported by Cumb 482. was reversed, for that the lender must lay the Money out for the Infant, or fee it laid out, and then it is his laying out. 1 Salk. 386. Earle v. Peshdf. — 12 Mod. 197. S. C. and because the Employment of the Money for Necessaries was transferable, and no Venue laid, Judgment was given for the Defendant for that Objection. * 10 Mod. 65. S. C. and Per Car. the Goodness or Badness of a Contract is not to depend on a subsequent Contingency. — But tho' the Law be, that if one actually lends Money to an Infant to pay for Necessaries, yet as the Infant in such Café may waste and misapply it, he is therefore not liable, as in 1 Salk. 279. It is yet otherwise in Equity; For if one lends Money to an Infant to pay a Debt for Necessaries, and thereupon he actually does pay the Debt, he is liable in Equity, tho' not at Law; For in this Café the Lender stands in the Place of the Person paid, (Vis.) the Creditor for Necessaries, and shall recover in Equity as the other should have done at Law; Per the Matter of the Rolls. Wms. Rep. 559. Trin. 1719. Marlow v. Pitfield.


14. Infant made a Contract with Consent of Friends, that Interest Money should become Principal, (it being a matter of Extremity) and it was decreed good. 9 Mod. 103. Mich. 11 Geo. cited per Ld. C. as Lady Betty Cromwells Café.

(G. 3) Bound by Forfeiture.

I If an Estate upon Condition defends to an Infant, who does not perform the Condition, he shall lose the Land, notwithstanding the Nonage. Br. Coveture pl. 71. cites 31. Ass. 17.

(G. 4) Bound by what Agreement of him and his Guardian.

1. Bill L. to have a specifick Performance of an Agreement &c. upon this Café, Mr. Fuller during his Minority by himself and Guardian enters into Articles with the Defendant to let him a Farm at a certain Rent &c. The Defendant enters upon the Farm, and continues the
Infants.

the Possession, and pays the Rent after Mr. Fuller came of full Age. After that Mr. Fuller conveys the Inheritance to the Plaintiff, and then the Defendant quits the Farm, insisting that he was only Tenant at Will, and refuses to accept a Lease, or execute a Counter-part, because Mr. Fuller being an Infant at the Time of making the Agreement was not bound by it, and therefore the Defendant ought not to be bound by it. It was insisted, that the Defendant was bound by the Articles tho' Mr. Fuller had his Election at his full Age to perform or not perform the Articles; For tho' in such Cases the Infant has his Election at his full Age, the other Party has not his Election, but is bound by such Agreement with an Infant. It was insisted by the Defendant, that this Bill is brought by a Purchaser of the Inheritance, and this Covenant does not run with the Land, nor is transfer'd by the Statute H. 8. But Harcourt C. decreed that the Plaintiff should execute a Lease to the Defendant, and the Defendant execute a Counter-part of such Lease to the Plaintiff in Pursuance of the Articles, and the Defendant to pay Costs. MS. Rep. Trin. 13 Ann. in Canc. Clayton v. Alldown. 2. If an Infant seized in Fee, upon a Marriage with the Consent of her Guardians, should covenant, in Consideration of a Settlement, to convey her Inheritance to her Husband; L. A. C. Parker said, that Equity would execute the Agreement if the Consideration was a competent Settlement. 2 Win's Rep. 244. Mich. 1724 in Case of Cannel v. Buckle.

See tit. Age. (H) What Judicial Privileges an Infant shall have.

1. In an Affizie against two, of which one is an Infant, if they make Default, by which the Affizie is awarded, and after the Br. Referit, Affizie remains for Default of Jurors, yet the Infant shall be received pl. 126 cites to plead afterwards. 29 Ait. 36.

Br. Error, pl. 129. cites S. C. but Brooke makes a Quære if this Receipt be Ratione Ætatis.

2. In an Affizie by an Infant, if the Tail pleads an ill Bar, and the Infant replies, by which he makes the Bar good, if the Plaintiff had been of full Age, yet this shall not make the Bar good against the Infant, but if the Judgment be for the Tenant thereupon, this is Error, for the Court ought to plead for the Tenders of his Age. 37 Ait. 5. adjudged.

3. If an Infant be nonjustified in Writ of Right, yet after he may have Writ De Poletiff; and if he prays to be received, and shews Cause, he may alter change the Cause. Br. Coverture, pl. 6. cites 41 E. 3. 13. per Finch.

4. If an Infant makes Default in Precipe quod reddat, by which Grand Cape is awarded, he has not lost the Land by his Default by Reason of his Intancy, quod nota. Br. Coverture, pl. 4. cites 3 H. 6. 10.

5. If an Infant be impeached by any Precipe of his Lands, and loes by defending, he shall have a Writ of Error, and because he was within Age at the Time of the Judgment it shall be revered and the Infant shall be reflored to all that he lois. Hetl. 65. Mich. 3 Car. C. B. Wilkins v. Thomas.
Infants.

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(H. 2) Actions. Liable to Actions or Suits in what Cases for Torts &c.

1. Account does not lie against an Infant of Receipt during his Non-

2. Agreement of an Infant to a Tort does not make him a Tort- 
   feelor, by the balt Opinion. Br. Affize, pl. 46. cites 3 H. 4. 16.

3. Infant shall not be sworn within Age, nor shall he be charged by 
   Bailment ; Contra upon Trover, as Executor. Br. Coverture, pl. 63. 
   cites 11 H. 6. 40.

4. If Lease for Years be made to an Infant, and he manures the Land, 
   Debt lies of the Rent; for he has Quod pro quo. Br. Coverture, 
   pl. 25. cites 21 H. 6. 31.

5. If an Infant of tender Age that the Justices think he cannot 
   conceive Malice, be indited and found guilty of Felony, the Just. 
   ies may dismiss him; Per Molli and Billing, quod nemo negavit. 
   And Wangl, who was of the Council against the Infant of four Years in 
   Trepass of putting out the Eyes of a Man conceifit, because in Felony a 
   Man cannot justify, but plead Not Guilty. Br. Corone, pl. 6. cites 
   35 H. 6. 12.

6. If a Man leases to an Infant of seven or eight Years, and a Stranger 
   does Wafa, the Infant shall not be thereof charged ; contra of his con 
   Wafa, and contra of a Man of full Age in the first Case. Br. Coverture, 
   pl. 68. cites Decdt. & Stud. 67.

7. And an Infant shall be bound by his Cefser in Coffavit. Ibid. cites 
   Decdt. & Stud. lib. 2. fol. 113.

8. So if he be Warden of a Prison and suffers a Prisoner to escape; 
   for these Statutes do not except Infants. Ibid.

9. An Infant shall answer to the Intrusion or to the Purchase by him; So 
   where he is vouched in Writ of Dower; and he shall answer to Appeal it 
   he be of the Age of 12 Years. Br. Coverture, pl. 66. cites F. N. B. 
   Dum suft infra Aetatem.

10. Wafa done by an Infant shall bind, and so of Coffavit. 8 Rep. 
    44. b. Palich. 25 Eliz.

11. An Infant and Baron and Feme shall be punished for Wafe done 
    by a Stranger, and so shall the Wife that has Eftate by Survivor for the 
    Wafa done by the Husband in his Life-time, if she agree to the State, 
    though there has been Variety of Opinions in other Books. Co. 
    Litt. 54. a.

12. Action for Words lies against an Infant of 17 Years of Age; For 

13. A Bill was exhibited in the Star-Chamber on 27 Eliz. 4. of fraudu- 
    lent Conveyances against several Persons, of whom one was an Infant, 
    and it was resolved that this Infancy shall not excuse him of the Pe- 
    nalty of the Year's Value of the Land, he being of 16 Years and privy to 
    the Conveyance, and having justified that fraudulent Deed to be made 
    Bona Fide, and therefore shall be punished as if he were of Age. Noy 
    105. Poulton v. Wifeman & al.

14. Account
Enfant.

14. Account lies not against an Infant, because the Infant may be mistaken, and such Account Evidence shall not be upon the Value of the Things, but upon the Account only. Lat. 169. in Case of Wood v. Witherick, says the same Point was adjudged 19 Jac. B. R. between Stirrel and Houniday, and the Reason there was, because the Infant might be mistaken.

15. Action upon the Case was brought against an Infant for affirming a Jewel to be his own which was not, and the Defendant pleaded Infancy, and the Plaintiff demurred, and adjudged for the Defendant; For be the Jewel his own or not he was not bound; Cited Sid. 258; in Case of Johnson v. Pye, as of Patch. 16 Car. 2, between Gorve and Nevil.

16. Case lies not against an Infant for affirming himself to be of Age, and thereby borrowing Money of the Plaintiff; and a Diversity was taken between Torts and Contrasts of Infants, for though Infants shall not be bound by Contracts, yet they shall be bound for Torts cites D. 105.

But per Cur. though Infants should be bound by actual Torts, as Trespass &c. which are Vi et contra Pacem, yet they shall not be bound by those which found in Deced. Sid. 258. Trin. 17 Car. 2. B. R. John- fon v. Pye.

17. If an Infant judicially perjures himself in Point of Age, or otherwise, he shall be punished for the Perjury; Agreed. Sid. 258. pl. 3. Trin. 17 Car. 2. B. R. in the Case of Johnson v. Pye.

18. But not for barely affirming himself to be of Age in order to borrow Money on a Mortgage; For such Torts that must punish an Infant must be Vi et Armis, or notoriously against the Publick, but not where the Plaintiff's own Credulity has betrayed him; Per Keeling. And by Windham, the Commands of an Infant are void, and for such he shall never be attainted a Diffidior, much less shall be punished for a bare Affirmation, which Twifden agreed, and that there must be a Fact joined to it, as cheating with false Dice &c. Also by this Means all the Pleas of Intacy would be taken away, for such Affirmations are in every Contract. Windham said, that had any other Person affirmed the Infant of Age, an Action would lie, (and cited the Case of Grove v. Nevil, where the Defendant pleaded Infancy, to which the Plaintiff demurred in an Action upon the Case, for falsely affirming a Jewel to be his own which was another Man's.) The Court awarded, on the Plaintiff's Prayer, a Nil capiat per Billam. Keb. 914. pl. 16. Trin. 17 Car. 2. B. R. in Case of Johnson v. Pie.

19. Infant may be charged for Treaver because it is a Tort, but not on Contrasts, nor as Bailiff, or for Goods to carry on a Trade, and therefore when Infants are Fathers, their Friends shall have Security for their account. Abr. Equ. Cases 6. Trin. 1700. Smally v. Smally.
(H 3) What Real Actions he may have.

1. INFANT may have Writ of Right and join the Misic if he be Pur-
chefar. Br. Coverture, pl. 66. cites F. N. B. Dum suit infra
Statem.
2. Infant may have Formedon within Age, but if Dced of Warranty of
his Auctor, whose Heir &c. be pleaded, the Parol shall demur
void.

(H. 4) What Action an Infant may have on his own
Contract.

1. If an Infant makes me Bailiff of his Manor, Trespaes does not lie
against me, for he shall have Writ of Account; For it is for
his Benefit. Br. Coverture, pl. 25. cites 21 H. 6. 31. per Aceue J.
2. If an Infant makes a Contract for an Horfe, and pays Part of the
Money himself, it is not a void Consideration, for being delivered with
his own Hands it is but voidable, to be recovered again by an Action of
Account; Per Herbert Ch. J. Hob. 77. Auten v. Gervas.
3. An Infant by his Guardian brought Affiampfit, and after Verdict
for him it was moved in Arreit of Judgment, because the Consideration of
the Promise being made by the Infant to pay a Sum of Money was void. But
per Car. the Action well lies, for it is only in the Election of the In-
fant to make his Promise void, and not of the other Party. Sid. 41.
much Mo-
4. An Infant brought an Affiampfit by his Guardian, and declared, that
where the Defendant entered into his Clofe, and cut his Graves, that in Con-
sideration he would permit him to make it into Hay, and carry it away, he
promised to give him 6 l. for it. Upon this Declaration the Defendant, 2 Keb. 581.
demurred, supposing it to be no Consideration, because it was not re-
expressed; For the Infant, was not bound by his PermilIon, but might
fine him notwithstanding; But the Court gave Judgment for the Plain-

Yeas, rendering Rent, it is not in the Election of the Lease to avoid this Lease for the Infancy of
the Lessor, but the Infant shall have an Action for the Rent; And so on a Promise to an Infant to
pay so much, in Consideration he would permit the Defendant to enjoy such a House, it was adjudged
a good Consideration, and an Action for it maintainable by the Infant; though the Infant
might avoid his Promise if an Action were grounded upon it against him. Mod. 27. in S. C. by
Twidlen said it had been so adjudged. — S. P. by Twidlen, Sid. 42. in pl. 8.
(H. 5) Actions. When they must sue.
Limitations.

1. An Assumpsit is made to an Infant, the Statute of Limitations is not pleadable if he brings his Action within six Years after his full Age, though he was but a Day old when the Promise was made.
2. If an Infant sets Six Years past after he comes of Age, and then brings a Bill for an Account against the Receiver of the Profits of his Estate during his Infancy; if the Defendant pleads the Statute of Limitations it is as much a Bar to such Suit as it would be to an Action of Account at Common Law, and this is not such a Trust as being a Creature of a Court of Equity the Statute shall be no Bar to. Ch. Prec. 518, pl. 320. Trin. 1719. Lockey v. Lockey.

(H. 6) Actions. How they must be sued.
By Attorney or Guardian.

Upon this Statute, whether the Infant be elfigned or no be shall sue by Prochein Amy; For the Elfignement is put in the Act to shew what Mistchief may fall out in this Case. If the Survivor that the Plaintiff is within Age be notarize, his Admittance by Prochein Amy is Error. 2 Inf. 597.

2. R. brought Affizy by Prochein Amy, it is no Plea that the Infant-Mother is alive, for the Statute intends him to be the Prochein Amy who will first sue for him. Br. Garden and Prochein Amy, pl. 27. cites Temp. E. 3. It. Not.
3. But the Issue was suffered 27 E. 3. who was Prochein Amy, and there it was agreed that where Land defends of the Part of the Father, and other Land of the Part of the Mother, that such Amy of one Part or the other who first gets the Infant shall have the Suit. Brook makes a Quere if this be not such Amy to whom no Land may descend. Br. ibid.
4. But the Suit is always in Name of the Heir by Prochein Amy, as it is in other Causes by such a one his Attorney &c. which appears in the Book of Entries. Br. ibid.
5. And see 34 E. 3. that an Infant who sues or answers by Prochein Amy shall not be suffer'd to disallow the Suit or Plea pleaded by him, nor the Prochein Amy, though the Infant comes in Person, neither may a Peme disallow the Plea of her Baron. Br. ibid.
6. Scire Facias upon a Fine, the Defendant made Default, and one came and informed the Court that the Plaintiff elfigned the Infant for Fear of a Recovery by the Defendant, for the Defendant was Infant; wherefore he was admitted to answer by Guardian ex afferu querentis. Quere if he may not be admitted by Guardian, without his Affent, as well as by Prochein Amy. Br. Garden and Prochein Amy, pl. 4. cites *40 E. 19.

* infant
7. Infant brought Avis by Guardian and well, and so it seems that an Infant may sue as well by Guardian as by Prochein Amy, for the Statute of Prochein Amy W. 2. cap. 15. is in the affirmative, but where the Suit of the Infant is against his own Guardian, as for Wilt, Mordrancector, Avisce &c. there for necessity it shall be by Prochein Amy, and it shall be by Prochein Amy by the same Statute where the Infant is esloigned, but where the Suit is not against the Guardian, and also the Infant is not esloigned, there the Suit may be by Guardian. Br. Garden and Prochein Amy, pl. 26. cites 12 E. 3. and Fitzh. Aff. 116.

8. Avis by two Coparencers, of which the one was an Infant, and appeared by Guardian, and it was demanded where he was made Guardian. Per Stone, he ought not to thow it, for he may answer as Prochein Amy by Statute, and there has been great Debate where one answers as Guardian, and the other as Prochein Amy, which Plea shall be taken. Per Fih, his who best pleads in Advantage of the Infant. Br. Garden, pl. 9. cites 28 Aff. 22.

9. Guardian shall draw Warrant, but Prochein Amy not, quod nota; and yet it seems that the Guardian shall be admitted by the Court and Prochein Amy not; but by 19 Aff. 10. the Guardian shall not have Warrant as Attorney shall have, because he is admitted by the Court, and this is the best Law. Br. Garrant de Attorney, pl. 47. cites 34 Aff. 5.


12. Writ of Wast has been sued by the Infant of the Prochein Amy against the Father of the Infant Tenant by the Custody. Br. Garden, pl. 3. cites 34 H. 6. 4.

13. S. brought Action of false Imprisonment against P. and because the Plaintiff was esloigned, G. came as Prochein Amy, and prayed to be admitted in the same, and counted by Valentine, and the Plaintiff was of the Age of ten Years, and because G. took upon him to say upon his Honour, that the Plaintiff was esloigned, therefore he was admitted without Obst. Br. Garden, pl. 14. cites 29 E. 4. 2.

14. Office may be traversed by Prochein Amy of the Infant, where the Tenure is found in Chivalry of the King where it is held of W. N. in Scogge. Br. Garden, pl. 13. cites 6 H. 7. 15.

15. Infant may have Appeal of Murder of his Ancestor whose Heir he is, and it shall be by Guardian and not by Attorney, and the Parol shall not demur at this Day. Br. Garden, pl. 1. cites 27 H. 8. 11.

16. An Infant shall sue by Prochein Amy, but if he be Defendant in any Action he shall make his Defence by Guardian and not by Prochein Amy. F. N. E. 27. (H) and in the new Notes there (d) cites 40 E. 3. Stat. Wilm. 2. cap. 15. 27 H. 8. 11. 3 H. 6. 16. 1 H. 5. 6. 29 Aff. 67. 27 Aff. 53.

one for the other, because they are oftentimes all one, As the Guardian in Scogge is also Prochein Amy, and now as well the one as the other are allowed by the Judges to be some of the Officers of the Court. 2 Hall. 261.

Guardian and Prochein Amy are distinct, and either may be admitted for the Plaintiff, and the Prochein Amy never was till the Statute W. 1. 47. and W. 2. 15. And he is apprised in Case of necessity where an Infant is to sue his Guardian or be esloigned, or that the Guardian will not sue for him. And for these causes he might be admitted to sue by either where he is to demand or to gain; But when he is to defend a Suit in an Action Real or Personal it ought always to be by Guardian, and the Guardian ought to be admitted by the Court, who ought to answer his Right pleading if there be cause; and Defendant ought always to appear by Guardian, and not by Prochein Amy. Per three Judges against one; and to a Judgment in Durham was revers'd. Cor. J. 641. pl. 5. Trin. 20 Jac. B. R. Simpson v. Jackson. — 2 Roll Rep. 247. S. C. and Judgment was reversed — Palm. 255. S C and Judgment reversed. — S. C. cited accordingly, and says the Precedent are fo.
17. In Writ by Infant against his Guardian one came as Prochein Amy by the Statute Westm. 2. and pray'd to be received, for that the Infant was effbign'd; it was replied, that this appearance not judicially to the Court, and that [though] such Suggestion had us'd to be made in Affire and Mortdanceller, because the ollowing might be enquired of, there being a Jury the first Day, but that otherwise it was in this Case of Wafe; But revol'd that the Prochein Amy ought to be admitted upon the said Suggestion in this Case, because the Writ is brought against the Guardian, who perhaps had eflbon'd the Infant, and he shall not take Advantage of his own Wrong; And the Court awarded the Prochein Amy to be admitted. 2 Indt. 261.

18. An Infant appeared by Guardian, and coming to Age continued still by his Guardian, whereas he should then have been by his Attorney, and Judgment was given for him, and the Judgment was affirmed in Error. Bult. 171. Trin. 9 Jac. Anon.

20. One cannot answer for an Infant as Guardian either in Chancery or any other Court, except he be assigned Guardian by the Court; for it he might, that were to make him self his Guardian, and that might prove to the Damage of the Infant, therefore if one will sue an Infant he must move the Court to assign a Guardian that may answer for him, but an Infant may sue by Prochein Amy, though his Prochein Amy cannot answer for him as a Guardian shall in Case of Infants being Defendants. Sty. 369. Pach. 1653. B. R.


22. The Court will admit one to sue by Guardian upon a Motion, though not present nor any Affidavit made. Cumb. 256. Pach. 6 W. & M. in B. R.


25. Where a Suit was by a Prochein Amy not sufficient to answer Costs, the Court ordered another should be named. P. R. C. 296.

It was so said Arg. 2. Wms's Rep. 297. in Case of Turner v. Turner. Trin. 1725.
26. It should seem that an Infant may sue here either by himself, by Prochein Amy, or by Guardian, as the Court pleases. P. R. C. 296.

27. And if it should seem he may defend. And if he is of Discretion, shall answer upon Oath. P. R. C. 296.

28. Any one may bring a Bill as Prochein Amy to an Infant without his Consent, because it is at his Peril that he brings it. But none can bring a Bill in the Name of a Feme Covnet as her Prochein Amy without her Consent, but it will be dismissed on Affidavit. Ch. Prec. 376. S. C. Mich. 1713. Andrews v. Craddock.

29. Oustlawry, or Exconsmoungment in a Guardian, or Prochein Amy cannot be pleaded or alleged in Disability, where an Infant sues or defends by him; because he Acts in Auter Droit. P. R. C. 296.

30. If a Prochein Amy be Insequeent the Defendant may apply to the Court in order to have a solvent one named. It was so said by Mr. Tulbot Trin. 1725. Arg. in Cafe of Turner v. Turner.

31. An Infant by Prochein Amy brought Bill to establish a Will of Land pretended to be devised to him. The Court directed an Issue, which was found against the Plaintiff. The Prochein Amy died before the Cofts taxed, and the Infant came of Age and never proceeded one Step. The Register and Clerk in Court informed the Court that the Cause was to dismiss the Bill with Cofts Generally without saying who should pay them. And Ld. C. King said he would dismiss the Bill with Cofts, and (as he apprehended) upon a General Dismissal the Defendant had Election to sue the Infant or Prochein Amy for such Cofts. 2 Wms.'s Rep. 297. Trin. 1725. Turner v. Turner.

(H. 7) Dum fuit Infra Ætatem. Lies in what Cases.

1. Where an Infant seised of Land in Fee, and another, who has nothing in the Land, jointly make Feoffment of the same Land to another, the Infant at his full Age shall have Dum fuit infra Ætatem alone, without joining with the other or with his Heirs. Thel. Dig. 25. lib. 2. cap. 2. S. 2. cites Mich. 18 E. 2. Brief 831.

2. One Jo brought Writ of Dum fuit infra Ætatem of Tenements which he himself leased Dum &c. The Tenant said that the Demandant and St. his Father leased to him &c. Judgment of the Writ, and held no Plea. Thel. Dig. 170. lib. 11. cap 34. S. 52. cites Mich. 18 E. 2. Brief 831. and says fee 6 E. 3. 245.

3. If Baron and Feme within Age alien in Fee, and the Baron dies, the Feme may have Dum fuit infra Ætatem; For it is at her Election to affirm it to be an Alienation, and to take upon it or to enter. Br. Cooperate, pl. 60. cites 14 E. 3. and Fitzh. Brief 282.

But if she be of full Age, she shall not have a Dum fuit infra Ætatem for the Nonage of her Husband, though they be but one Person in Law. Co. Litt. 337. a.

4. Dum fuit infra Ætatem in the Fe against N. supposing her Entry by the Demandant within Age, the Tenant said that he entered by the Demandant and J. G. and not by the Demandant alone; Judgment of the Writ, and no Plea, but he was compelled to answer over by Award; For if he brings Writ of the Moiety, supposing the Entry as above, such Plea may the Tenant have again, and so has not Quantum by which he was compelled to answer, whereupon he pleased the Alienation of both in Fe, and as to the Moiety of J. G. Judgment of the Writ, 5 K. and
and to the other Moity the Demandant was of full Age at the Time &c. Prift. Br. Enter en le Per. pl. 17. cites 21 E. 3. 50.

5. Two Infants seised in Fee and purchased jointly, both alive within Age, and the one died, the other brought Dum fuit infra Aetatem without the other by him alone; the Tenant said that he entered by the Demandant and by J. G. the other Infant; Judgment of the Writ which supposes the Entry by the one alone, & non allocatur, but the Writ awarded good. Br. Dum fuit &c. pl. 2. cites 21 E. 3. 50.

If two Jointtenants, being within Age make a Feoffment, though they may join in a Writ of Right, yet they cannot in a Dum fuit infra Aetatem, for the Nonage of one is not the Nonage of the other. Co. Litt. 337. a.

6. By which the Tenant pleaded this Matter in Bar, that the Demandant and J. G. purchased jointly and aliened to him in Fee, so for the Moity of J. G. Judgment is Aetio, and for the other Moity, that the Demandant was of full Age at the Time &c. Prift &c. For he cannot have other Form of Writ; But yet it appears that this Infant who survived shall not recover the Whole; for the Aetio does not survive to the one of the Whole; For it seems if both had been alive they should not have joint Dum fuit infra Aetatem, but several Writs; but of Diffelin if the one dies e contra. Br. Dum fuit &c. pl. 2. cites 21 E. 3. 59.

In Dum fuit infra Aetatem, it was pleaded that the Demandant and another leased to him the Land &c. Judgment of the Writ, and it was replied that the Demandant and the other were Jointtenants, and that the other is dead &c. by which Herle held the Writ good. Thel. Dig. 171. lib. 11. cap. 52. S 11. cites Hill. 6 E. 3. 245 & 296. and says see 15 & 21 E. 3. Dum fuit infra Aetatem 1. & 2.

7. Where two Jointtenants within Age alien, and one dies, the Survivor shall have Dum fuit infra Aetatem of the Whole. But says Quere, for it was said there that the Feoffment was a Severance, and so it is of a Judgment. Thel. Dig. 25. lib. 2. cap. 2. S. 2. cites Mich. 18 E. 2. Brief 831. and says see Mich. 15 E. 3. and Mich. 21 E. 3. Dum fuit infra Aetatem 1. & 2 agreeing.

8. Dum fuit infra Aetatem against Baron and Feme in that they had not Entry unless by R &c. the Feme was received by Default of the Baron, and demanded Judgment of the Writ because she was seised before the Coverture, or non allocatur; For it is no Plea unless it be for Michael of Warranty or such like; by which he pleaded that R. was of full Age at the Time of the Denies &c. Br. Enter en le Per. pl. 7. cites 45 E. 3. 17.

9. Dum fuit infra Aetatem was brought of Land and Rent against the Alien of the Father of the Demandant 2. and the Writ was admitted to lie of the Rent. Br. Dum fuit &c. pl. 1. cites 46 E. 3. 34.

10. Where two Jointtenants are, the one of full Age, the other within Age, and the Infant aliens the Whole and dies, his Heir shall have Dum fuit infra Aetatem for the Moity, and the other Jointtenant shall have Allife for his Moity only. Thel. Dig. 25. lib. 2. cap. 2. S. 3. cites Palech. 9 H. 6. 6. and that for it was held Hill. 39 H. 6. 42. per Choke; and says see Littleton in cap. of Difcontinuance.

Where two Jointtenants one within Age, and the other of full Age, makes a Feoffment, the Infant surviving may enter, or shall have a Dum fuit infra Aetatem, but for a Moity. Co. Litt. 337. b.

11. If an Infant makes a Feoffment he may enter either within Age or at full Age; and if he dies his Heir may enter, or have a Dum fuit infra Aetatem &c. Litt. S. 406. and Co. Litt. 247. b. & 248. a.

(H. S.) En
(H. 8) En Ventre fa Mere. How considered &c.

1. If Tenant in Tail has Issue two Sons, and encoffs the youngest Son of the Land entailed, and the youngest dies feized of the said Land, his Wife being Enfent and Eldest enters into the Land, and then the Issue is born. The Issue cannot re-enter because he Eldest is remitted, and in of his Antient Right before the Issue any Thing had, for then there was no Perfon capable by Decent not otherwise.

And. 31. pl. 76. Hill. 1 & 2 P. & M. Anon.

2. 1. Rep. 95. 8.

A Surrerent to the Use of an Infant en Ventre fa Mere is merely void; but it a Copyholder says I surrender my Copyhold Eftate, by way of Remainder, and if my Child which shall be born dies before his Age of 21 Years, that then my Brother shall have this, this clearly may be good enough; Per Coke Ch. 2 Bulk. 724. Mich. 12 Jac. in Cafe of Simp-

3. 3. Cro. C. 87 in pl. 8. Tott. 157. cites


5. 5. A. mortgaged Lands upon a Condition, that if he or his Heirs pay 100 l. at such a Day that he should Res-enter. He dyed leaving Issue a Daughter only, his Wife being primum enfeint with a Son, the Daughter and Heir at the Day, pays the 100 l. afterwards the Son is born; It was resolvd in this Cafe, that the Sifer should retain the Land for ever against the Son born, for in as much as the Money, (and if the had not paid it the Land had been lost,) if the should not retain the Land against the Son, the hath no remedy for the Money, and by the Payment thereof, the hath gained the Land, and is in a Purchaser, although the was entitle it to a Condition, and as Heir. Cro. C. 87. pl. 3. Mich. 3 Car. in the Court of Wards, Kirton's Cafe.

6. 6. A. conveys a Term on Trust to raise 1500 l. for such Child as should be living at his Death. A. dies leaving no Child, his Wife enfeint with a Daughter, which was afterwards born. Per Somers K. this posthumous Daughter is a Child living at A's. Death within the Meaning of the Trust. Ch. Prec. 50. pl. 31. Mich. 1692. Hale v. Hale.

7. 7. A Bond being given to pay 900 l. to a Daughter if there be no Son living at Obligor's Death, the Wife was enfeint of a Son at the Obligor's Death. Decreed the Daughter not to have the 900 l. 2 Freem. Rep. 223. pl. 294. Mich. 1698. Gibbon v. Gibbon.

8. 8. Lands on Marriage are limited to himfelf and Wife for Life, and to the first &c. Son in Tail Male, Remainder to the Husband in Fee, provided if Husband and Wife or either of them die without Issue Male living at the Time of his or her Death, leaving only one Daughter unmarried, the Trustees to stand feized till they have raised 1500 l. for
Infants.

for her, and if more Daughters unmarried at the Death of A. and his Wife, or either of them, and no Issue Male living begotten between them, then 3000 l. for such Daughters. A. the Father dies, leaving Daughters, and his Wife enfeint of a Son afterwards born; it seems the Daughters are intitled to the 3000 l. and it to Ld. Cowper thought that Equity would not take it away, but would be further informed as to the Value of the Estate. 2 Vern. 578. pl. 522. Hill. 1706, Palmer v. Creaghcoft. & al.

9. A Child in Ventre fa Mere may be vouched, is capable to take; A Bill may be brought on its Behalt, and the Court will grant an * Injunction to stay wait. The Mother may judiciously detaining of Writings on the Behalt of a Child en Ventre fa Mere. A Limitation hereof is not declared by Coverture, Chan. void, The jntke 4. sufficient 15. E. tender Claufe Br. But A. cited * Bridgman's Time, where he superintend that he cannot justify the jntke, but that the Claufe is not sufficient. It is a Case was denied, unless it be with this Difference, where, it is granted with such a Claufe to execute it per se vel Deputatum, and where he is of such a tender Age, that he cannot by Intendment execute it by himself, as being an Infant of 5 or 4 Years of Age, who has not Discretion to execute it; But when there is a Claufe to execute it per se vel Deputatum finum sufficientem it is good enough; for he may appoint a sufficient Deputy, and if he does not elect such, it is a Fortiture of his Office.

(I) Of what Things an Infant is capable.

Cro. E. 636, 1.

A N Infant is not capable of the Stewardship of the Courts of a Bishop, because by Intendment of Law he hath not sufficient Knowledge, Experience, and Judgment, to use the Office, and also because he cannot make a Deputy, Mich. 408 41 Eliz. B. R. between Scambler and Waters, adjudged per Curiam.

2. An Infant shall not be any of the 12 who join with the Defendant in Writ of Debts for paying his Laws, by which one was challenged for his Age and awarded to be of full Age by the Justices by Institution. Br. Covertare, pl. 22. cites 8 H. 6. 15.

3. If a Man makes a Feoffment to an Infant, and he makes Letter of Attorney to take Livery, this is good. Br. Covertare, pl. 25. cites 21 H. 6. 31. Per Aucue J.

4. Infant may be a Mayor, Abbott or Bishop without Disability, and if he be Executor he may make Releafe of the Debt of the Tefator. Br. Covertare, pl. 54. cites 21 E. 4. 12, 13.

5. An Infant Monk, or Feme Covert may cast a Protection, and Brook says it seems to him that an Infant and thole may be Attorney to make Livery of Seignies; But it was said that an Infant cannot be Attorney in the Law of Actions or Suits. Br. Covertare, pl. 55. cites 21 E. 4. 18.

6. If an Infant be made Executor, he may make Releafe or Acquistance of the Debt of the Tafator, and may fall the Goods, and give and distribute them; But a Feme Covert Executor cannot do so without her Baron. Br. Covertare, pl. 56. cites 21 E. 4. 24. Per Littleton.

S. P. Br. Co.

venture pl.

e77 cites 24


—S. P. Hill.

pl. 57. cites 18 H. 6. 4. and Fitzh. Relende, 8.

7. Infant
(I. 2) Several Ages for several Purposes.

1. A Male at the Age of Seven is married to a Female of 14, and if the Female before the Male is 13 she has Infuie, this Infuie is a Battard

2. A Female has several Ages, viz. at seven Years to have * Aid to be Br. Age, pl. married, and 9 Years to deserve Dowar, and 12 Years to consent to S. C. and Marriage, and 14 Years to be out of Ward, and 16 Years for the Lord to tender Marriage, and 21 Years to make Feoffment, or to deliver a Deed. But the Age of Consent of a Man is 14 Years. Br. Gard, pl. Ages for the Male, 7. cites 35 H. 6. 40.

3. And per Wang, when the Lord after 14, and before 16, has married the Daughter, she may enter into her Land; For the two Years over and above 14 Years is only Time for him to tender the Marriage, and this seems to be Reason; For it is said there, that the Course of the Chancery is to make Livery before 14 Years cum Exitibus, and after 14 but Livery only, and not cum Exitibus; And the Reason seems to be, insomuch as after the Livery made at such Age which the ought...
to have Livery, the shall have the Issues ab illo Die by the Law. Br. Garde, pl. 7. cites 35 H. 6. 45.

4. Infant of the Age of 12 Years, Male and Female, shall be compelled to serve in Husbandry. Br. Covertage, pl. 64. cites F. N. B. 192.

5. A Man, by the Law, for several Purposes, has divers Ages assigned unto him, viz. 12 Years to take the Oath of Allegiance in the Torn or Leet, 14 Years to consent to Marriage, 14 Years for the Heir in Secage to chuse his Guardian, and 14 Years also accounted his Age of Discretion, 15 Years for the Lord to have Adi par faire Fitz Civally, under 21 to be in Ward to the Lord by Knight's Service, under 14 to be in Ward to Guardian in Secage, 14 to be out of Ward of Guardian in Secage, and 21 to be out of Ward of Guardian in Civally, and to alien his Lands, Goods and Chattels. Co. Litt. 78. b.


7. Infant makes his Will, and charges his Personal Estate with Payment of Debts, his Executor shall pay Bond Debts which he had contracted, there being Affets sufficient. N. Ch. R. 55. 1651. Hampton vs. Sydenham.

8. Ecclesiastical Court is the proper Judge of Age for making Wills, and whatever our Law says concerning it, is only as directed by their Law. 2 Show. 204. pl. 213. Mich. 34 Car. 2. B. R. Smallwood v. Berthoule.


10. Till eight Years Children are accounted Nurse-Children. 2 Salk. 479. pl. 1. per Cur Paxch. 7 W. 3. B. R.


12. Administration granted during Minor Æate of Executor ceases at 17, but during Minor Æate of Administrator not till 21, because an Executor, by the Civil Law, may take that Office upon him at 17; but an Administrator being created by Statute, the Time of his full Age must be granted by the Common Law. Cumb. 475. Paxch. to W. J. 3. B. R. Atkinson v. Cornhill.

13. A was born Feb. 1. at Eleven at Night, and January 31, at One in the Morning; A. makes a Will of Lands and dies; it is a good Will, for
for he was then of Age ; Said per Holt Ch. J. to have been so adjudged.
41. An Orphan of the City of London at 17 made a Will of his Infant of
Share of the legatory Part of her Father's Personal Estate, who was 14 may
cede Indenture, and held good by the Statute of Distributions, but
made a
Will. Comb. 50. Patch.
17 Jac. 17. Wilcox v. Wilcox.

(I. 3) Cases wherein a Feme Covert and an Infant
differ.

1. The Deed of a Feme Covert with her Baron shall not be enrolled
because it is not the Deed of the Feme, and to see that Deed
of a Feme Covert is void. Br. Coveture, pl. 47. cites 7 E. 4, 5.
2. If an Infant is made Executor, he may make Release or Acquittance
of the Debt of the Testator, and may sell the Goods, and give and distribute
them ; But Feme Covert Executor cannot do so without her Baron.
3. Statute Staple nor Deed enrolled shall not be accepted of a Feme Covert
by the Common Law ; Contra by the Custom in London, nor Fine,
Statute, nor Deed enrolled, shall not be suffered by an Infant. Br. Coveture,
pl. 59. cites 32. H. 8.

4. If an Infant by Indenture bargains and sells Lands for Money,
and after leaves a Fine come ceo que il ad de fon Done &c. this Inden-
ture is not void but voidable, and the Use palls by the Bargain; then
the Fine being levied upon it the Bargain is irrevocable unless for Er-
ror ; As if Baron and Feme bargain and sell their Lands by Indenture,
though the Indenture be void against the Feme, yet a Fine and Reco-
very upon it shall bind her for ever, the Indenture declaring the Will
of the Feme how the Use shall pass. Mo. 22. pl. 73. Patch. 2 Eliz.

5. An Infant and J. S. were bound in a Bond for the Debt of the
Infant ; The Infant at full Age promised to save himself J. S. and died ;
An Allumpit lies against the Executor of the Infant ; But if a Feme
Covert being to bound had, after her Husband's Death, promised to have
her Surety harmles against such Bond, such Allumpit should not have
Edmunds.

the Allumpit could arise, yet upon the whole Matter the Action lies, and Judgment
was given for the Plaintiff. — 4 Lec. 5. pl. 22. S. C. adjudged. —— Cro. E. 126, 127. in pl. 7. S. C. cited as
adjudged.

6. If Feme Covert delivers Goods Trespass lies, but it is otherwise of
an Infant it he delivers them with his own Hands ; Arg. Lat. 10. cites
it adjudged to this Purpofe. Patch. 32. Eliz. Rot. 1017.
7. An Infant may do any Act to his Advantage, which a Feme Covert
cannot. As a Leaf made by Infant is voidable only, but by Feme Covert
void ; So of a Bond by Feme Covert, she may plead Non eft Peculium, but to cannot an Infant, but he must plead the Special Matter
that he was within Age.

8. Leaf
8. Leave by Infant reserving no Rent is void; but otherwise of Baron and Feme; for Baron has Power, and the Feme joining in the Leave it is not void, for she may affirm the Leave by bringing a Writ of Waife, or by Acceptance of Realty 3 Adjudged. Hutt. 102. Hill. 4 Car. Anon. cites 2 Rep. 61. in Wilcot's Cafe.

9. A Feme Covert is not capable to make a Contract, because she is sub potestate Viri, and though it be for Necessaries of Diet and Apparel, that shall not charge the Husband, but an Infant's Contract for such Things is good; Arg. Hutt. 107. Mich. 5 Car. in Cafe of Bill v. Lake.


Contra as to 11. Infants and Feme Coverts may execute Powers; Admitted, Arg. Infants, per the Master of the Rolls, because they are only Instruments. 21 Mar. 1738. in Cafe of Colton v. Hoskins.

(K) What Things shall bind an Infant by Agreement at his full Age.

Cro. J. 320. If a Lease for Years be made to an Infant rendering Rent, the Rent is arrear, and after the Infant comes of full Age, and afterwards continues the Occupation of the Land, this will make him chargeable with the Arrears incurred during his Infancy. Pasch. 11. Fa. 25. R. between Kettle and Elliott adjudged.

1. If a Lease for Years be made to an Infant rendering Rent, the Rent is arrear, and after the Infant comes of full Age, and afterwards continues the Occupation of the Land, this will make him chargeable with the Arrears incurred during his Infancy.

2. Exchange of an Infant is good by Agreement at full Age. Br. Coverture, pl. 17. cites Hill. 12 H. 4.

3. If an Infant makes an Indenture, and at the full Age binds himself to perform it, he shall not avoid the Indenture. Br. Coverture, pl. 28. cites 14 H. 8. 29. per Brudnell.

4. And if an Infant sells a House for 101 and brings Debt of the 101. at full Age, he shall not avoid the Contract. Br. Coverture, pl. 28. cites 14 H. 8. 29. per Brudnell.

5. So if he makes a Leave reserving Rent within Age, and accepts Rent at full Age. Br. Coverture, pl. 28. cites 14 H. 8. 29. per Brudnell.

6. If an Infant possessed of a Term for Years sells it for Money, and after be comes of full Age receives Part of the Money for it, he shall avoid the Grant notwithstanding; for the Contract being void in the Commencement it cannot be made good by any subsequent Act; per toto Curtam. Dal. 6. pl. 25. 3 Eliz. Anon.

7. Father
7. Father of Infant leaves the Son's Lands for 20 Years; at full Age the Son, upon the Back of the Indenture, releases to the Defendant all his Right; Per Wray, this Leaf by Father, as Guardian, was voidable only by the Son, and then such Indorsement is a good Affiavit.

2. Le. 2.20, 221. pl. 278. Paizch. 18 Eliz. B. R. Anon.

8. If Infant makes a Deed of Feoffment, or Leaf for Life, to commence in Future, and at full Age makes Livery. G. Crook holds clearly that this is good Feoffment; Quere of Femae Covera, for her Deed is void.


9. Infant, Reversioner in Fee of an Advowson, during the Estate for if an Infant Life grants next Avoidance, and at full Age reciting the said Grant conceit & confirmavit predi(o) latum Advocationem Habend' quando con-
tigerit vacate. This is a Confirmation during the Life of the Tenant for Life. Heat. 20. Trin. 3 Car. B. Stevens and Crows v. the Bishop of Lincoln, Holmes and Halworth.

cites 26 H. S. 2.

10. Afflumpst is against an Infant that contralized for a Coach and Horses and gave his Obligation for the Money; afterwoulis he promises' Payment. Per Cur. The Obligation is only voidable and extinguis the Contral, and to the Afflumpst at full Age is without Consideration. And by Wilde J. the Infant may plead non aflumpst, and his Infancy is sufficient Evidence; And Judgment for the Defendant Nifi. 3 Keb. 798. pl. 55. Trin. 29. Car. 2. B. R. Tapper v. Davenport.

(L) Offence in Cheating or Imposing upon Infants. How punished.

1. H. Knowing that S. was within Age procur'd him to acknowledge a Nov 6th. S. C.

• Recognizance of Debt to him for Wares sold; for which after the accordingly.

Death of S. he was fined for l. and imprisoned. And note other such Cases, viz. Calnadey's Case and Verlakendor's Case were cited for Pre-
cedents of the Court, that they being Infants were inticed to enter into Recognizances and Statutes by those who knew them to be within Age. Mo. 555. pl. 752. Paizch. 41 Eliz. in the Star-Chamber. Strange-
ways v. Hics.

2. A Fine was levied by an Infant of the Age of 13. The Court fined Sir Nich. Roe and the other Commissioners, and threatened all that had a Hand in the promoting it. Freem. Rep. 78. Trin. 1673. C. B. Petty's Cafe.

(M) Pleadings.

1. Co(n)feffion of an Infant of a Plea in Formedon which abs(ues) the Affi-


3. In Affio Infant pleaded Ne unques Accouple &c. against the Plain-
tiff, and certified it against him by the Ordinary, and yet the Affio was awarded in Point of Affio, because the Infant cannot be convicted. Diffiof by his Confeffion or Nient Derile, but by Verdict or the like. Br. Coverturepl. 38. cites 28 Aff. 52.

4. Affio
4. **Affise** is brought by an **Infant** by **Guardian**; the Infant came and *dissavow'd the Suit*, and was of the Age of 17 Years. Persley said this shall not be accepted; for it may be that it is by Durefs, and this is a *Retraxit* which is a Bar; Shard *dubitavit et adjon nruit*. Br. Cover ture, pl. 39. cites 28 Aff. 52. Brooke makes a Quere and says, see 34 Aff. 5, that in such a Case Thorp would not suffer the Infant to dis savow, but awarded the Defendant to answer, quod nota.

5. An Infant who brought *Mortmainnefor* by Prochein Amy would have *dissavow'd his Suit*, and was not suffered; for Infant. Br. Coverture, pl. 73. cites 34 Aff. 5.

6. An Infant **Plaintiff shall not confess Deed of Lease for Term of Life** without *Impoundment of Waiil* pleaded against him in Quid Juris clamat, but it shall attend till his full Age. Br. Cover ture, pl. 7. cites 43 E. 3. 5.

7. In **Affise** it was agreed, that *nothing shall be said to be Nient dedit of an Infant*, so that where Release of the Ancestor of the Plaintiff in Affise with Warranty was pleaded to be made to J. and his Heirs, que *Es tate the Tenant has*, and the Plaintiff says that J. had nothing but for Term of Life, Remainder in Tail to the Plaintiff, and that the said J. is dead, and he entered as in his Remainder, and the Tenant said that the Remainder in Fee was to the right Heirs of the said J. for Default of Issue of the Plaintiff, and thereupon they were adjourn'd; and at the Day of Adjournment the Tenant, who was an Infant, said that at the Time of the Release J. was feized in Fee, which Matter he cannot say after Adjournment; yet it was held that the Affise shall be at Large thereof in Advantage of the Infant, because nothing shall be held to be Nient dedit of him; quod nota. Br. Cover ture, pl. 8. cites 44 E. 3. 10.

8. *Scire Facias to execute a Fine* levied by R. *M. to W. for Conformance de droit come e o &c. and W. rendered to R. *M. for Life*, the Remain der to the Father of the Plaintiff whose Heir he is &c. and that R. is dead, and the Plaintiff as Heir in Tail pray'd Execution, and the Tenant said that R. *M. who levied the Fine had no such &c. but for Life*, the Reversion to him, and the Estate continued and R. *M. died, and be entered, and the Plaintiff who was an Infant, and by Guardian confess'd it*, and it was held by the best Opinion that the Con fe ssion shall not be taken, by Reason that he is an Infant. Br. Confe ssion, pl. 8. cites 48 E. 3. 33.

9. For per Belk: an Infant shall not be bound by for *Nihil dictis quando he is Plaintiff; contra where he is Defendant*; for there the Plaintiff ought to be answered. Br. Confe ssion, pl. 8. cites 45 E. 3. 33.

10. And per Kirton and Belk where an Infant *avows for Rent &c.* and the Plaintiff pleads Release of the Father of the Infant, there he shall answer to the Deed, Contra Wich. Br. Confe ssion, pl. 8. cites 43 E. 3. 33.

11. But it was agreed, that in **Affise** brought by an **Infant**, and *Recovery is pleaded against him* he shall answer to it. Br. Confe ssion, pl. 8. cites 48 E. 3. 33.


14. And per Belk. in *Scire Facias Deed of the Ancestor involl'd with Affises defended is pleaded against an Infant Plaintiff*, and the Infant pleads, that Rients per Decent the Plea shall not be taken, but the Parol shall demur. *Et adjon nruit*. Br. Confe ssion, pl. 8. cites 48 E. 3. 33.

15. An
15. An Infant might join the Mrs by Battel; For it shall be tried by Champion; But he cannot be try'd by Battel in Appeal; For this shall be done in proper Person, and therefore the Defendant shall not join Battel against an Infant in Appeal. Br. Coverture, pl. 79. cites 9 E. 4. 34.

16. In a Writ of Right it was agreed by Danby and Movel, that an Infant shall not be permitted to confess the Action by reason of his Infancy, quod nota. Br. Coverture, pl. 79. cites 9 E. 4. 34.

17. Where a Man prefers that an Infant may alien when he can measure an Ell of Cloth, he ought to show of what Age the Infant was when he aliened, and that he then could measure an Ell of Cloth. Br. Coverture, pl. 66. cites H. N. B. Dam fuit infra Etatem.

18. Against a Died enrolld a Man may plead Infancy, though none can plead Non est factum. Per Manwood Ch. B. 2 Le. 65. in pl. 89. Palch. 31 Eliz. in the Exchequer, in Sir Wm Pelham's Cafe.

19. Error upon a Judgment in C. B. in an Ejecutions Firmus brought by a Guardian in Sodage, because he has not known in the Writ that the Heir was within Age at the Time &c. But by the Court it is yet good, and Judgement affirmed. Noy 135. Trin. 7 Jac. B. R. Symonds v. Barham.

20. In Replevin against three, they all made Cognizance by Attorney, and Judgment being given for the Plaintiff a Writ of Error was brought in B. R. and the Error assigned was, that one of the three Defendants was an Infant, but it was disallowed; for per Holt Ch. J. this Matter was pleadable in Abatement, and therefore not assignable for Error. 3 Salk. 197 pl. 13. Mich. 2 W. 3. Score v. Bowles.

21. In Allumplit for Money lent, and for Money laid out to the Use of the Defendant's Wife dum fide. Upon non Allumplit pleaded it was on a Reference agreed by the Judges, that the Infancy of the Feme at the Time of the Promise might be given in Evidence as it usually hath been of late. 1 Salk. 279. Palch. 5 W. & M in C. B. Darby v. Boucher.

(N) Cafes in Equity as to Infants.

1. Being to convey Lands to B. he between the Date and Execution of the Coverture to B. conveyed the Lands to J. S. an Infant, wherefore B. had an Order against A. and the Infant was concluded. Toth. 172. cites 11 Nov. 6 Eliz. Altham v. Ld. Morley.

2. An Infant Plaintiff was committed to the Prison of the Fleet for not obeying a Decree. Toth. 172. cites 11 & 12 Eliz. Oliver and King v. Challoner.

3. The Defendant made secret Covertainces (pending the Suit to defraud the Plaintiff being an Infant; The Defendant was bound by Recognizance to discharge all Estates so made. Toth. 172. cites 12 Eliz. Digman v. Hamon.

4. A Bill of Review because the Decree was against an Infant; My Lords Declaration was, that it shall bind an Infant as well as at full Age. Toth. 133. cites Mich. 7 Car. Cromwell v. Carey.

5. A died leaving a Widow and a Son. The Widow being about to Marry J. S. the and the Son and J. S. agreed by Articles that J. S. should
should take Administration, and should enter into a Stature to pay to much Yearly till he should come of Age. J. S entered into the Statute and took Administration, and with the Personal Estate purchased Lands in Fee, but died much indebted, and in Arrears to the Plaintiff, and because the Estate could not be during the Minority of the Son and Heir of J. S. who was an Infant, it was decreed against the Infant and his Guardian, that the Plaintiff, the Cenuecf, should hold till he is fatisfy'd his Debt and Arrears. N. Ch. R. 42. Anno 1649. Morton v. Kinman and Popewell.

6. If an Infant suffers a Decree against him by Consent, he may at any Time reverse it for that Error of his being an Infant; Otherwise if he be Defendant by an Adversary Bill, and a Decree be pronounced; Per Ld. K. Bridgman 3 Ch. Rep. 21. 10 Nov. 1666. Anon.

7. A Messenger of the Court may be sent to bring in an Infant, and when he comes in the Court may assign one of the Six Clerks as a Guardian to appear and answer; Per Sir John Churchill, but not approved of Per Ld. Keeper. 2 Chan. Cafes 164. Trin. 36 Cat. 2. Anon.

8. It was said that there was no Precedent in Equity that the Parol should Demurr, but that Infants were Stable there, and Lt. North cited the Case of Baron Welton v. Dandy, which was thus, viz. Baron Welton had a Debt due to him by Bond, wherein the Heir was bound, but it happened that for three Defeats the Heir was still an Infant, and to the Parol demurred at Law, till the Interet much exceeded the Penalty of the Bond; And Mrs. Danby having been all along Guardian to these Infants and received the Profits of the Estate, and converting them to her own Use, the Baron therefore brought an Action against her, and called her Administrator to these Children; but the Baron's Policy did not prevail. Vern. 175, 174. Trin. 1682. in Case of Creed v. Cowl.

9. Whether Chancerly will decree Satisfaction of a Bond-Debt of the Ancestor's out of the Profits of the Real Estate, during the Minority of the Heir, where there is a Deficiency of Personal Assets; Matter of the Rolls declared he thought such a Decree just, and if such Case came before him he would decreed accordingly; Sed dubitatur. Vern. 428. pl. 403. Hill. 1686. March v. Bennett.

The Plaintiff was like wife a young Heir, and had been drawn in to buy Goods at extravagant Prices, and to accept of Alignments of bad Securities, joined in giving Securities for the Monies agreed on. He shall be relied on paying the Value of the Goods which came to his Hands, and shall not be answerable for his Companions. 2 Vern. 77. pl. 71. Trin. 1688. Lamplough v. Smith.

10. An Heir, together with other young Heirs, is drawn in to buy Goods at extravagant Prices, and to accept of Alignments of bad Securities, joined in giving Securities for the Monies agreed on. He shall be relied on paying the Value of the Goods which came to his Hands, and shall not be answerable for his Companions. 2 Vern. 73. pl. 72. Trin. 1688. Whitley v. Price.

11. This Court has often decreed building Leaves for 60 Years of Infants Estates where it is for their Benefit; Per Car. 2 Vern. 225. in pl. 204. Pach. 1691. in Case of Cecil v. Salisbury (Earl of).

12. A feised of Freehold and Copyhold Land surrenders to the Use of his Will, and then devises to B. all his Goods, Chattels and Estate whatsoever, upon Condition that the pay his Debts and Legacies, and makes B. Executrix and dies. On a Bill by the Creditors for Sale of the Estate, the personal Estate being deficient, the Court thought the Words, with other Circumstances of the Case, would pass the Lands, and decreed a Sale, and the Heir to join when he comes of Age, but he being an Infant, Day was given him to shew Case after he comes to Age. Ch. Prec. 37. pl. 38. Mich. 1691. Lumley v. May.

13. A
13. A. agreed to give her Son other Lands in lieu of Lands intailed, and Eqn. Ab. gives the intailed Land by Will to her Daughter, and the Son gives 25. (B) pl. Bond to suffer the intailed Lands to be enjoyed as if by Will had devised them. The Son dies, and leaves D. his Son an Infant, who brought Ejectment; The Bond was not liable against him because an Infant; Per Cur. the Infant being in Possession of the Lands that came in Recompence, we will at present only quiet the Plaintiff's Possession in the intailed Lands till six Months after the Infant comes of Age, and then he may sue Caufe it he thinks f. 2 Vern. 232. pl. 212. Trin. 1691.

14. The King as Pater Patriae has the Directions of Charities, In- In Cafes of fants, and Ideots, Lunatics &c. and so full under the Directions of Trusts in Chancery, where the Interest of Infants is to be regarded that no De- cree against an Infant shall be made without having a Day given him to show Cause after his full Age. By his Precaution Any he may call his Guardian to Account, even during his Minority. If a Stranger en- ters and receives the Profits of an Infant's Estate he will in Equity be looked upon as Trustee for the Infant; 1 Per Ld. Somers. 2 Vern. 342. Hill. 1697. in Cafe of Cary v. Berrie.

15. Lands devised to be sold for Payment of Debts may be decreed to But if he be sold without giving the Heir a Day to show Cause, tho' an Infant, had been decreed to for in this Case nothing defends to him; 1 Per Wright Keeper. 2 Vern. 429. pl. 391. Hill. 1701. Cook v. Parsons.

must have had a Day after he came of Age. Ibid — Chitt.Prec. 37. Lunly v. May. — An Infant Heir, in Cafe of a Will devising the Lands to Trustees to pay Debts, who sold the same was decreed to relinquish his Right to the Purchasers and his Heirs when he shall come of Age. Fif. 120. Trin. 30 Car. 2. Travel v. Danvers.

Tho' the Trustees in the Cafe above of Cook v. Parsons might have sold without coming to the Court for the Directions, yet if they do come it may be a Question, if the Infant Heir ought not to have a Day to shew Caufe; Per Ld. K. Ch. Prec. 184. S. C.

16. The Effects of an Infant's Answer to a Bill in Chancery is to no In an Infant other Purpose than to make proper Parties to as have an Opportu- nity to take Depositions, and to examine Witnesses to prove the Mat- ter in Question, and an Infant is never concluded by any Matter con- and there is tained in his Answer by his Guardian. Carth. 79. Mich. 1 W. & M. a Decree a- against him in B. R. in Cafe of Eccleston v. Speake.

Day given to shew Cause, such Answer shall not be read or admitted as Evidence against him when he comes of Age; But if a hierannuated Defendant puts in an Answer by his Guardian it shall be read against him at any Time after, for he is supposed to grow worse, and is not to have a Day to shew Cause; Per Lord Keeper. Abc Eqn. Cafes 251. Trin. 1704. Sir Richard Leving v. Lady Caverley. — Chan. Prec. 229 S. C. & S. P. agreed per Curiam accordingly.

17. An Estate is given to B. and the Heirs of her Body, and if she left no Sons and only two Daughters, the Eldief to pay the Younger 300 l. and to have the whole Estate. She leaving only two Daughters, and the Eldief neglecting to pay the 300 l. the Younger brought a Bill for an Ac- count of Profits, and for Possession of half the Estate; and at the Rolls obtained a Decree, that the Defendant should pay the 300 l. with Inter- est from the Mother's Death in six Months, or in Default thereof, to account for Profits of a Moiety; and the Moiety to be let out by Commissoners, and the Plaintiff to hold and enjoy it accordingly. Upon an Appeal to the Lord Keeper the Decree was to stand as to the Account of Profits and Partition; But the Defendant being an Infant, the
Infant.

the Words bold and enjoy, which amounts unto a Foreclosure, to be
struck out, or Defendant to have a Day after the comes of Age to frow

18. Regularly an Infant's Answer by his Guardian shall not be read,
but if the Caufe be brought to Hearing at his Request after his full Age
it may. But the Infant at his full Age might (as his right Way is)
have applied to the Court, and yet forth how he is grieved by the Decree,
and might have had Leave to amend or alter his Answer or any
Part of it, or put in a new One, but he not having done fo, it shall be
presum'd that he abides by that Answer, and fo it was read against him;
Rodbridges.

Fees devised
his Land to his Wife fo payment of his Debts and dies, leaving an Infant his Heir. The Creditors
brought a Bill and the Infant was made Defendant, who answer'd by Guardian, and the Estate de-
ferred to be sold. The Infant was allowed to put in a new Answer upon his consent to Age, (the Decree
not being made absolute,) and the Matter of the Rolls said, he understood that this was a
Matter of Course, and that when the Court gave him Liberty to sell Caufe, it was not Reall to
Caufe S. P. by the Matter of the Rolls, and faid he had granted the same upon a Petition Ex Parte.
Wm's Rep. 454. Hill. 1756. and fame Point then decreed by Lt. C. King, affifted by his
Power to purchase Lands for an Infant without a Decree. Gilb. Equ. Rep. 11. Hill. 7 Ann. in
Chancery. Terry v. Terry and Ragget.

19. Chancery may decree an Executor or Trustee to purchase Lands for
an Infant, and confequently may confirm a Purchase made by them for
an Infant without a Decree. Gilb. Equ. Rep. 11. Hill. 7 Ann. in
Chancery. Terry v. Terry and Ragget.

An Executor or Other who has
affect in every
Thing for the Advantage of the Infant, may lay out Part of the Perfonal Eftate in a Purchase of
Lands in the Infant's Name. But if he lends the Money on a bad Security he must answer it out
of his own Pocket. Chan. Prec. 275. pl. 222. S. C.

20. If a Man during a Perfon's Infancy receives the Profits of an In-
fant's Eftate, and continues to do fo for severall Years after, the Infant
comes of Age before any Entry is made on him, yet he shall account
for the Profits throughout, and not during the Infancy only; Decreed.

21. Infant Deviue of Lands in Mortgage, where by an after Part of the
Will all Infantor's Debts in general were made payable out of other Lands
had by her own Bill submitted to pay off this Mortgage; But the Maker
of the Rolls said, that he must take Care of the Infant, and not fuller
her to be caught by any Mistake of her Agent, and ordered that paying
the Cofts of the Day he might amend her Bill. 2 Wm's Rep. 387.

22. Where an Infant conceives himfelf aggrieved by a Decree, he may
apply for Redrefs as foon as he thinks fit, without itaying till he comes
of Age. Neither is he bound to proceed by way of Re-hearing, or
Bill of Review, but may impeach the former Decree by way of original
Bill, in which it will be enough for him to say the Decree was obtained
by fraud and Collusion, or that no Day was given to him to frow Caufe against
it. Wm's Rep. 737. says it was to hold Mich. 1721. in the Cafe of
Richmond v. Taylor.

And his
Lordship's
Secretary
acquainted the
Court
that Mr.
Vernon in
Cafe of an
Erroneous
Decree
againft an
Infant filed always to advis the bringing of an original Bill to set it aside, but in such a Bill to allege
specially the Errors in the former Decree. Ibid.

23. An Infant, when Plaintiff, is as much bound, and as little pri-
vileged, as one of full Age. Per Ld. C. King. 2 Wm's Rep. 519.
Hill. 1728. Ld. Brook v. Ld. and Lady Hertford.

24. Bill
24. Bill to have a Discovery of the Defendant's Title to Lands in B mortgaged to the Plaintiff, and likewise to have an Account of the Rents and Profits thereof &c. The Case was, the Defendant's Father having Omission to borrow the Sum of 300l. the Defendant was employed by his Father to solicit the Plaintiff to lend him upon a Mortgage of the Lands in B, which the Father made Affidavit of that he was feized in Fee, and that the Lands were free from Incumbrances; The Defendant being then about the Age of 20 Years, did carry a Eement in Fee and for the Lands of the Defendant's Father to the Counsel of the Plaintiff, and the Title was approved of, and the Money lent, and a Mortgage made to the Plaintiff, and the Defendant was a Witness to the Execution of the Mortgage-Deed, and likewise to the Payment of the Money. The Defendant's Father, after the Defendant came of full Age, took 100l. more upon the same Mortgage, and the Defendant was proy to that Transaction, but not a Witness to the Deed or Payment of the Money. The Defendant by his Answer says, that at the Time of making the original Mortgage, he had heard the Lands were settled upon him after the Death of his Father, but he had never seen the Settlement. The Defendant after the Death of his Father refuses to pay the Mortgage, and claims the Lands as Remainder-man in Tail by Virtue of a Settlement by his Grandfather upon the Marriage of his Father &c. Counsel for the Plaintiff insisted that the Defendant, though an Infant at the Time of making the Mortgage, was liable to make a Satisfaction because he was Party to the Fraud, and was privy to the whole Transaction, and aiding and abetting to the Cheat, and that though an Infant cannot bind himself by Contract at Common Law, yet he is liable to Actions of Tort, as Trespass, Case for Words &c. So is he liable to a Forfeiture upon a Condition in Fact, or implied &c. So in Equity he is liable to make Satisfaction for a Fraud &c. Per Cowper C. If an Infant having a Remainder upon an Estate for Life be a Witness to a Mortgage made by 'Tenant for Life, I do not think this would bind the Infant, because if he was made a Party to the Deed, and sealed it, yet that would not bind him, and that is a much stronger Case, yet I am of Opinion in this Case the Defendant is liable, and ought to make Satisfaction to the Mortgagee, because at the Time of this Transaction he was very near being of full Age, and solicited the Plaintiff to lend the Money, and produced this Eement in Fee to his Father, (which appears now to be forged) and was principally concerned all along in the Fraud, when he knew at the same Time, as he admits by his Answer, that his Father was but 'Tenant for Life, with Remainder to himself. If an Infant is old and cunning enough to contrive and carry on a Fraud, I think in a Court of Equity he ought to make Satisfaction for it. Decreed accordingly. MS. Rep. Mich. 1 Geo. in Can. Watts v. Creffwell.

25. In all Decrees against Infants even in the plainest Cases a Day must be given them to shew Cause when they come of Age. Per Lords Commissioners. 2 Wms's Rep. 122. Hill. 1722.


26. If a Decree be made against an Infant and a Bill is brought to set it aside for Fraud, yet if it be not fraudulent, though it may not be in every Respect so equitable as it ought to be, but the Court was fairly and fully apprised of every Thing at the making the Decree Ld. C. Maclefeld said the Decree might be just, and therefore he would not set it aside, but that had any Fraud or Surprize upon the Court been
been proved, he would have done it. Wms's Rep. 734. Mich. 1721.

Richmond v Taylor.

27. An Infant's Answer cannot be given in Evidence against him because it is not the Infant's Answer, but the Guardian's, and the Guardian is sworn, and not the Infant. 3 Wms's Rep. 257. Hill. 1733; in Cafe of Wrottesly v. Bendith.

28. An Executor, Administrator or Trustee for an Infant neglects to live within six Years; the Statute of Limitations shall bind the Infant. 3 Wms's Rep. 309. Trin. 1734. Wych v. East India Company.

(O) Equity; where an Infant is Trustee.

1. 7 Ann. cap. 19. It shall be lawful for any Person under the Age of
21 Years by the Direction of the Court of Chancery or Escheuer, by an Order made upon hearing all Parties on the Petition of such Person for whom such Infant shall be seized or poss'd in Trust, or of the Mortgage or Guardian of such Infant, or Person intituled to the Monies secured upon any Lands whereof any Infant shall be seized or poss'd by way of Mortgage, or of the Person intituled to the Redemption to convey any such Lands as the Court shall by Order direct, and such Conveyance shall be good in Law.

It must be a Trust ex profeso limited, and not by Implication only. Quere, M. 4. Nov. 1738. War. her v. Moore. — A Trst.

2. A Petition being exhibited upon this Act in Chancery fet out the Conveyances in Trust to such and such, and that such a one being Survivor was dead, and the Estate in Law devolved upon an Infant, who was in Court; the Declaration of Trust was also read, and the Consideration of the next Heir at Law to the Infant required, and then an Order was made for the Infant, by her Guardian, to convey over the Trust-Estate to Ceily que Truist, and the Conveyance to be settied by the Master. Ch. Prec 234. pl. 226. Pach. 1709. Anon.

3. On the Marriage of A. with M. a Settlement was made, in which A. was Tenant for 99 Years, if he so long live, Remainder to Trustees during the Life of A. Remainder to the first &c. Son of that Marriage in Tail, Remainder to the first &c. Son of any other Marriage, Remainder over. They have a Son, and afterwards the Wife and both Trustees died. The Son being upon a Treaty of Marriage with J. S. which was to be advantageous to the Family, a Bill was exhibited by the Father and Son against the Heir of the surviving Trustee, an Infant, to join in making a Tenant to the Precipe in order to suffer a Common Recovery.
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convey for making a Settlement on the Son's Marriage. 1. C. Parker decreed accordingly, and that the Master direct a proper conveyance, in which the Trustee should join. It was then insisted that the Heir of the Trustee (who an Infant) was a Trustee within the Stat. 7 Anne 19. and therefore it was prayed that the Infant Trustee might ley a Fine, which must be good unless reversed during his Infancy. But his Lordship said, he did not know how he could direct the Judges or Commissioners to take a Fine from an Infant, but let the Master direct a proper conveyance. Wms's Rep. 536. 538. Trin. 1719. Winnington v. Foley.

5. Infant to whom a Trust-Estate descends &c. is obliged to assign &c. by the late Act, and in a Case where a Freehold and Inheritance came to an Infant who was a Feme Covert Motion was made in C. B. for Leave to examine her, and the Court made a Rule to do it, non obstante Minoritate sua. Hill. 6 Geo. C. B. Ld. Fitzwilliams and Ux.

6. Where A. had purchased a Burgage-Tenure in Truf, and the Trustee died, and his Heir, an Infant, acknowledged that he was only a bare Trustee, and Proof being read that the Money was paid by A. though the Receipt in Writing was given to the Infant's Father, but A. had been always in Possession of the Writings and Estate, being 40. a Year, Ld. C. King said he was satisfied that this was but a Trust resulting by reason of A.'s Payment of the Money, and it being of so small Value, and it being paid his Lordship had made a like Order before, he ordered (though only upon a Motion or Petition and Reference to a Master) that the Infant convey, since a Decree would coit the Value of the Fee Simple; But that for the future, where the Trust is not declared in Writing he would have the Caufy que Tract to bring his Bill and have a Decree. 2 Wms.'s Rep. 549. Trin. 1729. Ex Parie Vernon.

7. A. owed several Debts, and by his Will devised Lands in Fee to an Infant, charged with all his Legacies; The Infant is not a Trustee within the Stat. 7 Ann. cap. 19 as to so much of the Lands as may suffice for the Payment of the Debts and Legacies. 3 Wms's Rep. 389. in a Note of the Reporter cites Trin. Vac. 1730. at the Rolls. Anon.

8. The Statute enabling Infant-Trustees to convey, extends only to plain and express Trusts, not to such as are implied or constructive only. 3 Wms's Rep. 387. Mich. 1735. Goodwyn v. Litter.

(P) Allowances in respect of Infants.

1. A. the Father devised Lands and 40 l. in Money to his Son and Daughter; the Mother and her second Husband entered on the real Estate, and pollefted himself of the personal Estate of Testator, and paid his Debts and Legacies, and bred up and educated the Infants, which amounted to more than the Income of the real Estate and the Interest of the 40 l. The Mother died, the Father-in-law offered a fair Account by his Bill, so that he might be allowed for Necessaries, and to pay the Defendant, now Guardian to the Infants, the Surplus, he being indemnified by this Court; which was decreed, and that now Guardian give Security to pay the said 40 l. with Interest to the Infant according to the Will. Fin. Rep. 2. Mich. 25 Car. 2. Hall v. Yates.

2. Where
2. Where an Infant recovers by a Decree of the Court, the Court may, with the Approbation of the Infant’s Relations, alter the Infant a Maintenance, though no Provision is in the Trust for that Purpose, and this is founded on natural Equity; Per Cur. 2 Vern. 236. pl. 219. Trin. 1691. Englefield v. Englefield.

3. 60l. per Ann. was allowed by Chancery for the Maintenance of an Infant out of his Estate. A Fit of Sickness cost 143 l. extraordinary, which was allowed over and above his quarterly Maintenance; Per Ld. Macclesfield. Chan. Prec. 559. pl. 343. Hill. 1720. Lady Shaftesbury’s Case.

4. In a Foreclosure against an Infant, though the Infant has six Months after he comes of Age to shew Cause &c. yet he cannot ravel into the Account, nor ever redeem, but only shew an Error in the Decree. 3 Wms’s Rep. 352. Hill. 1734. Mallack v. Galton.

5. An Allowance of Maintenance to a Guardian must be in regard to what the Infant then had, and not to what falls in afterwards. 3 Wms’s Rep. 368. Trin. 1735. in Case of Chaplin v. Chaplin.

(Q.) Equity. In what Cases the Parol shall demur in Equity.

1. WHETHER the Parol shall demur in Equity in Case of a Descendent of a Trust to an Infant? See Vern. 173. in pl. 167. Trin. 1683. Creed v. Covile.


3. Bill by a Bond Creditor against the Heir and the Executor of the Obligor to have a Satisfaction of a Debt due upon the Bond out of personal and real Assets; the Heir sues that as to him the Parol ought to demur, for that he is an Infant, and the Bill seeks to charge his Inheritance, which came to him by Diffent from the Obligor; the Parol shall demur until the Defendant comes to his full Age, as well in this Court as at Law, which was not denied by Attorney-General Counsel pro Quer. Ordered that the Cause should stand in Statu Quo until the Infant Heir come to full Age; but as to the other Defendant the Executor decree to account and make a Satisfaction out of personal Assets as far as they would go; Per King C. MS. Rep. Trin 12 Geo. Hazard v. Dixon.

1. Lands are given to A and his Heirs for three Lives. A dies; his Heir does not take by Diffent, so as to have his Age, or to make the Parol demur, but takes as Special Occupant; though had it been in the Case of Lands in Fee depending on an Infant, the Parol should have demurred in Equity as well as at Law. 3 Wms’s Rep. 368. Trin. 1735. in Case of Chaplin v. Chaplin.

For more of Infants in General, See Age, Fines, Guardian, Recoveries and other Proper Titles.

Enterpleader.
Garnishment.

Of the Plaintiff and Garnishee.

[Or of whom it shall be.]

1. If a Statute be acknowledged to a Dean and Chapter, and delivered to B till certain Conditions performed, though this B is one of the Chapter, yet if the Conuor brings Detinue against him, he may say that it was delivered upon Condition, and Garnishment shall be granted against the Dean and Chapter. 13 D. 4. 8.

2. In Detinue of a Writing, the Defendant said that it was delivered to him by the Plaintiff and one B who is dead, upon certain Condition to be performed to deliver &c. and if the Condition be performed or not he does not know, and prayed Garnishment P. Son and Heir of B. because the Charter concerned Inheritance, and had it without averring the Death returned by the Sheriff, viz. upon Surmise; Quod Nota. Br. Garnishee, pl. 26. cites 21 E. 3. 41.

3. If the Defendant confesses that the Garnishee has broke the Condition, this shall not prejudice the Garnishee. Br. Garnishee, pl. 33. cites 39 E. 3. 22.

4. In Detinue of Goods, the Defendant said that they were delivered to himupon Condition, that if A. performed certain Conditions to the Plaintiff, that they should be delivered to A. and otherwise to the Plaintiff, and prayed Garnishment to A. and had it, notwithstanding that A. be a Stranger, and had no Writ pending thereof. Br. Garnishe, pl. 38. cites 14 E. 4. 2.

(B) How it is to be * prayed.

1. In Detinue, if the Defendant says it was delivered by the PlainBr. Garnishee &c. pl. 17. cites S. C. and says the Res.

2. Action of Detinue of a Bill of Evidences, and of a Charter, and the Defendant said, that they came to his Hands as Executor, and that B. had entered into Part of the Land, and prayed Garnishment by Scire Facias against E. and per Marten he shall not have Scire Facias but where he confesses the Possession of the Thing demanded, and makes Priority of the Bailment; Quare inde. For Cockyn and Marten held that Scire Facias lay well. Br. Garnishe, pl. 1. cites 3 H. 6. 35.
(C) What shall be a good Counterplea of Garnishment.

Br. Garnifhe: In Detinue upon a Delivery to re-deliver, if the Defendant says it was delivered by the Plaintiff and another &c. it is a good Counterplea to the Garnishiment that the Delivery was by himself alone, abique hoc that it was delivered by him and the other &c. 3 P. 6. 29. b.

Garnifhee cannot plead such Plea, because by such Plea he varies in the Bailment from what was pleaded by the Defendant. Br. Garnifhe &c. pl. 59. cites 20 E. 4. 15.

2. In Detinue of a Writing, the Defendant said that it was bailed to him upon Condition by the Plaintiff and he was not named in the Writing, and prayed Garnishment against him, and he had another Writ against the Defendant of the same Writing returnable now, and was demanded, and was non nustet, and yet notwithstanding the Nonfuit Garnishment was granted against him; Quod Noto. Br. Garnifhe, pl. 14. cites 41 E. 3. 24.

3. In Detinue, the Plaintiff counted of a Bailment by J. G. to the Defendant to bail to the Plaintiff, and the Defendant said, that the same J. G. had brought another Writ of Detinue against him returnable at the same Court, and counted upon a Bailment made by himself to the Defendant to rebail to him. The Plaintiff said, that it was bailed to the Defendant to bail to him, abique hoc that it was bailed to the Defendant upon certain Conditions performed to rebail to the said J. G. Moli & Forma, and ali e contra. Br. Enterpleader, pl. 4. cites 3 H. 6. 49.

4. Detinue of two Obligations, one in which he was bound to T. H. and another by which T. H. was bound to him, the Defendant said, that they were deliver'd upon certain Condition &c. and pay'd Garnishiment against T. H. and had it, who came by Scire Facias, and said that the Obligations were deliver'd to the Defendant upon Condition that if the Plaintiff should to the Arbitrement of A. B. &c. and this award perform'd of his Part that then every one shall have Livery of his own Obligation, and if the one fails the Award and the other breaks it, that he who fails it shall have Livery of both Obligations, provided always that the said Award be made before Erfier next, and said that the Arbitrator did not make any Award before Erfier, and pray'd Livery of his own Obligation. Part. upon his Conpliance pray'd Livery of the Obligation of the Plaintiff and had it, and further pray'd Livery of the other Obligation; for he said that the Obligation was deliver'd upon Condition to stand to the Arbitrement &c. as above, and this fulfill'd as above that then the Obligation should be deliver'd as above generally, and said that after Erfier they awarded that the said T. H. should do such Things and floe'd what, which are not done, and that the Plaintiff should do such Things, and floe'd what, abique hoc that the Obligation was deliver'd to the Defendant upon Condition to stand to the Award of the said Arbitrator with such Proviso as above, and pray'd Livery Markham laid. You ought to shew that you have perform'd the Award of your Part; Newton said No; But Patson contra, and that he ought to shew it, for it is shown that he ought to perform the Arbitrement. Part. said I plead fo for my Speed, but nor de Rigore Juris only. Brooke says, it seems that he shal shew it de Rigore Juris, and the other shall maintain the same Ittie alleging the Condition to be perform'd of his own Part. Br. Garnifhe, pl. 31. cites 21 H. 6. 52.

5. In
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5 In Detinue the Defendant pray'd Garnishment and had it against the Baron and Feene, which was challenged inasmuch as it shall be intended of the Livery of the Baron only, and he shall have Action, and therefore he shall be warned only, and yet well here; For the one is Original and the other is Judicial, and there is a Diversity where two are warned where only one should be warned, and where one is warned alone where two should be warned. Br. Garnithe, pl. 43. cites 8 E. 4. 15.

(D) Garnishment.

[What Pleas the Garnishee may plead.]

i. The Garnishee shall not plead other Plea but Conditions performed. 20 H. 6. 29. b.

Fitzh. Garnithe, pl. 9. cites S. C.

2. The Garnishee shall not say that he hath performed the Condition contained in the Obligation for which the Writ is brought. 20 H. 6. 29. b.

Fitzh. Garnithe, pl. 9. cites S. C. & S. P. but pleads that the Condition upon which the Obligation was delivered is performed.

3. Detinue against an Abbot, the Defendant pray'd Garnishment against R. by reason of Delivery upon Condition &c. and R. came and said upon the Scire Facias that the Abbot is depos'd. Judgment of the Writ of Scire Facias, and the Opinion of the Court was, that he shall not plead in Abatement of it, quod nota; For per Babb. it is his own Writ, and by him he shall not plead in Abatement of the Writ of Deliverance. Br. Garnithe, pl. 4. cites 3 H. 6. 4.

(E) What Pleas the Garnishee may plead.

1. In Detinue, the Defendant says it was delivered by the Plaintiff and B. upon Condition, and prays Garnishment. B. comes and says that he solely delivered it, and it is not a Plea, for he is warned to answer whether the Conditions are performed or not, and therefore the Plea varies. 12 E. 4. 13. b. Curia. Dubitatute, * 3 H. 6. 50. † 14 H. 6. 11.

Fitzh. Garnithe, pl. 9. cites S. C. † Fitzh. Garnithe, pl. 7. cites S. C.

2. The Garnishee shall not say they were delivered upon other Conditions than the Defendant hath said, for the Garnishment is only to know whether the Conditions are performed, and if the Defendant hath not taken the Conditions he shall be charged by both, and to the Garnishee at no Fishef. 40 E. 3. 11. b. 3 H. 6. 50. || 21 H. 6. 35. † 14 H. 6. 11. b. Contra 43 E. 3. 23. b.

Plaintiff shall recover the Writing; For by the Garnishment the Defendant is out of Court, and cannot repin to the Plea of the Garnishee. Br Enterpleader, pl. 19. cites 14 H. 6. 11. —— Br. Charters de terre, pl. 43. cites S. C. —— S. P. Br. Garnithe, pl. 39. cites 20 E. 4. 11. —— Br. Enterpleader, pl. 34. cites S. C. —— S. P. for if he should be allowed to plead to, the Plaintiff should have Delivery against the Defendant, and yet the Garnishee should have Action against the Defendant.
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Defendant also, he having a where charged himself to both; Per Paflon; And by him the Garnishee cannot vary from the Conditions alleged by the Defendant; For should he do so, the Plaintiff should have Delivery as above, and the Defendant shall be charged by his Polfy; quad Cacock did not de- py, Br Garnishee &c. pl. 6. cites H. 6. 70. — And Note, that where the Defendant in Writ of Detinue admits the Writ and the Court, and pays Garnishee, the Garnishee when he comes shall not plead in Abatement of the Writ or the Court which the Defendant has admitted; Quad Note per Curtam. Br. Garnishee &c. pl. 6. cites S. C. — He shall nor plead to the Writ, nor call Pretention after Appearance. Br Garnishee &c. pl. 9. cites H. 6. 23. by Newton and Askew. 

† Br Garnishee, pl. 12. cites S. C. — Fitch Garnishee, pl. 28. cites S. C.

‡ Fitch Garnishee, pl. 7. cites S. C. — Br. Enterpleder, pl. 15. cites S. C.

3. The Garnishee cannot plead that they were delivered to the Defendant and a Stranger not named. 3 P. 4. 7. b.

5. But where 7 P. 6. 3. 4. b. 40. b. that the Defendant says, that it was delivered upon Condition, without thew any Condition, and when the Garnishee comes shall shew the Conditions, and the Plaintiff may say it was delivered upon other Conditions in certain, and traverie other Conditions alleged.

In De- time the Garnishee foresaw two Conditions, and that he had performed them, and demanded Delivery; The Plaintiff said, that they were delivered upon those Conditions and others, which the Garnishee has not performed, abide his that these are all Sec. Br. Garnishee, pl. 41. cites H. 6. 14.

6. In Detinue upon a Bailment in one County, the Defendant says it was bailed by him in another, before the Garnishee cannot traverie the Bailment in this County, for it is admitted by the Defendant 21 H. 6. 35. adjudged.

Fitch Garnishee, pl. 16. cites S. C. — Br Garnishee &c. pl. 20. cites S. C.

7. The Garnishee shall not plead a Grant of the Plaintiff by Deed after the Delivery, that he should have the Deed upon certain Conditions performed, which he had performed. Contra 20 H. 6. 29.

Br Garnishee, pl. 12. cites E. 3. 11. S. P. — Fitch pl. 28. cites S. C.

8. The Garnishee cannot plead an Accord between himself and the Plaintiff after the Delivery to do other Things. See 49 C. 3. 12.


Br Garnishee, pl. 9. cites S. C. — Br Garnishee &c. pl. 53. cites S. C.

Fitch Garnishee, pl. 9. cites S. C. — Fitch Garnishee, pl. 9. cites S. C.

10. The Garnishee may plead a Release of the Plaintiff made to him. 3 H. 6. 18.

In Detinue of a certain Debt obligatory, the Garnishee plead Re- lease of all Actions Personal between the Delivery and the Release Judgment 6 Atois, and was held good by Mirkham and Palbin in avoiding Circuity of Action; For otherwise the Plaintiff should recover in this Action, and should after be bar'd in Debts upon the Obligation. But by Newton and Atois contra. For each in Action against the other, and one Action cannot plead in Bar against the other
other, and each of them shall make Title to the Writing, and either of them may recover Damages. Br. Garnihiue &c. pl. 9. cites 2生 H. 6. 15. and takes Notice that it is not adjudged, but cites 39 E. 3. 22. that it was adjudged a good plea.

13. The Garnishie cannot plead that the Writing is not his Deed generally or specificaliy, for though it be an Error, yet if the Condition be performed the Plaintiff shall have it. 9 P. 6. 55. b. 11. H. 6. 6.

14. As he cannot plead that he was under Age at the making the Obligation, for this is in Bar of the Thing. 14 P. 6. 11.

15. Detinue by A. upon Bailment in indifferent Hands, and the Defendant had Garnishment against the Executor of the other Party, who appear'd by the Garnishie, and the Plaintiff show'd Indenture of the Bailment, in which it appear'd that the Plaintiff and R. were obliged in the Writings demanded, by which the Garnishie pleaded it to the Counterplea because R. is not named, by which his Release may discharge all the Actions, and by this the Plaintiff took nothing by his Writ, quod nonanother Connota. But this is rather by the Confession of the Plaintiff than by the Plea. Br. Garnishie, pl. 32. cites 24 E. 3. 24.

16. Detinue of a Writing of a Statue Merchant, the Defendant prayed'd and had it, and at the Day the Garnishie came, and the Defendant made Default, and the Plaintiff prayed Default to deliver to him the Writing, and the Garnishie to him like wife, and yet because the Plaintiff had counted before of Garnishment to deliver upon Condition, therefore by Award they interpleaded before any Livery, and thereupon the Garnishie pleaded Release of the Plaintiff of all Actions made between the making of the Writing and the Livery, and yet because the Detinue is determined thereby, therefore the Plaintiff was barred by Award, and this is good to avoid circuity of Action. Br. Charters de terre, pl. 39. cites 39 E. 3. 22.

17. In Detinue the Defendant prayed Garnishment, because the Writing was deliver'd to him upon certain Condition &c. and gave'd what, and had it, and the Garnishie gave'd another Condition; there per Thorp the Plaintiff shall recover and the Garnishie is at no Mishief; For he may have another Writ against the Defendant, and recover against him by his pleading of the false Condition. Br. Garnihiue pl. 11. cites 40 E. 3. 11.

18. Detinue of a Writing, the Defendant alleged delivery to him upon Condition, and pray'd Garnishment and had it, and the Garnishie contested the Condition but said that Accord was made between them that he should make Estate of the Manor of D. for Life the Remainder to the Plaintiff, and that the Plaintiff should be there, and then the Deed should be deliver'd to him, and said that he was always ready and the Plaintiff did not come, and pray'd Livery of the Writing, and because it was accorded in another Matter than the Condition pleaded by the Defendant, and he did not show Writing of this Accord, and also he might have made the Estate the Remainder to the Plaintiff tho' the Plaintiff did not come, therefore the Plaintiff recovered by award; For he did not say in the Negative that if the Plaintiff did not come that no Estate should be made. Br. Garnihiue. pl. 12. cites 40 E. 3. 11.

19. In Detinue of an Obligation, the Defendant said that it was delivered by the Plaintiff and T. B. upon certain Conditions, and he did not know if the Conditions were performed or not, and pray'd Garnishment against
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T. B. who came upon the Scire Facias, and said that it appeared by the Obligation that he and three others were bound who are not Warned; Judgment if he shall Ansver; et non Allocutur; For it may be that the Garnishee only sealed and delivered the Deed, and the other three use, and therefore he was awarded to Answer. Br. Garnishe, pl. 16. cites 49 E. 3. 13.

20. Garnishe pleads Release made to him by the Plaintiff after the Obligation of all Debts, Trefoises and Claims, and the best Opinion was that it is no Plea; For nothing is demanded against him in this Action, but against the Defendant, and the Obligor cannot be damnified in this Action as he shall be in Deed, and therefore it is a good Plea in Deed upon an Obligation, but not in this Garnishment, et adjournatur &c. Br. Garnishe, pl. 16. cites 49 E. 3. 13, and by 29 H. 6. 28, every one is Actor against the other, therefore no Plea, and see 39 E. 3. thereof.


22. In Detinme the Garnishee came and pleaded to the Writ because the Bailment was by two, and the one alone brought the Action, and though Garnishe cannot plead to the Writ which the Defendant has affirmed, and to which he is a Stranger, yet because it is apparent therefore per Cur. both shall bring the Action in Common by the Opinion of the Court, and this as Amicus Curiae. Br. Garnishe, pl. 22. cites 12 H. 4. 18.

23. In Detinme of an Obligation the Defendant said, that it was delivered to him by the Plaintiff and one Hillibroad, upon certain Condition to be performed, to deliver to the Plaintiff, but if we then to the Defendant, and be not known if the Conditions are performed &c. and played a Scire Facias against Hillibroad to warn him, and had it, and the Garnishe came and said that where the Scire Facias is Hilliibroadus his Name is Hillibroadus, Judgment of the Writ. Strange said he is obliged to me in an Obligation by the Name of Hillibroadus, Judgment &c. and the Opinion of the Court was that the Garnishe shall not have the Plea. Br. Garnishe, pl 2. cites 3 H. 6. 37.

24. In Detinme the Defendant prayed Garnishment upon Condition to deliver &c. by which upon the Scire Facias returned the Garnishe came and pleaded that the Plaintiff is excommunicated, Judgment if he shall be answered, and per Cur, he shall have the Plea, and is Party well enough before that he has made Title to the Writing; for Judgment of the Damages shall be given against him, by which the Plaintiff showed Letters of Abolition pending the Writ; Weldebury demanded Judgment of the Writ because he was once disabled pending the Writ, et non Allocutur. Br. Garnishe, pl 3. cites 3 H. 6. 40.


26. Detinme by a Feme Sole where the Count was that the Bailment was made by the Plaintiff, the Garnishe was not receiv'd to say that the Feme was Count with such a one at the Time of the Bailment in Abatement of the Writ or Count. Thel. Dig. 199. lib. 13. cap. 12. S. 3. cites 3 H. 6. 51.

27. In Detinme the Defendant pra'd Garnishment by Delivery of the Writings upon Condition, and had it; The Plaintiff counted of Delivery at D. in Middlessex, and the Garnishe said that at another Time the Plaintiff brought such a Writ against the Defendant, and supposed the Bailment
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Bailment at C. in London; Judgment of the Writ supposing it in Middlesex. Babb. [bid him] answer. For the Defendant has admitted the Writ good, therefore you shall not abate it. Br. Garnifhe, pl. 27. cites 7 H. 6. 34.

28. The Garnifhee shall not plead falsa Latin to the Writ as Party, s. p. And but as Amicus Curiae. r. Garnifhe, pl. 42. cites 9 H. 6. 39.


29. In Attaint it was agreed arguendo that Garnifhee shall not plead to the Writ of Detinue to abate it, but in a Thing apparent as Amicus Curiae, and not foreign Matter, and he shall have Oyer of the Declaration, but the Plaintiff shall not declare de novo against him; but per Babbs. if he comes at the first Day he shall have Oyer of the Declaration, but if he comes by the Exigent, not. Br. Garnifhe, pl. 8. cites 9 H. 6. 35. & 39.

30. In Detinue if the Defendant prays Garnishment because the Obligation in Demand was deliver'd to him and one C. upon certain Conditions &c. and the Garnifhee comes and says that he alone delivered the Obligation, the Plaintiff shall recover the Writ: For now they do not agree in the Liberty, and the Defendant is out of Court by the Garnishment, and cannot rejoin or rejoin to the Plea of the Garnifhee; quod nota. And if the Defendant says falsely it is his Folly, and if the Garnifhee says falsely this is his Folly. Br. Charters de Terre, pl. 43. cites 14 H. 6. 11.

31. Scire Facias issued against the Feme and another as Executors of such a one; the Feme said she was Covert with such a one who is in full Life &c. Thel. Dig. 200. lib. 13. cap. 12. S. 6. cites Hill. 21 H. 6. 29. Quære.

32. Per Newton, where Defendant alleges the Delivery to be by the Plaintiff and J. N. upon certain Conditions, and does not shew what is certain, there the Garnifhee may vary from those Conditions; But where the Defendant says that the Bailment was made by the Plaintiff and J. N. upon Condition by the Plaintiff alleged, and prays Garnishment, there the Garnifhee cannot vary from the Conditions alleged by the Plaintiff; and so to the Place, where the Defendant says that the Day, Year and Place in the Declaration, the Plaintiff and J. N. bailed upon certain Condition, and prays Garnishment, there the Garnifhee cannot vary from the Place, and this affirmed to be the Entry per Brown Prothonotary; by which it was agreed, that the Plaintiff recover against the Defendant his Chattels, and his Damages against the Garnifhee, and 14 H. 6. 11. agrees with Newton. Br. Garnifhe, pl. 30. cites 21 H. 6. 35.

33. In Detinue the Garnifhee shall plead Recovery of the Writings in Demand, in Action of Detinue against the Defendant and the Plaintiff before the Bailiff's of D. in D. upon such an Action, where the Bailiffs of D. had Confinement of the Plea, and a good Plea. Quære if the Defendant shall not be charged again, because he has not denied the Detinue now? and if the Recovery be good, by Reason that the Sheriff in Justices granted this Confinance to the Bailiffs? Br. Garnifhe, pl. 46. cites 34 H. 6. 47.

34. In Detinue the Defendant prays Garnishment and bad it, and came the Garnifhe, and said that at another Time be brought such an Action by Justices before the Sheriff, where the Defendant had Garnishment of the now Plaintiff who made Default, and this Garnifhee there recover'd the Thing in Demand against the now Defendant, and pray'd thereof of Liberty, and it was in Doubt if the Defendant shall have charg'd himself to the Plaintiff now by his Folly, because he had not pleaded the
Enter pleader.

4-26

the fame Rcco\ery in Bar, Quaere

For

feems that as long as Exeand then fhall
plead De Novo, Quaere^ Fornow the Delendant had Notice that the
Judgment was given againft himleif, Nota. Br, Detinue, pi. ii.

cution ts not nuuie a

Man

j

it

fhall repair to his ne-jo Original^

34 H. 6 47.
35. In Detinue of Charters the Defendant prayd Garni/hment againfi
y. N. and had it, and the Garni/hee came and fatd that J. P. gave the
Land to the Fef^e now Plaintiff and her frfl Baron and to the Heirs of the
Baron, and the Baron died icithont IJftte, and theGarnifhce is Heir to him^
and the. Donor deh-ver'd the Evidences to the Baron in Salvation of his hiheritance, alter -jjhofe Death his Feme got the Evidences and took another
Baron now Plaint iff, who alien d in Fee and delivered the Evidences to the
Defendant^ and the Garnijbee as Co/in and Heir of the Jirji Baron, and
cites

^

how Culih, enter'd ior Alienation ro his Dilinheritance,and fo it
belonged to hihi to have the Evidences &:c. And per Luken, the Feme
but Littleton contra,
fliall have the Charters for Term of her Lite,
and that by the Alienation they belong'd to the Heir ^ Laken faid, No,
Sir, For we cannot have Cui in Vita after the Death ot the fecond Baron ; but Littleton faid, Yet we may have them during the Lite of the
fecond Baron j But by him in this Cafe becaufe the filiate was made to
her and her firfl: Baron, and to the Heirs of the Baron without Deed,
and the ancient Charters deliver'd to the Baron alone in Salvation of
Contra of the
his Inheritance, the Feme can have none of them.
Deed ot the fame Eftate, though it had been deliver'd to the Baron
alone ; For all that touches his Eftate the fhall have, and no more.
Br. Charters de terre, pi 11. cites 34 H. 6. i.
39 The Garnijbment iffued agatnji Baron and Feme upon Surmife that
loth were Parties to the Bailment, and the Baron came and prayed Judgment of the Writ of Scire Facias brought againft him and his Feme &c.
Yet he was put to anfwer, but with a Saving to them. Thel. Dig.
fhevv'd

n

Writ,

(E. ^)

Procefs

&c.

in

Garnifliment,

againft

whom*

TN

D&tinue the Defendant prayed Garnipment againji the Baron and
and had it, and the Baron returned Dead, and a new Garnifhment ilTued againft the Feme, quod nota. Br. Garnifhment, pi.
1.

X

Fefne,

15. cites
2.

44

E.

3.

33.

34.

was deliver'd upon Condition^ viz. If the Obligor
that the Deed pall be deliver'd to him, or
K.
J.

Obligation

fay 20 /.

to

Plaintiff
otherwtfe

to deliver it to the Obligee, and the Obligee brought Aftion of Detinue,
and the Defendant pray'd Garnifhment agaui/t f. K. to fay why he did
not receive the Money, and the Plaintiff to have delivery of the Deed, and
had it, and the Sheriff returned Nihil, and at the Alias he return' d that
J. K. wdsdead, by which Garnifliment iffued againft the Heir and Executors, and the Sheriff return'd that he had neither Heir or Executors, and
that the Btpop of D. adminifier'd becaufe he died Inteftate, by which
Procefs iffued againft the Bijhop who came by Attorney, who recetv'dthe 20 /.
upon Condition, that is to fay, if his Matter ought to have them to retain them, and otherwile re-deliver them to the Court, and found
Khereof Surety.
Br, Garnifhe, pi. 44. cites 4S E. 3. 30.
3.

Condition

I


Entitleer.

3. Condition of the delivery of a Deed is to deliver it to the Maker if by reasonable Garnishment levy a Fine to the Oblige 15. Page. &c. and the Oblige sued Writ of Covenant to levy the Fine, and the Sheriff return'd the Obliger summoned, this is not sufficient Garnishment; for he ought to be warn'd by the Party himself. Br. Conditions, pl. 39. cites 11 H. 4. 18.

4. In Deutine of Charters the Defendant pray'd Garnishment against J. N. and had it, and four Scire Facias's and all return'd Nihil, and the Plaintiff pray'd Delivery of the Writing; Hank. said, You cannot; For he ought to be warn'd, and it was said to him by the Court, that he sue till be be swear'd, quod nota. Br. Garnihle, pl. 21. cites 12 H. 4. 9.

5. In Deutine the Defendant pray'd Garnishment against two, and the one was dead, by which new Garnishment illused against him who was alive, without Process against the Executors of the other who was dead. Br. Garnilhe, pl. 23. cites 12 H. 4. 23.

6. In Deutine of two Writings the Defendant pray'd Garnishment against two, and had it, and the Scire Facias return'd that the one was warn'd and the other dead, and the Scire Facias was abated as it seems; For it was awarded that he should sue a new Scire Facias, and it does not appear if against the Executors only, or against the one, and the Executors of the other. But by 19 H. 6. 32. the one had Idem dies, and a new Scire Facias against the other. Br. Garnihle, pl. 24. cites 14 H. 4. 1.

7. By the Death of Garnishee, the Writ shall not abate, but Re-furnum shall issue against the Defendant, and Scire Facias against the Executors of the Garnishee. Br. Garnihle, pl. 7. cites 9 H. 6. 36.

8. In Deutine of an Obligation the Defendant said, that it was deliver'd to him by the Plaintiff and one C. upon certain Condition &c. and becau C. is dead pray'd Garnishment against his Executors and had it, and it does not appear if they were were named or not; It seems they were not. Br. Garnihle, pl. 34. cites 14 H. 6. 11.

9. In Deutine the Defendant pray'd Garnishment against two, and Scire Facias illused, and the Sheriff return'd the one warn'd and the other dead, by which illused Scire Facias against the Executors of the Deceased, and Idem dies to the other who was return'd warn'd. Per Markham, where he who was warn'd was compelled to answer, quod nota, and Quare; For it was said there, that the Contrary thereof was adjudg'd Anno 24.

10. If the Sheriff returns the Garnishee warn'd, and does not say by Tales &c. Probes et Legales bonimes, yet this is good if the Garnishee appears; Contra if it the Garnishee makes Default. Br. Garnihle, pl. 45. cites 33 H. 6. 31.

11. In Deutine the Defendant pray'd that the Writing was deliver'd by the Plaintiff and J. N. and pray'd Garnishment against him in the County of E. which was return'd Nihil, and Alias illused, and return'd as above, by which he pray'd Garnishment in the County of N. upon furnishe of Affairs there, and had it. Br. Garnihle, pl. 36. cites 6 E. 4. 11.

(f)
(F) [Garnishment.] Judgment.

If the Garnishee comes at the Day, and the Plaintiff and Defendant make Default, the Garnishee shall recover. 40 E. 3. 39.

First Garnishee, pl. 29, cites S. C.

2. If there be an Interpleader in Ravishment of Ward, he that is not Party to the Writ may plead the Release of the Plaintiff. 20 H. 6. 29.

3. If the Garnishee be returned warned, and does not appear, no Damages shall be recovered. 20 E. 4. 13.

(G) In what Actions.

If one brings Detinue upon a Bailment, and the other upon a Trover, there shall be an Interpleader. 39 H. 6. 36 b.

First Interpleader, pl. 29, cites S. C. — In this Case, and so if the Defendant is charged with several Bailments by each of the Plaintiffs, there they ought to have several Actions; Roll Rep. 130, and says, that according to this are 19 H. 6. 3. 9 H. 6. 17, 17 H. 6. 22, and 39 H. 6. 36, but the Reporter adds a Remark, that 39 H. 6. is adjudged contra to the Trover.

2. If A brings Square Impediment against B. of the Advosson of C. and B. brings such a Writ against A. there if A. suing over that the second Square Impediment is brought of the same Avoidance as the first is brought, then they shall interplead upon the Writ of elder Date, and otherwise not. Br. Interpleader, pl. 56, cites 19 H. 6. 68.

3. In Writ of Ward and Account Garnishment does not lie, but if two several Writs of Ward are brought there lies Interpleader, and in Debt Garnishment does not lie. Br. Garnishee, pl. 38, cites 14 E. 4. 2.

4. If Garnishee will bring Detinue against the Defendant, then the Plaintiff in the first Action and he shall interplead; Quod Nota. Br. Interpleader, pl. 24, cites 20 E. 4. 13.

(H) For what Causes.

[Or the Reason of Interpleader.]

First Interpleader, pl. 1. THE Cause of Interpleader is, for that the Defendant shall not be charged to two severally where no Default is in him. 39 P. 6. 36 b.

2. In
Enterpleader.

2. In Detinie of Charters against one, the Defendant cannot have Scire Facias to warn a Stranger to see if he can make Title, if he does not confes the Possession of the Charters demanded and make Privity of Bailment, Contra Babb. and Cokayne, therefore Quære; and per Marten they may open the Bag, Contra Babb. and Cokanye. Br. Enterpleder, pl. 3. cites 3 H. 6. 35.

3. But it seems there, that no Enterpleader can be unless both the Parties have several Actions pending. Ibid.

(I) Upon what Delivery.


(K) At what Time it shall be made.

1. If the Goods [the Writs] are not returned at one Time, but one declared the last Term, and the Defendant imparted, and now the other brings an Action, yet they shall interplead. 39 P. 6. 9. cites S. C. 36. b.

(L) In what Cases there shall be an Enterpleader.

1. If two brings several Definies against J. S. for the same Thing, Fitzh. Enterpleder, pl. 14. cites S. C. Prayer of Enterpleader, they shall not interplead upon the Request of the other, for the Enterpleader is given for the Security of the Defendant, that he be not twice charged, and he hath waited that Benefit. 18 E. 3. 22. b.

2. Though the Garnishee cannot vary in the Bailment from the Plea of the Defendant, as to say that the Delivery was by him alone, where Defendant had pleaded that it was by the Garnishee and the Plaintiff, yet he may have Writ of Detinie against the Defendant also, and there the Plaintiff and he shall interplead. Br. Garnishee &c. pl. 39. cites 20 E. 4. 13.

3. Where the Garnishee comes, and the Defendant makes Default, yet none of them shall have Delivery of the Writing, but shall enterplead. Br. Garnishee, pl. 53. cites 39 E. 3. 22.

4. Detinie of two Obligations, the Defendant said, that M. bad another Writ against him of the same Obligations returnable the same Day, which two Plaintiffs delivered to him the Writings upon Condition &c. and he his ready to render to whom the Court shall award, and the Plaintiffs appear'd, and were awarded to enterplead. Br. Enterpleader, pl. 8. cites 12 H. 4. 18.

5. But if the Writs had been returned at diverse Days another Process should have been awarded. Ibid.

5 R.

6. If
Enterpleader.

6. If several Præcipe quod redit are brought against one Tenant, they shall not enterplead tho' Damages are to be recovered, but when one has recovered, the Tenant is discharged against the others. Br. Enterpleader, pl. 4. cites 3 H. 6. 43.

7. If one be found Heir to the Tenant of the King in one County, and another found Heir in another County, there they shall enterplead before any of them shall have Livery. Br. Enterpleader, pl. 5. cites 9 H. 6. 17.

8. Where they do not agree in Bailment, they shall not enterplead; For here is no Privuity, and if the Defendant lays falsely it is his Folly, and if the Garnishee says falsely it is his Folly. Br. Enterpleader, pl. 15. cites 14 H. 6. 11.

9. If I have Deeds which concern the Land of my second Wife, to rebait to me or my Heirs and die, and my Heir by my first Wife brings Detinue, and the Heir by the second Wife likewife, they shall interplead; Per Fortescue, quod Curia conceivit. Br. Enterpleader, pl. 11. cites 19 H. 6. 3. 4. 19.

10. It was agreed Arguendo, that if Diem claritext Femmum iusses, and one is found Heir, and a Melius Inquirendo iusses, and another is found Heir, and both come into the Chancery and pray Livery, they there shall enterplead before either of them shall have Livery. Br. Enterpleader, pl. 6. cites 35 H. 6. 19.

11. Detinue of a Chief with Charters, the Defendant said at the Distres that it came to him as Executor, and that J. N. had brought such a Writ against him of the same Chief and Charters in the same County, Returnable at the same Day that the Distres in the other was return'd, and brought the Chief into Court, and prayed that the Night enterplead, and they were awarded to enterplead upon the eldest Writ, and not upon the Original return'd now. Br. Enterpleader, pl. 7. cites 37 H. 6. 23 & 33 H. 6. 25.

12. And Per Cur. if the Writs had been in diverse Counties, or returnable at diverse Days, they cannot enterplead, but the Writs shall be awarded returnable at one and the same Day, and then they shall enterplead. Ibid.

13. But if they vary in Declaration, as the one declares of a Chief seal'd, and the other of a Chief, and focus what is in the Chief, they shall not enterplead. Ibid.

14. But it was said, that 38 H. 6. 2. Writs were brought in two Counties, and each declared by Invention, and they were awarded to enterplead. Ibid.

15. Enterpleader shall not be granted unless Defendant alleges that both Parties demand one and the same Thing. Br. Enterpleader, pl. 22. cites 8 E. 4. 6. by all the Justices.

16. Traverfe, two Offices were, by the one it was found General Tail and a Daughter Heir, and by the other special Tail and the Daughter traversed; For the other claimed as Cowe and Heir Male; Per Conibis where two claim by one and the same Ancestor they ought to enterplead. Br. Enterpleader, pl. 16. cites 21 H. 7. 33.

17. And Per Palmes, where one is found Heir and within Age, and another is found Heir to this same and of full Age, they shall enterplead; For it is to one Ancelor, and by one Title. Ibid.

18. Contra where they claim by several Titles as here, to which Green and Conisby agreed. Ibid.
Enterpleader

(M) In what Cafes for a Collateral Respect.

1. If Two bring several Detinues, they shall not enterplead.* Against one and the same Person. Br. Enterpleader, pl. 16, cites Hill 30 E. 3. 5. — If several Writs of Right of Ward, returnable at the same Day, and the Defendant pleads &c. and prays that they may interplead, yet they shall not interplead without issuing a Scire Facias against them, to whom the Plea is not pleaded, to be in Court at a certain Day. 30 E. 3. 4. b. adjudged.

2. If two bring several Detinues, and the Defendant prays that they may interplead, they may interplead if they be present in proper Person. 17 E. 3. 70. b.

3. But not if they or any of them are not present in proper Person. 17 E. 3. 70. b.

4. But a Writ shall issue to warn them to come in proper Person at the Day. 17 E. 3. 70. b.

5. If several Persons bring several Writs of Right of Ward, returnable at the same Day, and the Defendant pleads &c. and prays that they may interplead, yet they shall not interplead without issuing a Scire Facias against them, to whom the Plea is not pleaded, to be in Court at a certain Day. 30 E. 3. 4. b. adjudged.

6. If several Writs of Detinue [are brought], and the one declares of Bailment in the County of M. and the other in the County of D. they shall not be compelled to enterplead, but the Defendant shall answer to both; For it is in several Counties, and was of a Box of Charters. Br. Enterpleader, pl. 14. cites 14 H. 6. 2.

7. If two bring several Actions of Detinue of a Box sealed with certain Charters, the one of Bailment in one Country, and the other of Bailment in another Country, yet if the Defendant prays it they shall enterplead as well as if both Actions were in one and the same Country; For the Bailment is not material, but the Detinue. Br. Enterpleader, pl. 19. cites 5 E. 4. 25.

(N) In what Cafes.

Privy upon Actions.

1. If two bring several Detinues of Charters, and the one counts * Br. Enterpleader of a Bailment to re-deliver, and the other demands them by pl. Title to the Land, they shall not interplead, because there is not any Jurisdiction of Bailment between them, and the Defendant is not chargeable to him who makes Title to the Land but for the Enterpleader, Land, but to the other for the Bailment, and if he re-delivers to pl. 7. cites his Bailor, he is not chargeable to the other, and so he is at no Entry chief. * 19 H. 6. 3. Contra. 1 H. 6. 17.

6. 3. 19. — Br. Enterpleader, pl. 5. cites S. C. — Fitch Enterpleader, pl. 5 cites S. C.

2. If
Enterpleader.

2. In a Detinue one Plaintiff demands a Bag of Charters, and another Plaintiff demands certain Charters in the Bag, as belonging to him, against an Executor, because the were in his Hands, but not upon any Bailment, where whether they shall interplead, 3 H. 6. 36.

3. If one brings Detinue against B. and counts upon a Delivery to re-deliver to him, and another brings Detinue against him also, and counts so also, and if here be not any Privicy of Bailment between them yet they shall interplead to avoid the double Charge of the Defendant, and also because the Court cannot know to whom to deliver the Deed it both recover. * 3 H. 6. 44. Curia, for perhaps the Defendant found it. *Dulstatur, 11 H. 6. 19. b.

4. [And] upon such several Detinues, if the Defendant says that he found it, and traffices the Bailment, they shall interplead, for then he is chargeable as well to the one as to the other. * 7 H. 6. 22. f. 19. H. 6. 3. Curia.

5. So if he says that they delivered it jointly, abique hoc that they delivered it as they have counted. 19 H. 6. 3. b. f. 6. 3. 4. 19. —Fizch. Enterepleder, pl. 7. cit. S. C. —Br. Traverse per &c. pl. 68. cites S. C.

6. But it is otherwise if he does not traverse the Bailment, for if there was a Bailment he is chargeable only to the Bailor, and may plead in Bar against the others. * 7 H. 6. 22. f. 19 H. 6. 2.

7. I two Detinues are severally brought against an Executor because of his Possession, they shall interplead, because he is no more chargeable to one than the other. 9 H. 6. 18.

8. So for the same Reason, if they are brought against a Man who found the Thing demanded, they shall interplead. 9 H. 6. 18.

9. In Detinue, if they count of several Bailments, the Defendant may say it came to his Hands as Executor, abique hoc that he had it of their Delivery, and then the Plaintiffs shall interplead. 19 H. 6. 3. f. 6. 3. 4.

10. If two bring severall Writs of Ward against me at the same Day, they shall interplead * 3 H. 6. 44. f. 9 H. 6. 17. b. Curia. f. 19 H. 6. 3. b.

Fizch Enterepleder, pl. 7. cit. S. C.

S.P. agreed per Cur and yet there is no Privicy by which they should interplead. Br Enterepleder, pl. 4. cit. 5 H. 6. 43. — S. P. [without any Mention of the several Writs being brought at the same Day.] Br Enterepleder, pl. 5. cit. 3 H. 6. 43. 44. * Fizch Enterepleder, pl. 7. cit. S. C.

12. In Detinue, if the Plaintiff counts of a Delivery to re-deliver, the Defendant shall not have a Scire Facias against any other but him that was privy to the Delivery. 3 H. 6. 44.

It was agreed, Arg. that the Defendant in Writ of De-

tinue shall not have a Sc. Fa. to warn a Stranger without alleging Fruity of Bailment. &c. pl. 3. cites S. C. — Br. Enterpleader, pl. 4. 5 P. cites 3 H. 6. 45.

13. If two bring several Writs of Detinue, and each counts upon a Delivery at several Places in the same County to re-deliver, if the Defendant says the Delivery was by the Plaintiff upon Condition, and does not acknowledge whether the Condition is performed, they shall interplead, because the Defendant cannot traverse the Place of the Delivery, this being in the same County. 3 P. 6. 30. b. adj.

the two Actions are of one and the same Writing till both have counted. — Fitzh. Enterpleader, pl. 4. cites S. C.

14. But it had been otherwise if Deliveries had been in several Counties, for there the Defendant might have traversed the Place. * 8 P. 6. 31. + 14 P. 6. 2.

* Br. Enterpleader, pl. 10, cites S. C. — Br. Enterpleader, pl. 14, cites S. C.

† Fitzh. Enterpleader, pl. 4. cites S. C.

15. If one brings Detinue, and counts of a Delivery by himself and one J. S. in equal Hands, upon Condition &c. if J. S. brings Detinue also against the same Defendant, and counts of a Delivery by himself alone, they shall not interplead upon this Matter. 14 P. 6. 11. b. Ditto.

16. Detinue of Charters by one who counted by Title to the Land as Heir, and J. N. brought such a Writ against the Defendant returnable the same Day, and counted upon Bailment made to the Defendant, and the Defendant brought the Charters into Court, and said that he was ready to deliver them to whom the Court should award, and prayed that the Parties interplead, and the Opinion of Babb. Fulthorp, and Martyn was, that they should interplead, but Patton contra, because the one counted upon Bailment, and this is the Folly of the Defendant, and Brown Clerk said, that 3 H. 6. they interpleaded, where the one counted as Heir, and the other upon Bailment; For it may be, that at the Time of the Bailment the Defendant did not know of the Title. Br. Enterpleader, pl. 5. cites 9 H. 6. 17.

17. And there it was agreed, that he who finds a Deed, and an Executor shall not be charged but only to him who Right has; Contra upon several Bailments; For there is Folly in the Defendant. Ibid.

18. Where a Man is to bring a Party into Court by Garnishment, he ought to make Privity of the Bailment, viz. that it was bailed by both upon Condition &c. and pray Scire Facias against the other. Br. Enterpleader, pl. 5. cites 9 H. 6. 17.

5 S (O)
(O) At what Time it shall be.

1. In several Writs of Ward by divers against one Man, if they pray that they may interplead, though all the Writs of the Plaintiffs are returnable at one Day, and if they have Day all to this Day, yet Processe shall suffice to warn them, and they shall not interplead before Garnishment. 30 Ed. 3. 5. b.

2. In Detinue, the Defendant prayed Garnishment, and had it, and Scire Factus &c. and at the Day another Man brought another Writ of Detinue returnable the same Day, and all appeared, and the Defendant prayed that they might interplead, and per Littleton and Choke they cannot; For the Defendant is out of Court to pray it by reason of the Prayer of the first Garnishment; Quere. Br. Enterpleader, pl. 23: cites 11 Ed. 4. 11.

3. If a be found Heir to B. by one Office of Land held of the King in Capite, and C. is found Heir to him likewise to the same Land by another Office, and both are within Age, there they have no Remedy but to stay till full Age, and then they shall interplead. Br. Enterpleader, pl. 28: cites 1 H. 7. 14.

(P) Upon what Writ it shall be.

1. The Enterpleader shall be upon the Original. 22 Ed. 4. 49.

2. If two bring several Detinues, the Enterpleader shall be upon the Original of the eldest Date, if the other hath not counted upon his Original.


Enterpleader, pl. 1. cites S. C. —— And in such Case there is no Mischief; For he who brings the second Writ shall have every Advantage which he might have had in his own proper Writ in which he was Plaintiff. Br. Enterpleader, pl. 26. cites 19 H. 6. 68. || Br. Enterpleader, pl. 11. cites 19 H. 6. 3. 4. 19. || Br. Enterpleader, pl. 17. cites 39 H. 6. 36. S. P. || Br. Enterpleader, pl. 8. cites S. C.

Firth, Detinue, pl. 14. cites S. C.

Firth, Detinue, pl. 14. cites S. C.

4. [But] if the Writs are of one and the same Date, he that first comes and demands an Answer, or counts, shall be Plaintiff, and the Enterpleader shall be upon his Original. 19 H. 6. 4. b.

5. Or otherwise he shall be Plaintiff whom the Court shall assign, in such Case where the Writs are of one and the same Date. 19 H. 6. 4. b.

6. Upon Enterpleader he, who has the Writ of elder Date, first counts against the other, and the other shall defend, and so they did. Br. Enterpleader, pl. 11. cites 19 H. 6. 3. 4. 19.

7. He who has Writ of younger Date shall answer to the other who has Writ of Elder Date. Br. Enterpleader, pl. 17. cites 39 H. 6. 36.

8. Three
8. Three several Writs of Detinue of charters were brought against * All the editions of Br. are
the * Defendant upon the Matter shewn, and the Evidence tender'd, (Plaintiff)
and they enterpleaded to the Writ of elder Date, and so they interpleaded but it should be (Defendant)
every one against the other severally, and the Bar of the one is his
Title against the Plaintiff, and the other, and so three issues. Br. En
terpleader, pl. 20. cites 4 E. 4 9.

(Q) Upon an Enterpleader, * who shall keep the Thing demanded.

1. In ancient Time the Thing demanded ought to remain in Court. 12 D. 4. 6.
2. But now the Use is, that the Defendant shall keep it till it be * Br. Gar
tried, and not the Court. * 12 V. 4. 39 V. 6. 38.

3. In several Rights of Ward, if the Parties are awarded to en
terplead, they may pray that the Defendant find Sureties to keep the
Infant, and to have him in Court at a Day, and it shall be granted.
30 C. 3. 5. b.
4. But the Plaintiffs shall not find Sureties not to take the Ward in
the mean Time. 30 C. 3. 5. b.
5. Pending the Writ for the Thing, the Defendant cannot de
deliver it to any Party without award of the Court. 12 D. 4. 6. b.
Curia.
6. If the Defendant prays Garnishment, and the Garnishee comes
and pleads against the Plaintiff, the Defendant cannot alter deliver
the Writing to the Plaintiff. 39 C. 3. 23.
7. Ward by the King against E. who said that she did not claim any
Thing but by Cause of Nurture, and that H. S. had brought such a Writ
against her, and that the Infant is here ready at the Bar, as he ought
upon this Plea, ready to deliver it to whom &c. and therefore Day was given to
a certain Day to enterplead &c. and at the Day they both appear'd and
prayed that the Infant might be deliver'd to them in common quæcumque &c.
et non allocatur; For it is not forma Juris. Br. Enterpleader, pl. 12.
cites 24 E. 3. 38. 65.
8. In Detinue the Defendant pray'd Garnishment against D. and had it,
and at the Day the Garnishee came, and the Defendant made Default,
and neither the Plaintiff nor the Garnishee could have Livery before
they had enterpleaded, quod nota, by which the Garnishee barr'd the
Plaintiff by his Release of Aliens. Br. Enterpleader, pl. 13. cites
39 E. 3. 22.

(R) Pleader
(R) Pleader by the Defendant after an Enterpleader.

[And to what Purposes the Defendant shall be said to be in Court or not]

1. WHEN the Defendant hath prayed Garnishment he is out of Court to plead any Plea. 12 H. 4. 6. b.

2. But he hath a Day in Court to deliver the Writing to whom the Court shall award it. 12 H. 4. 6. b.

3. The Defendant is not demandable before Judgment given, but then he is, because he is to deliver the Thing demanded. 12 H. 4. 7. b.

4. After the Garnishee comes in, and pleads against the Plaintiff, the Defendant cannot say the Conditions are broke on the Part of the Garnishee, and so the Plaintiff ought to have Judgment. 39 C. 3. 23. Curia.

5. In Detinue of an Obligation Defendant said that it was delivered to him by the Plaintiff and one M. to hold till certain Conditions were performed, and then to deliver to the Plaintiff, and prayed Scire Facias against M. to enterplead, and brought the Writing into Court which was not sealed, and said that he is ready to deliver it to whom the Court shall award &c. and by the Opinion of the Court, because it is not sealed, the Parties cannot enterplead upon it; for it is not such a Deed as the Plaintiff demands, and if the Plaintiff shall grant it he shall not recover other Deed; Quaere inde; and to see that upon such Demand of Enterpleader, the Deed ought to be brought into Court; Nota. Br. Enterpleader, pl. 1. cites 2 H. 6. 16.

6. Two Persons brought several Writs of Detinue against the Defendant of a Charter, the one conveyed as Heir to the Brother, and the other as Heir to the Sister; the Defendant said, That no such Brother, and so too Issue. Br. Enterpleader, pl. 2. cites 3 H. 6. 20.

7. In Detinue of an Obligation the Defendant prayed Garnishment and showed the Writing; The Plaintiff said that the Writing which the Defendant showed is only an Ecsrow without Seal, and not the Obligation which he demanded, and the Defendant said that it is the same Obligation which was bail'd to him. And per Marean, if the Garnishment shall be granted upon Ecsrow the Plaintiff by this accepts it to be the Deed which he demands, Quaere; for the Defendant here confess'd the Detinue of the Obligation implicative. Br. Garnihe, pl. 40. cites 2 H. 6. 16.

(S) Judgment
ENTRPLEADER.

(S) Judgment.

1. If an Entreplesder be prayed by the Defendant between the Plaintiff and T. S. upon the Count of the Plaintiff, which supposes it to be delivered to him or T. S. upon Condition, and the Plaintiff and T. S. appear at the Return, and the Defendant makes Default, yet they shall enterplead, and the Plaintiff shall not have Judgment. 39 Eliz. 3. 22 b. because the Plaintiff himself hath supposed it to be upon Condition.

2. If two bring several Dettinues for one Thing, and the Defendant prays that they enterplead, and delivers the Thing to the Court, and before the Award of the Entreplesder one discontinues his Suit, the other shall not have Judgment to recover, because they were not awarded to enterplead. 11 H. 6. 19 b.

3. But otherwise it had been if he had discontinued his Suit after the Entreplesder awarded. 11 H. 6. 19 b.

4. If a Recovery he had upon an Entreplesder, Judgment shall be Final, given to recover the Thing demanded against the Defendant, and not against the Garnishee, * 3 H. 6. 15. 7 H. 8. 47. 30 Eliz. 3. 6. b. and S. C. * 3 H. 6. 15. 7 H. 8. 47. 30 Eliz. 3. 6. b. and S. C.


5. So the Garnishee shall recover it against the Defendant. 3 H. 6. 40 b.

[S. 2] [Damages.]

6. If the Defendant prays Garnishment to know whether the Conditionions are performed, and the Garnishee comes and says nothing, yet the Plaintiff shall not recover any Damages against the Defendant, because he was not bound to deliver it till very Notice of the Performance of the Condition. 9 H. 6. 39 b.

recoyrs the Judgment of the Writings; it shall be against the Defendant and of the Damages against the Garnishee. Br. Detinue, pl. 9. cites 55 H. 6. 27.

7. If the Garnishee comes the first Day, and cannot deny the Conditions to be broke, or makes Default, the Plaintiff shall not recover any Damage against him, because he hath not delayed him, which is the Caule that Damages are given against a Garnishee. 8 H. 6. 11. Fol. 732.

— 3 H. 6. 35. — S. P. And per Fecue, where the Garnishee appears and the Plaintiff makes Default, the Garnishee shall recover against the Plaintiff his Damages, if a quod non futi respondum. Br. Damages, pl. 73. cites 21 H. 6. 55. 56. —— If he comes and says nothing the Plaintiff shall recover the Writing detainted, but without Damages. Br. Damages, pl. 50. cites 56 H. 6. 20.
Enterpleader.

8. If two bring Demurrer against another, and they interplead, he that recovers shall recover Damages against the other. 8 P. 6. 5. 9 P. 6. 18.

9. If the Garnishee pleads with the Plaintiff, and it is found against him by Verdict, the Plaintiff shall recover Damages against him. 49 C. 3. 13 b. 7 P. 6. 45. b. 8 P. 6. 5. 10 P. 6. 8. b.

10. The Same Law if he plead with the Plaintiff, and it be adjudged against him by the Court. 49 C. 3. 145. b. 5 P. 6.

11. So if it be adjudged against him upon Default. + 8 P. 6. 5. But &c. pl. 10. if the Garnishee, if it fails with him, shall not recover Damages against the Defendant. Contra, 3 P. 6. 49. b.


13. So if two bring Demurrer against another, and upon his Pray- et, they interplead, if the Inquest pass for him who interpleads upon the Original of the other, he shall recover Damages against the other. * 8 P. 6. 5.

14. The Recovery against the Garnishee is for the Delay after the Writ purchased. 8 P. 6. 11.

15. Demurrer of a Box of Charters against P. who came and said that the Box was delivered to him by the Plaintiff, and two others, and pray'd Seire Facias against them, and had it, who came and made Title to the Land and pray'd Livery, and the Plaintiff shewed Possession made to one
Enterpleader.

Such estate be had, and pray'd Livery, and it was long in Doubt Plaintiff of whose Deeds were in the Box, and to whom they belonged, and at the first Thirn opened the Box and delivered to every one the Evidences which to him belonged; quod nota; and the Plaintiff recover'd Damages against him who came by Scire Facias &c. Br. Garnishee, pl. 18. cites 7 H. 4. 7.

shall not recover his Damages in this Action of Detinue to the value of the Land, per tot. Carn. Br. Charters de terre, pl. 18. cites S. C.

16. In Detinue the Defendant said the Writing was delivered to him by the Plaintiff and one R. upon certain Conditions to be performed to deliver to the Plaintiff, and if not to deliver it to the said R. and pray'd Garnishment against R. to know if the Conditions were performed &c. and there it was agreed that the * Judgment of the Writing upon the Enterpleader between the Plaintiff and the Garnishee shall be against the Defendant, for he has the Possession thereof, and of the Damages it shall be against the Garnishee, quod nota. Br. Detinue de biens, pl. 3. cites 3 H. 6. 18.

17. And it is said elsewhere, that the Process of the Execution there from is Distraint against the Defendant to deliver the Writing, and Proceeds against the Garnishee of the Damages. Ibid.

18. If a Man brings several Writs of Detinue against three, and they enterplead, he for whom the Jury prizes shall have Damages against the other; For every one is Answer against the other. Br. Damages, pl. 68. cites 8 H. 6. 4. 5.

19. Where the Plaintiff recovers the Judgment shall be of the Charters demanded, and if they are burnt, there she shall recover all in Damages. Br. Detinue de biens, pl. 27. cites 21 H. 6. 35.

20. Note, that the Entry is that he recover the Writings against the Defendant, and that he have Delivery against the Garnishee. Br. Detinue de biens, pl. 25. cites 21 H. 6. 35.

21. The Judgment of the Writings shall be against the Defendant, and S. P. Br. of the Damages against the Garnishees if he pleads; quod nota. And there it was upon Demurrer, and the Plaintiff recovered Damages against the Garnishee. Br. Damages, pl. 11. cites 27 H. 6. 2.

for the Garnishee, he shall recover Damages against the Plaintiff, quod nota. Br. Damages, pl. 249. cites 1 E. 5. 3. 4.—S. P. Br. Damages, pl. 68 cites 8 H. 6. 4. 5.

22. And the same Year, fol. 4. the Garnishee was returned Warrant, and made Default, and therefore the Plaintiff recovered, and no damages against the Garnishee, nor against the Defendant; For there he is not delay'd by the Garnishee. Br. Damages, pl. 11. cites 27 H. 6. 2.

23. And in the same Case above it was said, that where the Judgment is upon Demurrer upon the Plea of the Garnishee the Plaintiff shall recover no Damages; For there the Delay is in Decet Curie. Br. Damages, pl. 11. cites 27 H. 6. 2.

24. In Detinue, the Defendant prayed Garnishment, and had it, and the Scire Facias returned the Garnishee did not come, by which the Plaintiff recovered the Thing demanded, and no Damages against the Defendant, nor against the Garnishee. Brooke says it seems that the Defendant appeared at the first Day. Br. Damages, pl. 191. cites 27 H. 6. 4.

(T) How
Enterpleader.

(T) [How pl. 2. And] How much Damage. [pl. 1.]

1. If the Plaintiff counts but to the Damage of 20 l. yet more Damage may be given to him against the Garniture, for he does not declare this against the Garniture, 3 H. 6. 5.

Fnish Ent-
terpleader,
pl. 17. cites S. C.

2. In several Writs of Ward brought by Two, if the Defendant prays that they enterplead, and after the Plaintiff agree, and pray that it be delivered to them in common, yet the Court shall not sub-
ter it. 24 E. 3. 24. b.

(U) When the Recovery is had, what Remedy there shall be against him that has the Thing.

1. A Scire Facias shall be awarded against the Defendant who has the Chiroty of the Thing demand. 39 P. 6. 38.

Fnish. Gar-

— Br. Charters de terre, pl. 5. S. P. cites 9 H. 6. 36. — Br Garniture &c. pl. 7. cites S. C. 

— Ibid. pl. 15. S. P. cites 40 E. 5. 59. but it should be 40 E. 5. 59. as in Roll.

3. In Detinue of Charters the Defendant alleged Livery by the Plain-
tiff and two others, and prayed Garnishment against them, and had it, and at the Day they made Title to the Charters, and the Plaintiff made over Title, by which the Court had Box, and delivered to every Men thofe which to him belonged. Br. Enterpleader, pl. 25. cites 7 H. 4. 3.

4. Where the Plaintiff recovers, the judgment shall be of the Chataels demanded, and Diftres shall sife against the Defendant to deliver the Chataels. Br. Detinue de biens, pl. 25. cites 21 H. 6. 35.

5. A Man shall not have Scire Facias in Detinue of Charters to win a Stranger, unless he acknowledges the Possession of the Charters, and makes Privity of Bailment; per Marten; And by him the Court may opin the Bag to see what belongs to him, and what to the other, in the Ab- 
ence of the one Party, which Cokain and Babb. expressly denied, and said that they cannot judge to whom they belong by seeing them, and that Scire Facias lies against a Stranger; Quere inde. Br. Charters, pl. 2. cites 3 H. 6. 35.

6. The granting of Scire Facias upon Garnishment in Detinue against the Heir of J. N. and against the Ordinary, upon a Surmise that he is dead without Executors, is not Error; Per Brian. Br. Error, pl. 195. cites 14 E. 4. 1.

For more of Enterpleader in General, See other Proper Titles.
Entry.

(A) Conceivable.

In what Cases. [And How.]

1. If the Converse of a Statute sue an Extent, by which the Lands of the Convou are let into the hands of the King, and after a Liberate is sued, the Converse may, after entering into the Land before the Liberate executed, for this Liberate is a sufficient Warrant for his Entry, Dubitatim, p. 38 Eliz. B. R. between Butler and Wallis. Inratitus, 37 Cl. Rot. 206. P. 40, 41 Eliz. B. R. (*) between Sir Thomas Gerrard and Candiffe, per Curiam, where the Entry was not good, because the Liberate was void, being made to the Sheriff to deliver the Land to himself.

2. If the King feizes certain Lands, upon which an Outer le Mayn is sued to the Liberator to deliver this Land to the Party again, he may after enter into the Land before any Execution of the Writ. P. 38 Eliz. B. R. agreed, because there is a Judgment given before that the Hands of the King shall be removed.

3. Upon an Eject, if the Sheriff takes an Inquisition, though the Sheriff does not deliver the Land to the Party Plaintiff, yet the Plaintiff may enter presently after the Inquisition taken, before the Return thereof to the Court, without any Liberate to him directed. Dill. 8 Car. B. R. between Lister and Brown, per Curiam. Inratitus, 8 Car. Rot. 68, where an Action on the Case was brought against the Sheriff, for returning that he had delivered the Land to the Plaintiff upon the Inquisition taken, where he returned to deliver it, and to the Return tale, though it was objected he might have entered; but the Court laid, this was only in Mitigation of Damages, and his Return tale, and therefore an Action upon the Case lay against him.

4. In Allise, the Lord distrained for Rent pending Affibe of the same Rent; The Allise shall abate; Quod Nota. For Ditref is in Law an Entry into the Rent, as it seems. Br. Allise, pl. 302. citas 29 Aff. 52.

5. In Allise, Tenant in Tail is bound in a Recognition, and the Land is delivered in Execution by Eject, as the Moteity of the Land which the Recognisor had, and the Tenant in Tail died; The Issue in Tail may well enter; Quod Nota, by Judgment. Br. Entre Cong. pl. 77. citas 38 Aff. 5.

6. In Allise, Tenant in Tail after Possibility of Issue extinct aliens with Warranty, he in Remainder, or in Reversion, may enter notwithstanding the Favour of the Warranty; Quod Nota. Br. Entre Cong. pl. 84. citas 43 Aff. 24.

7. If the Tenant in special Tail has Issue and aliens, the Issue cannot enter; For he cannot be Heir in the Life of his Vacher. Br. Tailie & Dones, pl. 31. citas 45 E. 3. 25.

5 U

8. Where
8. Where a Feoffment is made upon Condition, which Feoffee dies seized, so that there are divers Defecents, there if the Condition be broken before the Defecent, or after, the Feoffor or his Heir may enter notwithstanding the Defecent; for the Land is bound by the Conditions, as it is where a Man recovers Land, and does not enter till after Defecent. Br. Ent. Cong. pl. 130. cites Littleton, tit. 94.

9. Where a Man seized that his Executors should fall, and died, and the Heir entered and was dispossessed, the Executors may fall, and therefore the Vendee may enter, for he has Title of Entry only. Br. Entre Cong. pl. 138.

10. If a Main enters with Force upon his Diffeifor, by which he is restored, yet the Diffeeree who was the first Diffeifor may enter, or have Affife. Br. Entre Cong. pl. 110. cites 22 H. 6. 18.

11. Tenant dies without Heir by which the Lord entered by Escheat, there he who by Right has Paramount may enter; for a Defeifent takes away an Entry, but Escheat does not take away an Entry. Br. Entre Cong. pl. 112. cites 37 H. 6. 1.

12. If Diffeifor, Intruder or Abator enfefts his Father and dies seized, and the Land descends to the Offender, the Party may enter. Br. Entre Cong. pl. 119. cites 5 H. 7. 6.

13. So if such Offender enfefts a Stranger who dies seized, and his Heir enters and enfefts the Offender, the first Diffeeree may enter; but against Strangers the Defecent shall hold Place, per Keble, which was not denied. Br. Entre Cong. pl. 119 cites 5 H. 7. 6.

14. If J. enfefts N. and after it is enlarged that all Estates made by J. to N. shall be void; there J. may enter upon N. Br. Entre Cong. pl. 89. cites 5 H. 7. 31.

15. A Man may enter after the Year or within the Year by Fine Execution. But see Fitz. Entre Congeable in Fitzh. 51. that alter Defeifent after such Fine he cannot enter, but shall have Seire Facias against the Tenant. Br. Entre Congeable, pl. 108. cites 15 H. 7. 5. and says, this appears by the Argument there.

16. Leffe for Years Remainder for Life, Remainder in Tail to Leffe for Years. Leffe for Years made a Feoffment in Fee with Warrantry and died. Remainder-man for Life died. Resolved that the Entry of the Illeue in Tail is lawful, notwithstanding that the Diffeifus was done to another Estate than that which was to be bound by the Warrantry. Le. 39. pl. 105. Pach. 26 Eliz. C. B. King v. Cotton.

17. What may be reduced by a Real Action may be reduced by an Entry, as in one Acre in the Name of more, and this was observed by the Court for an inartible Rule. Noy. 108. Trin. 2 Jac. C. B. Nicholl's Cafe.

18. Where one has Judgment to recover, (if his Entry be lawful) he may enter without Seire Facias, and without suing Execution; Per Cur. D. 379. b. pl. 26. Marg. cites Mich. 3 Jac. B. R.

19. If Tenant for Life levy a Fine, Remainder in Tail may enter now or have five Years after the Death of Tenant for Life, for they are two several Titles, one by Forfeiture, and the other by Determination of the Estate, and for this to have two several five Years, for if he compels the Remainder-man to enter presently, he shall be bound by all the Charges of Tenant for Life. Arg. Litt. Rep. 217. Mich. 4 Car. C. B. Thomas v. Kenns

30. After Recovery in Eiffeoent one may enter without the Sheriff, for the Affilance is only to preferve the Peace. Per Cur. 2 Sid. 156. Pach 1659. in a Norta.

(A. z) By
(A. 2) By whom it may be.

1. If the Tenant in Possession of a tract of land, and the Demandant recovers by Judgment, and the Tenant brings a Writ of Error as he may well and recover, the Attorney may enter. Br. Entry, Cong. pl. 51. cites 12 Aff. 41.

2. If my Tenant for Life be disposed of, and will not enter, yet I cannot enter. Per Finch. for clear Law. Br. Entry Cong. pl. 120. cites 40 E. 3. 5.

3. A Man of whom it appears Memoriam made a Deed of Feoffment and Letter of Attorney to deliver Seisin of the Land in Chivalry and died, the Friend of the Heir within Age entered; there the Lord may enter for the Ward, for the Feoffment is void; Contrary if he himself had made the Livery, as it seems, and it seems here that no one can enter but the Priests, for the Lord pleaded entry of the Friend of the Heir, and not by himself immediately. Br. Entry Cong. pl. 106. cites 7 H. 4. 12.

4. If Leafee for Life of a Devisor makes Feoffment, and the Devisor releases to the Feoffee, the Entry of the Devisor for the Forfeiture is not congeable; Per Littleton. Cited D. 339. a. pl. 44. in Case of Blackaller v. Martine.

5. Tenant for Life, the Remainder for Life, the Remainder in Tail, the Remainder to the Remainder for Life, Tenant for Life, and he in Remainder for Life joined in a Feoffment by Deed; Per Curiam he in Remainder in Tail may enter for Forfeiture of both their Estates; for he in Remainder joining, is particeps criminis. If the Tenant for Life himself had made a Feoffment, he in Remainder for Life might not enter, because he had not Estate of Inheritance. D. 239. a. pl. 44. Mich. 16 & 17 Eliz. Blackaller v. Martine.

6. Leafe to three for 80 Years, and in the End of the said Leafe was a Clause, that if they died within the said Term, that then the Leaf for might enter. A. Grantee of the Reversion makes a new Leafe thereof to B. for 21 Years to begin after the Expiration, Determination, or Surrender of the former Leafe. The three Leaffees died within the Term. B. cannot enter before A. has entered, for it is in the Election of A. it he will take Advantage of the Condition and defeat the Leafe, but that ought to be by Entry, and none can make such Entry but Leflor himself, or by his express Directions. 3 Le. 269. pl. 363. Patch. 33 Eliz. C. B. Anon.


1. In Afflit, it was held and adjudged, that where one abated up: on another and the Abator or Devisor made a Feoffment or Lease for Life, and fo over, fo that one is in by defeasible Title and hath Cause of Warranty by Reversion or such like, that in this Case be upon whom the Abatement or Devisor was made cannot enter upon him, who has Warranty against other Persons, notwithstanding that there be not any Defent to take away the Entry, but only the Loss of the Warranty.
Entry.


2. He who distrains for Rent, and has Clause of Re-entry in his Lease for Non-Payment cannot re-enter; quod non, by reason that he has distrained. Br. Entre Cong. pl. 53. cites 14 All. 11.

3. In Affrhe, the Tenant pleaded in Bar that he was bound in a Statute Merchant in 201. to the Plaintiff who sued Execution, and had this Land in Execution, and after granted to the Defendant by Indenture, that if he paid the 201 at a certain Day he may enter, and that he paid and entered, and a good Bar. Br. Affrhe, pl. 227. cites 20 All. 7.

4. If the Difflferee release all Actions Personal, yet he may enter; quod nota. Br. Entre Cong. pl. 54. cites 17 All. 25.

S. P. Br. Entre Cong. pl. 102. cites 19 H. 6. 4. For the Right, nor the Entry, is not released by these Words, All Actions.

5. In Affrhe an Infant may enter notwithstanding Collateral Warranty be defended upon him, where his Entry was lawful before; Per Shard, Stanton and Birton; and hence it seems, that the contrary is Law, if his Entry was not lawful before. Br. Entre Cong. pl. 65. cites 28 All. 23.

6. If full Age, at his Pleasure, to defeat the Warranty. — But it seems that if a Difflferee had no more between the full Age and the Entry he cannot enter. Br. Entre Cong. pl. 102. cites 18 E. 4. 13; Contrary upon a Recovery or an Estate Conditional. Br. Tid. 11.

5. In Affrhe, Tenant for Life is disfisfled, he in Reversion may enter; Per Penney, which was denied by Finchenden; Quod non, bne bene inde. Br. Entre Cong. pl. 11. cites 45 E. 3. 21.

7. In Writ of Entry in the Per & Cuti, if the Tenant conveys him in the Per, he may enter into the Warranty and plead to the Writ by Puffifying the Entry, quod non Curia conscienc. Br. Enter en le Per; pl. 21. cites 22 H. 6. 13.

(A. 4) Revived.

1. Difflferee is disfisfled, and second Difflferee levies a Fine, and the Year and Day pays without Claim of first Difflferee, but second Difflferee makes Claim within the Time, now the first Difflferee is bound as to the Entry upon the last Tenant in Possession; but if second Difflferee enters, as he may by reason of his Claim, now the first Difflferee shall enter upon him; Arg. Mo. 346. cites 6 E. 2. Fit. cit. Continual Claim.

2. Tenant makes Execution pending the Writ, and the Demandant recovers, the Feoffee is bound as to the Demand; but if the first Tenant reduce the Possession by recoveriing the Recovery for Error, the Feoffee upon the same Tenant shall re-enter; Arg. Mo. 347. cites 21 E. 3. and 12. All. pla. Ultimo.

3. In Affrhe it was found by Verdict, that Tenant in Tail aliened in Fee; The Allower died seized, and three Heirs after him, and the Issue of the third Heir had the Deed of Tail in his Hand, and being in his Bed dying sent for the Duke in Tail, and said to him, that he had Right to have the Tenements comprised in the Deed by Force of the Tail, and delivered him the Deed, and surrendered the Land to him by
Entry.

by Part 1, and after died in the House of the same Testaments, and the Issue in Tail entered by this Render by the Tail, and the Heir of him who surrendered ought him, and he him re-outed, and the Heir of him who surrendered brought Affife, and the Surrender was awarded good, and the Entry of the Issue in Tail good, and the Plaintiff barred of the Affise. Br. Entre Cong. pl. 70. cites 34 Aff. 2.

4. If Land be given to A. and to B. and C. his Feme, and to the Heirs of the Body of the Baron and Feme, and after the Donor refrains to A. and to B. and C. and their Heirs, and the Baron and Feme have Issue, and the Baron dies, and A. alienates the Money in Fee, * C. may enter by reason of the Tail for the Alienation to her Dilinheritance; But if the Issue dies after without Issue, then the Alleen of A. may re-enter, for the Alienation of A. was good before to sever the Jointure for Term of Life, and to give his Part of the Fee-simple, and therefore when the Tail is extinct the Fee-simple shall take Place. Br. Entre Cong. pl. 136. cites 45 Aff. 7.

5. If an Infant be a Diffeise, and another Man disfisfe him and dies seised, and his Heir is in by Descend, the Entry of the first Disfisee is taken away; But if the Infant enters or recovers, the first Disfisee may enter; and so fee that the Entry of one shall give Advantage to a Stranger. Br. Entre Cong. pl. 38. cites 4 H. 6. 7. 3.

6. A Disfisee made a Gift in Tail, Remainder over in Fee, if the Donee dies and his Heir is in by Descend, the Entry of the Disfisee is taken away; But if the Issue dies without Issue, and he in Remainder enters, the Entry of the Disfisee is revived, for he is in as Purchaser. Br. Entre Cong. pl. 92. cites 9 H. 7. 24.

7. But if a Descend be had from the Disfisee to his Heir, by which the Disfisee takes away, and after the Issue dies without Heir, so that the Lord enters by Escheat, yet the Entry of the Disfisee is not revived, for he affirmed the first Estate. Br. Entre Cong. pl. 92. cites 9 H. 7. 24.

8. But if the Disfisee himself dies without Heir, and the Lord enters by Escheat, the Disfisee may enter, for there was no Descend. Br. Entre Cong. pl. 92. cites 9 H. 7. 24.

9. And if a Feme be a Disfisee's, and dies seised, and her Baron is Tenant by Curtesy, the Disfisee may enter upon him. Br. Entre Cong. pl. 92. cites 9 H. 7. 24.

10. But if the Tenant by the Curtesy dies, and the Heir of the Feme enters, the Entry of the Disfisee is not lawful upon him; which was agreed by all the Court, quod mirum! For per Littleton, in this Case, the Descent is only of a Reversion, which does not take away an Entry. Br. Entre Cong. pl. 92. cites 9 H. 7. 24.

11. If a Disfisee be, and he aliens, and Alleen dies seised, and his Heir enters, the Entry of the Disfisee is rolled; But if the Disfisee be Heir to the Alleen, then he may enter becaue he was Party to the Wrong; Per Moyle for Law, which was not denied. Br. Entre Cong. pl. 3. cites 33 H. 6. 5.


5 X. (A. 5) Scire
(A. 5) Scire Facias. In what Causes Entry is not lawful without a Scire Facias.

1. Tis agreed in Trespasses that where a Man recovers Land and makes a Possession, and after the Judgment is reversed by Error, the Party cannot enter before he has had a Scire Facias against the Possessor, for he was not a Party to the Reversal. Br. Ent're Cong. pl. 132. cites 4 H. 7. 10. 11.

2. But when Attainder of Treason of such like is reversed by Parliament, the Party may enter without a Scire Facias against the Patientes, and otherwise upon the King. Br. Ent're Cong. pl. 132. cites 4 H. 7. 10. 11.

(B) Where an Entry into Part shall be an Entry for the Whole.

4 Le. 14. 1. If a Dileisseur leases several Parcels of Land to several Men for Years, and after the Dileisseur enters upon one in the Name of all, this is a good Entry for the Whole, because there is but one Tenant to the Premise, who is the Dileisseur, who is only Tenant of the Freehold. P. 6. N. 2. between Danport and Honour.

3. [But] If a Man be dillieisor of two several Acres by two several Persons, and enters into one Acre in the Name of both, this is not any Entry into the other Acre. P. 8. N. between Champernown and Hall, per Curiam.

4. Two purchased to them and to the Heirs of one, and Casey que Vis alienat the Whole; the other may enter into the Whole, the one Money for Dileisison to him, and the other for Alienation to his Disinheritance. Br. Ent're Cong. pl. 52. cites 13 Aff. 7.

4. In Allife, if my Father dies seized of one Acre of Land in D. in his own Right, and of another Acre of Land there jointly seized with his Wife, who
Entry.

who survives him, and I enter into the Acre of which my Father was sole
seized in the Name of all the Lands and Tenements whereof my Father
died seized in D. this does not give any Entry but in this Acre, and not
in the other, because I have no Right to enter into the other living
my Mother; quod nota. Br. Entre Cong. pl. 80 cites 39 Aff. 16.

5. If I have Title to two Acres of Land in one Vill, and my Title is
taken away in the one Acre, but not in the other; if I enter into that
where my Entry is sold, claiming the other Acre also, and in the Name
of both Acres, this is not any Possession in me but only of that Acre
where I have entered, but if my Entry had been congeable in the same Acre
into which I entered claiming the other Acre at the Time of my Entry,
this had been a good Entry and a good Possession of both Acres to have

6. If a Man be seised of two Acres in several Counties, and the Dif-
seifee enters into one Acre in the Name of both Acres, yet this Entry shall
not extend to the Acre lying in another County, in which Acre Entry
was not made. Perk. S. 229.

7. It is said that if a Man be seised of two Acres in one County, and If
he entered into one of the Acres, claiming the said Acre only, and maketh
seizer of me a Deed of Feoffment of both Acres into a Stranger, and makes the Livery
of Seizin according to the Deed in the Acre in which he entered, that both
Acres should pass unto the Feoffee, because that this Claim is nothing
to the Purpose, because he had Right of Entry before &c. and both Acres
are in one County, so as his Entry into one Acre shall be Entry
into both Acres, notwithstanding the Claim &c. against which it may
be said that the Acre into which the Feoffor did not enter shall not pass
by the Feoffment; for when a Man is out of Possession of a thing fe-
verable he is at Liberty to continue his Possession in it, in which Part
he will, and shall not be compelled for to re-continue his Possession unto

Co. Litt. 232. b.

8. If Lord and Villein be, and the Villein purchase two Acres of Lands
in Fee lying in one County, and Possession of them is executed to him ac-
cordingly, and the Lord of the Villein enter into one Acre, not claiming
the other Acre, and afterwards makes a Deed of Feoffment of both
Acres unto a Stranger, and makes Livery of Seizin in the Acre in which
he hath entered according to the Deed, yet the Acre into which he did
not enter shall not pass by the Feoffment &c. Perk. S. 234.

9. An Entry of a Man to re-continue his Inheritance or Freehold
must enure his Action for the Recovery of the same; As if three Men
disseifie me severally of three several Acres of Land, being all in one
County, if I enter into one Acre in the Name of all the Rest, this is only
good for that Acre which I entered into; for every Diffeifie hath
a several Freehold, and therefore I must bring several Actions. &c. Co.

10. So if one disseifie me of three Acres of Lands, and after leaves
these three several Acres to three several Men for their Lives, there
the Entry of the Diffeifie upon one of the Leissee is not good for the
Rest; but if the Diffeifie had letten these three Acres to three several
Men for Years, an Entry into one in the Name of all the three Acres
would rezeit the Whole. Co. Litt. 232. b.

11. If A. disseifie B. of Lands in three Towns, and hevies a Fine with
Proclamations of the Lands in one Town to C. in Fee, and the Diffeifie with-
in five Years enters into the Lands in the other two Towns only, (being in
the Possession of the Diffeifie) in the Name of all the Lands in the three
Towns,

S. C. this
Town, by this the Estate of the Consecree in the third Town was not devoted, because he was in by Title. Kelw. 213. a. pl. 22. Mich. 14 & 15 Eliz. Brook v. Meafen.

12. A Copyholdor surrendered to the Use of his Will, and thereby devised the Land to his Wife for Life, the Remainder over to his Son in Tail, and died, the Wife entered and died, a Stranger did intrude upon the Lands, and thereof made three several Eftaments to three several Persons, he in the Remainder entered upon one of the said three Freefees in the Name of all the Lands so devised, and made a Leafe of the whole Land; And by Clench and Wray it was a good Entry for the Whole, and by confequence a good Leafe of the Whole; Gandy contrary; Note, all the Lands were in one County. Le. 36. pl. 46. Trin. 28 Eliz. B. R. Troubëlfielv v. Troubelfield.

13. The Case was this, Three several Persons did occupy three several Houses in B. to which J. S. had Right, and J. S. went to one of the Houses and entered, and afterwards went away, leaving him who occupied the said House upon the Land; and then he entered into another of the Houses, and then went from that, leaving him who occupied the same before upon the Land; and then he entered into the third House, and there sealed a Lease for Years unto another Man of that House, and naming the two other Houses; and the Leafee brought an Ejeffione Forma for the two Houses in which the Leafe was not delivered, and the Opinion of the Court was against him, that he was barred in the Action; for the Entry or Continuance of him, who occupied the same before, did defeat the Entry of the Plaintiff or Leifor; and the Plaintiff was forced to be Nonfuted. Godb. 72. pl. 87. Mich. 28 & 29 Eliz. B. R. The Earl of Kent's Cafe.

14. When a Freethold is out of a Person, if the Difeifee enters generally into one Parcel, this shall not re-continue both, for it may be that the Difeefor or the Freefeee had a Warranty, and therefore the general Entry into one Parcel shall not re-continue both. Co. de Fin. Leét. 15.

15. If one difeife me of one Acre at one Time, and after difiefe me of another Acre in the fame County at another Time, in this Cafe my Entry into one of them in the Name of both is good, for that one Affife might be brought against him tor both Difeifins. Co. Litt. 252. b.

16 But if I eafeffe one of one Acre of Ground upon Condition, and at another Time I eafeffe the fame Man of another Acre in the fame County upon Condition also, and both the Conditions are broken, an Entry into one Acre in the Name of both are not fufficient, for that I have no Right to the Land, nor Action to recover the same, but a bare Title, and therefore several Entries must be made into the fame, in repect of the several Conditions. But an Entry into one part of the Land in the Name of all the Land Subject to one Condition is good, although the Parcels be severable and in several Towns. Co. Litt. 253. b.

17. Where the Possession is in no Man, but the Freethold in Law is in the Heir that enters, there the general Entry into one Part reduces all into his actual Possession. And therefore if the Lord enters into a Parcel generally for a Mortmain, or the Feefor for a Condition broken, or the Difeifee into Parcel generally, the Entry shall not vet nor devest in their like Cales but for the Parcel. Co. Litt. 15. b.

18. But when a Man dies seized of several Parcels in Possession, and the Freethold in Law is by Law cast upon the Heir, and the Possession in no Man,
there the Entry into Parcel generally seems to vest the actual Possession in him in the Whole. But if this Entry in that Case be special, viz. that he enters only into that Parcel and no more, there it reduces that Parcel only into actual Possession. Co. Litt. 15. b.

19. If a Man hath Cause to enter into any Lands or Tenements in divers Towns in one and the same County, if he enters into one Parcel of the Lands or Tenements which are in one Town, in the Name of all the Lands or Tenement into the which he hath Right to enter, within all the Towns of the same County, by such Entry he shall have as good a Possession and Seisin of all the Lands and Tenements whereof he hath Title of Entry, as if he had entred indeed into every Parcel. Litt. S. 417.

20. If three Men disfesse me severally of three several Acres of Land, being all in one County, and I enter in one Acre in the Name of all the three Acres, this is good for no more but for that Acre which I entred into, because every Diffeifer is a several Tenant of the Freehold, and as I must have several Actions against them for the Recovery of the Land, so my Entry must be several. Co Litt. 252. b.

21. So it is if one Man disfesse me of three Acres of Ground and lets. If a Man be the same severally to three Persons for their Lives &c. There the Entry upon one Lefsee in the Name of the Whole, is good for no more than that Acre that he has in his Possession. Co. Litt. 252. b.

severally the said three Acres to three Persons for Years, there the Entry upon one of the Lefsees in the Name of all the three Acres shall re-continue, and revest all the three Acres in the Diffeisser; For that the Diffeisser might have had one Affise against the Diffeisseur, because he remained Tenant of the Freehold for all the three Acres, and therefore one Entry shall serve for the Whole. Co. Litt. 252. b.

22. If one disfesse me of one Acre at one Time, and after disfesse me of another Acre in the same County at another Time, in this Case my Entry into one of them in the Name of both is good; for that one Affise might be brought against him for both Diffeeins. Co. Litt. 252. b.

23. If I entre on one of one Acre of Ground upon Condition, and at ano-
other Time I ente the same Man of another Acre in the same County upon Condition also, and both the Conditions are broken, an Entry into one Acre in the Name of both is not sufficient; For that I have no Right to the Land, nor Action to recover the fame, but a bare Title, and therefore several Entries must be made into the same in respect of the several Conditions. Co. Litt. 252. b.

Parcels are several; and in several Towns, and to Note a Diveristy between several Rights of Ent-
try, and several Titles of Entry by Force of a Condition. Co. Litt. 252. b.

24. If Lands lie in several Countries there must be several Actions, and Consequenently several Entries. Co. Litt. 252. b.

25. The Entry of an Attorney or Lefsee into one Acre in Possession of A. in the Name of other Lands, shall vest all in the same County which are in Possession of other Lefsees for Years, if the Freehold be in one Person. Palm. 402. Pach. 1 Car. B. R. Argol v. Cheyney.

26. It was held, that where a Man would recover the mense Prof-
fits in an Action of Trespass, he must prove Entry into every Parcel, and not into one Part in the Name of all. Clayt. 35. pl. 6t. Aug. 11 Car. Gledel's Cafe.

27. If there is a Manor-Houfe, and Demesne Land belongs to it; and one Lord enters into the Land, and the other Lord into the Houfe, the Possession of the Houfe shall not be the Possession of the Demesne, nec e converso. 2 Sid. 75. Pach. 1658. Crouch v. Wills.
(C) Entry to the Use of another.

In what Cases the Entry of one to the Use of another shall settle the Possession in him without Agreement, and in what not.

Br. Continu- 1. If the Baron enters to the Use of his Feme, where the Entry of al Claim, pl. 6. cites the Feme is lawful, this settles the Possession in the Feme S. C. but S. P. does not appear there. — Br. Entre Cong. pl. 41. cites S. C. but S. P. does not appear there.

Br. Continu- 2. So if a Man enters to the Use of an Infant into Lands where al Claim, pl. 6. cites S. C. his Entry is lawful, this settles the Possession in him before Agree- but not S. P. ment by the Infant. 14 H. 6. 25. b.


Co. Litt. 3. So if the Entry be to the Use of one of full Age, where the Entry 245. b ad is lawful, this vests the Possession in him before Agreement. finem. — Ibid. 258. a.

— Mo. 410. — If one dispossesses me, and a Stranger enters upon the Diffidtor for me, this Entry takes away the Diffidtor; Per Roll Ch. J. Sty. 370. Pech. 1655.

For the En- 4. If a Man enters to the use of one of the Plaintiffs, where the try of one Entry of the for two shall not be the other, where Entry of the other is not lawful. Br. Entre Cong. pl. 69. cites 51 Aff 33. and 1 H. 6. and S.H. 6. 16. ac- cordingly.

Br Continu- 5. So if a Man enters to the Use of an Infant, where his Entry al Claim, pl. 6. cit- is not lawful, this vests no Possession in the Infant. 14 H. e S. C. & 6. 25. b. S. P. Br. Entry, pl. 41. cites S. C.

So where one Copar- 6. If a Man dispossesses me, and I make continual Claim, and after where one Copar- enter, ce enters, claiming for her and her Sitter who is an Infant, she of full Age is a Diffidtor's only, and the other who is an Infant not. Br. Entre Cong. pl. 60. cites 26 Aff. 59.
Entry.

7. If a Man enters upon two Jointenants, where his Entry is lawful, by which the Jointenancy is defeated, if after one enters to the Use of both, yet nothing vests in the other before Agreement. 


and Feme, and the Diffelee re-entered, and the Baron re-entered claiming to him and his Feme, this vests nothing in the Feme, because the Jointenancy was defeated by the Regrets of the Diffelee, and to be that enters by Tort, as the Baron here does, cannot by his Claim vest anything in the Feme, but in Infant, nor in a Stranger to the Entry. 

3. to the same Purpofe. 4. The Guardian cites Coftain &c., Br. S. P. unless they enter actually. 5. Br. Continental Claim. pl. 6. cites S. C. But Brooke lays, it seems if the Stranger agrees after, this will make him a Diffelee. — Br. 6. Enr Cong. pl. 4. cites S. C which was in Case of a Feoffment made by a Diffelee to a Baron and Feme, and the Diffelee re-entered, a Claim afterwards by the Baron vested nothing in the Feme.

8. If two Coparceners have a Right of Action to certain Lands, but their Entry is not lawful, and the one enters to the Use of both, yet nothing vests in the other till Agreement. 27 Aff. 68. and judged.

9. If two Jointenants are diffeleed, and the Diffelee aliens, and one Jointenant enters upon the Allene to the Use of both, this leaves the Freehold in both. 27 Aff. 68.

10. If a Man commands J. S. to enter into certain Lands in his Name, if he has Right, otherwise not, if he enters accordingly, yet if the Command had no Right, no Estate vests in him by this Entry, because his Command was conditional. 34 E. 3. 12. and judged.

11. In Aifee, it was found that the Son infeffed his Father of two Parts of the House, and 20 Acres of Land for Term of Life, and that he infeffed his Father and his Mother for Term of their Lives, and after the Son went beyond Sea the Father aliened the whole, and his Sister entered in Name of her Brother if he be alive, and if he be dead in her own Name as Heir to him, and she was ouited, and the Son came back and brought Aifee of this Outler, and recovered the whole by Award notwithstanding the was not deputed by the Son to enter. Br. Sethin, pl. 21. cites 11 Aff. 2.

12. In Aifee, it was found that Tenant in Tail had Issue two Daughters and aliened in Fee, and died, and one Daughter entered, and ouited the Feoffee, claiming to the Use of her and her Sister; The Feoffee re-entered, and the who re-entered brought Aifee and recovered, and after the other Sister entered upon her claiming as Heir, and the other ouited her, and he brought Aifee and recovered, by reason that her Sister entered first to the Use of both, and recovered upon the fame Title, and therefore her Sister may enter with her; Brooke lays, Quod mirum! Br. 12 Aff. 21. cites 21 Aff. 19.

13. Guardian entered claiming the Franktenement to the Heir within Age, where the Entry was not compeable, and yet because the Infant was not named in the Aifee the Writ was abated, and therefore it seems that the Franktenement is in him till he refuses; Quare? For where one Coparcener entered claiming for him and his Coparcener, he alone brought the Aifee of an Outler after and recovered, notwithstanding that it was pleaded to the Writ that the Plaintiff entered claiming to him and his Companion. But Fifth said, that he would have a Writ of Error, and, as it seems, it is clearly Error where such Entry and Claim is made, and the Entry lawful. Contrary it seems if the Entry be not lawful. Nevertheless, it seems that this Case is not Error, for the Case was, that Baron and Feme seised in Tail, the Baron made a Feoffment, and had Issue two Daughters, who had Issue two Sons, the
Baron died, the feme entered upon the Feoffee of his Assent, claiming at his will, and died, and the two Daughters died, and one of the Sons entered upon the Feoffee, claiming to the Use of him and his Companion, the Feoffee brought Affidavit against him who entered only, and recovered by Award, for the Feme by her Entry was no Difflfurder, and then he did not die feized of an Estate of Inheritance, so that the Heir may be remitted; quod nota. Br. Entre Cong. pl. 37. cites 24 E. 3. 42.

14. And where the Entry is not lawful, there the Claim to him and his Companion does not vest Seisin in his Companion, and a contra where the Entry is. Br. Entre Cong. pl. 37. cites 24 E. 3. 42.

15. In Quare Impedit, the Defendant made Title, because A B was feized of the Land in Fee with the Adwcrson appendant and interest up-on Condition one R. to re-infeoff A B. and his Feme and G. his Son, and after. A. B. died, and G. the Son died within Age after Request made to re-infeoff him, and alter A. B. died also within Age, and W. his Son being within Age, one H. as his Properly enter'd, by which the Defendant as Lord jefted the Ward, and the Church voided, and he presented; and admitted for good Title to have the Ward where the Heir enters into the Land within Age by Condition defended; quod nota. Br. Gard. pl. 58. cites E. 3. 37.

16. If a Feme Convey has Title of Entry into Land, or if Infant has such Title of Entry, and the Baron or another enters to the Use of the Feme or Infant, this veils Possession in the Feme or Infant; Contra if the Entry be not lawful, and it Difflurfs interest, and two, and the Difflurfs re-enters, and after one of the Feoffees re-enters, this is no Remitter to his Companion; Contra if his Entry had been lawful. Br. Remitter, pl. 42. cites 14 H. 6. 25.

17. By Re-entry of the Tenant at Will after a Difflurfs the Franchise meat is not recontinued to the Fesnor, as it is by Entry of a Tenant. Br. Tre- pafs, pl. 227. cites 38 H. 6. 27.

A Feoffment by Tenant for Years is a Difflurfs, and in such Case every one may enter on Behalf of Difflurfs where he has a Right of Entry. Co. C. 172. pl. 16. Mich. 3 Car. B. R. in Case of Edgar v. Sorrell.

19. Contra if he has not Title of Entry, by Justices of B. R. For there the Possession vests in those who enter. Br. Seisin, pl. 50. cites 10 H. 7. 12.

20. If an Infant makes a Feoffment in Fee, an Esstranger of his own Head cannot enter to the Use of the Infant, for the Estate is voidable. Co. Litt. 245. a.

21. If an Infant, or a Man of full Age is disfeised, an Entry by a Stranger, of his own Head, is good, and to vests presently the Estate in the Infant or other Difflurfs Co. Litt. 245. a.

22. If Tenant for Life makes a Feoffment in Fee, an Esstranger may enter for a Forfeiture in the Name of him in the Receision, and thereby the Estate shall be vested in him, et ille de limitibus. Co. Litt. 245. a.

23. If an Infant or any Man of full Age, have any Right of Entry into any Lands, any Stranger in the Name, and to the Use of the Infant, or Man of full Age, may enter into the Lands, and this regularly shall vest the Lands in them without any Commandment precedent, or Agreement Subsequent. Co. Litt. 258. a.

24. If a Difflurfs levy a Fine with Precautions according to the Statute, a Stranger without a Commandment precedent, or an Agreement subsequent within the five Years cannot enter in the Name of the Difflurfs.
Entry to avoid the Fine, and the Resolution was grounded upon the
25. Guardian for Nurture, or in Seige, may enter in the Name of the
Infant, having a Right of Entry, and this shall vett the Estate
in the Infant without any Commandment or Assent. 9 Rep. 106. a.
Patch. 10 Jac. 1. in Margaret Podger’s Case.

(D) Entry to the Use another.

What shall be a good Agreement to settle the Estate.

If a Man disfifes another to the Use of Baron and Feme, and they
agree to it, the Estate is in both. 15 E. 4. 15. b. admitted.

2. [But] If a Man disfifes another to the Use of a Feme Co-
vert, the Agreement of the Feme without the Husband will not
settle the Estate in the Feme, because her Agreement is void, for
her Will is transferred to the Baron.

3. But in this Case, the Agreement of the Baron will settle the
Estate in the Feme, though she is no Distressress thereby, for the
whole will of the Feme is put in the Baron during the Coverture, and
he may agree to the Feoffment made to the Wife; Ergo. 44 E. 9. b. Cura.

Agreement, pl. 4. S.C. — * The Original in Roll is (agree).

4. If the Baron disfifes another to the Use of the Feme, this * Firth
shall settle the Estate in the Feme, for the Baron upon a Ltve
congeable, pl. 33. cites S. C. — 7 Br.
Dissent. in Law; Ergo. 44 E. 3. 9. admitted. 44 All. 26. admitted.
Contra f 14 H. 6. 25. b. 7 E. 4. 7. b.

Br. Entre congeable pl. 41. cites S. C. but S. P. does not clearly appear.

5. If Baron and Feme enter into Land in the Right of the Feme, Firth
where the Feme hath not any Right, the Feme is Tenant of the
Land thereby. 44 All. 5. adjudged.

cites S. C. and Brooke says, Et sic Vide that the Feme has no Power to waive the Tenancy during
the Life of the Baron.

6. If the Baron seised in the Right of the Feme aliens in Fee, and Firth
after disfises the Discontinue, claiming his first Estate, without say-
ning any Thing of the Feme, this shall vest nothing of the Tenancy
in the Feme, because he does not claim by express Words in the S. C.
Name of the Feme. 44 E. 3. 9. adjudged per Curtiam. 44 All.
26. the same Case.

7. If a Man enfeoffs Baron and Feme of a Manor, and after the
Baron and Feme, by Colour of this Feoffment, enter into certain Land
which are not Parcel of the Manor, but they thought they were Par-
cel, yet the Feme shall gain nothing in the Land by this, but the
whole Estate is in the Baron. Littare, 21 All. 1.
Entry.

8. If the Guardian enters and diffieres a Man, claiming the Freehold to the Use of the Heir, this shall forfeit the Freehold in the Hoc. 27 A. 68. said to be so adjudged.

9. If a Man leaves Lands for Years to J. S. and delivers the Deed to J. D. to the Use of J. S. and after J. D. enters into the Land to the Use of J. S without Commandant of J. S. and is ejected, and after J. S. affords thereto, he shall have an Ejection from upon the said Ejectment. 54 El. 2 B. B, Bishop's Case, per Curiam.

(E) What shall be said an Entry into Lands to reduce his Estate.

1. If the Differseo enters into the Land, and continues in the Land with the Differseo, and mashes the same Land with the Differseo, claiming nothing of his first Estate, yet this is an Entry that will reduce his first Estate. 42 A. 38. Curia.

2. [But] If the Differseo enters, and takes the Profits as Lofcse at Will of the Differseo, or in any Banne, this will be an Entry, and reduce his Estate. 28 A. 42. adjudged, but Quere.

3. If the Differseo commands a Stranger to put in the Cattle of the Stranger in the Land to feed there, this is an Entry in Law into the Land. 1 C. 4. 3.

4. If A. leaves to B. for Years, the Remainder to C. in Fee, and A. and B. come upon the Land of Purpose, Sclfctt, A. to make Livery and B. to take it, this shall not be said any Entry of B. to vest the actual Possession in him till Livery made; for then the Remainder would be void, which would be against the Intention of the Parties. Co. Lit. 49. b.

5. If it be agreed between the Differseo and Differseo, That the Differseo shall release all his Right to the Differseo upon the Land, and accordingly the Differseo enters upon the Land, and delivers the Release to the Differseo upon the Land, this is a good Release, for the Entry of the Differseo being for this Purpose, shall not annul the Differseo, for his Intent in this Case guides his Entry to a special Purpose. Co. Lit. 49. cites 319. El. 2. per Curiam, resolv'd.

6. But if the Differseo makes a Peolement to the Differseo and others, there though the Differseo comes to take the Livery, per when the Livery is made, the Differseo is remitted. Co. Lit. 49. b.

7. [But] If the Differseo comes upon the Land, and puts his Foot pl. 159. cites in, but takes no Profits, but the Differseo ouits him, this Entry shall not forfeit any Estate in him, (for the Election of the Differseo as it seems) for the Differseo may have an Affixe of the first Differseo. 25 A. 42. adjudged.

8. If
Entry. 455

8 If I have an House and Land adjoining to the Plot of Land in Question between me and another, and I stand upon one Piece of Stone Wall, which is mine own Soil, and put my Hand through a Wall made of Lime and Lathes which stands upon the Land in Question, and there delivers a Lease sealed to try the Title, this is a good Entry, though I do not come within the Plot in Question. 5

11 A. between Ballard and Richardson, per Curiam.

9 If Lease for Life be, the Remainder or Reversion in Fee, and Leases cited 1. Rep. is disfessed with Warranty, and dies, and after Lease enters or recovers by 67. in Ar. Affise, because the Warranty does not descend upon him, yet this shall not reduce the Remainder or Reversion, but it shall be bound by the Warranty, because it was bound before the Re-entry. 44 Aff. 35. 2. Roll 740. Voucher (F) pl. 1.

10 But otherwise it is if the Lease re-enters before the Death of the Assessor, then the Reversion or Remainder is not bound by the Warranty, because it does not descend upon him, and therefore the Re-entry of Lease reduces the Estate of him in Reversion or Remainder, and then the Estate upon which the Warranty was annexed is destroyed. 44 Aff. 35. 2. Roll 740. Voucher (F) pl. 2.

11 Where Diffeorse insoffs bis Father or Cofin who dies seised, and the Diffeise is Heir, the Diffeise may re-enter upon him, 3. Mole and Chocke, quod suit cancellam, Br. Property, pl. 7, cites 34 H. 6. 10.

12 If the Diffeise dies seised, and his Feme is enowed by his Heir, the Entry of the Diffeise is revoked for the third Part put in Dower. Br. Seisin, pl. 18, cites Littleton, tit Defcents.

13 It was agreed, that if a Man has Title to a Moity, or to a third Part, or fourth Part &c. by this he may enter into the whole Land, and this (as it seems) is underfoot before Partition of the Land clearly. Br. Enter Cong. pl. 103. cites 21 E. 4. 10. 11.

14 If the Diffeise, at the Request of the Diffeisor, comes into the Cellar to seize, or to come to his House to his Daughter's Wedding, or to dine with him &c. this is no Entry. Pl. C. 92. b. 93. a. Trin. 3 M. 1.

15 The Diffeise comes upon the Land to deliver a Release to the Diffeise; This is no Entry to reseat the Land in the Diffeise; Arg. Le. 127. pl. 172. Trin. 30 Eliz. cites it as adjudged in C. B. in Wayman's Cafe.

16 If the Cattle of a Leafee that is oufled estray into the Land where- Goulston 88. of he is oufled, this is not any Re-entry to revive the Rent, because they were not put into the Land by the Diffeise himself, but went v. Hill, S. C. there of their own Accord; Per Anderson, to which Periam agreed. Le. 110. pl. 169. Patch. 30 Eliz. C. B. Cibell v. Hills.

17 Leafee being in Possession makes Feodament and Livery in the Presence of Leffer, which he may do, and the Leffer's Presence cannot disturb it, but immediately by Leffer's being there, this is an Entry by him, and a reseating the Freehold in him. Cro. E. 322. pl. 10. Patch. 36 Eliz. B. R. Reay and Morpeh v. Erinorton.

18 A Diversity is to be observed between an Entry in Law and an Entry in Deed, for that a continual Claim of the Diffeise being an Entry in Law, shall vest the Possession and Seisin in him for his Advantage, but not for his Disadvantage; and therefore if the Diffeise brings an Affise, and hanging the Affise he makes continual Claim, this shall not abate the Affise, but he shall recover Damage from the Beginning; but it is otherwife of an Entry in Deed. Co. Litt 253. b.

19 If the Baffard invites the Mulier to see his Houfe, and to see Pictures &c. or to dine with him, or to Hawk, Hunt, or sport with him, or such like, upon the Land descended, and the Mulier comes upon the Land
Land accordingly, this is no Interruption, because he came in by the Consent of the Baffard, and therefore the coming upon the Land can be no Trespafs. Co. Litt. 245 b.

20. But if the Miller comes upon the Ground of his own Head, and cuts down a Tree, or digs the Soil, or takes any Profit, these shall be Interruptions, for rather than the Baffard shall punish him in an Action of Trespafs, the Act shall amount in Law to an Entry, because he has a Right of Entry. Co. Litt. 245 b.

21. Do it is if the Miller puts any of his Beastis into the Ground, or commands a Stranger to put in his Beastis; These do amount to an Entry, for although in these Cases the Miller does not use any express Words of Entry, yet these and such like Acts do, without any Word, amount in Law to an Entry, for Acts without Words may make an Entry, but Words without an Act, cannot make an Entry; (viz. Entry into the Lands &c.) Co. Litt. 245 b.

22. It a Man has Common in the Land of J. S. between Lady-Day and Michaelmas, and the Commoner brings an Affile of his Common, and at Christmas puts in his Beastis, this shall not be any Entry to abate his Writ; for it cannot be intended for the same Common; Cited per Fleming Ch. J. as cited by Velvertyon J. and which Cafe is agreed to be good Law. 2 Brownl. 238. Pach. io Jac. B. R. in Cafe of Rutland (Earl) v. Shrewsbury (Earl).

23. Though a Fine be a Feoffment of Record, yet it is but so Figite one Juris. If another were in by Tort it will not amount to an Entry as a Feoffment shall; Per Bridgman Ch J. Cart. 176. Hill. 18 & 19 Car. 2. C. B.


25. Though a Declaration in Ejeftment be delivered within 20 Years, and a Trial, whereby there is a Leafe Entry and Oafter confessed, yet that will not amount to an Entry to bring it out of the Statute of Limitations, though an Entry be actually contended, for it must be an actual Entry though an Ejeftment be a customary way of Proceeding, and this has been so adjudged; Per Holt Ch. J. 12 Mod. 573. Mich. 13 W. 3. in Cafe of Havward v. Kinyer.

26. In proving an Entry and Claim it is necessary to prove that it be Animo clamantis. 6 Mod. 44. Mich. 2 Ann. B. R. Ford v. Ld. Grey.

A Casual Entry by Hunting is not good.

Lat. 25. 26 cites Pl. C. 93.

27. A bare Entry on another without an Expulsion makes such a Seipin only that the Law will adjudge him in Potellion that has the Right, and so are the Words Introitus & suum inde Seipus pront Lex posuit at to be understood in Special Verdict, but it will not work Diffeftion or Abatement without actual Expulsion. Per Holt Ch. J. 1 Salk. 246. pl. 2. Trin. 3 Ann. B. R. Anon.
In what Cases the Entry of one shall be for another.

1. If a Rent descends to an Aunt and Niece as Coparceners, and the Aunt hath the Niece in Ward, (Civillic, as Guardian in Sogage as it seems) and takes the Rent to her own Use, and never claims to the Use of the Niece, yet this Seisin of the Aunt shall be an actual Seisin for the Niece, for in Law the general Seisin of one is of both, and here is not any express Act that her Entry was to her own Use. 30 Aff. 1.

2. If Lands descend to two Coparceners, and a Stranger abates, and after one enters generally into the Land, this shall be an Entry for both, and feoff the Possession in both. 26 Aff. 1. admitted.

 — Br. Entre conteable, pl. 59, cites S. C. and in Affile brought by her alone against the Abater the recover’d by Award; For she had Right against all that had no Right. See Tit. Par.

3. If Lands come to two in Common, and one enters into it generally, this shall be an Entry for both. 99. 40, 41 El. B. R. between * Humpsey and Brie, per Curiam. Robert's Reports 166. between + Smiles and Dales, adjudged.

4. If a Man devises of Lands held in Capite by Knight's Service to (+) his younger Son, by which the Devise is void for a third Part, and the Devisee enters generally into the Whole, this shall be an Entry in Law for the eldest Son alto. 99. 40, 41 El. B. R. between + Humpsey and Brie, per Curiam. Robert's Reports 166. S. C. & S. P. ruled, according to the Disputes and Dales, adjudged.

[4.] So if the Devisee after his Entry makes a Lease for Years of Cro. 629, the Whole, yet this shall be not any Explanation of his Entry, but that his Entry shall be laid an Entry for both. 99. 40, 41 El. B. R. between Humpsey and Brie.

— Mo. 729. S. C & S. P. ruled accordingly.

5. So if the Devisee levies a Fine of the Whole. 99. 40, 41 El. B. R. between Humpsey and Brie.

6. If a Man leased of Lands held by Knight's Service in Fee, de- Mr. Drapers the whole to B, in Fee, and B after his Death enters into the Whole, claiming the Whole to himself, yet this is an Entry for the Pert, who is Tenant in Common with him for a third Part, the Devise being void for a third Part, for one Tenant in Common cannot dissolve his Companion without an actual Duffer. Robert's Reports 167.

Whether it must not be intended the Heir was in Possession before, or that B made his Entry still, and afterwards being
Entry.

7. If a Man devises certain Annuities to his four Sons out of certain Lands, and devises further, That if his Heirs do not pay the said Annuities, then his said Sons shall have the Lands to them, and the Survivor of them, and after the said Annuities are not paid, upon which one of the Sons enters generally, this shall be an Entry for all the four Sons, with which they are Jointenants. 52 Cl. 2 B. R. between Purflewe and Parker, adjudged.

8. If a Man devises to J. S. Lands held by Knight's Service, and dies, his Heir within Age, and a Stranger enters upon the Devisee, and dispossesses him, and after the Lord in Chivalry enters upon the Devisee, and upon the Re-entry by the Devisee, brings Trespa against him, this is maintainable, for the Entry of the Lord into his third Part (the Devisee being dead for that) is an Entry for the Devisee for the other two Parts, and so the Lord and Devisee are no Tenants in Common. 3 P. 3 Car. between Rogers and Bynum, per Curiam, refelbed upon Evidence at the Bar.

9. In Affile the Son leased to his Father for Life, and went beyond Set, and the Father aileed in Feoff, and the Sifer of the Son entred in the Name of her Brother if he be alive, and if he be dead in her own Name, and was ousted, the Son returned and brought Affile, and recovered by Award upon this Entry and Sein, and yet the Son did not depute the Daughter to enter; quod nota, by Award. Br. Ent're Cong. pl. 50. cites 11 All. 11.

10. In Affile the Baron and Feme were Tenants in Tail, and had issue two Daughters, the Baron disappeared and died, and Feme by Affile of the Feoff entred and claimed nothing but at his Will, and after died, one Daughter entred claiming to both, and the Feoffe brought Affile against her who entred only, and all this Matter found by Verdict, and the Writ shall not abate by the not naming of the other Co-Appraiser, but the Plaintiff shall recover; for the Entry of the two shall not be the Entry of the other, where the Entry is not lawful. Br. Ent're Cong. pl. 69. cites 31 All. 33. and 1 H. 6. 5. and 8 H. 6. 16. accordingly.

11. If a Fine is levied to two, and one does not enter, nor say any Thing, and the other enters and is incomplete, there per Hank, he may plead Jointenancy with the other, notwithstanding that be above counts of the Poffeheon, and that the other never entred. For the Poffeheon by the Fine and the Entry of the one, shall be adjudged in Law to be in both, till the other discharges by Matter of Record, and lo see that Disagreement to relinquish a Thing shall not be but by Matter of Record, but Agreement to take a Thing may be by Parol or Matter in Deed. Br. Jointenancy. pl. 57. cites 8 H. 4. 13.

12. If Devisee, Intruder & Alator enfeof a Stranger and dies seized, and his Heir enters and enfeof the Offender, the first Devisee may enter, but
Entry.

but against Strangers the Devest shall hold Place. Per Keble, which was not denied. Br. Entre Cong. pl. 119. cites 5 H. 7. 6.

13. If a Man discontinues the Land of his Wife upon Condition, and dies without Issue, the Entry is given to the Heir of the Baron, and if he enters for the Condition broken then may the Heir of the Issue enter, for the Entry of the one revives the Entry of the other. Br. Entre Cong. pl. 91. cites 9 H. 7. 24.

14. And if a Recovery by erroneous Judgment be had against the Father, of Land of the Right to his Wife, and he dies, if the Heir of the Part of the Father revokes the Judgment by Error, there the Heir of the Part of the Mother may enter. Br. Entre Cong. pl. 91. cites 9 H. 7. 24.

15. And where a Man selsd of Land his Issue two Sons, and the Eldest enters into Religion, and the Father dies, and an erroneous Recovery is had against the Youngest, and the Eldest is dismissed, he hath no Remedy ; For all the Justices of C. B. Br. Entre Cong. pl. 91. cites 9 H. 7. 24.

16. But if the Youngest revokes this by Error, the Eldest may enter, for in these Cases the Land is put in such plight as if no Recovery of Discontinuance had been, and to the Entry of one shall give Advantage to the other. Br. Entre Cong. pl. 91. cites 9 H. 7. 24.

17. Two Tenants for Life are divided by A. and B. If one of the Tenants for Life relates to A. and the other Tenant for Life re-enters, he has the Moity in Common with A and he has revolvted the entire Recovery in him in whom the Recovery was before ; Per Manwood J. L. 264. pl. 334. 19. Eliz. C. Anon.

18. When an Entry is given by a Special Statute, there the Entry shall not endure farther than the Words of the Statute, as Land is given to the Husband and Wife, and to the Heirs of the Body of the Husband; The Husband levies a Fine and dies: The Wife enters; This Entry shall not avail the Issue in Title; For the Entry is given to the Wife by a Special Law, and so where the Husband aliened the Lands of the Wife and after they were divorced the Husband dies, the Wife shall not enter by 32 H. 8. but is put to her Writ of Cur in Vita et Divortium; Arg ; Le. 7. pl. 10. Mich. 25 and 26 Eliz. B. R. cited in the Case of Stonely v. Bracbridge as Sir Richard Haddons Cafe.

Mo. 457.

19. Tenant in Possession of Lands to which another has Right of Entry leaves a Fine with Proclamation; he who has Right ought to enter in Person, or make Warrant special, or Commandment to one to enter for him, otherwise he does not preserve his Right, and other Entry by a Stranger will not avoid the Fine. Mo. 150. pl. 613. Patch.

33 Eliz. B. R. Luttrell's Cafe.

that had the Right, if made within the five Years after such Entry made in his Name, would serve, but an Agreement afterwards would not serve; Quere. Cro. E. 361. pl. 10. Patch. 59 Eliz. B. R. in Case of Pollard v. Audley. — Poph. 103. Pollard v. Luttrell. S. C. agreed by the Chief Justice.

20. Two Coartners of a House. One entred Generally and made a Lease by the Name of "All that his House &c." Popham and Fenner held, that the Intire House passed; For when he says All that my House &c. that intended the whole House, and by his Livery made he gained the Intire, and gave the Intire, altho' by his general Entry it is not intended that he enter'd into more than to what he had Right; but Gawdy v. Contra; For as this Entry prima Facie does not gain more, than he had Right to demand, no more shall this Lease. And Pollard at the Bar cited, that it was adjudged in this Court in Reigndol's Cafe according to the Opinion of Popham. Cro. E. 615. pl. 4. Trim. 40 Eliz. B. R. Gerry v. Helsford.
21. The Rule of the Law is, that in all Cases when Co-partners or Tenementants may join in Action, and have one and the same Remedy, there if one be summoned and fevered, and the other sues forth and recovers the Mootesty, the other may enter with her; but when they are driven to several Actions, or where their Remedies are not equal, there if one recovers or continues the one Mootesty, the other cannot enter with her, and yet when both have recovered, they shall be Co-partners again. 2 Inst. 308.

(G) Special Entry.

1. If Lands descendent to two Co-partners, and a Stranger abates, and after one Co-partner enters into the whole to her own use, this shall not fettice any Possession in the other, but all the Estate shall be in her tenant by the special Entry. 26 Aff. n. 1, adjudged.

2. If there are two Co-partners, and one and a Stranger sust be the other, a Naper Obit lies against the Co-partner sole, and Brooke lays hence it follows, that the Stranger gains no Franktenement by his Entry. Br. Enter Cong. pl. 122. cites F. N. B. 197.


1. Difficult may enter into every Parcel, but not into the Appendancies without the Manor or Land to which &c. As Common &c. and th' an Adovwon may be sever'd and made in gros, it ought to be when the Owner is seised of the Land to which &c. and not by Possitement when he is out of Possession; Per Danby Ch. J. quod nota, good Reason, and Needham J. cum illo. Br. Pretenstion, pl. 30. cites 9. E. 4 38.

2. And where Tenant for Life aliens the Manor in Fee he in Reversion cannot present to the Adovwon before that he has enter'd into the Manor. Per Needham J. Ibid.

3. In Trefpas it was agreed, that where a Man recovers by erroneous Process or Judgment certain Land and makes Feoffment, and the other brings Suit of Error and recovers it, yet he cannot enter, but shall have}
Entry.

Seire Facias against the Feoffee; For he is in by Title, and is a Stranger to the Recovery. Br. Seire Facias, pl. 163. cites 4 H. 7. 10.

4. But by reason of All of Parliament, he may enter without Seire Facias; For every one is Party to an Act of Parliament; Per Towne-
fend J. quod non negat. Br. Seire Facias, pl. 163. cites 4 H. 7. 10.

5. Of a thing tranitory a Man may be in Possession without Entry or Seisin; Per Brandnell. Br. Trespass, pl. 169. cites 14 H. 8. 23.

6. As where Tenant in Chancery dies, his Heir within Age, the Lord shall have Reavalment of Ward without Seisin, but not Ejectment of Ward of the Land. ibid.

7. If Tenant in Fee of a Common Lord is attainted of Felony, his Lands remain in him during his Life until the Entry of the Lord, and where the King is Lord until Office found; But in the Case of a Common Lord, after the Death of the Person attainted, they are in the Lord before Entry, and in the Case of the King before Office for the Mil-

8. A Possession is made to the Use of B. Per Anderson and Walmley J. contra Granvil J. B has such a Seisin before his Entry of which he

bring Ejectment; for actual Possession is not in Ceifay que Ufe by the Stat. 27 H. 8. for he may dis-
gree to it. But by Walmley and Granvil, He may have an Affile, but not Trespass without actual
Possession.

phens.

(G. 3) Necessary in what Cases.

To yeft or doveft an Estate.

1. If a Feme inheritable takes Baron, and has Issue, and the Feme
dies, the Law adjudges the Franktenement in the Baron as Tenant
by the Court immediately without Entry, and Precipe quod reddat lies
lit. 2.

2. Lease for Life on Condition, that if Lesflor pay to Lessee such a Day
20 l. that his Estate shall cease; now by the Performance of the Con-
dition the Estate is determined without any Entry. 4 Le. 119. cites
21 H. 7. 12.

3. Where Estate ends by Limitation there needs no Entry, because
not waivable as a Condition is. Mo. 612. in pl. 842. 19 Eliz. cites
Bracebridge's Case.

4. Though a Lease become void on Nonpayment according to Cove-
nant, yet it seems there must be a Re-entry to re-settle the Possession
of the Land. 2 Le. 143. pl. 178. 33 Eliz. in the Exchequer.

5. Inheritance or Freehold in Ufe shall not coexist without Claim of
Entry since the 27 H. 8. unlefs he that has Power to cease it be Tenant
of the Franktenement; Arg. Mo. 663. in pl. 906. Mich. 44 & 45 Eliz.
in Canon. cites 1 Rep. Digge's Cafe.

6 B 6 A
Entry.

6. A Man cannot be said feised upon a Fine for *Rent* without an Entry alleged; but upon a Fine *Su* Conuenance &c. come *ceo &c.* it is otherwise for that is executed. Cro. E. 953. pl. 6. Mich. 44 & 45 Eliz. B. R. in Cafe of Bullard v. Coulter.

7. Upon a Surrender of a Lease for Years, the Lease is determined, and the Possession and Interest is in the Leffor without Entry. Cro. C. 102. pl. 1. Hill. 3 Car. C. B. Petro v. Pemberton.

8. Tenant for Life leaves a Fine, he having a Freehold his Fine displaces the Remainder, therefore an Entry is requisite within five Years after the Death of Tenant for Life; Per Hale. Hardr. 402. Pauch. 17 Car. 2. in Secce. But if such Lease be made by Collay que Ule it is determined by his Death, and the Leafe becomes Tenant at Sufferance; Arg. Gads. 519. cites D 57.

9. Upon executing the Deed of Mortgage the Mortgagor, by the Covenant to enjoy till Default of Payment, is Tenant at Will, and the Assignment of the Mortgagee to the Allignee, and the Allignee's assigning it over again without the Mortgagor's joining, can only make the Mortgagor Tenant at Sufferance, but his continuing in Possession can never make a Diffeifia, nor develling of the Term mortgaged; Otherwise if the Mortgagor had died and his Heir had entered, for the Heir was never Tenant at Will, but his first Entry was tortious; Or if the Mortgage had entered on the Mortgagor, and the Mortgagor had re-entered; For the Mortgagor's Entry had been a Determination of the Will, and the Re-entry of the Mortgagor had been merely tortious; Per Holt Ch. J. 1 Salk. 246. pl. 1. Pauch. 6 W. & M. in B. R. Smartle v. Williams.

(G. 4) Neceffary.

To bring Trefpafs.

1. If Land defcend to the Heir he may make Leaves before Entry, but he cannot have an Aktion of Trefpafs before Entry; Arg. Pl. C. 142. b. cites Pauch. 37 H. 6. 18. B. Surrender 21.

2. It was agreed, that Diffeifia may have Trefpafs of the first Entry without Regrets, but not of the Continuance of the Trefpafs after the Entry; for he shall not punifh Diffeifor in charging him with Damages which are the Accelfory, before he has re-entered into the Frankenteen which is the Principal. Br. Trefpafs. pl. 227. cites 38 H. 6. 27.

3. Tenant at Will may have Trefpafs without Re-entry after Diffeifia till the Will of the Leffor be determined by Release &c. and because he by his Entry cannot re-continue the Frankenteen to the Leffor, therefore
fore he shall have Trespas without Regress, but he who may by his Entry re-continue the Franktenement and will not enter, shall not have Trespas without a Regress; Note a Diversity, per Fortescue and Yelverton. Br. Trespas, pl. 227. cites 38 H. 6. 27.

4. In Trespas the Defendant said that the Plaintiff himself was seized in Fee, and leased to the Defendant for ten Years, and after the Term ended, the Defendant held himself in and did the Trespas, of which he has brought this Action before any Entry; Judgment &c. and by all the Justices Trespas Vi & Armis does not lie before the Plaintiff has made Regress, as here; quod non. Br. Trespas, pl. 365. cites 22 E. 4. 13.

5. And per Fairfax, the Ouster of the Leafe for Years shall give Affise to the Heir, where his Father made the Leafe, and the Son never entered. Br. ibid.

6. But where the Father dies seized, and did not make the Leafe, and a Stranger enters, there Trespas does not lie without Entry first by the Heir, nor Affise, but Mortadecelor. Br. ibid.

7. If A. makes a Leafe to commence at Michaelmas, the Leffe may grant the Leafe before Michaelmas, but he cannot have Trespas before Entry; Arg. Pl. C. 142. b. cites 22 E. 4. 37. Br. Grants 100.

8. A. devised Land to B. and his Heirs, and dies, it is in B. immediately, but till Entry he cannot bring a poletaffory Action, as Trespas &c. 2 Mod. 7. cites Pl. C. 412. 413. [Mich. 13 & 14 Eliz.


It suffices to it before Notice or Content; Per Veniris Cited per Bidejman.

Ch. 1 who said that in this Case the Heir was a Stranger. Carth. 66. 87. Pauch. 13 Car. 2.

10. When the Leafe at Will ceases, he in Reversion may bring an Action of Trespas; Per Tirrel J. Carth. 62. cites Co. Lit. 62. b.


12. If Leffe holds over his Term there must be actual Entry to bring Action of Trespas. 5 Mod. 384. Hill. 9 W. 3. B. R. Trevillian v. Andrewe.

(G. 4) At what Time it may be made.

1. F Diffeñor infeñs four, upon whom the Diffeñee re-cuter, and one of the Reñee enters again, and the Diffeñee brings Affise, he cannot plead Jointenancy with the other three, for by the Entry of the Diffeñee their Interest is defeated, and therefore Regress of the one does not remit the others, for the Right is determined. Br. Remitter, pl. 16. cites 1 H. 6. 5. per Half. J.

2. But where four Copartners, or others, are lawfully seized, and are diffeñed, the Entry of the one remits all the others, for the Entry is lawful and the Right remains; and in the other Cases e contra; for the Right, Interess and Possession is defeated by the lawful Entry. Ibid.

3. If
Entry.

3. If a Feme Sole of full Age be dispised and takes Baron, and the Diffesfor dies seized, and the Baron dies, the Feme cannot enter, for the might have re-entered before that the took Baron, and did not, therefore it was her Folly; Per all the Justices. Br. Entre Cong. pl. 91. cites 9 H. 7. 24.

4. Contrary if the Diffesfor had been during the Coverture, or if she had been within Age at the Time of the Diffesfor, and when the took Baron, there she might have entered after the Death of her Baron. Br. Entre Cong. pl 91. cites 9 H. 7. 24.

5. Auit and controver she be dispised within Age, and takes Baron at full Age, and the Diffesfor dies seized, and the Baron dies, the Feme cannot enter; which all agreed. Br. Entre Cong. pl. 91. cites 9 H. 7. 24.

6. In Præcipe quod reddat the Tenant laid, that before the Writ purchased H. was seized till by him dispised, which H. entered pending the Writ; Judgment of the Writ; and adjudged a good Plea, as it seems, but the Reporter did not hear it. Br. Brief, pl. 356. cites 5 E 4. 5.

7. Leeflor may enter into the Land for a Forfeiture pending the Suit before Judgment, as well as after, if the Plea be entered of Record. Golsd. 41. pl. 18. Mich. 29 Eliz. Dixey v. Spencer.

8. A. infeoffs B. on Condition to go to Rome within two Years; B. stays in England till within two Days of the End of the two Years, so that now it is impossible to perform the Condition within the Time, yet the Feodors shall not enter till the two Years ended; Arg. Mo. 328. Trin. 32 Eliz.

9. If there be Tenant for Life, and Tenant for Life comitts a Forfeiture, he in Remainder for Life may enter, and the Case 29 Aff. 64. is not Law; For the particular Estate in Pollission is determined by the Forfeiture; and if he in Remainder could not enter, then it should be at the Will of the Leeflor, whether he should ever enter; The same Law is if the Remainder be for Years. Godb. 175. pl. 241. Patch. 8 Jac. C. B. in Case of Meers v. Rideout.

(G. 6) Excused by Act or Fear of the Party.

1. If a Man hath Title to enter into any Lands or Tenements, if he dare not enter into the same Lands and Tenements, nor into any Parcel thereof for doubt of Battering, or for doubt of Mansm for doubt of Death, if he goeth and approach as near to the Tenements as he dare for such doubt, and by Word claims the Land to his, presently by such Claim he hath a Pollission and Seifin in the Lands, as well as if he had entred indeed, although he never had Pollission or Seifin of the same Lands or Tenements before the said Claim. Litt. S 419.

2. If a Man fear the burning of his House, or the taking away or spoiling of his Goods, this is not sufficient, because he may recover the same, or Damages to the Value, without any corporal Hurt. Co. Litt. 253 b.

3. Such doubt of fear must concern the safety of the Person of a Man, and not his House or Goods, because he may recover the same or Damages to the Value without any Corporal Hurt. Co. Litt. 253 b.

4. If
Entry.

4. If the Fear concerns the Person, yet it must not be a vain Fear, but the Fear must be such as may befall a constant Man, as if the adverse Party lies in wait in the Way with Weapons, or by Words Menace to beat, maim, or kill him, that would enter, and so in Pleading must he show some just Cause of Fear; For Fear of itself is internal and secret; But in a special Verdict, if the Jurors find, that the Difflerence did not enter for Fear of corporal Hurt this is sufficient, and shall be intended that they had Evidence to prove the same. Co. Litt. 253. b.

5. Fear of Imposition is also sufficient; For the Law has a special Regard to the Safety and Liberty of a Man. Litt. S. 420.

(G. 7) Writ abated by Entry; In what Cases.

1. W R I T o f Entry in le Quibus, the Tenant had not Entry unles after the Lease which one made who had not any thing therein unles as Guardian &c. was abated because he might have Affife or Writ of Entry for Difflerin, as his Case required. Thel. Dig. 117. Lib. 10. cap. 27. S. 1. cites Mich. 4 E. 2, brief 790. But says that in the Time of Bracton the other Writ was in Use as appears fol. 324.


3. If the Demandant disfises the Tenant, or enters pending the Writ, it shall Abate notwithstanding that the Demandant has Alliened the Land after to another Thel. Dig. 187. Lib. 12. cap. 21. cites Trin. 4 E. 3. 148.

4. In Caflavit after Verdict found for the Demandant against the Tenant en Pais the Tenant was not received at the Day in Bank to plead that the Demandant had disfised him &c. in Arrest of Judgment. Thel. Dig 187 Lib. 12. cap. 21. S. 5. cites Trin. 5 E. 3. 291.

5. And where it appears by the Writ that the Writ was upon the Seisin of another Ancestor than him upon whose Seisin it is brought, it shall abate. Thel. Dig. 117. Lib. 10. cap. 27. S. 2. cites Hill. 7 E. 3. 301.

6. At the Grand Cape return'd the Tenant was received to say that the Demandant had disfised him after the Default made, and that the Demandant is Tenant by his Disfiss &c. without saving the Default. Thel. Dig. 187. Lib. 12. cap. 21. S. 7. cites Pach. 8 E. 388. And that so agrees Pach. 9 E. 3. 455. at the Petit Cape return'd but he ought to say that the Demandant is this Day feiled, cites 10 E. 3. 541.


Entry.

In Fomocodon, in. To say that the Demandant after the last Continuance didseise the Tenant, and so is Tenant &c. is a good Plea to the Writ. Thel. Dig. 187. lib. 12. cap. 21. S. 11. cites Mich. 18 E. 3. 57.


In Afflire, it is affirmed by Prifot, that the Tenant is to have the Writ; & that the Plaintiff, pending the Writ, into Parcel pleaded by Diffefer gers in Bar for this Parcel. Thel. Dig. 187. lib. 12. cap. 21. S. 10. cites Mich. 17 E. 3. 57. and 4 E. 4. 34. Contra it is said Trin. 27 E. 3. 82.

And so it is held in Precipit quod soldat pleaded by the Tenant. Thel. Dig. 188. lib. 12. cap. 21. S. 17. cites 59 H. 6. 43. and 21 H. 6. 55. And by Tenant by Receipt 57 H. 6. 2.

11. In Afflire, the Tenant said that the Afflire ought not to be, for the Plaintiff brought by this Deed indented, which he knows, granted to him after the last Continuance, that he should hold the Land till Michaelmas last past, and so has abated his Writ; Judgment; Caund. said, the Grant proves that it was granted to the Use of the Plaintiff; and per Cur. the Writ is abated, by which the Plaintiff was nonfuited. Brook says the Reason seems to be, because this Leave is an Entry in Law, as Exchange, or Partition, or Assignment of Dower of the Land in Plain, as it is said elsewhere, that those are Entries in Law which shall abate a Writ. Br. Brief, pl. 308. cites 42 Aff. 21.

12. And if the Demandant receives Parcel of the Penents of the Tenant pending the Writ by Accord between them, and after leaves this Parcel to the Tenant for Years; the Writ shall abate for all, notwithstanding that this Accord was upon Condition, which did not give Re-entry by the Non-performance thereof. Thel. Dig. 187. lib. 12. cap. 21. S. 8. cites Mich. 10 E. 3. 532 and says fee 42 Aff. 21.

13. Writ of Entry fir Diffelion, the Tenant said that the Demandant with other Strangers, by his Procurement, have ousted the Tenant pending the Writ; Judgment of the Writ; & non allocatur, but the Writ awarded good; But if the Demandant himself had entered, or another to his Use, to which be agreed, this shall abate the Writ; Note the Divertity; Quare of Commandement. Br. Brief, pl. 87. cites 50 E. 3. 2.

14. One leased for Life rendering Rent, and referring a Re-entry for Default of Payment, and afterwards brought Writ of Wafte, pending which Writ be entered, because the Rent was arrear &c. Quare if the Writ shall abate. Thel. Dig. 187. lib. 12. cap. 21. S. 12. cites Pach, 43 E. 3. 9, and says fee 12 H. 4. 6 and 4 E. 4. 34.

15. The Tenant said, that the Demandant with others, by his Procurement, had ousted the Tenant of the Land pending the Writ, and no Plea, without laying that the Demandant or was Tenant of the Land by this Ouster. Thel. Dig. 187. lib. 12. cap. 21. S. 13. cites Hill. 50 E. 3.

16. If the Demandant in Formacdon enters into the Land in Demand to show it to the Sheriff to make the View, such Entry shall not abate the Writ clearly; Quod Nota per Cur. Contra elsewhere if he claims to himself. Br. Brief, pl. 408. cites 10 H. 6. 8.

As in Afflire it was agreed that if the Plaintiff comes upon the Land, pending the Writ, and does not claim any Title by his Entry, that such Entry shall not abate the Writ, for he comes there to show the Jury the Land to have the View of it, and to give them Evidence. Br. Brief, pl. 328. cites 5 E. 4. 59.

And therefore the Same seems to be, that if he enters to see if Wafte be done pending the Writ, as in Forncodon between Partition and . . . . . in the County of Stafford. Br. Brief, pl. 328. cit 5 E. 4. 59.
17. In Formedon, if a Man enters upon the Tenant, and the Demandant pro¬fesses his Suit and recovers, this shall bind the Tenant and him who entered; but if he who entered had elder Right before the Writ of Formedon, the Recovery is not good; and see elsewhere, that Writ shall be brought against the Mortgageor and Mortgagee, and the Lord and Villein; For an Entry by the Feoffor, or Lord of the Villein, shall abate the Writ, and to see that the Entry of a Stranger shall abate the Writ in several Cases. Br. Brief, pl. 182. cites 21 H. 6. 17.

18. Where a Manor is demanded the Entry of the Demandant into an Acre, Parcel of the Manor, shall abate all the Writ. But where 20 Acres are in Demand, and the Demandant enters into one Acre, if he does not claim to enter into any more than this Acre, the Writ shall abate only for this Acre; Per Prior. Thel. Dig. 187. lib. 12 cap. 21. S. 16. cites 34 H. 6. 2. 2 H. 6. 17. 39 H. 6. 45. and 1 E. 4. 4.

19. In Cul in Vita of three Acres it is agreed, that if the Demandant in Cul in Vi¬e by another Action recovers one of the three Acres and enters, it shall abate all the Writ, because it is the Act of the Demandant to recover it, and to enter, and therefore the shall abate her Writ in Vita; Quod Nota, that Recovery in Affiff of Parcel of the Land shall abate the Cul in Vi¬a for all the three Acres. Br. Brief, pl. 238. cites 1 E. 4. 5. 4. and 2 E. 4. 10.

Tenements against him by Affiff, and that the Demandant had entered into this Parcel by force of this Re¬covery &c. And it was held that this was a good Plea to all the Writ, yet Judgment was given for the Demandant to recover Seisin of all. Thel. Dig. 183. lib. 12. cap. 21. S. 19. cites 1 E. 4. 4. Qua¬ri. 2 E. 4. 11.

20. If a Man brings Précipe quod reddat of a Manor, Houfe, or the like, which is entire, and enters into Part, pending the Writ, all the Writ shall abate. Br. Brief, pl. 480. cites 2 E. 4. 10.

21. In Formedon, the Tenant vouched A who entered into the Warran¬ty and vouched B. and the Demandant as to the third Part granted the Voucher, and to the rest counterpleaded the Voucher, by which Processes il¬lu¬sioned against the Inquest upon the Volee of against B. and at the Day A. the first Voucher said that the Demandant, after the left Continuance, had entered into 10 Acres, and into the Moity of the Rent Parcel of the Ten¬ments in Demand, and did not answer to the rest, and well, per Cur. For Entry into Partshall abate the Writ in all, for he has falsified his own Writ by his own Aff, and it lies well in the Mouth of the first Voucher; for he remains Tenant of this Part which is counterpleaded, and he is also Tenant of the rest till the second Voucher has entered into the Warranty; Quod Nota. Br. Brief, pl. 332. cites 5 E. 4. 116.

22. The being of the Demandant upon the Land claiming nothing is no such Entry or Possession of the Demandant as shall abate the Writ. Thel. Dig. 183. lib. 12. cap. 21. S. 18. cites Mich. 5 E. 4. 60. And that to agrees Plowden in the Affiff of Parnel, fol. 92. For the Intent of him who entered shall be consider'd.

23. In Scire Facias against a Vicar upon Recovery of an Annuity, it is no Plea that the Plaintiff has entered into certain Land of the Vicarage, nor of the Abbey, Mutatis Mutandis, nor of the Heir where the Recovery is against the Ancestor; for the Person is charged in Writ of Annuity and not the Land. Br. Brief, pl. 370. cites to 4 E. 4. 15.

24. So in Affiff of Prefe-force the Plaintiff after the left Continuance entered into the Celler of the Dileforo to view the Antiquity thereof, in or¬der to give Evidence upon a Subpoena delivered to him. It was adjudged that this was not such an Entry as should abate the Writ. Pl. C. 91. b. 93. a. b. Trin. 3 Mar. Panel v. Moore and Corporation of Mercers.

25. A5
25. An Entry to obate a Writ ought to be an Entry into the Thing demanded, which every Entry will not do, as Entry was into the Cellar, hanging the Affilee, but it was to view the Antiquity of the Cellar, and to do not abate the Writ; see Fleming Ch. 1. Bullit. 9. Hill. 7 Jac. cites Pl. C. 92. The Patron of Honey-Lane’s Cafe.

26. Several were upon the Land cutting down Wood, the Demandant came upon the Land and admonished them to do no more than they could do by Law at their Perils; and this was adjudged no Entry to abate his Writ; see Fleming Ch. 1. Bullit. 9. Hill. 7 Jac. cites Pl. C. 93. in the E. of Shrewsbury’s Cafe.

27. Every Entry which may abate a Writ ought to be in the Thing demanded, and therefore if a Mistaking an Affilee of Rent or Common, and hanging this Affilee, he enters into the Land, this is not any Entry which will abate the Writ; see Fleming Ch. 1. Brownl. 237. Patch. 8 Jac. B. R. in Cafe of Rutland (Earl) v. Shrewsbury (Earl)

28. An Affilee was brought for the Office of Keeper of a Park, and of the Fails and Fees; and Entry into the Park will not abate the Writ brought for the keeping of it, and though it was said that he took a Fee, viz. A Shoulder of a Buck, that does not make any Matter for two Reasons, 1st. He has not shewed a Warrant he had to kill the Buck. 2dly, The taking of the Fee is no Entry into the Office, but the exercising of that; see Fleming Ch. 1. Brownl. 237, 238. Patch. 8 Jac. B. R. in Cafe of Rutland (Earl of) v. Shrewsbury (Earl of)

If he had entered as Custodiendum, this would have abated his Writ, because this would have been a Claim of Property.

This was only an Entry to hunt, but an Entry to have abated the Writ ought to have been alleged that he entered to keep; for in every Entry the Intent of the Entry is to be regarded.

29. Error of a Judgment in Affilee of the Office of Keeper of a Park granted to the Demandant in Reversion, and afterwards the Park itself was granted to another, who entered and keeps out the Reversioner after the Death of the Tenant for Life, for which he brought an Affilee, and after the Verdict and before Judgment entered into the Park, and hunted and killed a Deer; this Entry did not abate the Writ or make the Judgment erroneous. 1 Bullit. 5. Hill. 7 Jac. in the E. of Shrewsbury’s Cafe.

30. In Ejectione Firma the Entry of the Plaintiff after Verdict upon the Nisi Prius, and before the Judgment, does not abate the Writ, and is not actionable for Error. Jenk. 341. pl. 100.

31. The Lessor pending the Action brought by himself for the Rent, entered into the Land, and the Lessor re-entered upon him; the Question was, Whether the Writ once abated by the Plaintiff’s Entry was revived by the Re-entry of the Defendant, and held it was not. Sty. 260. Patch. 1651. Webb v. Wilmer.

32. In Ejection the Quære was, If Entry after the Day of Nisi Prius, and before the Day in Bank, may be pleaded in Abatement; and if such Entry after the Darren Comin’ be a Plea in Abatement in Ejection Firma, See 16 El. 4. 19. 34 H. 6. 9. cites 2 Cro. 309. Kerley v. Lover. Note, this was Error out of C. B. and at another Day it was held per Cur. that this is not Error, because it is only in Abatement, and a Diversity is between this and Death, and cites 1 Rep. 5. and it is usual where Entry is before Nisi Prius to plead such Plea at the Affilise, and shall be tried at the Affilise, and if it be omitted, the Advantage of it is lost, but not in Cafe of Death. Sid. 231. pl. 8. Hill. 16 & 17 Car. 2. B. R. Boys v. Norcliff.
(G. 8) Writ abated by Entry of a Stranger.

1. In Writ against Tenant for Life, if he aliens in Fee, and he in Reversion enters &c. Quære if the Writ shall abate; for it is said in this Case that he in Reversion after such Entry may be received by Default of the Tenant. Thel. Dig. 190. lib. 12. cap. 29. S. 1. cites Mich. 18 E. 3. 48.

2. If the Mortgagor pays the Money to the Mortgagee at the Day limited pending the Writ against the Mortgagee, and enters, the Writ shall abate. Thel. Dig. 190. lib. 12. cap. 29. S. 2. cites Mich. 39 E. 3. 36. and 15 E. 4. 27.


4. It is held that where the Defendant makes Payment over, and the Feejee is imploated by a Stranger, if the Defendant enters upon the Feejee, pending the Writ against him, the Writ shall abate. Thel. Dig. 190. lib. 12. cap. 29. S. 3. cites Mich. 7 H. 6. 17. and says it seems that the Opinion of Hill. 3 H. 6. 34. agrees to where the Defendant himself is Tenant, and the Defendant enters upon him. Trin. 5 E. 4. 6. and 15 E. 4. 4. and 22 H. 6. 26.

5. But it is said that where one is imploated upon Condition to be performed of the part of the Feejee, if he be imploated by Writ, and the Feejee enters for the Condition broken pending the Writ it shall not Abate. Thel. Dig. 190. Lib. 12. cap. 29. S. 5. cites Mich. E. 4. 5. Quære.

(G. 9) Pleadings in Writs of Entry.

1. In Writ of Entry, the Demandant pleaded Jointtenancy by Fine, and the Demandant was not received to maintain his Writ, but it was Abated. Thel. Dig. 226. Lib. 16. cap. 7. S. 5. cites Mich. 17 E. 2. Maintenance de Briel. 1. and 55. Parch. 15 E. 3.

2. Feme received pleaded Entry of the Demandant pending the Writ, without paying after the last Continuance, and held good. Thel. Dig. 188. Lib. 12. cap. 21. S. 20. cites Trin. 21 H. 6. 54.

3. If the Tenant enters pending Praecept quod reddat before Issue, the Pleading shall be that he entered pending the Writ, but if he enters after Issue, the Entry shall be that he entered after the last Continuance. Br. 12. Cap. 21. S. 25. cites S. C.


6. As in Dile for Rent upon a Lease for Years due at Lady-Day, an Entry after our Lady-Day shall not be pleaded in Bar; Arg. Skin. 210. in S. C.

6 D
(G. 10) Bar of Action; In what Cases.

1. Where a Man recovers an Adowison, or brings Preacepie quod reddat of Land, and before Judgment or Execution enters and makes a Lease of it, or takes a Lease of it for Years, Execution by Elegit, or the like, or accepts Dower in Part, pending Case in Vita, or takes Part in Exchange or in Partition, it is a Bar for the Time. Br. Barre, pl. 33. cites 24. E. 3. 3.

2. If Diffeisin re-enters he shall not have Trespass of the first Damage, for it was tully that he had not taken the Afisle; Per Thirm. Br. Trespas, pl. 72. cites 2. H. 4. 11.

3. In Writ of Entry the Tenant pleaded Entry by the Demandant pending the Writ, the Demandant said that the Tenant was Tenant of the Franktenement the Day of the Writ purchased, and yet is, & non allocatur; For if the Demandant entered, and the Tenant re-entered, it shall not make the Writ good which was once abated; Per Fitzherbert and the best Opinion. Br. Brief, pl. 1. cites 26. H. 8. 1.


(G. 12) Sur Diffeisin; Writ and Pleadings.

1. If a Man gives in Tail, or aliens in Fee upon Condition, if the Condition be broken the Donor, Feoffor, or his Heir may have Ad terminum qui præteritit, Per Monbray, quod Chelr. and Finch omnino negaverunt. Per Greene, if J. leaves for Term of Years, and the Term expires, and a Stranger enters, the Leffor shall have Ad terminum qui præteritit; Contra upon Estate upon Condition if the Condition be broken there is no other Remedy but Entry, quod Skipw. & omnes concellerunt by their Judgment. Br. Enter en le Per, pl. 27. cites 33 Aff. 11.

2. If Diffeisin releases to the Diffeisin all his Right, the Diffeisin in Writ of Entry after this Release shall be supposed in the Per by the Diffeisin; Per Hody. Br. Releasfs, pl. 22. cites 19 H. 6. 17. 23.
3. The reason for which Writ of Entry Ad terminum put praterii lies against Terminor who holds over his Term is because this holding in by E. 4. 4. 35.

4. Tenant in Tail brought a Writ of Entry for Disseisin, and the Writ was General, and the 21 H. 6. 26 was vouched to be held, that the Writ ought to be Special, viz. to make mention of the Tail; but the Court held that the General Writ is good enough. And then the Count ought to be Special. Le. 231. pl. 314. Panch. 33 Eliz. C. B. Brownfall v. Tyler.

(G. 13) Upon what Plea by Defendant the Demandant may enter without praying Scisin.

1. Formedon against two, the one disclaimed, and the other pleaded Non-tenure, and therefore the Demandant prayed Scisin of the Land, for nothing can be vested in him who pleaded Non-tenure, because he did not take the Tenancy; but the Opinion of all the Court was that the Demandant may enter; quod nostra. Br. Disclaimer, pl. 17. cites 36 H. 6. 28.

2. Per Danby, in Action in which a Man may recover Damages, and the Tenant disclaimed, the Demandant may enter in Tenancy. But Contra where he cannot recover Damages; For he is at no Mischief; For he may enter. Br. Disclaimer, pl. 17. cites 36 H. 6. 28.

3. And note, That upon the Disclaimer the Judgment is, that the Writ shall abate, and no Judgment is given for the Demandant, and yet he may enter by Reason of the Eschappe which is between the Demandant and the Tenant, but it is no Eschappe to another. Br. Disclaimer, pl. 17. cites 36 H. 6. 28.

4. In Quod juris clamat, the Tenant claimed Fee which is found against him, the Plaintiff shall not have Judgment to recover the Land nor to have Attornment; For no Land was in Demand, and yet the Demandant may enter. Br. Disclaimer, pl. 17. cites 36 H. 6. 28. per Prior.

5. In Formedon the Tenant disclaimed, the Demandant maintained his Writ, that the Tenant was Fermo of the Profits the Day of the Writ, and Tenant of the Franktenement the Day of the Action accrued; and per Littleton he shall not to maintain his Action; For he is not to recover Damages in this Action, and therefore he may enter. But Needham J. contra, and that he may so maintain his Writ; For he cannot enter; For the Judgment upon Disclaimer is no more, but that the Demandant shall take nothing by his Writ, which is in Effect that the Writ shall beare, and then cannot the Demandant enter; For if he enters the Tenant may have Affife. Quod quare inde; For it seems the Law is contra, for the Disclaimer stops the Tenant to have Affife. Br. Disclaimer, pl. 24. cites 4 E. 4. 38.

6. In Formedon the Tenant disclaimed, the Demandant cannot enter into the Land upon the Tenant or any who is in by him pending the Writ or after, as where the Tenant aliens pending the Writ or after. But he cannot enter upon him who is not in by him; As in Pracipe quod reddat against Diffelcor who disclaims where the Diffelcor has entered pending the Writ, he cannot enter upon the Diffelcor. But Danby
Danby contra, if the Title of the Demandant be elder than the Title of the Defendant. Br. Disclaimer, pl. 23; cites 5 E. 4. 1.


Error.

(A) In what Cases an Erroneous Judgment may be avoided by Plea without Writ of Error.

1. If the Tenant in a Cui in Vita dies seiz'd pending the Writ, and after Judgment is given against him, which is erroneous, and after the Recoveror sues Execution against the Heir, and he brings an Allegation; he shall not avoid this Judgment against his Father, by saying, that his Father died pending the Writ; but he is put to his Writ of Error; for the Judgment is not void, but only voidable. * 28 Aff. 17 adjudged. 32 E. 3. All. 99. Curia.

By Stat. 17 Car. 2. cap. 8. S. 1 and made perpetual by 1 Jac. 2. cap. 7. It is enacted that in all Actions Real, Personal or Mixed the Death of either Party between the Verdict and Judgment shall not be alleged for Error, so as such Judgment be entered within two Terms after the Verdict.

2. If a Man recovers in an Exaction Firma, and after his Executor sues in Execution by Seire Facias against the Recoverer, the Recoverer cannot avoid the Judgment, nor stay Execution, by saying the Tenant died between Verdict and Judgment, or such like; but he is put to his Writ of Error, for the Judgment is only voidable. 32c. 5 Jac. B.R. between Hide and Markham, which concerned the Earl and Countess of Shrewsbury. Adjudged per Curiam; and by the Clerks, such Pleas have been several Times disallowed.

3. So if a Man recovers Lands in any real Action, and after sues Execution against the Heir of the Recoverer by Seire Facias, it is not any Plea for the Heir to say, that his Father died pending the Writ, but he is put to his Writ of Error. 28 Aff. 17. by Bowdrey, admitted.
4. If a Writ recover, against the Principal and for a Scire Facias against the bail, they cannot say the Principal died before the Judgment, and to avoid the Judgment by Plea; for it is against the Record. Hill. 32, 33 El. B. R. between Water & Plaintiff, and Perry & Spring, Defendants. Per Curiam.

Avoidance of the Judgment, and proves it erroneous which cannot be avoided but by Writ of Error, but they might plead the Death of B. before the Scire Facias, and after Judgment, because then they could not bring in the Body. But notwithstanding the Plea was afterwards received because they cannot have a Writ of Error to reverse the Judgment. —— 2. E. 101. pl. 125. Walter v. Perry. S. C. and all the Justices except Way held the Plea not good; For it is a Surmise against the Judgment, which cannot be given against a dead Man; but it was agreed that he may plead that Defendant is dead after the Judgment, but it was ruled that Defendants should be sworn that the Plea was true. —— S. C. cited 2 Mod. 508. and said that such Plea was good by way of excusing themselves to bring in the Body, but not to avoid the Judgment because it is against the Record which must be avoided by Writ of Error.

5. In an Action upon the Case, if the Plaintiff be nonsuit, and after it is entered, that he relitig Actionem luam & tactor te noile uterius prosequi, upon which Costs are allowed, though it be admitted that this Judgment is erroneous, because this is not any Nonnull as is entered; yet in an Action of Debe for the Costs, the Defendant shall not avoid it by Plea without a Writ of Error; for it is a Judgment de facto not bono, but only Voidable by Writ of Error. Hill. 11 Jac. B. R. between Crosses and Law, adjudged.

6. If Land in one County be brought by Prerog in another County, Or if the Tenant dies pendant the Writ, those shall be reversed by Error as may be avoided by Answer; For those are Ipso Jure void. Br. Error, pl. 104. cites 36 H. 6. 33.

8. If a Judgment is given in a Court which has no Jurisdiction it may be avoided by Plea; For it is Coram non Judice; As in the Court of men, 122. Marshall unifies both the Parties are de Hoilt de Roy; Per Croke J. cites 20 E. 4. Bull. 208. cites 22 E. 4. 31. 19 E. 4. 8. b. and 20 E. 4. 16.

9. If any of the Proclamations upon a Fine be entered to be made upon a Sunday, out of Term, or upon the 31st of June (there never having been a Fine, &c. adjudged in Error in any such Day) they may be avoided by Plea or Writ of Error. Dyer 181. a. 182. b. pl. 52. &c. Patch. 2 Eliz. Fith v. Brockett.

10. If a Fine be imposed in a Leet as unreasonable or against Law, as Joint where it should be Several, it may be avoided by Plea and Judgment of the Court where in the Suit is depending, for there is no other Remedy; Resolved. 11 Rep. 44. b. Godfrey's Cafe.

11. The Bail cannot maintain a Writ of Error upon a Judgment given against the Principal, because he was not privy to the Judgment, and therefore shall be allowed him by Way of Plea in a Scire Facias. Arg. Godb. 377. in pl. 465. Paup. 3 Car. B. R.

12. In Debt upon a Bond against an Administrator he pleads a Judgment recovered against the Intestate, and that he has not Access ulteriores &c. the Plaintiff replies that an Action was brought against the Intestate, and that he died before the said Judgment, and that after his Death judgment was given and kept on Foot for Frauds. The Defendant traversed the Fraud, but did not answer the Death of the Intestate. It was urged for the Plaintiff that the Judgment was ill, and that he being a Stranger to it could neither bring Error nor Deceit, and had no other Way to
avoid it but by Plea. The Court held that the Plaintiff might avoid the Judgment without a Writ of Error, epecially in this Case, where it is not only erroneous but void. 2 Mod. 303. Trin. 30 Car. 2. C. E. Randal's Case.

In what Cases a Fine may be reversed by Plea without Writ of Error; See Tit. Fine. (G. b. 3)

(A. 2) Lies; In what Cases in General.

1. In some Case of erroneous Judgment no Writ of Error lies, as where Judgment is given against a Baifard, and he dies without Iffite. Br. Error, pl. 112. cites 15 Aff. 8.


3. If Matter of Error which is not apparent is not objected to, but passes without Challenge, as a Venire Facias returned by a Bailiff of a Franchise where Part of the Lands are guildable, Error will not lie. See Br. Error, pl. 34. cites 3 H. 4. 6.


6. This Writ lies when a Man is grieved by any Error in the Foundation, Proceeding, Judgment or Execution, and thereupon it is called Breve de Errore corrigendo. But without a Judgment, or an Award in Nature of a Judgment, no Writ of Error does lie; for the Words of the Writ be, Si Judicium redditum istis; and that Judgment must regularly be given by Judges of Record, and in a Court of Record, and not by any other inferior Judges in base Courts; for thereupon a Writ of false Judgment does lie. Co. Litt. 283. b.

7. Error will not lie on a Conviction for keeping a Gun on the 33 H. 8.


9. Supposing there was a general Pardon, and the Party did not plead, nor the Judges did not take Notice of it, the Party might not have Remedy by Writ of Error. Ellis said, They could allege nothing for Error but what did appear in the Record; to which Vaughan assented.


10. It is merely a Matter of Favour that Judgment in inferior Courts, in Cases not arising within their Jurisdiction, are not avoided without Writ of Error, and the bringing such Writ does not affirm their Jurisdiction. 2 Jo. 209. Paefch. 34 Car. 2. B. R. Copping v. Fulford.

11. Upon the Denial of B. R. to grant a Prohibition the House of Lords was moved for a Writ of Error, but there held that Error did not lie. 1 Salk. 136. Paefch. 11 W. 3. in Case of Bishop of St. David's v. Lucy.

12. Error will not lie on a new created Jurisdiction unknown to Common Law; For they need not proceed purgant to the Methods of Law, nor need they Indictment or Jury, nor in their Judgments, say idem confederatum eft, but may say they judge him guilty, and that he
be ought to pay so much Money &c. and it is like the Case of Convictions by Juftices of Peace, and in both Cases the Party has a good Remedy by Certiorari, and that is a Consequence neceffary on all fuch particular Jurifdictions, that the Record of their Proceedings may be brought up to B. R. that this Court may examine whether they have kept themselves within their Jurifduction; Per Holt Ch. J. in delivering the Judgment of the Court. 12 Mod. 390. Pafch. 12 W. 3. Dr. Greenvill v. The College of Physicians.

13. Since the Statute 9 Anne, cap. 20 which allows special Pleadings to a Mandamus, it was admitted that Error lies of a Judgment thereon, because it is now in Nature of an Action, and Cofts are given by the Statute for that Side which prevails; But then it was faid further, that this is no Argument that Error lies of a Mandamus where there is no Plea to it, and only a Rule awarded for the Mandamus, which is not in Nature of a Judgment; And Lt. Ch. J. Parker (who with others alledged Lt. C. Cowper at the Motion) faid, that Chancery might supercede fuch Writ of Error, Quia impovide eamnation, if it were fo; And that a Mandamus now is in Nature of an Action, and where Judgment was given on special Pleadings upon the late Statute, it was admitted lately in B. R. in a Cafe there, that Error lay, Wms's Rep. 350. Pafch. 1717. in Cafe of Dean and Chapter of Dublin v. Dowgatt.

14. Where a Reference is to the Judges on a Cafe stated, no Writ of Error will lie on their Judgment, but if they certify their Reasons for their Opinions, this Court may confider of it. 9 Mod. 5. Trin. 8 Geo. Gore v. Gore.

15. No Writ of Error lies in Cases of Mandamus or Procedentos. For the Mandamus gives the Party that tries it no better Right than he had before, which still remains examinable and triable in a proper Action, and there being no Cofts, the Party that fies the Writ of Error can have no Benefit by it. MS. Tab. March 18. 1725. The King v. Herle.

(B) In what Cases an erroneous Judgment may be avoided by Entry without a Writ of Error.

If an Infant suffers a Common Recovery, in which he comes in as Vouchee in his proper Perfon, and not by Attorney or Guardian, though this shall not bind him but that he may in a Writ of Error avoid it, because it is Error in Law, yet at his full Age he cannot enter into the Land and avoid it by his Entry, before he has received it in a Writ of Error, because he himfelf is proper to the Judgment, and may receive it by SUCH means, and he is not a Stranger to the Judgment, for Judgments ought not to be conducted by Matter of Jus without Matter of Record; as a (* ) Recognizance of Fine by an Infant, not any Judgment in other Actions given against an Infant, where he appears by Attorney and not by Guardian. Hill. 1650. between Ayliff and Walker adjudged see Curiam, upon a special Verdict for Land in Error. Inciturate Trin. 1649. Rot. 200.

2. 15
Error.

2. If an Infant makes an Attorney which is recorded, and plead a Plea to Issue, which is found against him, this is no Matter in Arrest of Judgment, but is put to his Writ of Error. Br. Error, pl. 79. cites 22 H. 6. 31. per Newton.

3. So per Portington, if the Infant be permitted to levy a Fine, if this be recorded it cannot be deleted but by Writ of Error; Quod non negavit. Ibid.

(C) In what Cases Judgments shall be reversed without a Writ of Error.

In what Court.

* Fitzh. Er- 1. In Banco Regis in no Case, neither in the same Term, nor in another Term, shall an Outlawry be reversed without Writ of Error on the Crown-Side. Mich. 14 Jac. The Clerks said, that so at all times had been their Course, and the Court agreed there- to, and adjudged accordingly. * 19 H. 6. 2. adjudged; and by the Clerks it is the Court. I

could not be reversed in that Court without Writ of Error, but says that otherwise it is in C. R. if he comes the same Term. —— Br. Error, pl. 199. cites S. C. that he who comes in by Exigent may the same Term reverse Outlawry for Matter apparent by Plea, As for Omission of Proces in C. B. without Writ of Error; but otherwise upon Matter in Fact; But that the Usage in B. R. is, that in both Cases he is put to his Writ of Error. —— Br. Error, pl 81. cites 15 E. 4. 7. 8. fame Diversities. —— Outlawry in Personal Actions cannot be reversed in B. R. without Writ of Error, by the Court of the Court; But otherwise it is in C. B Per Broome, Secondary of B. R. 2 Roll Rep. 25. Patich. 16 Jac. B. R. Anon, cites 4 E. 4. 10. b. 11. a. and 42 b. 43 a. In what Cases Outlawry shall be reversed by Writ of Error, or by Plea, Sec tit. Utlawry (G b).

2. One convicted of Felony prayed his Clergy, and had it. The Indictment was removed into the Crown-Office; A Writ of Error does not lie to avoid it, because he is a Clerk convicted only, and not attained; For when he prayed his Clergy, which was allowed him, there never was any Judgment afterwards given, and of that Opinion was the whole Court; But upon Exceptions taken to the Indictment, the same was discharged and Restitution awarded. Cro. E. 499, 490. pl. 6. Mich. 38 & 39 Eliz. B. R. Long's Cave.

(D) [Reversed.]

For what Cause

Br. Utlawry, pl. 11. cites S. C. ——

1. A T the Exigent returned in Banco, if the Defendant says the Plaintiff appears by the Attorney, and the Attorney has no Warrant, this is not Cause to reverse the Judgment without Writ of Error, for perhaps he has a Warrant in Chancery. 11 H. 4. 34.

2. But

3. So if the Exigent bears Date before the fourth Day of the Pluries Capias issued to the Sheriff. 11 P. 4. 34. — Br Error, pl. 48. cites S. C.

4. A Man outlawed of Felony shall not avoid the Outlawry, because he was in Prison at the Time, without a Writ of Error. 1 P. 7. 13. B. Contra * 7 P. 6. 25.

5. [So] if a Man be outlawed, where it appears by the Record *In the large Edition or Book, of the Word of Capias's was sold, viz. that there were not two Capias's only; But the Year Book is in Roll, viz. that there were not two Capias's awarded. See Brook Utlagary, pl. 19. cites 8 H. 6. 37. * This is misprinted in Roll, and it seems should be (15. b. pl. 6.) and there the Objection was, that there were but two Capias's issued where there should have been a third.

6. So if a Man be outlawed, and no Mention is made of what S.P. where County he was, this may be reversed without a Writ of Error. 3 P. 6. 37. Curia.

7. [But] if a Man be outlawed without Addition given to him in such Action, in which Action there ought to be an Addition by the Statute, he shall not avoid it by plea without Writ of Error, though the Statute says that such Outlawry shall be void. 11 P. 8. 15.

8. [But] if a Man comes in Ward upon the Capias Utlagatum, he may reverse the Outlawry, because he is named J. S. de A. whereas he was abiding at the Writ purchased at B. and not at A. and this without Writ of Error, because if he should bring a Writ of Error, it ought to agree in the Name with the Record, which would be against himself. 19 P. 6. 80.

9. But otherwise it would be if he had rendered himself Gratia. 19 P. 6. 80.

10. [But] if a Man comes in Ward upon the Capias Utlagatum, he may avoid the Outlawry without Writ of Error, because he is called J. S. de D. whereas there is no such Vill in the County, because if he should bring a Writ of Error it ought to agree with the Record, and so he should admit that there is such a Vill. 22 2. 4. 38. Writ, per Newton and Paffon J. For the Sheriff did wrong to arrest him; because if he be of B. he is not the same Person, Nota, and shall not be forced to a Writ of Error; For per Paffon the thing a Writ of Error will affirm the Name because it must be according to the Record; And if he was suffered to make Attorney, and was dismissed. Br Utlagary, pl. 22. cites 19 H. 6. 80.
11. If a Man be convicted upon the Statute of Jac. cap. 11, by two Justices of the Peace for killing of Patrick's with Nets upon Proot or Conelusion of the Party without Indictment, this Judgment may be reversed in B. R. this being removed there by Certiorari without any Writ of Error. Hill. 12 Car. * B. R. Berry's Cafe, Per Croce and Beckley, and they seem'd in some Manner that such Conviction upon the Statute for Shooting, or such like, might be so reversed without Writ of Error.

12. A Man shall have Writ of Error upon an erroneous Execution; As upon an Outlawry, as well as upon the principal Judgment; Per Pasfion. Br. Error, pl. 70. cites 7 H. 6. 44.

13. If an erroneous Judgment be given upon an Indictment of Barrestry at the Sessions of Peace, and the Party fined thereupon, and committed till he pays it, and he removes the Indictment and Proceedings by Certiorari, and himself by Habeas Corpus, yet he cannot be discharged, because Judgment being given thereupon he cannot discharge it unless he brings a Writ of Error; Adjudged. Cro. J. 494. pl. 2. Trin. 14. Jac. Rice's Cafe.

14. But a Record of Force made by Justices of Peace upon the View, if the same is insufficient, may be quashed upon Motion without Writ of Error; Agreed per Curt. 1 Lev. 113. Mich. 15. Car. 2. the King v. Chaloner.

(E) At what Time a Judgment may be so reversed without Writ.

[Outlawry.]


2. But an Outlawry in Banco Regis may be reversed in the same Term without Writ of Error, for all the Term the Judgment does not remain in Pecore of the Judges, this being an Outlawry and Judgment before the Coroner. 19 H. 6. 2. Er. 14. Jac. B. R. Fitch. Error, 20. cites S. C. accordingly. — And Br. Error, pl. 148. cites 4 E. 41, 42. that in B. R. the Defendant shall be put to his Writ of Error, and says that the same Term the Outlawry was reversed in B. R. upon an Exigent illusing there; a Writ of Error was brought out of Chancery, directed to the Judges of B. R. Brooke says, Quod nomen, that they reversed their own Error at the same Term.

3. So in the same Term an Outlawry returnable in Banco may be reversed in Writ of Error. 8 P. 6. 37 f 19 P. 2.

4. But not there in another Term without a Writ of Error. 19 P. 6. 2.

5. Br. Error, pl. 199. cites S. C. — See (C) pl. 1. and the Notes there.

Error.

5. An Outlawry after a Superfedeas cannot be reversed in Banco the same Term of the Return without a Writ of Error. 99 37 El. B. per Curiam, because this is not their Judgment, but the Judgment of the Coroner.

6. In the same Term and Outlawry may be reversed in C. B. for Er- ror. Het. 93. Patch. 4 Car. C. B. Anon. 150. S. C.

7. Or in any Term if it be void upon any Statute; As for want of Lit. Rep. Proclamations &c. Het. 93. Ibid.

(F) Upon what Judgment.

1. If the Plaintiff be nonuit at the Nisi Prius, upon which Costs are taxed by the same Jury, by the Statutes of B. 8. and Ja. and Judgment given for them against the Plaintiff, the Plaintiff may have a Writ of Error upon this Judgment. Cr. 3 Jac. B. K. admitted per Curiam.

2. If a Bail brings a Writ of false Judgment in Banco upon a Judgment given in Ancient Demesne, and reverses the Judgment there, a Writ of Error lies upon this Judgment, for this is a Matter of Record. 99 49 & 41 El. B. K. by two Justices.

3. If a Manor Court holds Plea of a Thing out of their Jurisdiction, and gives Judgment thereof, though this is void, being Coram non Judge, yet a Writ of Error lies, and Error may be aligned in this. 99 3 Ja. B. K. between Quarrels and Searle, for by the Writ of Error he shall be restored to all that he hath lost, where, by the Act of Crewpals, he shall recover all in Damages.

Williams: And though a Writ of Error be brought that does not affirm the Jurisdiction of the Inferior Court, nor is any affirmative, but that it may be said to be a void Judgment, and yet the Writ of Error well lies of a void Judgment.


ed, who entered into Warranty, and pleaded to Issue, which was misjudged or false contrary the like De- fault, and it was found against him; now if Judgment is given against him, in such Case he cannot have a Writ of Error, by all the Justices in Bank, notwithstanding the Statute 32 H. 8. cap. 39. [52.] for this is out of the Statute, which only gives the Writ where a Verdict is found for or against the Demandant or Tenant, and a Vouche is neither of them. And 26, 27. pl. 60. Hill. 7 E. 6. Anon.

5. And also note, That if any Default is in any Original Writ, or in Bendl. in the Return thereof, or in the Verdict, or in the Judgment, or in the Keilw. 127. Count, so that it plainly appears by the Count that the Plaintiff has no Cause of Action; And if a Verdict and Judgment is given upon such In- Originals for the Plaintiff, yet the Defendant shall have Writ of Error, in Insufficient notwithstanding the said Statute, and these Defaults are not remedied by the same Statute. Bendl. 37. pl. 67. Mich. 1 & 2 P. & M.

Stat. 58 H. 8. cap. 39 does not extend to Verdict given between the Demandant and Vouchee, nor to any Default in the original Writ, or in the Return thereof, or the Want of an Original, or in the Count, or to any Insufficiency in the Trial, Verdict, or Judgment &c. And the Stat. 18 Eliz. saves many such Defects, but does not remedy any insufficient Trial, but this remains as at Common Law.


6. It.
6. It doth not lie of a Judgment upon an Affidavit of Falsify-force; but a Writ of false Judgment, as it seems. F. N. B. 19 (1)

7. If one be outlaid upon an Indictment of Treason, Felony or Treason, but the Proofs and Order preferred by the Statute of 8 H. 8. cap. 1. and 8 H. 6. cap. 13. are not observed, the Outlawry may be reversed by Writ of Error, which Writ ex merito Judiciis ought to be granted. 3 Inst. 31. cites it as adjudged, Mich. 26 & 27 Eliz. in Writ of Error Cowen Rege in Ninian Menvil's Cafe.

If the Judgment be given by him that has Authority, and it be erroneous, it was at Common Law reversible by Writ of Error, only the Statute 21 Eliz. cap. 2. secures all former Atrinders, where the Party is executed from Reversal by Writ of Error, but mediates not with other Attainders, neither doth the Stat. 33 H. 8. cap. 22. take away Writs of Error upon Attainder of Treason, as hath been resolved against the Opinion of Stamf. P. C. lib. 5. cap. 19. Ca P. C. p. 31. But it is true that the Statutes 25 H. 5. & 5 & 6 Eliz. cap. 11. take away from a Person outlawed in Treason the Advantage of Reversal of an Outlawry, because the Party outlawed was out of the Realm, but extends not to other Offences. Hale's Hist. of Pl. Cr. 333, 334. cap. 26.

8. A Writ of Error lies to reverse an Attainder of High Treason, tho' some have held the contrary by reason of 33 H. 8. cap. 25. [25.] That every Attainder of Treason by the Common Law should be as effectual as if by Authority of Parliament, for the Statute is to be intended of lawful Attainders by due Course of Law, and not of erroneous or void Attainders; and so it was held in a Parliament held the 28 Eliz. when it was enacted, That no Attainder of High Treason, where the Party was executed for the same, should be avoided by Plea or Error, but this Act extended only to Attainders before that Time where the Party had been executed, not to Attainders after. 3 Inst. 215.

9. If a Man be attainted by a Judgment upon an Indictment he shall not have Writ of Error without making a Petition to the King for the having it; because it so highly concerns him; Per Coke and Doderidge. Roll Rep. 175. pl. 12. Patch. 13 Jac. B. R. Gargrave's Cafe.

10. Error was brought to reverse a Judgment upon an Indictment for Recusancy; It was doubted whether any Exception be good upon such Conviction; For the Statute 3 Jac. is precisely that it shall not be void of discharge for Default of Form, or other Matter, until after conforming himself by coming to the Church. But afterwards, because the Judgment was not bona capitis, and the Omisston thereof is apparent to the King's Prejudice, and for that upon every Conviction in Indictment, the Judgment is Quod capitum, for this Cause the Judgment was reversed. Cro. C. 504, 505. pl. 6. Winchelsea (Marquis's) Cafe.

11. Error was brought to reverse a Judgment entered in an inferior Court, that the Plaintiff recouperate a debt, whereas it ought to be recuperate debet. Roll Ch J. said, that this is no Judgment, and so no Writ of Error lies thereupon, for the Writ supposes a Judgment, because the Words of the Writ are Si Judicium reatum hic. Sty. 255. Patch. 1631. Shedlock v. Lapere.


Because it is no Judgment but the Statute 3 Jac. cap. 4 gives Proceeds upon it for the Forfeiture, and the Party's Remedy is in the Exchequer to quash it there. Raym. 533. Patch. 39 Cap. 2. B. R. Phorbes's Cafe.
Error.

14. The Defendant was convicted at the Sessions for a Scoit, and ad- 6 Mod. 173. jected to be ducked; She brought a Writ of Error (by Leave of the S. C. held Attorney-General) and the Ch. J. said, The Court was well enough, accordingly, possest of the Cause by Writ of Error, but the best Way was by Cor- tors to remove it into the Crown-Office, and then bring a Writ of Error coram nobis residentem, and upon that the Court is to give a Rule to afill Error, and then to move for a peremptory Rule, and in Default thereof to have a Non Prof. and then an Award of Execution. 1 Salk. 266. pl. 12. Trin. 3 Ann. B. R. The Queen v. Foxby.

15. A Writ of Error does not lie on a Mandamus. 8 Mod. 29. Hill. 7 Geo. D. and Chapter of Dublin's Cafe.

As to Reverting of Attainders, See Tit. Attainder (D)

(G) Of what Judgments. [In respect of the Court where given.]


2. But no Writ of Error lies upon a Judgment upon a Subpoena in Chancery, for as to this it is not a Court of Record. 37 D. 95 cites 37 H. 6. S. C. & S. P. Br. Error, pl. 32. cites S. C. See (D) pl. 11.

3. A Writ of Error lies upon a Judgment given in a Franchise by Virtue of Conclavial Pleas. 2 D. 4. 4. b.

4. No Writ of Error lies upon a Judgment given by the Juftices of the Peace. 4 D. 6. 24.


6. If the Sheriff refuses the Challenges the Party shall have Error. Br. Waite, pl. 58. cites M. 2 H. 4. 2.

7. Of Error in the Court of Pie-powders lies Writ of Error, and not Writ of false Judgment, which proves that it is a Court of Record, and this per Littleton, quod non negatur. Br. Error, pl. 162. cites 6 E. 4. 3. and 7 E. 4. 23.

8. Where false Judgment is given upon a Writ of Juftices directed to the Sheriff, no Writ of Error lies, though the Judgment be of Debt or Trepass above 228. F. N. B. 18. (H)


12. If there be a Conviction of Forceable Entry upon View of the Juftices of the Peace no Writ of Error lies upon it, but it may be examined in a Certiorari Vent. 171. Mich. 23 Car. 2. B. R.

13. Upon a Judgment given by the Senators of the College of Physicians against one for Male-Practises no Writ of Error will lie, because it is a Court instituted de novo, and by the Institution they are not bound up to the Formalities of other Courts, viz. as to draw up their Judgments 6 G.
with Idea Consideratam &c. But it is sufficient for them to shew the Con-
valuation in other Words. But the Conviction may be removed into B. R.
by Ceritoriari, and there quashed for In sufficiency. Per Holt Ch. J. Curth.

(H) In what Court [it lies.]

1. D. 14 B. 315. 100. A Judgment given in Chancery upon a
Scire * Pacias upon a Recognizance, was reversed in Banco Regis,
per both Courts were before the King himself. 29 Mt. 47 adjudged.
My Reports, 11 Jac. B. R. per Coke.
S. P. by
Coke Ch.
1. Roll
Cap. 8. S. P.

3. No Writ of Error lies in Banco or Banco Regis upon a
Judgment given within the Cinque Ports. D. 23 El. 376. 23. ad-
judged.

4. But by the Custom of the Cinque Ports a false Judgment
given there may be reversed per Custodium five Port-
ments, tuum apud Curiam Shepway D. 23 El 376. 23.
See tit. Courts of Cinque Ports [E 7]

5. A Writ of Error lies of Banco Regis of a Judgment given
in Lancaster. 18 El. 4. 12.
6. So of any County Palatine, for this is exceeded out their Char-

7. A Writ of Error his in Banco upon Judgment in a County
Palatine because these Counties were derived out of the Crown * 19
Be Cure. Courts of County Palatine [S 6]

8. If the Judgment be given in the Court of Stannaries of the
Duchy of Cornwall, no Writ of Error lies this in Bank or
Banco Regis, because it hath not been tried; but of this there
may be an Appeal to the Guardian of the Stannaries, and from him
to the Prince, and when there is no Prince to the King's Counsel.
D. 13 Jac. B. R.

9. A Writ of Error lies in B. R. upon a Judgment given in
abjudged. 37. Mt. 5.

Doderidge said, that it had been
adjudged by all the
Judges in
own Erwir-
mans'Cafis
that no Writ of Error lies of a Judgment given in the Stannaries in Cornwall. Win. 8. Pash. 19
Jac in the Case of Errr v. Vaughan.

* Br. Error,
pl. 175. cites
E. 4. 12.
S. P. [and Roll seems misprinted (El.) for (E.)]

* Br. Error,
pl. 74. S. C.
That Er-
ror in Coun-
ty Palatine
shall be redressed here in England; [but lays not in what Court whether in C B. or B. R.]
Br. Cinque Ports, pl. 8. cites S. C.

* Br. Error,
pl. 129. cites
S. C.
Per Cur. L.C.
55 in pl. 69.
cites 15. E. 7 Error 72.—And 3 Le. 139. pl. 207. cites S. C.——Upon a false Judgment, in
C. B. in Ireland Error must be sued in B. R. there, but on Judgment given in B. R. there, Error
must be sued in B. R. in England. F. N. B. 22. (E.)—Vaugh. 290. Vaughan Ch. J. cites it as fud by
Sir
Sir Edward Coke in Calvin's Case, fol. 18. a. that albeit no Reservation were in King John's Charter, yet by Judgment of Law a Writ of Error did lie in B. R. of England of an erroneous Judgment in B. R. in Ireland. Whereupon Lord Hobart observes, that a Writ of Error lies not therefore to reverse a Judgment in Ireland by special Act of Parliament, for it lies at Common Law to reverse Judgments in any Inferior Dominions: and if it did not, Inferior and Provincial Governments, as Ireland is, might make what Laws they pleased; for Judgments are Laws when not to be reversed.


11. If a Judgment be in any Court in Wales, a Writ of Error Br. Error, lies thereof before the Justices errant. 19 P. 6. 12.

* Br. Cirque Ports, pl. 8. cites S. C.

12. But no Writ of Error lies thereof in any Court at Common Br. Error, Law at Westminster, because it lies before the Justices errant. 19 pl. 74. cites S. C. but by Newton if there are no such Justices there it shall be redresst here in Curia Regis; but Brooke says, Quere inde; For br. Fortescue and others it shall be redresst in Parliament.——Br. Cirque Ports, pl. 8. cites S. C. accordingly.

13. And if a Judgment be given before the Justices Errant in Wales was Wales no Writ of Error lies thereof in any Court at Westminster, a Kingdom because the Court of Justices Errant is as high as any of the King's Courts, except the Parliament. 19 P. 6. 12.

Lancaster, Chester and Durham were; Per Fortescue. Br. Cirque Ports, pl. 8.—S. P. and therefore regularly no Writ of Error did lie of a Judgment in Wales, but otherwise of the Countries Palatine. 2 Inf. 223. Cap. 32. But Kelw. 201. b. in pl. 19. Mich. 11 H. 8. it was said by Brudenell, Ex affentu brook, Fitzherbert, and all the King's Council; that Wales is Parcel of the Realm of England, and that Writ of Error lies in England for an erroneous Judgment given in Wales, tho' not of such Judgment given in the Isle of Man which was no Parcel of the Realm, and so of Gascoigne and Calice.

14. But a Writ of Error lies in Parliament upon a Judgment given before the Justices Errant in Wales, because the Parliament is more high. 19 P. 6. 12.

Wales, See rit. Wales (C) and the Notes there, on Sat. 34 & 55 H. 8. cap. 26.

15. A Writ of Error lies in Banco upon a Judgment given before Le 15. pl. the Judges of Affile. 11 P. 3. Rot. 7. admitted that it was well brought.

York v. Morton S. P. adjusted that it did not lie in the said Court.—5 Le 159. pl. 207. S. C. in the dead Verbs.

16. A Writ of Error does not lie in Chancery upon a Judgment given in Banco.

17. But vide 17 C. 3. 5. 19. 21. where a Writ of Error upon a Judgment in Banco was returnable in Chancery, and there the Record was returned accordingly, and the Chancellor delivered it over to the Chief Justice de Banco Regis. 17 C. 3. 46. 30 C. 3. 14.

18. A Judgment in Affile cannot be reversed by the Chancellor before the Council, for this is not any Place for it. 34 C. 3. 14. by the Justices.

20. Where Writ of Error is tried in London on Error before the Mayor, this shall be tried at St. Martin's, and then the Mayor and Aldermen shall have Day by 40 Days to be advised of their Records, and then the Recorder shall record it in his book, and there were divergent Opinions if the Party after this might allege Diminution or not. Br. Erro, p1. 18. cites 34. H. 6. 42.

21. 31 E. 3. Stat. 1. cap. 12. Enacts, That where a Man complains of Error in the Exchequer, the Chancellor and Treasurer shall cause to come before them in any Chamber of Council High the Exchequer, the Record of the Proceeding taking to them the Justices and other Free Persons; and shall cause to be called before them the Barons of the Exchequer, to bear the Causes of their judgments; and if Error be found, they shall correct and amend the Rolls, and send them into the Exchequer to make Execution.

Be Con. temp. pl. 7. Procefs, pl. 181. cites 21 H. 7. 31.


23. If false Judgment be given in London, or other Place which is a Court of Record, the Party grieved shall have a Writ of Error, and this Writ may be returned into C. B. or B. R. at the Pleasure of him who sues the fame. F. N. P. 20 (D)

24. Judgment in a Square Impediment to Judges of Assize, and a Writ awarded to the Archbp., and for Damages a Scire Facias to the Sheriff; the Defendants bring Error, and remove the Record into Banco Regis, and the Writ was directed to the Chief Justice of Banco. Dyer 76, 77 Mich. 6 E. 6. Henlow v. Kebbe.


26. It was held by all the Justices that a Writ of Error does not lie in C. B. upon an Errorneous Judgment given in any inferior Court of Record. And this was, as was said, upon great Advice. Cro. E. 26. pl. 6. Pach. 26 Eliz. C. B. Roe v. Hartly.

27. 27 Eliz. cap. 8. S. 2. Reciting that Errorneous Judgment in B. R. were only to be reformed in Parliament, enacts, that where any Judgment shall begin in B. R. in any Action of Debt, Debits, Account, Action upon the Case, Fiduciary Firms or Trepasys, first commenced there, order other than such only where the Queen shall be Party; the Plaintiff or Defendant against whom Judgment shall be given, may sue forth out of Chancery a special Writ of Error directed to the C. J. of B. R. commanding him to cause the said Record, and all Things concerning the said Judgment, to be brought before the said Justices of C. B. and Baron of the Exchequer into the Exchequer-Chamber, to be examined by the said Justices of C. B. and Baron of the Exchequer as are of the Degree of the C. J., or six of them, shall thereupon

Administra-ers are within the Benefit of this Act. 6 Rep. 30. cites it as adjudged in the Exchequer Chamber. 36 Eliz. in C. B. Mor- din's Case. A Scire
Error.

upon have Power to examine all such Errors as shall be assigned or found in such Judgment, and thereupon to reverse or affirm the Judgment otherwise than for Errors concerning the Jurisdiction of the Court of B. R. or for errors of Form in any Writ, Return, Plant, Bill, Declaration or other Pleading, Proofs, Verdict or Proceeding; and after that the Judgment shall be affirmed or reversed, the Record and all things concerning the same shall be brought back into B. R. for Execution &c.

S. 3. Such Reversal or Affirmation shall not be so final, but that the Party grieved may sue in Parliament for the further Examination of the Judgment.

prosecute it with Effect, or pay the Money, if the Judgment was affirmed; They plead, That he did prosecute it with Effect, and that the Judgment was not yet affirmed; The Plaintiff replied Protestando, That they did not prosecute with Effect, Pro Placito, That the Judgment was affirmed by the Justices of the Common Bench, and Barons De Grauo de la Caja, et hos jurata et certificata per Record; To which the Defendants demurred generally, Because it was not alleged, That there were six Justices and Barons present when the Judgment was affirmed; For 25 Eliz. cap. 8, which gives them Authority, requires that there should be six at the least. Sed non allocutus; For the Defendant should then have pleaded Not not Record; For if there were not six, their Proceedings were Ceremon et Non Juris. Vent. 75. Pach. 22. Car. 2. Barre v. Milward.


29. In Durham, if an erroneous Judgment be given either in Canon law, or before the Justices of the Bishop, a Writ of Error is to be brought before the Bishop himself; and if he gives an erroneous Judgment, a Writ of Error shall be sued returnable in the King's Bench. 4 Inf. 218. cap. 38.


34. Writ of Error on a Judgment in Indictment of Perjury in B. R. If the Indictment was brought in Parliament, Stig. cites the Cafe of Read v. Davison as about two Years before, and Per Cur. this proves that it may be brought in Parliament but not that it must; and they affirmed their Jurisdiction that Error may be brought in B. R. in Criminal Cases upon Judgments given in this same Court; but not in Civil Cases, unless it be by Errors in Faiz triable by Jury; but in Cases Criminal, as well of Errors in Law as in Fact. Lev. 149. Mich. 16 Car. 2. B. R.

Error may be brought in B. R. for the Reversal thereof. 3 Inf. 214. cap. 121.
35. A Writ of Error out of an Inferior Court lies as properly in C. B. as in B. R. but generally Writs of Errors for many Years have not been brought in C. B. the Reason is Matter of Conveniency, because if you bring a Writ of Error in C. B. and the Judgment is affirmed, yet it may be brought into B. R. and be there reversed; though indeed if a Writ be brought in C. B. we must proceed upon it; But no Man will advise his Client to bring it in C. B. but rather into B. R. where it is final; Per Vaughan Ch. J. Cart. 222. Parc ch. 23. Car. 2. C. B. Anon.

36. Upon a Judgment in the King's Bench Error may be brought either in the Exchequer Chamber or Parliament at the Election of the Party, but upon a Judgment in the Exchequer Chamber, the Writ of Error must first be brought before the Lord Chancellor, and cannot come per Salumin into Parliament. Parl. Cases 56, 57, in Case of Phillips v. Bury.

37. In the Court of Exchequer Chamber for reverting a Judgment given in the Court of Exchequer, according to the Statute 31 Ed. 3. cap. 12. the Lord Keeper Somers did then declare, That the Question had been put to all the Judges in England, Whether the Judgment of that Court ought to pursue the Opinion of the Majority of Judges? And he said the Judges had delivered to him their Opinions in Writing. Holt Ch. J. Powell and Eyre Justices, were of Opinion, that the Majority of the Judges should govern this Judgment. But the Ch. J. Treby, Ch. B. Ward, Nevell, Rokeyb, Turton, Letchmere and Powis, were of a contrary Opinion; and therefore the Ld. K. pronounced a Reversal of the Judgment in the Court of Exchequer merely upon his own Opinion, and of Treby Ch. J. and Baron Letchmere, against the Opinion of all the rest of the Judges. Carth. 388. Mich. 8 W. 3. B. R. The King v. Hornely and Williams.

38. Mayor and Commonalty of London sued in the Sheriff's Court for a Fine for refusing the Office of Sheriff; according to a By-Law; Error brought into the Husting, which is a Court held before the Mayor, or his Aldermen in his Absence; It was objected that the Writ of Error did not lie, because the Mayor was both Judge and Party; but not allowed, because the Court might be held without the Mayor; Adjudged in B. R. Holt Dilligenti, and Judgment affirmed. MS. Tab. March 18, 1707. Mayor of London v. Markwith.

(1) Lies where.

In the same Court where the Judgment was.

But in the same Term they may reverse their own Error without suing to the Parliament. Br. Error, pl. 63. cites S. C. — Fitch. Error, pl. 16. cites S. C.
2. But if the Error be not in the Judgment but in the Proces, Br. Error, there the Writ of Error lies in the same Court de
there, and they may return it. 7 H. 6. 30.

3. As they may return their own Judgment for false Latin, he
causing this is not the Default of the Court but the Clerks. 7 H. 6. 30.

4. So upon a Judgment in a Real Action, if they award an Habe-
se Facias Seiimam of two Messuages and Land in one Town, where
the Demand is in two Towns, this erroneous Execution may be
there return upon a Writ of Error brought in another Term
than that in which the Execution is awarded. 7 H. 6. 30
between Himmer and Thomas adjudged.

5. If a Man comes in B. R. the same Term the Exigent is returned,
and notwithstanding this the Court gives Judgment against him,
this may be return upon Writ of Error in the same Court, because
this is not the Act of the Court, but of the Sheriff or Coroner. 7 H.
6. 28.

6. If the Court de B. R. awards Exigent where they ought to a-
ward a Pluries Capias, and thereafter the Party is outlawed in the
Country, this may be return upon the same Court, because it is the
Judgment of the Coroner. 7 H. 6. 28.

7. If a Distregas and Oto Tales be returnable in B. R. where
the Award is made of Oto Tall, and after Judgment is given,
this may be return upon Writ of Error in the same Court, because
the Error is in the Proces, and made by the Sheriff. 7 H. 6. 28.

Term, and that the Error assigned was, that he had a Distregas Sumnoners after Issue joined, and the
Sheriff returned the Distregas & Otto Tales where no Tales was awarded by the Roll. But Cher-
nery Ch. J. sais, that the same Term that Judgment is given, the Record is in the Breif of the Justi-
ces, and not in the Roll; for the Roll the same Term is not the Record, but the Remembrance of the
Justices, and by this Amendment we shall not force the Party from any Action, for though the
Roll be vicious, the Record is in us Justices, therefore we will amend the Roll, and not the Record,
for the Record is in our Breifs all this Term, and I myself well remember that Otto Tales was aw-
warded, and I think that where good Judgment is given in C. B. which is entered in the Roll erro-
nously, and Writ of Error comes the same Term, the Justices ought to amend the Roll according to
their Remembrance and the Truth, and then to sign the Record; but contra in another Term; for
then the Record is in the Roll, by which he commanded the Clerk to amend the Roll; Quod Nota.

— Br. Amendment, pl. 52. cites 7 H. 6. 29. S. C — Br. Record, pl. 20. cites 7 H. 6. 70. S. C.

Fitch, Error, pl. 16. cites S. C. If a Judgment is pronounced in B. R. and is not en-
tered, the Judges may alter it the next Term; Per Jones J. which was not denied Poph. 181.

8. If a Partition be made in Chancery, this may be return upon the same Court without going to Parliament. S. C.

9. If a Judgment a Capias ad Satisfaciendum be awarded in B. R. where no Capias lies in the Original, and thereafter the Party
is outlawed, he may have a Writ of Error in another Term and re-
return it in the same Court for the Error in Proces in Promulgatio-
ne Utralgaria, because this was the Judgment of the Coroners, and
not of the Court. Dyer 3 El. 195. 37. adjudged.

10. If an Action upon the Capi in B. R. an Award is made
upon Non Sum Intermutus quod quenses damn a recuperare debat, sed
quia necefu quo damn &c. a Writ of Inquiry of Damage is aw-
arded, but it is never returned, nor any final Judgment given, and
yet
yer afterwards a Writ of Capias ad Satisfaciendum is awarded for the B. Damages, and upon this an Exigent, and the Party is outlawed, no Writ of Error lies in Banco Regis in another Term for this Error in the Judgment, because they cannot correct their own Error, but the Party has his Remedy in Parliament only. 

Dyer, 3 El. 195. 37. adjudged.

11. If a Part brings a Writ of Error in B. R. upon a Recovery in an Affile of Darrell Porentment in Banco, and is nonsuit thereon, upon which a Writ to the Bishop is awarded for the Receiver, yet afterwards the Recoveror may have a new Writ of Error in the same Case, though they ought to reverse by Consequence their own Award of the Writ to the Bishop if they reverse the first Judgment. 

23 Att. 8. adjudged.

12. If Judgment be given in an Action in Banco Regis, and there also Execution is awarded, a Writ of Error quod coram vobis reidet does not lie in B. R. in Adjudicatione Executionis, because they cannot reverse their own Error. S. 12 Ass. B. R. between Chester Plaintiffs, against Brown and Sorel, adjudged.

13. If the Defendant in an Action, being an Infant, appears in B. R. by Attorney, and Judgment is there given against him, a Writ of Error to reverse this Judgment lies in the same Court for this Error. S. 25. 26 El. Rot. 93 B. R. adjudged between S. and Griffin. Nib. 5 In. B. R. between 2 Watkin and Griffin adjudged. Rot. 386. Tr. 1650. between 2 Dawkes and Peyton adjudged, and the Judgment reversed accordingly between Dawkes and Peyton, where the Case was, that Peyton being a Clerk of the Prerogative Court of Chancery, declared the same by Force of his Privilege, but not by Attorney or Guardian, and yet was within Age, and after he came of full Age, and after they pleaded to Issue, and after it was transmitted in B. R. and there was a Verdict and Judgment given for the Plaintiff, the Action being a Trespass of Battery, and in the Case was more strong than the other Cases, because the Error in this Case was committed in Chancery before the Record came in B. R.

14. If two bring a Writ of Error in B. R. upon a Judgment in an Affile, and pending the Writ one of the Plaintiffs dies and after the Court not knowing of the Death of one of them reverses the Judgment, and after he against whom the Judgment was reversed brings a Writ of Error in the same Court de B. R. and assails the Death of one of the Plaintiffs in the first Writ of Error, which was the Act of God, not the Error of the Court, it seems the Writ well lies. Ibid. 2 R. 3 1 b. a. and 2b. where thisis reported uncertainly, but Basford in the End said, that he would shew them Precedents.

In an Affile it is agreed two mean between the Verdict and the Judgment, one of them dies, and notwithstanding the Judgment was given, and upon it was demurred, if Error lies here: For it was said, that this Court cannot reverse their own Judgment, except it be for Error in Proces, and not for Error en fait; But it was adjudged that the Writ of Error was well brought here; For the Death &e. was the Act of God, and a Thing that did not lie in their Cognizance; And it was clearly agreed, that the Death of one of the Parties did absolve the Writ, and the Judgment was reversed. Cro. E. 107, 108. pl. 19. Trin. 50. Eliz. B. R. Meggot v. Broughton — 2 Le. 14. pl. 77, S. C. but no Resolution — 4 Le. 60. pl. 151. Meggot v. Davis. S. C. in toto dem Verbo, & adjournat.

Jones upon F. N. B. 21. (1) took this Difference, true it is that B. R. cannot re

15. Error in B. R. in the Proces where it is the Default of the Clerks shall be reversed in the same Court by a Writ of Error sued by the Party before the same Justices, but not without suing of a Writ of Error, altho' it be the same Term. F. N. B. 21. (1).

16. But in C. B. after Judgment given in the same Term the Justices may reverse their own Judgment upon Error in the Proces, or for

Default
default of the clerks, without any writ of error sued for; but in other cases, another term the party ought to sue for a writ of error thereupon returnable into b. r. f. n. b. 21. (i).

17. but of an error in law which is the default of the justices, the same court cannot reverse the judgment by a writ of error, nor with a writ of error, but this error ought to be redressed in another court before other justices by a writ of error. f. n. b. 21. (j).

court as upon outlawry, but if an error lies in this court for the same cause, but in parliament, then b. r. may reverse the judgment without writ of error being the same term. poph. 181. trin. 2 car. b r.

18. the court of b. r. cannot reverse errors in law before themselves, tho' it be in the same term; but error in fact or in process they may; per cur. mo. 186. pl. 332. mich. 26 eliz. b. r. anon.

b. r. cannot reform error in process unless in the same term.

19. if a. b. be indicted of treason or felony in b. r. or if he be indicted before commissioners of oyer and terminer, or any other, and the indictment of treason or felony is removed into b. r. and by process out of b. r. be erroneously outlawed, and lo returned, a writ of error may be brought in b. r. for reversal thereof. 3 init. 214.

20. a writ of error was brought of a judgment in b. r. upon an indictment in b. r. and held good, and that there are more precedents of writs of error in such cases brought there than in parliament, and cannot be elsewhere than here, being matter in fact, and non contumacy till error alleged if it be for error in fact or not. std. 208 pl. 2. trin. 16 car. 2. b. r. the king v. cornwall and ux.

(i. 2) in exchequer chamber.

a writ of error is not maintainable in the exchequer chamber, by the statute of 27 eliz. a judgment in b. r. upon a refusal, because it is not within the words of the statute, although it be a trespass; but is more than a trespass, and the party that brings refusal could not have had trespass because the cattle refused were the defendant's own cattle; per all the justices clearly. mo. 694 pl. 963. trin. 39 eliz. ody v. yate.

resolved not allowable, it not being an action mentioned in the said statute.

2. by the statute 27 eliz. the exchequer chamber hath power to examine errors of judgments in b. r. and alter such judgments are affirmed or reversed, then to send back the record into b. r. to that by the words of this statute, it is not to be sent back unless the judgment be affirmed or reversed; but yet, by the equity of that statute, if the plaintiff in the writ of error is nonsuit, or if the suit is discontinued, the record shall be sent back into b. r. and the court of exchequer shall give costs and damages to the plaintiff in the original action for his delay and vexation upon the statute 3 h. 7. cap. 10. but if the plaintiff in error was plaintiff in the original action, then no costs shall be given. 2 and. 122. pl. 68. 40 eliz. anon.

3. error in the exchequer chamber, upon a judgment in b. r. for that one of the parties died before judgment; it was objected, they had
It was afterwards moved in B. R. that they had proceeded in the Exchequer Chamber without Warrant of the Statute to try Error in Faét; for the Statute does empower them only to examine Errors in the Record; and of that Opinion were all the Justices; wherefore for this Cause they would not re-grant Redifinition upon this Judgment to the Defendant, who was put out by the first Judgment. Ibid. — Cro. C. 514. at the End of pl. 11. cites S. C. that Error in the Exchequer Chamber in Faét was assigned and tried by Nisi Prius and found, and for that Cause reversed.

5. Error was brought by the Bail in the Exchequer Chamber upon the Statute of 27 Eliz. of a Judgment in a Sci. Fa. against his heir. It was the Opinion of all the Justices, that it was not an Action mentioned in the Statute, whereof a Writ of Error did lie in that Court, nor is lie Party that can have Error of the first Judgment. Cro. J. 171. pl. 12. Trin. 5 Jac. in Cam. Scacc. Vaughan v. Williams.

6. In Sci. Fa. against the Bail who upon the second Sci. Faç, was condemned for not having the Body of the Principal, and Judgment was given that the Plaintiff recover super Recuperationem prædictam, where it should be super Recognizansa prædictam; Per Cur. no Writ of Error lies into the Exchequer Chamber; nor does it lie into B. R. as upon Error in Proces; For this is no Error in the Proces; For that is where the Proces is mistaken, viz. one Proces for another, which it is not here; but the Error is only in Point of Judgment, viz. recuperationem instead of Recognizansa, which is clearly another Matter, and no Remedy, as it seems, but in Parliament. Yelv. 157. Trin. 7 Jac. B. R. Prowse v. Turner.

7. Judgment in Debt was given in C. B. which was affirmed upon a Writ of Error brought in B. R. Afterwards the Defendant died, and then a Scire Facias was brought against the Son and the Tenantants, and Judgment against them; and upon a Motion for a Writ of Error in the Exchequer Chamber, upon the Judgment in the Scire Facias, it was denied, because the Record came into B. R. by Writ of Error, and not originally by Bill, as by the Statute 27 Eliz. cap. 8. is required. Roll Rep. 264. pl. 35. Mich. 93 Jac. B. R. Harvey v. Williams.


9. It was agreed that Error upon a Judgment in B. R. in Replevin does not lie in the Exchequer Chamber, but in Parliament only, because Replevin...
Replevin is out of the Statute. 2 Roll Rep. 434. Trin. 21 Jac. B. R.  
Farnell's Cafe.

10. No Writ of Error lies in the Exchequer Chamber by Force of the  
Statute 27 Eliz. on a Judgment in B. R. in an Actio De Scandaliis, for S. C. held  
it is not included within the Words of the Statute, for though the Statute says, such Writ shall lie upon Judgments in Actions of the Cafe,  
yet it does not extend to that Action, altho' it be an Action on the Cafe  
(Grado's Case) because it is an Action of a far higher Degree, being founded specially doubted, upon a Statute. 2 Ld. Raym. Rep. 954. Trin. 2 Ann. in Cafe of Aff-  
Jo. 194.  
pl. 5. S. C.  
B. R. Say (Ld. Vifcount) v. Stephens.]  

16 & 17 Car. 2. B. R. — S. P. cited as adjudged accordingly. 5 Mod. 250.  

on Judgments in the same Court, as well of Errors of Law as Errors of F  
The Fact; but not in Civil Cases, unless of Errors in Fact triable by Jury.  
Lev. 149. Mich. 16 Car. 2. B. R. Cornhill's Cafe.  

not be brought elsewhere than here for Matter in Fact, & non conlat till Error assigned whether it  
be for Matter in Fact or not.  

12. In Debt upon the Statute of Usury, the Plaintiff had Judgment in  
B. R. and the Defendant brought a Writ of Error in the Exchequer pl. 5. S. C.  
Chamber. It was moved that it should not be allowed, because it is  
not within the Statute 27 Eliz. which gives a Writ of Error there; for  
no Action which concerns the King is within it, and therefore an Action  
on upon the Statute of Scandalum Magnum is not within the Statute, and  
cited Ld. Say's Cafe.  
But on the other Side it was said that it had  
been adjudged to lie on a Judgment in an Actio on the Statute for  
Ties: Ideo Quere. Sid. 240. pl. 13. Hill. 16 & 17 Car. 2. B. R.  
Whiton v. Preiton.  

Twidden abinentibus, admissur. — 5 Mod. 250. Arg. cites S. C. that the Writ of Error was dis- 
allowed.  

13. Mandamus to restore Dr. Patrick to the Mastership of Quen's Col- 
lege in Cambridge; to which there was a long Return of Charters and  
Local Statutes; and upon the arguing it several Times the Court was  
never divided, Whether it might be adjourned into the Exchequer Chamber  
for Difficulty it being amongst the Pleas of the Crown as well as civil  
Pleas might, was the Doubt, but the Courts formed it that it might, and  
that the Pleas of the Crown, as well as other Pleas, might be adjourned this  
other, and that 4 Hlts. 58, 69. seems to warrant it, and that it extends  
to all Pleas, except to those of the Ecclesiastical Courts. Sid. 346. pl. 

Raym. tot. to 113. Hill.  
Car. 2. Patrick's Cafe,  
S. C. argued, but Curia  
advise to the Maje.  
it is said that this cafe  
was vacantly  
argued by four Judges, and that Norton (Moreton) and Keeling were for the Plaintiff, and Twifden  
and Whinham contra. — Lev of Quen's College Cafe alias Dr. Patrick's cafe, the Court be- 
ing to divide it was confided if it being a Case of the Crown Side, it might be adjourned into  
the Exchequer Chamber, and it seemed to come that it might, but it was not  

It was moved whether a Writ of Error would lie of this in the Ex- 
chequer Chamber; for though a Trespass is one of the seven Cases  
mentioned in the Statute which gives this Writ of Error, yet it may  
be intended common Trespasses only, and not those which are included  
on a Statute; Curia adjure to the Maje.  
Vent. 34. Trin. 21 Car. 2. B. R.  
Skirr v. Skyes.  

15. Writ
Entry.

But where Judgment was given in B. R. in Debt on the Stat. 1 Eliz. cap. 5, and 21 Eliz. cap. 1 for abating from Church for eleven Months, refused that Error in the Exchequer, because the King is not properly a Party, though he is to have Part of the Penalty. Raym. 275. Pacht. 31 Car. 2. in Scacc. Scott v. Knapton.

16. Scire Facias issued against the Bail, and upon two Nichols returned, there was a Judgment against them. Resolv'd, that no Writ of Error can be brought into the Exchequer Chamber upon that Judgment, but in Parliament only; and that after such a Return of two Nichils, it cannot be assigned for Error, that there was no Capias against the Principal; but in that Case the Bail is receivable only by an Audita Quaerela. Vent. 48. Trin. 21 Car. 2. B. R. Wingate v. Stanton.


18. Judgment in B. R. in an Action on the Cafe, and a Scire Faciat quare Exactionem &c. and there was a Judgment upon that; upon which a Writ of Error was brought in the Exchequer Chamber, and the Judgment in the Sc. Fa. was affirmed; and the Defendant died, and a Sc. Fa. (reciting the Judgment and Affirmance of it in the Exchequer Chamber) was brought against an Administrator, and Judgment bad up thereon, and the Administrator brought a Writ of Error upon the Judgment in the Sc. Fa. The Court held that it did not lie in the Exchequer Chamber, because it was brought upon a Judgment affirmed in the Exchequer Chamber, which is therefore priviledg'd from any other Writ of Error to be brought upon it there, so that this Writ be brought only upon the Judgment given in the Sc. Fa. and therefore lies not into the Exchequer Chamber. Vent. 168, 169. Mich. 23 Car. 2. B. R. Skinner v. Webb.

2 Keb. 849.
832 pl. 99.

19. Note, it was said by the Court, That if there be a Consent of forfeiture Entry upon the View of the Justices of the Peace, no Writ of Error lies upon it; but it may be examined upon a Certiorari. Vent. 171. Mich. 23 Car. 2. B. R. Anon.

20. Error was brought of a Judgment in this Court into the Exchequer Chamber, and Error in Fa't was then assigned; and the Court being there of Opinion, That Error in Fa't would not be assigned there, they affirmed the Judgment; upon which the Record with the Affirmation was remitted hither, and a Writ of Error was brought here Coram vobis resident (as is usual for Error in Fa't.) Vent. 207. Patch. 24 Car. 2. B. R. Prior v. 

2 Lev. 38.
Hopkins and Prior v.
Weiglesworth, S. C.
the Error assigned was the Death of one of the Plaintiffs, and Judgment was affirmed; upon which the Plaintiff brought Writ of Error Coram vobis resident* in B. R. and assigned the same Error and entered it on the same Roll, and now Hale Ch. J. said this Writ does not lie here, for this ought to be brought upon and recte all the Proceedings in the Exchequer Chamber.


22. Judgment
Error.

22. Judgment in Cafe upon a Bill of Exchange was affirmed upon a 12 Mod. Writ of Error in Cam. Sccce, and remitted into B. R. and then a Sci. Fa. 105. S. C. ruled accordingly, and Judgment thereon was, that the Plaintiff should have Execution. Then the Defendant brought Error in Cam. Secce, san in Redi- tion Judiciar quam in Adjunctione Executionis, and the Writ was al. S. C. allowed, yet the Plaintiff was taken in Execution, whereas Complaint was judged that made to the Court, but without Relief; For per tot. Car. no Writ of Error does not lie and the Execution is well taken out. Comb. 593. Mich. 8 W. 3. B. R. Hartop v. is no Super- vised.

pl. 4. S. C. adjudged accordingly. — Ed. Raym. Rep. 97 S. C. adjudged accordingly, that the la-
tent of the Statute of 2 Eliz. was only to relieve the Party grieved upon the Merits of the Case as it was at the Time of the first Judgment, and not upon any Matter subsequent which arisec afterwards, when therefore the first Judgment was affirmed the Merits of the Case were allowed, and the Exchequer Chamber, who ought only to affirm or reverse the first Judgment, have executed their full Power. It is true that if a Sci. Fa. be brought to revive a Domant Judgment in B. R. Error will lie in the Exchequer Chamber tam quam because it is only in Execution of the first Judgment, and is Quasi an Original Action; but if a Judgment in B. R. be once affirmed in the Exchequer Chamber, and then a Sci. Fa. is brought upon it, it is privileged from any other Writ of Error, otherwise the Law would be infinite and without End. And the Sci. Fa. is not in Nature of Debt at Common Law; for the one is brought to obtain another Judgment, and the other to obtain Execu-
tion.

(K) What Persons shall have a Writ of Error.

[And in what Cases jointly.]

i. The Writ of Error shall be brought by him who should * This have the Thing for which the Judgment is erroneously given, if the Judgment has not been given. Dyer 1 Ha. * 9. 5.

Cafe of Reynolds and Verney & al' v. Dignum & al'.

2. As the issue Female shall have it if intailed to her. 3 D. 4. Dyer * D. 90. a.

pl. 5. cites 3 H. 4.

S. P. and Hill. 10 E. 3. — Br. Erro's, pl. 35. cites 3 H. 4. 16. S. P. and also 9 H. 7. 24. Cameron and that the Heir at Common Law shall have the Action, and that after the Judgment reversed, the Heir in Tail may enter. — S. P. per Car. Le. 261. pl. 346. 18 Eliz. B. R.

3. None shall have a Writ of Error unless be Party or Privy to the Judgment. 22 E. 4. 31.

9 E. 4. 15. 9 H. 46. b. — Prives in Record may join in a Writ of Error; Per Roll Ch. 1. Sty. 190. Hill. 1649. There is a difference if one be Party to the Writ, although not Party to the Judgment; A Quare Impedit was brought by the King against the Patron and the Incum- bent, and Judgment was had against the Patron only, and the Incumbent Parish brought a Writ of Error; but if he had not been Party to the Writ, he could not have maintained Error. Arg. Godb. 578. pl. 465. Pech. 3 Car. B. R. in Brooker's Case cites Error 72. — S. had Judgment against W. and afterwards acknowledg'd a Statute to B. then S. sued Execution, and B. brought Error on the Judgment, but adjurg'd that it would not lie, 18. because he was a stranger, and Secondly, because he came in under and after the Title of Error. Arg. Godb. 578. cites 43 Eliz. C. S. Sherington v. Worley.

4. But all that were Parties to the Fine, though they shall have D. 89. b. nothing it revered, yet shall join with him that shall have the Thing for Conformity. Dyer 1 Ha. 89. 2.

6 K

5. Write
Error.

* Br. Error, 5. Writ of Error may be brought by him that is made Party by pl. 157, the Law, though he was not originally Party, as every of the cites S. C.—Vouchees shall have a Writ of Error. * 22 C. 4. 31. 8 H. 4. 3. b. Br. Error, pl. 59. cites S. C.——Fifth Error, pl. 61. cites S. C.

Br. Error, 6. The Tenant shall have a Writ of Error also of an Error between him and the Demandant. 8 H. 4. 3. Fifth. Error, pl. 61. cites S. C.——See (R) pl. 1, and the Notes there.


Br. Error, 8. [But] The Tenant shall have a Writ of Error of an erroneous Judgment given against the Tenant by Relecie. 22 C. 4. 32. E. 4. 50, 51. S. P.——In a Quod ei deforescit in Wales, in Nature of a Writ of Right Judgment was given upon the Default of the Tenant by Relecie, and this was allowed for Error, for that the Judgment ought always to be against the Tenant to the Action; and this was held a manifest Error, and Judgment was reversed. Cro. C. 252, 253; pl. 9. Trin. 8 Car. 8 R. Kilfin v. Vaughan.

9. But upon Default of the Tenant, if the Demandant says, that the Reversion is to I. and prays that he be receiv'd, there the Tenant shall not have a Writ of Error. N. B. 22 C. 4. 32.

Br. Error, 10. If a Judgment be given against B. and the vacant of C. is attached by Force of a foreign Attachment in London, C. shall not have a Writ of Error, because he comes in by Garnishment by the Custom, and is not Party nor Prior. 22 C. 4. 31. upon foreign Attachment & may have a Writ of Error, and that the Plaintiff in Attachment of Debt in another's Hands in London by the Custom may; For the judgment is not only against the Garnisher but against the Defendant also, that the other shall be discharged against him which is Extinguishment of the Debt of the Defendant against the Garnisher.

* Fol. 148.

11. If he in the Remainder be made privy to the Record by Ad- Praier * he shall have a Writ of Error during the Life of the Lessee, Co. 3. Marques of Winchester. 4.

* Fifth. Error, pl. 61. cites S. C.——Br. Error pl. 59. cites S. C.

12. So if he be receiv'd he shall have a Writ of Error. Co. 2. Marques of Winchester's Case. 4. * 8 H. 4. 5.

13. So if he in the Reversion or Remainder be made Privy by Voucher. Co. 3. 4

Same Cases cited 3 Rep. 4. 2.

14. So if it a Recovery be against Lessee for Life, he in the Reversion shall have a Writ of Error after his Death. 18 C. 3. 25. b. 17 Arg. 24.

15. So if the Feme be receiv'd by the Default of the Baron, and loses the Land by Judgment, the Baron and Feme shall have a Writ of Error thereupon. 49 C. 3. 21. b.


S. C. ad- judged.——Le. 114. pl. 157. S. C. adjudged.——F. N. R. (D) S. P.——Br. Error, pl. 28. cites S. C. But Coffin Executs during the Life of the Baron; For he has Authority to give it during his Life.——Fifth. Error, pl. 67. cites Hill. 50 E. 5. 5. S. C.

27. 36
17. If the Coniator of a Statute aliens the Land, and Execution is not fitth. Er-
fiued against the Alienor, he may have a Writ of Error upon the Ex-
cution. * 19 E. 3. 25. adjudged. Miller, for he is not priy — S. C.
ct. 4 P. 8. 1. 5. + 17 At. 24. the same Case, because he is ousted
by the Execution.

18. If an Action be brought against A. as a Wife sole, where she * Sr. 294.
is a Feme Covert, and he pleads to issue as a Feme sole, and after
a Judgment is given against her, and she is took in Execution, she
and her Husband may bring a Writ of Error; for otherwise the Hus-
band shall be prejudiced in the Controversy of his Wife, and of her
Care concerning his Business and Family, and he has no other
Means to help himself; but in the Case of a Feme the Husband
was cited and void it. Ct. 1651. between * Haywood and Wills- Court ad-
+ 18 E 4. 4. per Curiam. B. 15 Car. S. R. per Curiam, be-
tween Edwards and Simpson, in a Writ of Error upon a Judgment
may not bring a Writ
of Error to reverse it, but that is only where he may have another Remedy to avoid the Prejudice he
may receive by it; But in this Case the Baron has no other Remedy; For his Wife is taken in Ex-
cution, and by this Means he shall lose his Society; and therefore reverenti, nisi ante &c.
† Br. Error, pl 175. cites S C. but that is of an Action brought against a Feme Covert who ap-
peared, because he did not know whether her Baron (who was beyond Sea) was dead or not, and she
was condemned upon Ples, but the Baron came back, and they brought a Writ of Error, and all the
Judges held that it was well laid; and if she is outlawed they shall join in Error, otherwise it cannot be
reverted. — Br. Joinder en Action, pl 88. cites S C. as to Outlawry; for Feme Coverts cannot
flue without her Baron. — S. C. cited a Roll Rep. 32. Mich. 16 Jac. B. R. in the Case of Hay-
don v Miller, but in that Case, because it did not sufficiently appear to the Court that she was Covert
at the Time of the original Proceses laid out, and which ought to be expressly avered in the Align-
ment of the Error the first Judgment was affirmed. — Same Cases cited a Ld. Raym. Rep. 1625.
1527. Trim. 2. Geo. 2. in Case of King v. Jones, but the Court took a Difference between the De-
dendant's being a Feme Covert at the Time of taking the Writ, and her being then and after a Feme sole,
and cited the Case of Haydon v Miller, and Judgment in the principal Case affirmed accordingly.

19. So in the said Case, if the Action be brought against A. and Sr 284. &
others, they all with the Husband may join in a Writ of Error in
the said Case of Haywood and Williams; Adjudged per Curiam, and
the Judgment repelled accordingly.

20. If pending a Real Action the Tenant aliens in Fee, and after S. P. for the
Recovery is had against him, he himself may have a Writ of Error,
though he had nothing in the Land, because he is privy to the Judg-
ment after his Alienation and Tenant in Law.

cannot have Writ of Right, nor other Remedy; Quod Nota. Br. Error, pl 111. cites 12 Aff. 21.
— Ibid. pl 118. S P. cites 20 Aff. 2. — In such Case the Feodour shall have Error, and
when he is restored the Feodour shall enter upon him; Per Richardson J. Palm. 245. Mich. 10
for in such Case shall have Error, and yet there is no Right nor Priety in him. Ibid. 154. per De-
[Albany's Cafe.] — See (A. C) pl. S. P.

21. So if he had aliened in Fee pending the Writ, and re-purca- See(A. A)
sed it for Life, and after Judgment had passed against him, he
should have had a Writ of Error.
22. So his Heir after his Death shall have a Writ of Error, tho' he shall have nothing in the Land, for the Privacy which he has to the Judgment. *Civ. 50 *55.

23. But if the Tenant aliens, pending the Writ, and after Judgment passes against him, the Alienee cannot have a Writ of Error on this Judgment for want of Privacy.

24. So if the Tenant aliens, pending the Writ, and re-purchases it for Life, and after Judgment passes against him, and after he dies, it seems he in Reversion shall have a Writ; for though he has nothing in the Land at the Time of the Writ purchased, yet he had a Reversion at the Time of the Judgment, and is privy thereof. *Dituratur 50 *55.


against them, and the Principal shall have another Writ to reverse the first Judgment, and a Writ brought by the Bail to reverse the first and second Judgment was held ill. *Civ. 58. *4. S. C. held accordingly by Berkley and Crooker, contra Jones (abiere Bromley) that the Writ should abate in 100, because it was grounded on the first Judgment, and also upon the Judgment in the Scire Facias, and alleged Error in that Judgment, and in the Execution thereof &c. it had been well enough.

It has been a Question heretofore, whether a Writ of Error brought upon the principal Judgment, and also upon the Judgment given against the Bail together be good in Part, and ill for other Part; But of later Times it has been ruled that it ought to abate for all; Therefore let the Party shew Cause why the Writ shall not be abated here. *Sty. 174. *Mich. 1649 Shaler v. Bagg.* S. P. by Glyn *Ch. J. S. 471. Mich. 1655. in Case of Bradfield v. Norden, but the principal Judgment ought to be reversed by the Principal, and not by the Bail, and therefore the Writ of Error is not well brought by the Bail, therefore let it abate.

The Bail cannot have a Writ of Error of the principal Judgment, which was agreed by the Court, but then the Quisilis was, the Record being removed, Whether he may have a Writ of Error, Good cause ought to be shew. And therefore the Court doubted and would advise. *Civ. 58. *5. *Mich. 25 *25. *Car. B. R. Anon.

26. In a Writ of Annuity against an Heir, upon an Annuity granted by his Ancestor in Fee, upon Non es Faciam pleaded, if a Verdict be found for the Plaintiff, and thereupon Judgment is given that the Plaintiff shall recover his Costs, Damages and Arrears of the Lands descended from the same Ancestor, and therefore a Writ of Execution is awarded to levy it of the Lands descended, but no Return thereof appears upon the Record, and after the Heir dies intestate, his Administrator cannot have a Writ of Error upon this Judgment, nor
much as he losts nothing thereby, for if it be levied it is of the Lands defended, the which, nor the Profit thereof, he cannot have, nor be restored to it if he rebuffed the Judgment. Hill. 11 Car. B. R. between Franks and Stinchy, per Curtan, in a Writ of Error upon a Judgment in Banco. Intruct Hill. 10 Car. R. 990

27. If a judgment be given against the Principal, and after a Judgment against the Bail in a Scire Facias against them, the Principal shall not have a Writ of Error upon the first Judgment and the Judgment against the Bail.wich. 13 Car. B. R. between Griffith and South. Dubitatatur, Hill. 15 Car. in Camera Saccarari, in a Writ of Error between Coke and ... upon a Judgment in Banco Regis such Writ of Error was abated per Curtan.

If the Sureties be smeared where they ought not to be smeared by the Law, yet the Defendant shall not have a Writ of Error thereupon, for he is not the Party grieved by the Accident; and upon that Reason it is, if in a Scire Facias against the Bail erroneous Judgment be given, the Defendant in the Action shall not have a Writ of Error; Avg. 2 Le 4 pl. 4 Nich. 3 & 32 Ellis B. R. in Savare's Cafe. --- Keb. 256. pl. 30 Patch. 14 Car. 2. B. R. Spencer v. Monkhe, S. P. held accordingly.

28. Where one recovers in Affize against the Tenant, and the Diffidors named in the Affize were acquitted of the Diffelin, yet the Tenants who left, and those Diffidors, may join in Writ of Error. Thel. Dig. 32. lib. 2. cap. 13. S. 1. cites Hill. 2 E. 3. 31. and that so it is agreed in Falle Judgment Patch. 3 E. 3. 80. and Trin. 19 E. 3. Joiner en Action 30. and 19 All. 7. if the Diffidors are convicted of the Diffelin; And says fee such like Matter Patch. 3 H. 4. 16.

29. If the Tenant in Principle good reddat aliens pending the Writ, and the Demandant recover by Judgment, the Tenant may well bring Writ of Error. Br. Entre Cong pl. 51. cites 12 All. 41.

30. It was adjudged, where two Brothers Parteniers in Gavelkind were forjudged in Writ of Mufes, that the Survivor of them, and the Sons of the other, should be received to join in Writ of Error, inasmuch as one of the Brothers was dead before the Judgment. Thel. Dig. 32. lib. 2. cap. 13. S. 3. cites 19 All. 8.

31. A Stranger to a Recognizance of Statute Merchant may sue Writ of Error to reverse Execution awarded of this Recognizance, if be Ten-nant of the Land at the Time of the Execution sued. Thel. Dig. 32. lib. 2. cap. 45. S. 1. cites Trin. 18 E. 3. 25. 17 All. 24.

32. And it was held, where Writ of Error is brought by two Tenants, and the one dies, the Survivor and the Heir of the other shall have a Scire Facias in Common ad audiendum Errores. Thel. Dig. 32. lib. 2. cap. 13. S. 2. cites 19 E. 3. Joiner en Action 30. and 19 All. 7.

33. 9 R. 2. cap. 3. S. 1. If Tenant for Life, in Dower, by the Custody, or in Tail after Possibility, be implied, and left by Verissent or other-wife, be in Reverition shall have an Attain or Writ of Error upon a false Verissent found, or an erroneous Judgment given against the Particular Tenant.

not named in it. Pl. C. 343. b. Trin 10 Eliz. Brett v. Ridget. --- It was resolved, that the Statute speaks only of Reverisons, yet it shall be taken to extend to Remainders. 3 Rep. 4. a. Trin 25 Eliz. The Marq. of Wincheffer's Cave.

It extends not to a Reverison or Remainder expectant upon an Estate Tail, for by enumerating the four particular Estates for Life, it appears to be the Intention of the Legislature to exclude Estates expectant upon an Estate Tail; and it would be unreasonable to give a Writ of Error to such Reveris-son or Remainder-man during the Life of the Tenant whose Estate is an Estate of Inheritance, and by Possibility may continue for ever. Resolved, 3 Rep. 4 a. b. Marq. of Wincheffer's Cafe. --- 3 Rep. 61. a. Mich. 37 & 35 Eliz. C B Lincoln College Cafe. --- 10 Rep. 44. b in Jennings's Cafe.
Error.

34. And if the Oath be found false, or the judgment erroneous, and the Tenants still in Life, he shall be restored to his Possession and Issue, and the Receiver to the Arrearages; But if he be dead, or be found of Covin with the Demandant, the Receiver shall have all, yet the Tenant may traverse the Covin by Scire Facias out of the Judgment or Writ of Attain't if he please.

35. In Aff'is against an Infant and two others, there each took the Tenancy severally and pleaded in Bar, and the Plaintiff elected the Infant for Tenant and made Title, and were at Issue, and demurred upon the others, and it was found that the Infant was Tenant, and the Title for the Plaintiff, and that the two disjed the Plaintiff to the Use of the Infant, he being a Tear and half old, and the Plaintiff recovered, and the two brought Writ of Error, inasmuch as they ought to adjudge the Plaintiff to be bar'd for mis-electing of his Tenant. Horroby said they fevered in Pleas in Aff'is, therefore they cannot now join in this Action; but Tirwhit contra, and Markham doubted, therefore Quere his Intent of the Tenancy, inasmuch as an Infant of that Age cannot agree to the Entry. Br. Jinder in Action, pl. 107. cites 3 H. 4. 16.

36. Several Outlaws in Appeal may join or sever in Writ of Error at their Election, by the clear Opinion of Gafcoign. Thel. Dig. 32. lib. 2. cap. 13. S. 4. cited Patch. 7 H. 4. 39. and 40.

37. Where the Tenant vouches in Præcipe quod reddat, or Damages are to be recovered, and the Vouchee enters into the Warranty and lives, the Damages shall be recovered against the Vouchee, therefore he shall have Writ of Error; Per Horton. Br. Damages, pl. 45. cites 8 H. 4. 5.

38. Successor of a Parson shall have Error or Attaint of a Recovery adjudged against his Predecessor. Br. Error, pl. 198. cites 8 H. 6. 25.

39. Trespas against two who are condemned by erroneous Judgment, they may join or sever in Writ of Error at their Election; Per Cur. Br. Jinder in Action, pl. 77. cites 14 H. 6. 9.

40. In Recovery in Writ of Trespass against the Ancestor, the Heir shall not have Writ of Error nor Attaint; for this does not descend to him there, but yet if Fraudemen come in Debate, the Heir of it shall take Advantage by way of Escape. Br. Dicent, pl. 4. cites 33 H. 6. 18. 19.

41. If Trespass be brought against J. N. who dies, his Heir shall not have Error nor Attaint; For it was upon a Personal Action, which shall not descend to the Heir. Br. Error, pl. 14. cites 33 H. 6. 19. 51. 52.

42. Trespass against four in B. R. by one, and one died since between the Nisi Prius and the Day in Bank, and therefore the Plaintiff prayed Judgment against the others; But Markham said, that he might have Judgment against all; For none can have Error but the Executors of the Deceased, and not the other Defendants. Br. Brief, pl. 557. cites 5 E. 4. 6. 7.

43. Where a Feme Covert was sued as a Feme sole, and condemned and put in Execution, and afterwards her Heir returned from beyond Sea, it was held that he and his Feme should have a Writ of Error to reverse this Judgment. Thel. Dig. 32. lib. 2. cap. 13. S. 5. cites Patch. 18. E. 4. 4.

44. In Debt upon Escape after Recovery of Debt, or Damages, or other such Action founded upon Record, against a Stranger to the Record, the Defendant shall not Nullify by Error in the first Record. Br. Error, pl. 196. cites 21. E. 4. 27.
Error.

45. If Erroneous Judgment be given aganist Tenant by the Cartesia and after he dies without Issue, if his Heir revokes the Judgment by Error, the Heir of the Part of the Seme may enter. Br. Error, pl. 154. cites H. 7. 24.

46. And by all the Justices if a Man failed of Land has Issue two Sons, and the Eldest enters into Religion and the Father dies, and the Youngest Son lothes by Erroneous Judgment and the Eldest is deraigned, he has no Remedy. Ibid.

47. But if the Youngest reverses the Judgment by Error the Eldest may enter; Quod Nota! And this tho' the Youngest enters after the reversall or not; And fo in the other Case above, as appears there. Ibid.

48. Tenant in Tail suffered a Recovery, and released all Errors; now, tho' this Release shall bar him to bring a Writ of Error, yet it seemed to divers Justices that it shall not hinder the Issue in Tail, but then the Question was, whether, if there are no such, he in Remainder in Tail shall have Error by the Statute Rich. 2. or by the Common Law, he not being privy in Blood to him who lost the Land erroneously? And it seemed by the Opinion in Patch. 4 H. 8. fol. 1. that he may.


49. Error and Attaint always descend to such Person to whom the Land would descend, if such Recovery or false Oath had not been. Le. 261. pl. 346. 18 Eliz. B. R. in Cafe of Heningham v. Windham.

50. So if a Man has Lands of the Part of his Mother, and lothes it by erroneous Judgment, and dies, the Heir of the Party of the Mother shall have the Writ of Error. Le. 261. pl. 346. 18 Eliz. B. R. in Cafe of Heningham v. Windham.

51. If Tenant in Tail Male has Issue a Son and a Daughter by one Venter, and a Son by another, and dies, and the eldest Son makes a Feoffment, and a Common Recovery is bad against the Feoffee, in which the eldest is vouches, and he vouches over the common Vouchee, and after the eldest dies, the youngest Son may have Writ of Error; for though the eldest should have rendered a Fee Simple to the Feoffee according to his Loofs, yet he should have recovered but an Elliott Tail, viz. such an Elliott as he had when the Warranty was made, which would have descended to the youngest, and consequently the Writ of Error shall be brought by him.


52. He who is special Heir by the Custom, as of Borough-English; shall have the Writ of Error, and not the Heir at the Common Law; Adjudged. 4 Le. 5. pl. 19. 18 Eliz. Heningham's Cafe.

53. In a common Recovery four Husbands and their Wives were vouched, and the Plaintiff brought a Writ of Error as Heir to one of the Husbands, Exception was taken because he did not make himself Heir to the Survivor of the four Husbands, But a Difference was taken between a Real and a Personal Covenant, for if two are bound to Warranty, and one dies, the Survivor and the Heir of the other shall be charged, and said, that each of the four and their Heirs are charged, and then the Heir of each being chargeable the Heir of any of them may have Writ of Error. And the Writ of Error was adjudged good. But upon Suggestion that the Writ of Error was not well brought, for the Voucher being of four Husbands and their Wives, it shall be intended in Right of their Wives according to 20 H. 7. 1. b.
500

46. E. 3. 28. 29 E. 3. 49. So the Plaintiff here should intitle himself as 
Hirr to the Writ; wherefore the Plaintiff relinquished his Writ and 
brought a new Writ and intituled himself as Heir to the Wife. Le. 291. pl. 

54. The Plaintiff had a Verdict in an Action on the Cafe for Words 
and 100 l. Damages, and afterwards he took out Execution by Ellegion on 
the Lands of the Defendant, who died, and his Administrator brought 
Writ of Error in the Exchequer Chamber; the Defendant in Error 
pleaded in Abatement this Execution, by which he intended, that 
the Administrator not having any Lofs but the Heir only, therefore a Writ 
of Error would not lie by the Administrator; but upon a Demurrer to 
this Plea, it was adjudged for the Administrator; for upon Edition of the 
29 Eliz. Lord Mordant v. Bridges.

S. C. & S. P. resolved that the Writ of Error did lie, and that the Administrator is privy to the Re- 
cord, and may have Lofs by it in future.

55. Loffes for Life and Infant in Remainder join in a Fine, the Infant 
alone may bring Error. D. 89. b. pl. 2. Marg. cites Hill. 30 Eliz. C. B. 
Pigot's Cafe.

56. In a Queue Impedid against the Bishop and S. brought by the 
Queen, in which the Bishop pleaded, that he claimed nothing but as Or- 
dinary; after Judgment for the Queen Error was brought by the Bishop 
and S. It was objected that the Bishop ought not to join in the Writ, 
because he had no Lofs; But it was adjudged that the Writ was well 
brought, for Wray said, the Bishop has Lofs; for the Writ shall be to 
the Archbishops for Admonition and Institution, and so he has Lofs. 
Cro. E. 65. pl. 11. Mich. 29 & 30 Eliz. B. R. The Bishop of Glou- 
cester v. Savacre.

the Plea of the Bishop is not in strong as a Disclaimer; and afterwards the Writ was a- 
warded good And 200. pl. 316. S. C. but S. P. does not appear. —— 3 Mod. 174 S. P. 
obter per Cor. says they must join in Error unless where the Bishop claims only as Ordinary.

57. Husband and Wife Tenants for Life, Remainder to an Infant in Fee, 
all three leased a Fine, and the Infant alone brought Writ of Error to re- 
verse it for Non-age. It was objected, that since all joined in the Fine 
they should likewise join in the Writ of Error; and that the Husband 
and Wife should be summoned and severs, and then the Infant might 
proceed alone to affiign Errors; but adjudged that the Writ of Error is 
well brought by the Infant alone, because the Error assigned is not in the 
Record, but without it, viz. in the Perfom of the Infant, and that is 
the Cause of the Action by him, and for no other. Leon. 317. 

58. A Cousin of a Fine cannot affiign Error in the Grant and Render by 
which he takes Estate, any more than the Cousin shall do in the Co- 
nuniance; for this would be to defeat the Estate which by the Fine is 
given to himself; So a Recoveror shall not bring a Writ of Error to defeat 
a Record by which he himself recovered, for the Judgment in the Writ of 
Error is to restore the Party to all which he lost by the Fine or Judg- 
ment, and not to avoid or lose that which he had gained by the Fine or 

59. The
59. A Man was entitled to Felony and died, his Executor brought a Writ of Error to reverse the Outlawry, and the Question was whether S. C. argued it law; The same was argued, Sed adjournatur. Cro. E 225. pl. 10. Le. 525. Patch. 33 Eliz. B. R. and ibid. 273. pl. 2. Patch. 34 Eliz. B. R. pl. 519. S. C. Wray Ch. J. held clearly that the Executor might have and pursue this Writ of Error, and afterwards the Outlawry was reversed accordingly. —— S. C. cited as resolved accordingly. 5 Rep. 111. 2. —— Godd. 350. Jones J. cited 4 Rep. 111. but said that Marth’s Cafe never was adjudged. —— Cro. E. 539. S. P. cited by Popham and Gowyd as resolved accordingly in B. R. in Nichollon’s Cafe.

60. The Plaintiff had a Judgment in Debt, and afterwards the Defendant made a Feasment to J. S of his Lands, then the Plaintiff sued an Easit upon the Judgment; before it was executed J. S brought a Writ of Error, and aligned Error in the Judgment; Adjudged, that a Writ of Error would not lie for J. S. unless it be for Error in doing out Execution, which was not done in this Cafe, for before Execution he is not a Party grieved, which is the true Reason why he is in Reversion or Remainder shall not have a Writ of Error in the Life-time of the Tenant for Life upon a Judgment given against such Tenant for Life, because neither of them can be a Party grieved in his Time. Cro. E. 289. pl. 6. Mich. 34 & 35 Eliz. B. R. Charnock v. Sherrington.

61. If Execution upon a Judgment is sued by Easit, and Lands only Ma. 69y. extended, and no Goods taken in Execution, and after the Defendant pl. 949. dies his Administrator have a Writ of Error, for he is privy to the S. C. E. 8. R. Record, and may in fututo have Loss by it. Cro. E. 294. pl. 10. in the S. C. Com. Scacc. Hill. 35 Eliz. Scrogs v. Ld. Mordant. ruled that the Writ well lay for the Administrator, because it might be that the Land might be evicted, and then the Plaintiff might resort to the Goods. —— And at the End of the Cafe in Cro. E. is a Note added to the same Purpose.

62. In many Cases be that has no Loss nor can have Loss may maintain a Writ of Error; as the Tenant which makes a Feasment pending the Writ against him, So in Trespass against two, and Execution of the Damages is had against one only, and the Plaintiff is satisfied, and he, against whom the Execution was. died, yet the Survivor may sue a Writ of Error; Per Cur. Cro. E. 294, 295. pl. 10. Hill. 35 Eliz. B. R. in Cafe of Scrogs v. Ld. Mordant; and as to the last Point cites 20 E. 3. 5.

63. Judgment in Square Impedit was given against the Incumbent and Bishop Defendants. The Bishop pleaded that he claimed nothing but as Ordinary. Error was brought in the Name of the Incumbent and Bishop, but the Incumbent only assified the Errors (without Summons and Severance.) Afterwards the Incumbent and the Bishop assified the same Errors, and the Defendant pleaded in Nulla est erratum. All the Court held the Affirmation by one only was ill, and all the Plea discontinued, and not aided by the second Affirmation after. and afterwards a new Writ of Error was brought. Cro. J. 92. pl. 20. Mich. 3 Jac. R. R. Lancaster v. Low.

Bishop and others, and Judgment be against them all, they must likewise all join in a Writ of Error. unless it be where the Bishop claims only as Ordinary.

64. An Affidavit was brought against five for 100 Acres of Land, three Nov. 110. of the Defendants were found not Tenants, and acquitted at the Diffetum; Vaughan’s two other were found guilty, quoad three Acres, and for the Remain he adjudged to not guilty, but the Verdict was entered for 100 Acres, and Judgment be Error given accordingly. A Writ of Error was brought, in which all of them
them joined; Adjudged, that it ought to have been brought only by those two who were found guilty, and the three who were acquitted had not any Lands, and therefore ought not to have joined. Cro. J. 138. pl. 15. Mich. 4 Jac. B. R. Vaughan v. Lottinman.

65. Trespass against several, they all appear by Attorney and plead several Pleas; three not guilty, two of which are found guilty; the others justify by force of a Statute made 12 Car. 2. that three of them being Officers pursuant to the Direction of the Governor &c. and according to the Statute took the Goods, and that the other Defendants, as their Servants, and by their Command, assisted them in it. Upon a Writ of Error brought the Error assigned is, That A. who was Servant, was an Infant, and under Age. It was mov'd the Infant's Appearance by Attorney is erroneous for all; for it is a joint Judgment, and joint Damages are given, and cited the Cafe of Oate v. Aylett. The other Side agreed, that in all Cafes where an Infant ought not to appear by Attorney, if he doth, it is Error. But whether it is Error here, he only acting as a Servant, I must submit. The Reason why an Infant cannot appear by Attorney is, because he is thought not to be able to make known his Cafe; now he being a Servant must plead as the others, and stand or fall by that. Per Holt Ch. J. The Cafe is the fame whether he is Master or Servant, for the Servant is equally liable to Damages with the Master. Powell J. It is a joint Judgment, and entire Damages which cannot be divided. Per Cur. the Judgment was reversed. Holt's Rep. 360. pl. 5. Trin. 8 Ann. Greek v. Mew.

Hob. 73. pl. 81. Hilly: 11 Jac.in Camp. Scacc. Parker v. Law. — If in Trespass against three, Judgment was against the Plaintiff as to one, and as to the other two for the Plaintiff, the two only without the third may have a Writ of Error, for he for whom the Judgment was given cannot say that the Judgment was to his Damage; Per Cur. prater Twidlid, who held that the Writ ought to be brought by all. 1 Lev. 210. Pauch. 19 Car. 2. B. R. Cannon v. Abbess.

66. In Trespass against three one pleads to Issue; The Plaintiff has a Verdict against him and Judgment; The other two demurr; A Nolle Prosequi is entered as to them; The three Defendants cannot join in a Writ of Error; For the two against whom the Nolle Prosequi is entered are not damned. Jenk. 303. pl. 57.

67. The Son and Heir was outlawed upon an Indictment for Felony in the Life-time of his Father, who was jailed in Fee, and upon his Death the Son entered and devised it to C. in Fee, who conveyed it to B. who brought a Writ of Error to reverse the Outlawry; Doderidge and Jones J. seemed to incline that it did not lie for B. For that none can restore the Blood, but he who is privy in Blood; Sed adnornatur. Godb. 376. pl. 465. Pauch. 3 Car. B. R. Brooker's Cafe.

68. The Principal and Bail ought not to join in a Writ of Error to avoid the Principal Judgment, nor the Judgment against the Bail. Cro. C. 408. pl. 1. Trin. 11 Car. B. R. Butthell v. Yaller.


70. If
Error.

70. If J. S. binds himself and his Heirs in a Bond, and thereupon Judgment is obtained against J. S. and J. S. makes his Will, and his Heir at Law Executors and dies, leaving Lands which descend to his Heir, yet he shall not have a Writ of Error as Heir, for he is not privy to the Judgment, and when an Extent is made upon him it is as Tertenant, but after the Lands are taken in Execution he may have a Writ of Error; Per Roll J. Sed adjournatur. Sty. 38. 39. Trin. 23 Car. White v. Thomas.

71. By Roll Ch. J. if an Action be brought against three, and one of them is an Infant, and they all appear by Attorney, and an entire Judgment is given against them all, and they all join in Writ of Error to reverse this Judgment, this Writ is well brought; for the Judgment was erroneous, because it is an entire Judgment, for as to the Infant it cannot be good, and so it is naught to the rest, and he cited one Says. Cafe 9 Jac. in the Point. Sty. 406. Hill. 1654. Anon.

72. Judgment was had in Debt upon a Bond against Father and Son, and afterwards the Father alone brought a Writ of Error, and the Error was assigned, that his Son was under Age; but because the Son did not join in the Error, the Court ordered the Writ to be abated. 3 Mod. 134. Trin. 3 Jac. 2. Hacket v. Herne.

73. There is a Difference where a Writ of Error is brought by the Plaintiffs in the original Action, and when by the Defendants, for if two Plaintiffs are barred by an erroneous Judgment, and afterwards bring a Writ of Error, the Release of one shall bar the other, because they are both Actors in a personal Thing to charge another, and it shall be presumed a Folly in him to join with another, who might release all; But where the Defendants bring a Writ of Error it is otherwise, for it is being brought to discharge themselves of a Judgment the Release of one cannot bar the other, because they have not a joint Interest, but a Joint Burthen, and by Law are compelled to join in Errors. 3 Mod. 135. Trin. 3 Jac. 2. R. in Case of Hacket v. Herne.

74. Where several Writs of Sci. Fa. issue into several Counties, against several Tertennants, upon one and the fame Judgment, in such Case they cannot all join in one Writ of Error, for the Actions are several. Carth. 200. Mich. 3 W. & M. in B. R. in Case of Blake v. Gell.

75. But where a Scire Facias issued against the Tertennants in the same County, and upon a Scire Feci returned against several, they pleased that J. S. is another Tertennant and not summoned, and then a second Scire Facias issued against the said J. S. who was returned an Infant &c. and the Perad demurred for Infancy, and after his full Age a Refummons issued against all the Tertennants; But one of the Tertennants who was returned summoned was dead before the Day of the Return, and this was assigned for Error, and the surviving Tertennants and the Heir of him who was dead joined in the Writ of Error, and held good, for the last Scire Facias is only supplemental to the first, and then both make but one Action. Carth. 200. Mich. 3 W. & M. in B. R. Blake v. Gell.

76. Judgment was had against the Principal, and afterwards upon a Scire Facias, Execution was awarded against the Bail, and one of the Bail for the Defendant in the original Action brought a Writ of Error in redditione Judicis quos in adjudicationes Executionis against the Bail &c. But the Writ was qualified quoad all that related to the Judgment in the original Action, and no more, and was ruled to stand good quoad the Judgment against the Bail upon the Scire Facias and the Ball (Plauntiff in Error) proceeded therein accordingly. Carth. 447. Pach. 10 W. 3. B. R. Burv v. Atwood.
Error.

Writ of Error.—7 Mod. 3. S. C. and same Exception taken by Raymond at the End of the Case fol. 8. and the Court were of Opinion to quash the Writ of Error for this Exception. —Ld. Raym. Rep. 453. S. C. and the Writ of Error was quashed for the same Reason. —Ibid. 528. S. C. cited as in Court, and ruled accordingly.

77. Error upon a Judgment in C. B. in an Action against two, and one of the Defendants was outlawed; And exception was taken to the Writ of Error, because it mentioned the Writ to be brought against one only; But it was held good, because the Writ as to the other was determined by the Outlawry; Ex relatione M'ri Jacob. Ld. Raym. Rep. 691. Trin. 13 W. 3. Oliver v.anning.

78. If an Appeal of Murder be brought against three Persons, they may all join in a Writ of Error, for it is ad damnum ipsum formam respective, and yet the Attaint of one is not the Attaint of the other two; Per Holt Ch. J. Holt. 277. pl. 22. Hill. 4 Ann. in Case of Bradell v. Sawbridge.

79. The Plaintiff obtained Judgment against two Defendants in an Action of Debt, and one of them brought a Writ of Error, when it should be brought by both, and then he who would not prosecute ought to be summoned and fevered, which not being done, this was held to be a Fault not amendable, and thereupon the Writ of Error was quashed. 8 Mod. 303. Mich. 11 Geo. Cowper v. Ginger.

(L) Against whom it lies.

1. It does not lie against any but against him who is Party or Privy to the first Judgment. 9 H. 6. 46. b. Cittia.

2. It does not lie against any who is not Party or Privy, though he be Tenant of the Land. 9 H. 6. 46. b. Cittia.

3. The Writ lies against him who is Party or Privy to the Judgment, though he hath nothing in the Land. 9 H. 6. 46. b. Cittia.

4. If a Man recovers and dies without Heir, Quare against whom the Writ of Error shall be brought. 9 H. 6. 49. b. Ditiera.

5. Writ of Error lies well against him who was Tenant at the Time of the Judgment given, notwithstanding that he is not his Tenant at the Time of the Writ of Error acquired; Contra of Attaint; For this shall be against the Tenant of the Frankenement &c. Br. Error. pl. 109. cites 5 All. 6.

6. H. recover'd, and had Issue alive, and, and the took Bacon and had Issue 3, and died, and Writ of Error was brought against the Tenant by the Curtesy and the Heir, and admitted, and yet per Candid, the Usage has been to bring the Writ of Error against the Party to the Record or his Heir, and when the Judgment is revers'd to bring Scire Facias.
Error.

Facias against the Tertenant, if he can say any Thing why the Plaintiff should not have Execution, quod nota. Br. Error, pl. 27. cites 47 E. 3. 7.


8. If an erroneous Judgment is given for the Queen in a Writ of Injunction, the Party shall have a Writ of Error against the Queen without any Petition; Per Coke, Arg. 2 le. 194. Hill. 29 Eliz. in Hurilton's Cafe.

9. Many Outlawries have been reversed for Error without any Petition, and yet in such Cafe the Queen has an immediate Interest; Per Wray. 2 le. 194. Hill. 29 Eliz.

10. Error does not lie against the Queen upon a Petition, where she is in immediate Party to the Recovery; but otherwise where she is Party only as for Conformity, as in an Action upon the Statute, or in a Popular Eliz B. R. Hurilton's Cafe. Same Cases cited, and seems to be S. C. of Glazier v. Fulhiston, and the Cafe was, That Judgment was given for the Queen in a Sci. Pa to reverse the Patent of the Godlinesship of the Caffie of Glazier But Glazier didd. Then there needs no Petition, because both Patentees claim from the Queen, and whether there be Error or not the Queen is not prejudiced.

11. Adjudged, That a Writ of Error lies against the King without Petition, though antiently the Courte was by Petition, and was a Decency, but since the Year 1640 Writs of Error have been Ex Officio. 1 Salk. 264. pl. 7. Pack. 11 W. 3. B. R. Anon.

*At what Time it may be brought. [Before Writ of Enquiry. Pl. 2. 3. 9. 10. 11. 14.]

1. A Writ of Error bearing Date before the Judgment given 16 Br. Error, not good, for it lies not before the Judgment given, for the Writ is, St Iudicium redditum sit, &c. 22 H. 6. 7. Contr. 3. P. but says, that after dictum in B. R. 3 E. 6. —— Mo. 461. pl. 647. Hill. 39 Eliz. is a Nata that a Writ of Error was delivered Infanter when the Judgment was given, but held not good, because it was procured before the Judgment given —— Mar. 140. pl. 112. Mich. 17 Car. in Cafe of Dale v. Morthyn, the Court agreed that a Writ of Error bearing Telle before Judgment is good, as is the book of 1 E. 3. 4. because there the Foundation bands good, and it is the usual Courte of Practice for preventing and superceding Execution —— Vent. 235. Hill. 25 & 26 Car. 2. B. R. the Court held that a Writ of Error bearing Telle before the Judgment given is good to remove the Record, so as Judgment be given before the Return of it. —— Mod. 112. pl. 9. S. P. by Hale Ch. J. and seems to be S. C.

*Now s4 cites S. C. but there it was said by the Court in the Cafe of Jennings v. Bragg, that a Writ of Error bearing Telle before the Judgment is entred of Record is void, although the Judge have pronounce'd the Judgments, viz. good in surrer Judicium. Writ of Nift Pris was returnable Oxk Hilliar at which Day it was return'd, and at the first Day thereof the Plaintiff had Judgment to recover, the Defendant brought Writ of Error, bearing Date the third Day of the said Return, and before the fourth Day, viz. the time between the first Day and the fourth Day, and because Judgment was given the first Day, and to it is alter Judgment as it ought to be, therefore well; Per Cur. Br. Error, pl. 17. cites 34 H. 6. 27. —— Br. Jour. pl. 10. cites S. C.

2. In an Assize of Darrein Presentation if the Parties demur upon the Title, and it is adjudged for the Plaintiff, and that he shall have 6 N. a Writ.
Error.

A writ to the Bishop, a Writ of Error lies upon this Judgment before the Damages incurred of, because there were no Damages at the Common Law, and then the Writ would be present, and the Addition of Damages given by the Statute to be inquired of to the Sheriff, shall not lay the Writ of Error, and if it be attended, it may be inquired of the Damages where it is as affirmed. 17 C. 3. 3. 19. 21. adjudged 33.

3. So if a Bail recovers by Default in a Writ of Construction or Aiel, a Writ of Error lies upon this before the Damages are inquired of, because the Damages are but an Addition to the Common Law given by the Statute, (*) and to the Judgment for the Principal continues as it was at Common Law. 17 C. 3. 3. 21. 33.

4. No Writ of Error lies upon a Judgment to account before the last Judgment, because the Plea is not ended till be hath accounted. 21 C. 3. 9. adjudged. * Berckes 38. adjudged. * The Nay's Reports 68. two Executors have Judgment against B. quad compute the Writ shall not abate by the Death of one of the Executors.

Judgments, and Writ of Error is Litigis fì Judicium reddition sit tune &c. For Writ of Error does not lie before Judgment. — Cro. E. 626. in pl. 52. cites S. C. & S. P. For the Plaintiff might be non-suited before the second Judgment. the. H. 7. 2. 15. And that if it was adjudged in 11 Eliz. Lordy b. Corn. And 66 7 R. 2. in Formen where the Tenant was ousted of Aid, Error lies not till the Judgment of the Principal. — Le. 104. in pl. 257. cites 21 C. 3. 9.


Award Quad 5. So no Writ of Error lies upon an Award before the Original be computed is determined. 17 C. 3. 21.

6. As it does not lie upon an award of a Capias, Summons, or Re summons before the Original determined. 17 C. 3. 21.

7. In a Writ of Partition, if the Judgment be given Quad Partition Fix, and thereupon both is directed to the Sheriff to make a Partition before it is executed and returned, no Writ of Error lies upon the first Judgment for that before the last Judgment, which ought to be Quad Partition Pro 't fit, and安宁s in perpetuum the Plaintiff may be non-suited, or he may, upon the Return of the Sheriff, suggest to the Court that the Partition is not equal, and to have a new Partition, and also he may release before the last Judgment. * Mich. 40, 41 Cl. B. R. between the * Lord Barkly and the Counts of Warwick adjudged. B. 10. 40, 42. between * Ballad and Rosalins, per Curiam, P. 3 13 Car. B. R. between Williams and Watkins adjudged, and such Writ abated, being brought upon the first Judgment given in Cardigan.

* Cro. E. 635 pl. 32. and 633. pl. 46. the Counts of Claro with B. D. Birdsey, s. C. held per tot. Cur. that till the second Judgment given, Quad Partition Stabilis fit the Record is not full, nor the Judgment perfect, and therefore the Record should not be removed. — Mo. 615. pl. 39 S. C. by Writ of Judgment. — Nov. 71. S. C. held accordingly; and this is not like other Real Actions, where Error lies before the Habere Facias Seinam be returned; For that is a final Judgment, and no other to be given; besides, there needs no Return of an Habere Facias Seinam; For the Party that recovers may execute his Judgment by his Entry, and cites D 67, 4. — Roll Rep. 85. Mich. 12. 4. B. R. Coke Ch. J. laid, that in the Courts of Warwick's Cafe of Partition there was no any Resolvem, but that it seems in such Cafe before the second Judgment no Writ of Error lies, Quad full controversial per Dorderidge, but Crooke and Haughton did not of it. — S. C. cited by Dorderidge, as ruled to be brought too soon before the second Judgment. 2 Bull. 104. S. C. cited 2 Roll Rep. 125. as held accordingly.
8. A Writ of Error lies in Camera Scaccario after an Award of the

See tit. Ex-

Court of King's-Bench for Judgment, and the Roll signed for Judg-

ment by the Clerk before any Judgment entered; for otherwise the

 Plaintiff in the Writ of Error should be at great Prejudice, for the

See supra use of the Court is not to enter the Judgment till the Vacation

after, but to award Execution presently after the Signing the Roll

for Judgment, and before Entry thereof; And so if the Writ of

Error shall not be allowed after Signing, and before the Entry;

the Plaintiff in the Writ of Error should not have any Benefit of

the Superfederes of the Execution, which is incident in the Writ of

Error. N. C. 15 Jac. B. R. between Smith and Bowles, by all the

Clerks, that this is the common Course, and per Curiam ad-

judged.

9. If a Woman recovers in a Writ of Dower, a Writ of Error lies

before the Writ of Inquiry of Damages awarded, and before the third

Part assigned by Metes and Bounds; for the Judgment is perfect as

to the Reality, and the Damages given by the Statute by way of

Addition. P. 17 Car. B. between Stewart and Stewart, per Cur-

iam adjudged, and the Inquiry of the Damages, after the Writ of

Error brought, quashed.

10. In an Ejectment Firmo, if the Plaintiff recovers per nilit dicit,

in which Judgment is given that the Plaintiff shall recover his Term,

and a Writ awarded to inquire of the Damages, a Writ of Error lies

uppon this Judgment before the Return of the Writ of Damages, and

Judgment thereupon, for the Judgment is perfect as to the Recove-

ry of the Term before the first Judgment, and the Plaintiff may

presently have Execution for the Possession, and perhaps he will

never have Judgment for the Damages, and to the Defendant

should be ousted of the Possession without Remedy. Tr. 3 Car.

B. R. between Newton and Terry. Intratru Writ 2 Car. Rot. 110

per Curiam, in a Writ of Error Judgment revoked. Nota,

Mr. Hodderson the Secondary de B. R. said to me, that this

is now agreed by both Courts,estates, the Common-Pleas and

King's Bench.

11. So if a Man recovers in a Quare Impediment upon a Demurrer, the

Defendant may have a Writ of Error before the Writ of Inquiry

of Damages (*) returned, for such Writ may be awarded out of

the King's Bench if the Judgment be affirmed there. Note,

this was the Lord Arundel's Case against Edmonds, about 15 Car. ad-

mitted, and so is the constant Practice of the Court, for no Da-

mages were given at the Common Law, but given by the Sta-

tute. Contura Noy's Reports 66. the Bishop of Gloucester and Vele.

12. If an Execution upon a Statute-Merchant be awarded where a

Stranger is seised of the Land by Feoffment of the Conouor, per he

shall not have a Writ of Error of the Execution before he is ousted

by the Execution. 18 C. 25. because he is not privy to the Record

before this, nor before the Return of Execution, and after the

Duffer of him by Force of the Writ by the Sheriff. Dubitavit

18 C. 3. 25.

N. S. by

Banks Ch.

S. P. by


—2 Build. 104. S. C. & S. P.

agreed. — 2 Build. 19. Arg. S. P.
13. If a Man recovers in a Præcipe quod reddar against me, I may have a Writ of Error before Execution is issued. 18 Ed. 3. 26.

14. If a Man recovers in an Ejection Firma by Confession, Nil habil dictis, Non iam informatus, or Demurrer, a Writ of Error lies before the Damages taxed by Writ of Inquiry I had the Precedents of Matter bondedown, Secondary de B. R. Patch, 13 Ed. B. R. Rot. 52 between Vassuer and Borest. Error brought upon a Judgment in Banco, and a Writ of Inquiry awarded in B. R. The like between Bouch and Errington, 13 Ed. B. R. Rot. 51. Tr. 35 Ed. B. R. Rot. 626. Winmarke's Case; And same Case Co. 5 Winmarke's Case, 74. where Judgment upon Demurrer in B. R. and before the Return of the Writ of Inquiry Error was brought in Camera Scaccarii, and there affirmed and remanded, 13 Ed. B. R. Rot. 438. B. R. between Howie and Layton. Error brought in Camera Scaccarii before Damages assessed, and this affirmed Nich. 25, 26 Ed. B. R. Error brought after Judgment, and before Damages assessed, and this recover'd for Error in fact, Tr. 3 Car. between * Newton and Terry, for Cittain, in a Writ of Error. New Entries 141. between Don and Lure. But note, this is there but an Award. Dill. 1649. between Broad and Barrow adjudged in a Writ of Error upon a Judgment by Nohil dict in Banco. Intratut Tr. 1649. Rot. 1538.

15. But in an Ejection Firma, if Judgment be given, Ideo considerandum est quod quæres recuperari terminum, and upon this Judgment the Plaintiff may have an Habere Parus Poletinonum, and if Error would not lie on this Judgment, the Plaintiff after he had got Poletinon upon an erroneous Judgment would never sue a Writ of Inquiry, and so the Defendant would be without Remedy. Lat. 212 Patch. 3 Car. Smith vs. Ames — S. P. by Roll Ch. J Stev. 252. Trin. 1631, in Case of Giles v. Tumberley. — 5 P. adjudged, there being no Return of Damages, nor a Captain, the Commonwealth may by this Means be correct of the Fure, and the Defendant barred from bringing a Writ of Error. Syr. 246 Mich. 1649. Acton vs Ayres — If Error be brought in Ejection before the loft Judgment on the Writ of Inquiry, and no Captian entered, it is Error; Per Twidin, and to be laid it had been often ruled. Keb. 327. pl. 59 Trin 14 Car. 2. B. R. Oliver vs. Harkwith.

16. If a Man recovers in a Quære Impeudic, and after brings a Writ of Quære non admitt against the Bishop, a Writ of Error may be after brought upon the Judgment in the Quære Impeudic, and the Record shall be removed, though the other Writ of Quære non admit be not yet disculped. Dubitatur 26 Ed. 3. 75.

17. If a Man recovers Damages, and after a Year sues a Scire Facias of the Damages, a Writ of Error lies after the judgment, and the Record shall be removed. 26 Ed. 3. 75.

18. If an Infant suffers a Common Recovery by Guardian, in which he is Tenant to the Præcipe, at full Age he may have a Writ of Error as well as within, and assign for Error that he was within Age at the Time of the Recovery suffered; for if he had brought this
Error.

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this Writ within Age, it should not have been tried by Inspection, but S. P. does not appear.

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one Cap. 2. B. R. comes and sues a Common Recover, this shall not be reversed for Error, per Cur. Sid. 521. Hill. 18 & 19 Car. 2. B. R. cites Ed Newport's Case. And in the principal Case there cited, the Court, and the other Judges held, that where an Infant comes in and sues a Common Recover, a Writ of Error does not lie after full Age; but if he appear by Attorney and sues a Common Recover, this may be reversed for Error after his full Age, because it shall be tried for Pais, whether the Warrant of Attorney was made when he was an Infant &c and this is the Reason, that Judgments so obtained against Infants may be reversed after their full Age, viz. because the Trial is not by Inspection but per Pais, and cites Cro E 366. Mo 400. Co. Litt 580 b. and F. N. B. 144 (K) — Lev 145: Xiph b. Robinson, S. C. the Parties agreed before Judgment given, but the Opinion of the Judges was laid to be, that Error lay not after his full Age, 

see tir. Trial (C) per tum. 

19. In Account, Writ of Error came after Judgment given that the Writ of Error if Defendant should account, and after Capas ad Comptandum was awarded, and before that he had accounted in Fact, and therefore per Cur. this shall not be sent for him to have accounted; for the Plea is not ended before he has accounted in Fact. Br. Accomp! pl. 39. cites 21 E. 3. 9. when he was adjudged to account, and all Times after he shall be adjudged in Ward, and who is in Ward cannot be taken out by Writ of Error. Br. Accomp! pl. 43. cites 21 H 6. 26.

20. 9 R. 2. cap. 3. S. 1. If Tenant for Term of Life, Tenant in Deces, Tenant by the Court, or Tenant in Till after Possibility be implied, and lead to Inquests, and life by the Oath of twelve, or life by Default, or in other manner, he to summon the Recovery persons at the Time of such Judgment given, his Heirs and Successors, shall have an Action, and also a Writ of Error, as well in the Life of such Tenants as after their Death.

21. If a Squre Impedis is brought against two, and one pleads to Issues, and the other confesses the Action, upon which Judgment is given, he shall not have a Writ of Error till the Matter is determined as to the other, for the Writ of Error must rehearse all that are Parties to the Original, and then the Writ says, Sir Judicium inde redditum in tunc Recordium illum habeatis, and as to one Judgment is not given, and it the Record should be removed before the entire Matter is determined, there would be a Failure of Right; Per Curiam, 11 Rep. 39. a. b. in Mertcal's Case, cites 34 H. 6. 41. a. in Humtrey Bobun's Case.

and own appeared and pleaded, and was attainted, and Judgment given against the other, that he could not have Writ of Error till the Matter was determined against the other &c. —Br. Error, pl. 15. cites S. C. and Prior cited as lately adjudged in Ed Curnwall's Cafe.

22. Writ of Error was discontinued, and the Plaintiff after the Record removed into B. R. brings another Writ of Error there, quod ceraus vesin rei did; Quod nota. Br. Error, pl. 149. cites 2 H. 7. 12.

23. Information was made in the Exchequer against the Merchants of the Stiff-Yard for diverse Merchandises Shipped not Carried, and Judgment given against them, upon which they sued Writ of Error, which was discontinued for the not coming of the Chancellor and Treasurer, to whom it was directed, &c.; and to whom they sued to
Error.

have another Writ of Error, which was discontinued in the same Manner, and they said the third, and then the Kings Attorney pray'd Execution, and could not have it; For the Writ of Error is a Superfedeas in itself, and the Party cannot compel the Judges to come, and a Man who is nonuitied in Writ of Error may have another Writ of Error, but not with Superfedeas as the first Writ was; For this is his own Default; Contra here by the not coming of the Justices. Br. Error, pl. 147, cites 6 H. 7, 15, 16.

24. So of Demise of the King, or Death of the Party, or by Adjourn- ment of the County, in those Cases the Party shall have Superfedeas up- on the second Writ of Error. Ibid.

25. An Exigent being awarded in an Appeal, a Writ of Error was brought immediately; For he by the Exigent awarded, in Cafe of Felony, forfeited all his Goods immediately; Wherefore for as much as he was at present Los, and Prejudice he might have a Writ of Error presently; Cited by Coke, Cro. J. 357, in Cafe of Metcalf v. Wood, as a Cafe he had seen a Precedent of 8 H. 8.

26. It in a Forfeiture the Tenant as Judgment for Part, no Writ of Error lies until the entire Matter in demand is determined; for the Judgment is, Si Judicium inde redditem fit, which Word inde goes to the entire Demand. 11 Rep. 39, b. per Curiam, cites Dyer 291. b. [D. 290. a. pl. 62. and 291. b. pl. 67. Trin. 12 Eliz. Fitzwilliams v. Copley.]

27. Error in Proofs cannot be alleged after in Nullo eff creatum pleaded; For if it had been alleged the other Party might allledge Diminu- nation. Cro. E. 83. Hill. 30 Eliz. in Cafe of Robbert v. Andrews.

28. J. S. had a Judgment against W. in Debt, and afterwards W. made a Feoffment to C. the Plaintiff of his Land; Then J. S. sued an Elizit upon the Judgment, but before it was executed C. brought a Writ of Error, and would affign Error in the Judgment. The Court thought that a Writ of Error would not be for C. the Feoffee unless it be for Error in suing out Execution. 2dly Till Execution sued he is not a Party grieved, which is the true Reason why be in Reverfor or Remainder shall not have Error in the Life-time of the Tenant for Life upon a Judgment given against such Tenant for Life, because he was not then a Party grieved. Cro. Eliz. 289. pl. 6. Mich. 34 & 35 Eliz. B. R. Charnock v. Sherrington.

29. Error to reverse an Amerciation in a Court Lest, because it was unreasonable; It was inferred that after an Amerciation is once affed- ed, the Writ of Moderata Mifericordia doth not lie; And per rot. Cur. clearly this is no Error now to be affigned, and the fame was affirmed. Bulft. 125. Patch. 9 Jac. Stubbs v. Flower.

30. In Action of Account it was inferred, that a Writ of Error does not lie on the first Judgment, and Man secondary informed the Court upon a general Writ of Error, upon a Judgment given in an Account, the first Judgment that he shall accompt, and the second Judgment also, shall be reverfed, if Error be therein. Doederidge J. said, By this it appears that the general Writ of Error goes to both the Judgments, as well to the one as to the other; The whole Court agree with him herein. 2 Bulft. 120. Trin. 11 Jac. Porter v. Agar.

31. In Debt against divers by several Precipes, if there be Error in the Judgment against one, he may have Error before Determination of the Matter as to the others, for in those Originals in which are several Counts, and Error is against one, he shall have Writ of Error, and the Record of his Count and the pleading shall be severed from the Original, and removed in B. R. and yet the Original remains in C. B. as well becaufe the Court of C. B. is in Possifion of it becaufe otherwise the Court of C. B. could not proceed to determine the Re-
Error.

...there is no tie. Per the Danv. r^r 2

32. Where several Judgments are to be given, the one dependent on the All

other, there the Writ of Error does not lie till the last Judgment is
given of the Thing of which the Judgment is given before; Per Dod-

33. Where a Suit is of several Things, yet if the Damages are entire

the Writ of Error does not lie till all is determined, as in Trepafs; afte's Jure-

Jac. B. R.

34. In Debt, Detinie and Dozer, by several Precipes, Writ of Error

does not lie till all is determined; But otherwise in Trepafs; Per


like. zdly, When the Things are several, then she shall not tarry till the last Judgment. zdly, though they are several Things in their Nature, yet if the Damages are entire, there the Error shall not be before Judgment be of the whole and final; Per Doderidge. And per Haughton, In Debt, Detinie, Doctor &c. if Defendant confesses Part, and has Judgment for this, Error lies, because it is several, but otherwise in Trepafs, because the Damages are entire. Litt. Rep. 6. Mich. 17 Jac. B. R.

35. If in a Quo Warranto Judgment be given as to Part of the Liber-
ties claimed, that they shall be sealed, and that the Defendants capi-
tur pro Fine, and as to the other Part, Curia advigare only, a Writ of

Error lies before any Judgment given for the other Part. Patch-

17* Car. 2. adjudged upon a Writ of Error upon a Judgment in a

This is Quo Warranto against the Corporation of Dublin. 3 Danv. 22. pl. 26. nilprinted and should cites Palm. 1, 2, &c. 17 Jac. B. R. and says fee a long Argument and the Judgment accordingly.

36. In Trepafs when the Recovery is had by Default no Writ of Error will lie before the Writ of Inquiry of Damages is returned; for the De-

fendant is not grieved until Judgment is given upon the Return of the

Writ of Inquiry. Jenk. 25. in pl. 48.

37. Error lies after a Confession or Retraction, but not after a Disclaim-


38. Writ of Error bore Telle before the Plain there entered, the Court
viz. Mallet, Heath and Brampton were clear of Opinion, without any solemn Debate, that the Record was not removed by that Writ of Error, because if there be not any Plain entered at the Telle of the Writ, how can the Proceffus according to the Writ be removed, when there is no Proceflus entered? And that it is then the Delay of Justice. Mar. 140. pl. 212. Mich. 17 Car. Dale v. Worthy.

39. A Writ of Error bearing Telle before Judgment is good, as is the A Writ of Book of f E. 5. 4, because in that Cafe the Foundation of the Writ
stands good, and it is the usual Course of Practife for the preventing
and superseding of Execution ; Agreed per Curiam. Mar. 140. pl. 212.

...move the Record, so as Judgment be given before the Return of it; Per Cur. Vent. 235. Hill.


Judgment, when ever it is entered, has relation to the Day in Bank, viz. the first Day of the Term; so that a Writ of Error returnable after will remove the Record, whenever the Judgment is entered; Per Hale Ch. J. Mod. 112. pl. 9 Patch. 26 Car. 2. B. R. Anon.

40. A Writ of Error may be brought before the Writ of Inquiry is re-
turned in an Ejection; for in that Action the Judgment is compleat at

the
the Common Law before it is returned; for the Judgment is only to
gain Pottellon. And so it is in a Writ of
Dower; But in Trespafs,
where Damages only are to be recovered, the Judgment is not complest till
the Writ of Enquiry is returned, nor can be made up before, as in
this Case it may; but here being no compleat Judgment entered, there
being no Capias which ought to be in all Actions Quare Vi & Armis,
that the King may have his Fine, which he cannot otherwise have it
if the Party does not proceed in his Writ of Enquiry, the Writ of Error
is brought too soon, and Plaintiff may proceed to Execution in C. B.
because the Compleat Record is not here; Per Rull J. and bid them
advise what to do in C. B. for it is mischievous either way. Sty. 109.
41. Error returnable the same Term in which Judgment was given,
is good when the Record is removed; Per Twifden J. Sid. 104. Hill.
14 & 15 Car. 2. B. R.
42. Defendants in Indictment in B. R. were found guilty, and after
View Judgment there, brought Writ of Error there, but upon Search and
of the Roll there was only Judgment entered Quod Capiatur, and there-
fore the Court directed that the Writ of Error shall not be allowed till the
Defendants come in proper Person, and in the Interim Process shall
be made against them to come in to hear their Judgments. Sid. 208. pl 2.
Trin. 16 Car. 2. B. R. The King v. Cornwall & ux.
43. Hale said, that about three Years since at Norfolk Alizes, the
Defendant in an Indictment of Barrenry brought a Writ of Error Tisse
before the Alizes, and it was disallowed, because if such Practice should
obtain it would disappoint all the Proceedings at the Alizes. Vent.
19. A Writ of Error will lie on a Judgment in Ejecment quod recup-
eret &c. before a Writ of Inquiry executed, for that is only as to the Da-
mages; Per Holt Ch. J. Earth. 225. Hill. 3 W. & M. in B. R.
44. 1 W. 3. cap. 14. S. 1. No Fine or Common Recovery, nor any
Judgment in any real or personal Action, shall be reversed or avoided for Er-
ror, unless the Writ of Error, or Suit for the reversing such Fine, Recover-
y or Judgment, be brought and proceeded with Effect within 20 Years af-
ter such Fine levied, or such Recovery suffered, or Judgment signed or en-
tered of Record.
45. Error of a Judgment in Debt upon a Bond in C. B. and the
Error asignfed was, that it was a Bond for Appearance taken by the Plai-
tiff Colore Officii, and it was no where said that the Plaintiff was a She-
riff but only that he took the Bond, per nomen Viccicom; Holt said, then
you should have pleaded the Statute and that matter, and now you are
too late and Judgment was affirmed. 12 Mod. 634. Hill. 13 W. 3.
Jones v. Sweetapple.

(N) How the Writ shall be brought.

1. If a Writ of Error be brought in this Manner, videlicet,
This is directed to Sir Edward Littleton, (he being then Chief
Justice de Banco) to certify a Judgment in Querela, que fuit coram
Vobis et Sociis veltris where it was before Sir John Finch, then Chief
Justice the Predecessor of Sir Edward Littleton is, this Writ shall
abate. Tr. 18 Car. B. R. between Lowes and Weble, adjudged
per Curtiam.
So if a Writ of Error be directed to Oliver St. John, he being Chief Justice de Banco, to certify a Judgment in querelle, quae fuit Coram vobis et sociis vestris, where it was before Edmund Reeves and Sociis suis, there not being then any Chief Justice; this is not good, but the Writ shall abate. Pull. 1649. Several Writs abated for this Cause.

3. But if a Writ of Error be directed to Peter Phelpsant, to certify a Judgment in Lignula quae fuit Coram vobis et sociis vestris, where it appears by the Record that it was held Coram Edmundo Reeves et Petro Phelpsant, this is a good Writ; for though in the Return Edmund Reeves is first named, yet this is well enough, that any Writ Phelpsant is also named, and it does not appear which of them was the elder. Pull. 1649. Between Clarke and Spring, adjudged, Intratur P. 1649. Rot. 458.

4. If a Writ of Error be directed to the Mayor, Aldermen and Recorder of Lancaster in Cornubia, and the Record is certified by the Mayor, Aldermen, and Deputy-Recorder, the Court being held by Letters Patents, this is not well certified, notwithstanding this ought to be certified in the Name of the Judges of the Court; and it does not appear that the Recorder had Power to make a Deputy by the said Letters Patents. Pull. 1649. Between Spring and Mill, adjudged, and the Writ abated accordingly. Intratur P. 1649. Rot. 228.

5. In a Writ of Error to reverse an Outlawry, it is not mentioned at whose Suit he was outlawed, nor in what Action, and yet held good, because of the many Precedents. 4 Rep. 93 b. cites 4 E. 4 44. Palfon's Cafe.

6. But in the Principal Cafe where the Writ of Error was brought to remove a Judgment in quodam Lignula by Writ of certain Land and Paffure, and shews not in what Action this Plea was, the Court for that Reason adjudged, that the Writ should abate. Roll Rep. 22. pl. 27. Pach. 12. Jac. B. R. Watton v. Bernard. Coke Ch. J. Roll Rep. 22. cites 6 C.

7. A Writ of Error directed to the Chief Justice de Banco upon a Judgment given in a Quare Impedit by Judges of Affairs, and held good; and the Plaintiff in Error had a Superfedeas, viz. non Molestandum to the Metropolitian to furcase Execution until the Error was discutted, and this quitted out of the Common Pleas, and the Defendants filed a Scire Facias Quare Executio non &c, against the Bishop and Incumbent; at the Return whereof the Plaintiff came and aligned his Errors. Dyer. 76. b. 77. a. Mich. 6 E. 6. Henfloes v. Keble.

8. A Writ of Error was brought directed to Sir A. Brown Ch. J. of C. B. but before the Return of the Writ Sir A. was removed, and Sir J. Dyer made Ch. J. there, this was held ill, and the Plaintiff was forced to bring a new Writ of Error De Recordo quod Corani Vobis reliet. D. 174. b. pl. 16. Mich. 1 &c 2 Eliz. Kirk v. Parrott.

9. When a Writ of Error is brought to reverse a Fine, there must be one Writ finus to the Ch. Justice de Banco, another to the Caesars Breunia to certify Transcriptum pedis Finis cum omnibus eundem Finis tangeb; and another to the Chirographer to certify Transcriptum Notae Finis. 5 Rep. a. 39. b. Trin. 34 Eliz. E. R. Ty's Cafe.
514

Error.


4. Judgment ought unless Writ for Cro. and a locum E.

Far! his Writ Scire is good an especial was requisite by both And

Judgment whom Record and 'E.

Judgment But recite Andrews. deridge Ld.

But the Brit the Brit

therein heald ament; Tuftices of NkH and Heydon's.

6. Henlow and Stanby v. Keble.] where a Judgment was in Quare Impedit before the

Justices of Nisi Prius, by the Statute of Wilm. 2. and Error thereof being brought, Exception was taken, because he does not show in the Writ where the Judgment was, and yet held to be good: For there the Record began, and remained in the Common Bench, and where the Judgment was, was not material; But in this Case, the Record was not at first in the Common Bench, and therefore he ought to shew how it came thither. And Gawdy said, When the Record begins in one Place, and is finisht in another, there is a Notice of Error, the Proceedings in both Places ought to be mentioned.

And Yelv. 5. a Diverfity was taken between the Cafe of an Affife, and a Quare Impedit; for the Affife ought to be commended originally before the Justices of Affife, and fo by Pretiumpton and Intercourse, Judgment given alfo before them, and not in C. B. unless upon Adjournment; and therefore if Judgment be given in C. B. it ought to be apprized certainly how the Record of Affife came into C. B. But in Error to remove a Record of a Quare Impedit the Writ is not of such Precife Form, because the Action originally commended before the Justices of C. B and by Amendment Judgment given there, though by the Statute to avoid a Like Judgment may be given before the Justices of Affife.

11. In the 5 E. 6. where Judgment in a Quare Impedit by the Statu

te of Wilm. 2. was given by Justices of Nisi Prius, and a Writ of Error thereof brought without shewing where the Judgment was given, it was held good; for the Record beginning and remaining in C. B. it was held not material where the Judgment was given, per Curiam; and Gawdy said, When the Record begins in one Place, and is finisht in another, there is a Notice of Error in the Proceedings in both Places ought to be mentioned. Cro. E. 891, 892. pl. 8. Patch. 44 Eliz. in Ld. Cromwell's Cafe.

12. Error brought as Cofen and Heir of C. Earl of Devon to reverse a

Fine levied by the said Earl, and Errors were alledged, and a Scire Facias ad audiend. Errorres but he does not shew either in the Writ of Error or in the Sci. Fa. how he is his Couns. Resolved it was good enough without shewing the fame in any of the said Writs, for the one is but a Commiffion to hear the Errors, and needs not such Certainty; And the other is but a Writ founded thereupon, and therefore how Couns, need not be praised in them. Cro. J. 160. pl. 15. Patch. 5 Jac. B. R. Hampmoren v. Godolphin.

13. Nor is it requisite that the Title be shewed therein, unless it be in a

special Cafe varying from the Common Course; As where an especial Heir in Tail brings a Writ of Error, or be in the Remander, because he is to entitle himself, he ought to shew specially how Couns, or how he has the Remander, but otherwife not. And although in some Writs it is shewn how Couns, as in QUEEN'S Cafe, and is good enough, yet it is not of Necessity; And the omitting thereof is no Cause of abroging the Writ. Cro. J. 161. Patch. 3 Jac. B. R. in Cafe of Hampmoren v. Godolphin.

God. 248. pl. 345. Heydon's.

14. If a Writ of Error be brought upon a Judgment in an Affife
cap't coram J. Fleming super capital 'Jussician' ad placita, & J. Doderidge
deridge uno judicato ad platica coram nobis tenend' affignat' Justici-
ciar' notris ad Alia, this Writ is naught, for there was no such Re-
cord before Fleming Justiciar ad platica, the Words Coram Nobis
Tenend' Affignat' being omitted, and those after Doderidge cannot
refer to the first; adjudged per Curiam preter Doderidge. Cro. J. 341.
pl. 7. Parch. 12 Jac. Sir Christopher Heyden v. Godlalve.

15. A Writ of Error was brought in Record & Processia Affixe &c.
inter A. and B. Joannit' Exception was taken because he did not shew
which was Plaintiff and which Defendant in the Writ of Error, nor
in the Affixe; Sed non Allocatur, because the Precedents are both

16. A Writ of Error was brought to remove a Record in Curia Mavrii
de Cuttingby, where the Record was in Curia Custosiam Liberatis Angliae
Authoritate Parliamentis de Cuttingby. It was moved that here was a
Variance between the Writ and the Record; but per Roll there is no
direct Opposition between them, for they both may stand together, and
though de Fucto it is the Court of the Lord of the Manor, yet
Virtually and in Dignity it is the Court of the King. Stv. 344 Mich.

17. Writ of Error to certify the Record of a Plaint held before the
Mayor and Aldermen, and the Mayor and Constables of the Staple of
Bridge, and also before the Sheriffs and Bailiffs, Mayor and Commonalty
of the said City &c. and this was directed to them & coram cultilib, and
the Record certified was only by the Sheriffs and Bailiffs; but adjudged to
be well, for that it shall be taken distributively, viz. That the Re-
cord of a Judgment, upon a Plaint held before the said Officers or
either or any of them should be certified; And Judgment was affirm'd.

(O) What shall be a Removal of a Record.

1. If a Writ of Error be brought in Banco Regis to remove a
Recovery of the Manor of M. in M. cum pertinentiis, where
the Record of the Recovery is of the Manor of M. cum pertinentiis,
yet the Record is well revived. Ca. 3. Marquess of Winchester.
2. adjudged per Curiam, for upon such Writ the Recovery is
reverted.

2. Debts was brought by E. against F. Feme and Executrix of J. N.
and he recovered, and the brought Writ of Error and removed the Re-
cord, the Writ made mention of Record between the Feme and J.
N. the Tsdator, and not between the Feme and F. who recovered, and it
was doubted where the Record remains, and the Opinion was that it is
in B. R. because the Roll in C. B. makes mention that it is removed;
Quere; For Per Babb. it may be amended; Quere inde. Br. Error,
pl. 5. cites 9 H. 6. 4.

3. In Partition the Judgment was, Quod sit Partition, but before the
final Judgment was given a Writ of Error was brought, and it was held
that the Record was not removed for that Cause, whereupon the Writ
of Error was qualified. 3 Salk. 145. pl. 2. Mich. 12 W. 2. B. R. Finch
v. Renew.

4. A Judgment in C. B. given after the Return of a Writ of Error is
not removed, and Nul tiel Record may be pleaded to a Scire Fac. Quare
Executio non brought upon it to compel the Plaintiff to affign Errors.

5. One
5 One of the Defendants brings a Writ of Error without the other, tho' the Writ shall be quashed, the Record is removed. 2 Ld. Raym. Rep. 1403. Trin. 11 Geo. Ginger v. Cowper.

(P) Record removed.

What Thing shall be removed thereby.

1. If a Writ of Error upon any Judgment but a Fine be brought in B. R. the Record itself shall be removed there and not the Copy only. 22 C. 3. 6. per Thorge. * 49 H. 29.

2. In a Writ of Error upon a Fine levied in Banco the Transcript only shall be removed in Banco Regis, because if the Record itself should be removed, there is no Chirographer in Banco Regis to engrave it, and then no Quod litteris claimat could be brought, if it should be affixed there, for this lies only in Banco and does not lie there, and this shall not be removed out of the King's Bench after it comes there. 21 E. 3. 24. 22 C. 3. 6. adjudged.

S. P. by Coke Ch. J. Godb. 248. Patch. 12 Jac. B. R.

3. But if in B. R. they conceive the Fine is to be reversed, they may * send for the Note itself and reverse it. 21 E. 3. 24. D. 1.

Ha. 89. 4.

4. Where they may send a Writ to the Treasurer and Chamberlains to draw the Fine off the File. 22 C. 3. 6. adjudged.

Firth Record. * Fol. 733

Firth Error. pl. 35. cites S. C. — Firth Protection. pl. 62. cites S. C.

Firth Record. pl. 11. cites S. C.

and says Vide 40 Aff and 16 E. 3.

5. If a Writ of Error be brought in B. R. upon a Fine levied in the Duttings of Oxford, the Record itself shall be removed. 50 Aff. 9.


sancer, pl. 61. cites S. C.

When a Writ of Error is brought, the Court said that there is no Occasion to bring it into B. R. but only the Record, and the original Writ, and the Warrant of Attorney, and not the Efton Roll, unless Dimission be alleged. Br. Error. pl. 158, cites 1 H. 7. 21. — Firth Error, pl. 10 cites S. C.

6. If a Writ of Error be brought in Banco Regis to reverse a Judgment given in Banco, the Original shall not be removed if it be not by Special Matter, as if Error be assigned in the Original. 24 C. 3. 24. b.

7. If a Writ of Error be brought in B. R. upon a Judgment in an Interior Court against the Plaintiff, there the Court may reverse the Judgment, though the Original be not removed, no Error being assigned in the Original, for this is removed but to sit here upon the same Original. 37 Aff. 5. adjudged.

Br. Error. pl. 27. cites S. C. —

8. If a Writ of Error be brought in B. R. upon a Judgment in Ireland, the Original shall not be removed. 37 Aff. 5.

S. C. cited 2 Balf. 165 — It is only a Transcript which is sent hither, because it must come over
Error.


9. **Upon a Writ of Error in Parliament upon a Judgment in B. R.** the Roll in which the Record is shall be brought into Parliament by the Chief Justice himself. 22. C. 3. 3.

10. When a Writ of Error is brought in Parliament upon a Judgment given in B. R. the Chief Justice de B. R. shall carry with him in Parliament the whole Roll in which is contained the Plea and Process in which the Error is supposed, and there shall leave ed, that it is a Transcript of the Record in which the Error is assigned, and shall carry in B. R. the Roll itself, because the Roll concerns other Matters; and for that if the Judgment be affirmed the Court of B. R. may proceed upon the Record, there to grant Execution, and therefore if the Record itself should be removed, and Judgment there affirmed, and the Parliament be dissolved, there could not be any Proceedings thereupon to have Execution. 1 P. 7. 19. D. 25. C. 375. 19.

S. P. — Ibid. 175. Same Cases cited, and 10. H. 6. — 4 Init. 21. cap. r. S. P. and that after the Transcript is examined, the Ch. J. carries back the Record itself into B. R.

11. A Writ of Error in all Cases (except the Case of a Fine) removes the Record; for it takes it out of the inferior Court to the superior. In the Case of a Fine, the Transcript only is removed upon the Writ of Error. Jenk. 31. pl. 61. cites 26. Aff. 24.


13. But Ancient Decision, Championship, and Judicature of Affairs, upon Writ of Error send the Original Writ and Record itself, and not the Transcript; Per Knivet. Br. ibid.

14. But by 37. Aff. 5. Ireland does not send the Original itself, but the Transcript; Per Finch there. Br. ibid.

15. Upon a Writ of Error the Record itself shall be removed, and not a Transcript of the Record, for upon the Transcript Error cannot be assigned, unless it be in a Writ of Error sued upon the Transcript of a Fine, that Errors may be assigned upon the Transcript of the Note of the Fine; and if the Justices think that this is Error then they shall send for the Note of the Fine and reverse it. F. N. B. 20. (F)

16. By the Writ of Error all is certified which is with the Ch. 7. of C. B. which is only the Body of the Record; but the Original and Judicial Writs remain with the Cases Breviatus; and other Officers, which are never certified but where Error is assigned for want of them. Cro. E. 84. Hill. 30. Eliz. B. R. in Case of Roberts v. Andrews.

17. In Case of Error upon Indictments to reverse them the Body of the Record itself is to be removed, and a Transcript of it is not sufficient; Per Williams J. And per Fleming Ch. J. If the Error be assigned in the Outlawry, only Diminution may be alleged, there being only a Transcript of the Record, but if the Errors be assigned upon the Outlawry, and also upon the Body of the Indictment, here in this Case the Body of the Record ought for to be removed, and to be in Court, and a Transcript is not sufficient, and so it was in this Case, and therefore by the Rule of the Court, a Certiorari was granted for to remove the Record itself, and that afterwards Diminution may be alleged. Bullit. 181. Patch. 10. B. R. Baker v. Baker.

6 Q. 18. A
18. A Write of Error lies in Parliament upon the Transcript of the Record, without bringing the Record into Parliament, for the Parliament is holden at the King's Pleasure, and may be dissolved before the Errors are certified, and so the Record itself cannot be brought here again, because the Parliament, which is a higher Court, was once dissolved at it; Agreed per cou. Cur. Godb. 247. pl. 345. Pach. 12 Jac. B. R. and cites 8 H. 5. Error 88.

19. The usual Form of all Writs of Error is to certify Recordum & Processum, and yet they do only certify the Declaration and the Pleas omitting the Writs. And the Record shall be intended the Principal Record, and not the Writ and Proces. Bridg. 57. Hill. 12 Jac. cites 11 Rep. Mercat's Cafe, and the Words of the Writ of Error, "Si Judicium inde redditum sit" shall be taken to be the Principal Judgment.

20. There is no Difference between a Writ of Error upon a Fine, and upon another Judgment; for where it is brought to reverse a Fine the Transcript of Record is only removed; for none can have the Record of the Fine but C. B. But otherwise it is where the Writ of Error is to reverse another Record there; And yet in both Cases the Record or Roll in C. B. is not sent out of C. B. for it remains there, but the Difference is in the entering of them; For when the Writ of Error is brought to remove the Record out of C. B. into B. R. the Entry is "Mittitum Transcriptum Recordi." Per Ley Ch. J. 2 Roll Rep. 253. [253] Trin. 19 Jac. B. R.

21. A Writ of Error was brought upon two Judgments given in an inferior Court, and they returned two Records between the same Parties, but it seems not those which the Plaintiff intended, and this was complained of to the Court; and it appeared that those, which the Plaintiff brought his Writ of Error upon, were not determined; for Writs of Inquiry of Damages were returned, but no Judgments entered. Per Curiam, if there be divers Records between the same Parties, the inferior Court may remove which they please, they being warranted by the Writ to do; and here was an Omition in the Plaintiff, that he did not see that Judgment was entered; for after a Writ of Inquiry of Damages returned, the Court is to give Judgment at the Prayer of either Party, and not without. Vent. 96. Mich. 22 Car. 2. B. R. Prydye v. Thomas.

Sid 466. pl. 1. Brier v. Thomas, S. C. says that there were four Causes between the same Parties, and the Plaintiff pray'd the Steward to certify the two last Causes, but he certified the two first, and omitted entering Judgments in the last till the Return of the Writ of Error was paid. And per Twifden J. in such Cases the Steward may certify which he pleases without any Contempt; but in Case no Judgment was given before the Return he may return the Special Matter, viz. that the Writ of Error was returnable such a Day, before which no Judgment was. — Raym. 189. Rinch's Cafe, S. C. refixed accordingly, and that the Steward could not certify the two last, because no Judgment was given upon them, and the Writ of Error commands to certify "Judicium redditum sit," and the Defendant might have helped this by moving the Court below, after Gods taxed, to have Judgment entered in the two last Actions as well as the Plaintiff; For Judgment ought to have been given at the Request of either Party, and so the Contempt was discharged.

22. In an Action of Writ brought in the Haflings in London, there was a Verdict for the Plaintiff, which being after quashed for the Insufficiency, and a new Venire awarded, whereupon a Verdict was given for the Defendant, and Judgment for him, and a Writ of Error being thereupon brought before special Commissioner, it was resolved that the first Verdict should be certified in the Record, because it was not set aside, for that the Jurors had found against Evidence, or for any undue Practice or Misfeasance of the Parties, but only for the Insufficiency thereof in Point of Law, which the Court had adjudged upon the Verdict appearing before them upon Record. 2 Saund. 254. Mich. 22 Car. 2. Green v. Cole.

23. If
23. If the Record omits from the Writ of Error, yet the inferior Court ought to remove it. Vent. 97. in a Noma Mich. 22 Car. 2. B. R.

24. In Debt upon a Record in an inferior Court, if the Defendant pleads Nulli tali Record, they shall certify only Tenorem Recordi, and grant Execution afterwards. Vent. 212. Pach. 24 Car. 2. B. R. Anon.

25. If the true Record which comes here out of Ireland, and not the * Vol. 118. Transcript, but * when it comes here it is the true Record, and not before, and that which is in Ireland cassis to be a Record; And so it is of a Record of C. B. that comes hither by Writ of Error; Per Holt Ch. J. 12 Mod. 255. Mich. 19 W. 3. B. R. Coot v. Linch.

Script for Fear of the Peril of the Sea, for one might object in the same Manner, that upon Error in C. B. the Transcript only is removed hither for Fear it should be burnt or lost before it comes into B. R. But in Fact, when the Record in both Cases arrives here, then it is the true Record, and not before; and that which is in Ireland or C. B. cassis to be the Record; Per Holt Ch. J. Ed. Roym. Rep. 427. Hill. 10 W. 3. Coot v. Linch.

(Q) Quod coram vobis residet.

When a Writ of Error shall abate.

In what Cases the Record is so removed, that this Writ lies.

1. If a Record be removed by Writ of Error out of one Court into another, if the Writ of Error be abated the Plaintiff may have a Special Writ of Error Quod coram vobis Redit sp. 3 P. 52. 5. 36.

2. If the Writ of Error be disagreeable to the Record of the Judgment or otherwise bad, yet if the Record be removed by it, another Writ Quod coram vobis residet lies. H. 3 Fa. 2. B. R. per Curiam.

3. If the Writ of Error mentions the Judgment to be in loquela inter A. and two others, where it was between A. and the two Persons, and another Person also not named, the Writ shall abate, and the Record is not removed to have a Writ of Error, Quod coram vobis residet, but he ought to have a new Writ. B. 1649. adjudged in a Writ of Error. Intr. 23. Car. 2. R. Rok. 232. between Worgan and Kedwin, and the like Judgment given the same Term between Hacker and Whatten, where the Writ of Error mentions Five, and the Loquela was between Seven, two of them were not named.

4. If the Addition of the Mystery of one of the Parties be mistaken in the Writ of Error, by which it abates, the Record is not removed so as to have a Writ of Error Quod coram vobis residet; as if the Plaintiff in the first Action be named A. B. de London, Citizen and Salter, and the Writ of Error is to * remove a Record in loquela inter A. B. de London, Citizen and Salter sp. the Record is not removed by this, but shall abate, and a new Writ of Error shall be awarded de novo. D. 1 El. 173. 16.

5. If
5. If the Writ of Error abates for mistake or the Name of either Party, there no Writ of Error quod coram se lies, for that the Record is not removed thereby. 9 H. 6. 4.

6. As if P. recover in Debt against the Executor of B. and the Executor brings a Writ of Error of a Record between the Executor and B the Teller, where it should be between the Executor and P. by which it abates, no Writ quod coram se lies, for that the Record is not removed. 9 H. 6. 4.

7. If a Man 3 Jac. sues a Writ of Error to reverse a Judgment given in the time of Queen Eliz. and the Writ is in Judicium redditnum in Court nostra, by which it is intended in the time of King James, (in whole Time the Writ of Error is brought) for which the Writ is abated, it seems that he cannot have a Writ quod coram se voids Receiver, but ought to have a new Writ of Error, for the Record is not removed, for there is not such Court mentioned. 9 H. 3 In. B. R. Dubitatir.

8. If Judgment be given in an Account quod computat, and before the second Judgment a Writ of Error is brought in B. R. where the Writ is abated, because it does not lie before the second Judgment, the Record is not removed by this: For the Writ commanded them to send the Record, St Judicium inchoandum in Court non est, but no Judgment was given here, upon which the Writ of Error lies thereupon. 9 H. 12 In. B. R. between Wood and Metcalf, per Coke.

9. This Writ may be awarded by the Court, in which the Record is returned. 3 H. 6. 3. * 26.

10. If Judgment be given against J. S. in B. R. and he and his Bail bring a Writ of Error in Camera seaccarrit, which is of a Record between J. S. and the Bail & this does not remove the Record, because the Bail are not parties to the Record. 9 H. 13 In. B. R. between Verity and Sir James Sandeloe.

11. If the Bail bring a Writ of Error as well upon the principal Judgment as in the Judgment against them upon a Judgment in Bando, or in an inferior Court, and the Error abates, because it does not lie upon the principal Judgment, it seems the principal Judgment is not removed by this, but it seems that the Judgment against the Bail is removed, that the Bail may have a Writ of Error quod coram se voids Receiver. 9 H. 15 In. B. R. between Williams and Worrel; a Doubt among the Justices.

Error in Boston to reverse a Judgment given there upon a Scire facias founded upon a Recognizance entered into by the Defendant, as Bail for one Townsend at the Suit of the Plaintiff; The Court of Boston do certify not only the Judgment upon the Scire Facias, but also the principal Judgment, and all Proceedings therein, and removed good enough, because if they should certify only the Judgment in the Scire Facias it could not well be understood by this Court, because in inferior Jurisdiction there are not several Rolls to enter the Judgment for the Principal, and another for the Scire
Error.

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Seire Facias, and another for the Jail, but all Proceedings, as well against Defendants as against the Jail, are entered (for the most part) in a Book, and never entered at large, unless a Writ of Error is brought, and then they make up an entire Record, and not otherwise; and Judgment was affirmed. Raym. 431. Parch. 35. Car. 2. B. R. Johnson v. Taylor.

12. If a Writ of Error be brought in B. R. to reverse a Judgment given in Banco, and in the Writ the Sum of the Damages in the first Action is mistaken, though a Mititeur be entered upon the Record upon the Receipt of the Writ of Error, yet the Record is not removed by it. P. 7 Ja. 3. between Stocker and Kemish, per Curiam.

13. If the Judgment be given in Banco tempore of one King, and the Writ of Error bringt n tempore of another King, and the Writ of Error be to remove a Record in Loquela quæ suit in Curia nostra; et coram Justitiarum nostris, et per breve nostrum, between the Parties, and thereupon the Record is certified in B. R. yet it is not removed in Banco, so that no Writ of Error lies in B. R. Nimod Coram nobis residet. D. 1. 2. 106. 16.

Bridg. 56. S. C. & S. P.

14. If the Writ of Error mentions the Judgment to be Coram the See. See Sir 151. Contable and Bailiffs, and the Record is, that it was Coram the Deputy Contable and Suitsors, and not the Bailiffs, the Record is not removed, but it ought to be abated, and a new Writ of Error to remove it. P. 1639, between Wrotham and Kedgwin. adjudged. Jurat. B. 23. Car. B. R. Rot. 241.

Journen, Curia adlvice vult.

15. If a Writ of Error be brought in B. R. in Hibernia, upon a Judgment given in Banco there, and upon this the first Judgment is reversed, upon which a Writ of Error is brought in B. R. in England upon the Judgment given in Hibernia, and in this the Judgment given in Banco in Hibernia shall stand in its Force; If there be Error in the Judgment given in Banco in Hibernia, Writ of Error may be brought in B. R. in Hibernia [Anghia], in Recordo quod Coram nobis residet, though the Record itself is not removed, but only the Transcript, for the Danger of the Miscarriage over the Sea. Th. 5. Ja. B. R. between Comyn and St. John, agreed.

Fol. 755.

Velv. 117.

St. John, etc.

Comyn, etc.

the Court after much Debate granted that they should have a new Writ Quod coram nobis residet, de bene eile.

16. If a Writ of Error brought in Camera Scaccarii upon a Judgment given in B. R. by the Statute of 27 El. be abated by Death of the Debtor or otherwise, it seems that no Writ lies there quod coram nobis residet, for upon this Writ of Error the Record itself was not removed, but only the Transcript, and therefore ought to have a new Writ of Error. Dibutact. B. 13. Fac. B. R. between Verto and Sir James Sandele. Mich. 19 Fac. in Scaccarii, adjudged per Curiam.


18. If Record be removed out of this Court of C. B. into B. R. by Writ of Error, and Seire Facias is brought against the Party, and after the Plaintiff in the Seire Facias is nonsuited, and the other brings Seire Facias to have Execution, and the other serues Writ of Error, Quod penes illos refit

6 R.
refused and affixed Errors, yet the other ought to have Execution without Alguring to the Errors. Br. Faux Judgment, pl. 9. cites 21 H. 6. 34.

19. But if he will first see Writ of Error and pray Scire Facias against the Party, and after be nonsuited, there if the other sues Scire Facias to have Execution, the Party who was nonsuited shall have Writ of Error Quod coram vobis reiditer and assign his Error, Conv in the Scire Facias. Br. Faux Judgment, pl. 9. cites 21 H. 6. 34.

20. And so there seems a Diversity where he sues Scire Facias and is nonsuited, and where he prays Scire Facias and does not sue it out. Br. Faux Judgment, pl. 9. cites 21 H. 6. 34.

21. A Writ of Error is brought of a Judgment in the Exchequer before the Chancellor, Ld. Treasurer, and two Chief Justices, and afterwards another is brought, but not quod coram vobis refused, because the Record is not removed out of the Custody of him who had it before, but the Record remains in the same Custody after the Writ of Error purchased as it was before 3 Rep. 11. b. 15. b. Mich. 26 & 27 Eliz. in Seacc. Sir William Herbert's Case.

Yelv 211. S. P. adjudged and that the Record being brought in B. R. was well removed and remained there. 2 Ld. Rvnn. Rep. 1200 cites S. C. that the Record was held to be well removed; for if the Parties are rightly named, any other Variance will not hurt.

Yelv 212. S. C. & S. P. per Cur. for that the Answer was not so full as the Com. mode of the Writ and therefore ill, and the Answer ought to be by all unless some are dead after the Writ awarded, and if so then it ought to appear by the Answer of those that are alive.

22. If a Writ of Error be brought to remove a Record before the Bishop of Durham and eight others, and thereupon a Record before the Bishop and nine others is removed, the Record cannot be examined upon this Writ, but there ought to be a new Writ de Recordo quod coram vobis reiditer; Cro. J. 224. pl. 14. Mich. 7 Jac. Odell v. Morton.

23. But upon View of the Record it appeared the Writ was directed to the Bishop and eight others, and eight of them only certified, and to the ninth, and it appeared not that he was dead or removed, and therefore also the Writ was held to be ill &c. per Curiam. Cro. J. 254. pl. 14. Mich. 7 Jac. Odell v. Morton.

24. A brought a Writ of Error against B. upon a Fine, upon which the Transcript of the Fine and Proclamations are removed in Banco, and afterwards A. is nonsuited; Now another who has Caule may have a Writ of Error Quod coram vobis reiditer. 3 Le. 107. pl. 157. Trin. 26 Eliz. B. R. in the Case of Ragg v. Bowley.

25. The Plaintiff recovered in B. R. and the Defendant brought a Writ of Error in the Exchequer-Chamber, and after the Record was certified, the Writ was discontinued, and then the Defendant brought a Writ of Error Coram vobis reiditer, in the Exchequer-Chamber; and resolved by all that it did not lie, because the Writ of Error is given by the Statute 27 Eliz. in a special Manner, viz. either to affirm or reverse the Judgment, and the Execution thereof is referred to B. R. and therefore no Coram vobis reiditer lies; but upon a Discontinuance or Miscontinuance, the Transcript of the Record is remanded to B. R. Jo. 14. pl. 16. Mich. 18 Jac. Polhill v. Care.

26. If a Writ of Error does abate upon the Plea to the Writ and the Record be well removed, the Party may have a new Writ of Error Coram vobis reiditer &c. But if the Record be not well removed, then the Party shall not have a new Writ of Error here; Per Doderidge. Godb. 375. pl. 453. Trin. 3 Car. B. R. Carlisle Dean and Chapier's Cafe.

28. Where the Writ of Error recites truly the Names of the Parties Yelv. 6. to the Action, the Action itself, and the Thing in Demand, though the Writ of Error abates for other Detects, a new Writ of Error De Re- cordo Quod coram vobis resi]det well lies. Jenk. 306. pl. 81.

there is any Mislaking in the said matters it is otherwise.

29. Error to reverse a Judgment in C. B. in an Action on the Cafe; Exception was taken that the Record was not removed, the Judgment in C. B. being given Coram Petro Phesaut, and the Writ of Error was to certify a Record Quod coram vobis resi]det; And the Court abated the Writ of Error for this Exception. Syt. 153. Mich. 1649. Gilbert v. Marden.

30. A Writ of Error coram vobis resi]det is, when a Writ of Er- ror is brought to reverse a Judgment given in C. B. or other Court, where the Record was formerly removed into the Court of B. R. and by Reason of the Death of the Party, or for some other cause lefts undetermined, by reason of the abatement of the former Writ of Er- ror. Syt. 470. Mich. 1655. Anon.

31. Where a Writ of Error abates, or is discontinued in Cam. Soc. Show 402. the Judgment is not again in B. R. till a Remittitur is entered; For S. C. accord- ingly— Carth. 236. the Writ of Error is still pending in the Exchequer Chamber 1 Salk. 264. pl. 1. Trin. 4 W. & M. in B. R. Howard v. Pitt.

32. A Writ of Error coram vobis was brought, reciting the former Carth. 579. the Court held
that this

Ch. J. said, if the Writ of Error had been granted in the Time of the Writ was no
King and Queen, and then the Queen had died, and then the Record Warrant had been brought into B. R. this had been such a Record as the Coram


33. And Holt took the Yuditation in Yelv. 211. that where the Suit
is to defeat a Record, then the Variance is fatal, but where the Suit goes to S. P. in S. C.

another Collateral matter, and not to defeat the Record, there it is other-
wife. Ld. Raym. Rep 152. in S. C.

34. It lies on a Judgment in B. R. for any Error in the Record, As
want of an Original &c. or concerning Matters of Fact, as Nouage,
Death of the Party; For Error in Fact is not the Fault of the Court,
therefore it may be determined by the Judges when the Record is be-
fore them. 8 Mod. 317. Mich. 11 Geo. in a Note there at the Bottom
of the Page.

35. Where a Writ of Error in this Court abates by the Death of the
Parties, another Writ of Error will lie Quod coram vobis resi]det, but
v. Buffel.
(R) *Who may assign* Error in the Thing.

The Vouchee.

Br. Error, 1. *In a Writ of Error by the Vouchee he may assign Error which was between the Demandant and Tenant.* 8 H. 4. 3. b. because the whole is upon one Original.


2. So the Tenant may assign Error between the Demandant and the Voucher. *Contra 22 C. 4. 32.*

3. So the second Vouchee may assign Error between the Tenant and the first Vouchee. *Contra 8 H. 4. 5.*

Fitch. Error, pl. 61. cites S. C.

4. If the Heir of the Husband brings a *Writ of Error* upon a Judgment given against him, being Vouchee in a Writ of Dower, he may assign Error in the whole Process. 8 H. 4. 5.

5. The Vouchee may assign Error in the Judgment of the Value against himself. 18 C. 3. 38. b.

6. If Tenant in Tail within Age, being vouched in a Common Recovery, appears by Attorney where he ought to appear by Guardian, he in Remainder may assign it for Error, because he is privy to the Record in Regard of his Interest, and the Appearance of the Tenant by Attorney was void. H. 13 Ja. B. R. between Holland and Lee.

7. If A. recovers against three in a Dum suit infra Bateam, and two of the Tenants are within Age, yet all may bring a *Writ of Error,* and allign the Nomine for Error. Dyer 1. 2. 4. 104. 10. adjudged.

8. If A. recovers against B. Debt and Damages, and after B. dies, and upon the Return of the Death of B, upon a Testatum a Seire Facias is awarded to the Sheriff of Kent, and another Seire Facias to the Sheriff of Surrey, against the Tenants, and the Sheriff of Kent returns C. Tertenant of the Land there, which was the Land of B, at the Time of the Judgment; and the Sheriff of Surrey returns D. Tertenant of the Land there; and upon this C. and D. appear, and C. pleads that J. S. a Stranger, is Tertenant of the Land, which
which was the Land of B. at the Time of the Judgment; to
which A. the Plaintiff lays, That A. S. is not Tenant of any
Land or. Upon which several Pleas several Issues are joined, and
several Devises Facias's, and several Trials, one in Kent and the
other in Surrey; and the Issue is found against C. lessee, that A. S.
was not Tenant; and the other Issue is found for D. lessee,
that he is not Tenant, upon which several Verdicts Judgment
is given accordingly for the Plaintiff A. If C. brings a Writ of
Error only upon this Judgment, (c) he cannot assign for Error that
D. died before the Verdict was given for him, for he is a mere Stran-
ger to the Proceedings between A. and D. for if A. had relinquish-
ed his Right against D. C. could not prevent it; for he had not
pleaded that D. was also Tenant, but hath put himself upon
14 Car. B. R. between Angell and Cooper, adjudged per Curiam
in a Writ of Error upon a Judgment in B. and the first Judg-
ment affirmed accordingly, notwithstanding this Error. In-
trat.

Caufe that the other, against whom the Verdict is found, should aflign it for Error, and he cited for
this Point 5. E. 4. 7. and of that Opinion was Brampton, Jones, and Croke; Whereupon Rule was
given that the Judgment should be affirmed.

9 If a Man be vouch'd, and enters into Warranty, and loses, he may
have a Writ of Error, and aflign the Errors which happened between the
Demantand and the Tenant, or between the Demantand and the Vouchee,
F. N. B. 21. (C)

10. And fo be in the Reservon who prays to be received upon the De-
fault of the Tenant for Life, or for his joint Pleading, if he be received,
and pleads, and loses, he shall have a Writ of Error, and aflign the Er-
ror between the Demantand and the Tenant, or between the Demantand
and him who prays to be received. F. N. B. 21. (C)

11. Note also, The Vouchee may aflign Error between the Demantand
and Tenant, and so of Tenant per Receit. 8 H. 8. 4. 5. 8 H. 4. 3.
But the Tenant (himself) shall not have Error, because he is out of
Court. Quere 17 E. 2. Recovery in Value 32. F. N. B. 21. (C) in
the new Notes there (b)

12. Writ of Error to reverse a Judgment given in an Affise against A. Yelv. 3.
and 19 others Hill. 43 Eliz. but nothing being done thereupon, a Deire Fa-
cias was filed Quare Executionem habere non debet, returnable quinque
Pach. A. appeared, and the others excult non venenut; and A. only the Errors
affigns the Errors, and this Affignment was held to be null and void, together,
affigns the Errors, but by this

but he that appeared ought to have prayed Proces ad sequend' final, and upon this Judgment of Se-
verance ought to have enuied, for before Appearance there cannot be any Judgment of Severance
without Proces, but otherwise it is after Appearance.
(S) Assignee.

In what Judgment Error may be assigned.

[By Default or false Surmise.]

This seems to be mist.

1. A Pan may assign Error upon Law in a Judgment given against him by Default. 19 Att. 10.

Br. Error, pl. 177.

2. So a Pan may assign Error in Fact upon a Judgment given against him by Default. 19 Att. 10.

Br. Error, pl. 177 cites 19 Att.

3. As in a Writ of Messe against two Coparceners, if one dies pending the Writ, and after both are fore-judged, upon their Default, the Survivor and the Heir of him that is dead may assign for Error the Death at the Time of the Judgment of him that is dead. 19 Att. 10. adjudged, though it be Mutter in Fact.

Br. Error, pl. 177 cites 19 Att.

4. In an Ejectione Firmae against Two, if after Issue joined, and Venire Facias awarded, one of the Defendants dies, and after a Verdict is given at the Juit Prius for the Plaintiff, and after, before Judgment, the Plaintiff sues the Death of one, ut supra, and praps Judgment against the other, and Judgment is given accordingly, without any Anfwcr to it by the Plaintiff [Defendant]: if it be not true that he died as is surmised it may be assigned for Error; for inasmuch as the Plaintiff has made this Surmise, this being a Mutter of Fact, the Plaintiff [Defendant] cannot have any Anfwer thereto, (the tile not being thereupon to enter that the Plaintiff [Defendant] did not deny it) the Plaintiff [Defendant] hath no other Remedy but to assign it for Error in Fact, 11 Car. B. R. between Tiffin and Lenton, per Curiam.

In the Judgment in C. B. in Trespas of Afflunt and Battery were assigned; That the Action was brought against H and J and J S. died before the Juit Continuance: it was holten, that in regard the Judgment was only against H that the Writ should abide as against J.S. and the Judgment then good against H. Cro E. 145. pl. 4. Mich. 51 & 52 Eliz. Hill v. Temple.

In Trespas against divers, one dies pending the Action, and notwithstanding the Venire and Dishings mentions all, and the Verdict is against all, if this Matter be sues before Judgment, so that the Judgment be against the Survivors, it is well enough. Vent. 249. Mich. 25 Car. 2. B. R. Anon.

Afflumpit was against two Men, mean betwixt the Verdict and the Judgment one of them died, and notwithstanding Judgment was given; the Judgment was reversed for the Opinion of the Court was, that the Death of one of the Parties did abide the Writ. Cro E. 101. pl. 19. Trin. 77 Eliz. B. R. Meggot v. Broughton.

It was fald, that the Case is not like the Case of an Action of Trespas, for every Trespas done by many is several by each of them, but every Afflumpit is joint and not several. 2 Le. 52 pl. 77. Mich. 29 Eliz. B. R. Meggot v. Broughton.

See (Q. S) Infra, pl. 1. S. C. — — See (L. S) Infra, pl. 11.
5. An Action of Trespass was brought by Five, and before Verdict one of Skinn 59. them died, and yet they proceeded to Trial, and a Verdict was given for the Wedgewood, and they judged that one of them was dead, and Judgment v. Bally, was given for the rest; this was Error, for every one ought to recover S. C. lays, according to that Right only which he had at the bringing the Action, and that the and this differs from the Case in Trespas where one Defendant dies. Court, (Dolben and the others) were Dolbin doubting) and the Judgment reversed accordingly, and of Opinion, Spring's Cafe 2 Bull. 262, disapproved, and said the Reasen of the that the Judgment in that Case was mistaken. Raym. 463. Pach. 34 Car. 2. Shevedwood & al v. Bayly & al.

the Reasen of Read and Kidman's Cafe 10 Rep. 134 and 2 Bull. 262 not allowed, but thought by Pemberton that Coke's Opinion was mistaken by the Reporter, and so it was reversed. -


(T) In what Judgment; And by whom.

1. If Debe the Plaintiff recovers by Judgment against B. who after dies, and upon a Seire Facias against the Tercents, three are returned Tercents, who appear and plead several Pleas, and thereupon there are several Judgments against them; and after one of them brings a Writ of Error, he cannot assign Error in the first Judgment given against B. as that the Judgment was not that B. sit in Noticorneria, because he is not privy thereto. Tr. 9 Car. 13. B. R. between Hull and Wittach adjudged, and upon such Writ of Error and Assignment the first Judgment affirmed.

2. If a Judgment be given against the Principal, and after another Judgment against the Bail in a Seire Facias, the Bail cannot infringe Error in the first Judgment, because he is not privy thereto. Pill. 11 Car. 13. B. R. between Hardy and Brown adjudged in a Writ of Error upon a Judgment in Rippin, but the Judgment given in the Seire Facias against the Bail was reversed.


(U) What Thing may be assigned for Error.

[Things contrary to the Certificate or Record, or Admittance of the Party.]


2. But otherwise where the Assignment stood with the Certificate & Dyer 1. 99a. 89. 3. as the Death of the Conunor before ingrafting and recording the King's Silver.
3. But if the Judge of the nisi prius dies before the Certificate of the Verdict and Day in Bank, and notwithstanding the Clerk of the Rolls returns the Decret, which is received and entered, he cannot after align for Error the Death of the Judge aforesaid, because it is contrary to what the Court de Banco did as Judges. _Dyer_ 5 _Bd._ 163. 56.

4. In a Writ of Error to reverse a Fine, it cannot be assigned for Error, that the Cononor was dead before the Telle of the Deditus Potestatem, for this is directly contrary to the Record of the Conunance taken by the Commissioners. _Dyer_ 1 _Ma._ 89.

5. In a Writ of Error to reverse a Fine, it cannot be assigned for Error that the Cononor died between the Telle of the Writ of Covenant and the Return thereof, though the Conunance in this was taken by Deditus Potestatem in the County, although it was objected that this Alignment stood with the Record, inasmuch as the Deditus Potestatem issued before the Writ of Covenant, and so it might be that he died after the Conunance, and between the Telle of the Writ of Covenant and the Return, for it seems it cannot be intended or inferred, that the Deditus issued before the Writ of Covenant, for by the Deditus the Writ of Covenant is supposed to be pending, and so this Death ought to be before the Conunance taken, and so against the Certificate of the Commissioners. _Bd._ 38, 39 _El._ 8._R._ between Wright and the Mayor of Wickam adjudged per Curiam.

6. But it may be assigned for Error that after the Conunance taken and the Certificate thereof the Cononor died, for this stands with the Record. _Bd._ 38, 39 _El._ 8._R._ in Wright's Case.

7. In a Writ of Error to reverse a Fine it cannot be assigned for Error that the Deditus Potestatem was directed to Sir Roger Manwood Knight, where there was not any such at the Time, but he was but an Esquire, and yet he certified it according to the Writ, for this is against the Record. _Dibnatur_ 43, 44 _El._ 8._R._ between Arundel and Arundel.

8. If in Assizes of Fines, which passed against the Defendant, the Record had made mention that he had been attacked and summoned, and he was not attouchd and summoned, he shall not assign this for Error; For it is contrary to the Record, and then it seems that he is put to the Action against the Sherif who returned it. _Br. Error._ pl. 116. cites 19 _Aff._ 7.


10. As two brought Writ of Error because Writ of Mitis was brought against the one and the Father of the other, who were Forejudg'd by Judgment, where the Father was dead at the Time of the Judgment given, by which the other Coparcener, and the Heir of him who was dead, brought Writ of Error, for they were Co-Heirs in Gavelkind, and assigned for Error the Death of the Father before Judgment, by which the Judgment was reversed, and the Plaintiffs restored to their Meinfalty, and the
the Tenant to be attendant on them as before. Br. Error, pl. 117.
cites 19 Afl. 8.

11 Error to reverse a Judgment in the Court of M. because the
Judgment was entered before the Mayor and J. S. and J. D. Aldermen
&c. and at the same Time the Plaintiff was made Mayor pending the
Suit; Sed non allocatur; For if he admits him to be his own Judge
Collinger.

12. Another Error was, that the Prescription is to hold Courts before
the Mayor and two Aldermen, and it is alleged that at such a Court held
before the Mayor and J. S. and J. D. Aldermen &c. and alleges in
facto that the said J. S. was not then Alderman; The Court held that
to be a manitell Error, for that the Court cannot be holden unless
there be two Aldermen at the least, and it J. S. was not an Alderman
there were not two Aldermen, and for that Cause the Judgment was
reversed. Cro. E. 320. in S. C.

13. A Statute-Merchant was by Mulitimus removed out of the Chancery
into C. B. and Execution awarded there upon Tenorum Recordi, Resolved,
that in that Cause the Conrouer cannot allege for Error, that the Statute
counts one of the Seals that ought to be to it, because he has admitted
the fame in C. B. Mo. 570. pl. 778. Trin. 41 Eliz. B. R. Worliley
v. Charnock.

14. Error to reverse a Judgment in the Court of Abington, which Roll Rep.
Court is menioned to have been held before the Mayor, seundium Confequendum
53 pl. 26.
Burjì a Tenour enjus &c but it does not appear there was any such
the Write of Custom there to hold Pleas; it was reversed the Affignment, being Error
held directly against the Record, is not receivable; And the Judgment not good;
Lee.

Record and therefore it cannot be assigned that there is no such Custom.—- Bullf. 242. S. C.
and Judgment affirmed accordingly.—-Jenk. 527. pl. 47. S.C. the fuit by the Writ of Error
does not admit it to be a Court of

15. If the Defendant appears by J. G. his Attorney, it cannot be
assigned for Error, that the said J. G. was dead before the Day of Appear-
ance, because that it is against the Record; Adjudged upon a Writ of Error
Morris v. Fletcher.

16. Nothing is assignable for Error which proves the
Writ obstructus, Sid. 248, pl.
but that only which proves it abated; As where Error was brought of a
Judgment in Ejecution, and it was assigned that after Verdict and
before Judgment the Plaintiff entered, the Court held it not affin-
able, and affirmed the Judgment. Lev. 155. Hill. 16 & 17 Car. 2.

17. In a Writ of Error upon a Judgment in an Inferior Court, it may be
be assigned for Error, that the Mayor, who was the Judge, had not re-
ceived the Sacrument, and taken the Oaths according to the 25 Car. 2. be-
cause his Office is made void, and so the Proceedings curton non ju-
dice; adjudged, and Judgment revered accordingly. 2 Lev. 134.

able, and though it cannot be assignd that he was not Judge, yet it may be that he was not Mayor,
and without such Averment the Statute would be ulieig. —- 2 Mod. 193. Jolly v. Tuck & C.
and Judgment revered. —- 3 Kebl. 721. pl. 6. S. C. and Judgment revered —- 5 S. C. cited

6 T 18. 1a
18. In a Writ of Error upon a Judgment in the Palace-Court held in a certain Jacobus Ormond, it cannot be avowed for Error, that the Duke was not there, because that is contrary to the Record; Adjudged agreed per Cur. and that 1. Lev. 76. 14 Car. 2. Molins v. Wheatley.

19. It is not affixable for Error that the Person who tried the Case was not Judge, by reason of his not having taken the Oaths, and subscribed the Declaration, according to the Statute 13 Car. 2. Stat. 2 cap. 1. For this is contrary to the Record and Admiration of the Parties.

20. Nothing shall be affixed for Error which the Party might have pleaded to the Action, and had a proper Time to do; Arg. said it is a Rule; But because in the Principal Case the Plaintiff had no Time to plead the Matter; For by the Death of J. S. (one of the Tenants) before the Return of the Writ of Refinements all the Proceedings on the Sci. Fa. were discontinued, and the Parties out of Court, and fo had no Time to plead any thing afterwards, and the Death of one Tenant puts the whole without Day; and for that Holt Ch. J. cited keilw. 69. Fitz. tit. Error. it is for the Plaintiff in Error; and the Court said, that the Defendant must bring a New Sci. Fa. against the Tenants, because the Old Writ was put without Day Causa quia inopra. Carch. 200, 201. Mich. 3 W. & M. in B. R. Blake v. Gell.

21. Error in Facit Coram Nobis upon a Judgment in Seire Facias against the Bail, the Scire Facias suggested that Lampton survived, whereas in Fact the other survived; But per Cur. the Error of Write lies not in this Case, for the Motive of the Cause or Foundation of the Suit cannot be affixed for Error in Fact, but only mistakes in Fact pendente placo, which might hinder the Proceedings, As where an Intant appears by Attorney, but this being the very Gift of the Action, the Party can be relieved only by Audita Querela. Comb. 325. Patch.

22. It is not affixable for Error that he who returned the Writ was not Sheriff. 2 Ld. Raym. Rep. 884. Patch. 2 Ann. Andrews v. Linton.

23. Debt on a Bond; Non est Factum pleased; Verdix and Judgment for the Plaintiff in C. B. Error on this Judgment was affixed, that the Defendant died before the Day of Nisi Prius; and held it was not affixable for Error, because the Record mentioned that he appeared that Day. Judgment was affirmed November 7. 1729. 2 Ld. Raym. Rep. 1415. in a Note of the Reporter, cites Mich. 3 Geo. 2. B. R. Plommer v. Webb.
(U. 2) Stile &c. of the King.

1. W. R. I. T of Error was brought on a Judgment, reciting that it was in Curia Nostra, viz. Jac. 2. whereas all the Proceedings were in the Reign of Car. 2. this was held a fault incurable, and a Judgment in B. R. reverified in the Exchequer Chamber, and thereupon the Plaintiff brought another Writ of Error. Carth. 158. Mich. 2 W. & M. in B. R. Dicken v. Greenvill.


(U. 3) Want of entering Pledges, Bail &c.

1. The Plaintiff an Attorney in C. B. sued an Attachment of Privilege against the Defendant, and recovered against him by Non Sistum Informatum, and upon a Writ of Error brought, this being certified, and in Nulli est erratum pleaded, and because he did not find Pledges, the Judgment was reverified. Cro. J. 329. pl. 7. Mich. 11 Jac. B. R. De la Hay v. Vaughan.

2. After a Verdict for the Plaintiff in an Action of Assault in B. R. the Error assigned was, That there were no Bail in B. R. Upon a Certiorari awarded, the Cb. 7. certified Bail there of John Hayes, but without any Addition, and with a Blank for the Place of his Habitation; and thereupon the Judgment was reverified, because it did not appear that they were Bail for the Party who was sued; and so he was never in the Custody of the Marshal, and if not, then he could not be sued in B. R. Mo. 694. pl. 961. Bucknell v. Hayes.

3. Error to reverify a Judgment in C. B. in which the Plaintiff alleged Diminution for Want of an Original, and upon a Certiorari to the Caustos Breuim he certified no Original, and that there was not any Original between the said Parties remaining with him, because there were no Pledges that was assigned for Error; and it was agreed that if no Pledges had been found it had been Error; but adjudged that Pledges should be intended to be on the Original, (though it could not be found) because in C. B. they are always entered on the Original, and not on the Roll; and where there is no Original, that is a Fault which is aided by the Statute, though a bad Original is not. Sid. 84. pl. 12. Trin. 14 Car. B. R. Wheeler v. Wilkinofon.

But see Tit. Amendment (P) (N. a) &c. And Tit. Pledges (B).
(X) A Thing for his Advantage.

[Not against a Record.]

* Br. Error, 1. A Ball may assign the Want of the Warrant of Attorney of his own Attorney, which is for his Advantage. * 7 H. 4. 16. and his own Debitus. i 11 H. 4. 44. 88.

See (A) pl. 4 S. C and the Notes there.

2. In Sceo Facias against the Bail after Judgment against the Principal it is no Plea for the Defendant to say, that the Principal died before Judgment, for this is against the Record, much as a Judgment ought not to have been given against a dead Person. Bich. 32, 33. Cl. B. R. between Walter Plaintiff, and Perry and Spring Defendants, per Curtin, proctor Bavy, who doubted, Nuestra, for by Intendment the Party was not present in Court at the Judgment, and this is Error in Fact.

3 In a Writ of Error upon a Judgment given at the great Sessions in Wales, by the Statute of 34 H. 8. the Justices there may make Deputies, who may give Judgment, and this Judgment was given by J. S. who is supposed by the Record to be a Deputy of the Justice, it cannot be * assigned for Error that the said J. S. was not Deputy to the said Justice, for this is against the Record. Tr. 12 Ja. B. R. between Floyd and Belf adjudged in a Writ of Error.

4. In a Writ of Error to reverse a Judgment given in B. in a Formedon, it may not be assigned for Error, that whereas the Record is, that the Venire Facias to try the Issue, which was tried in that Cause, was returned by J. S. Sheriff of the County of D. that the said J. S. was not then Sheriff of the said County, for this is against the Ammdion of the Court, who know their Officers, and have recorded him to be their Officer of the Court. Bich. 11 Car. B. R. between Smith and Smith, such Matter was assigned for Error, and this certified by a Record under the Seal of the Exchequer, Solicitor, that he was Sheriff, upon which the Judgment was affirmed; But some then said this could not be assigned for Error against the Record of the Court de B. Internut H. 10 Car. Rot. 192. Dice 12 H. 4. B. R. Return de ure 40. and upon Nulltid Record pleaded, at the Day he procure in Court the Letters Patents. The Judgment was affirmed. * Original return'd by one not Sheriff is not assignable for Error. 1 Salk. 263. pl. 9. Paclh. 2 Ann. B. R. Andrews v Luton.

5. If Error be assigned, that whereas by the Record the Defendant appears by Francis Demington his Attorney, whose Name is Henry Demington, and the Warrant of Attorney is certified, by which he is named Francis Demington, the Judgment shall be affirmed; for this Warrant is against the Record, and therefore it
Error.

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6. In a Writ of Error upon a Judgment in Banco, the Plaintiff may assign for Error, that whereas the Record de Banco is, that J. Newton, his Attorney, and pleading non solum Informatus, upon which Judgment was given for the Defendant, that J. Newton was not then any Attorney, but was force-nominate and during all the Term in which he so appeared and pleaded; and upon a Writ directed de Banco it is certified accordingly; and per Curiam, this may be assigned for Error, because this is not the Act of the Court, as an Administratrix by Guardian. P. 16 Car. B. R. between Fawcet and Barnes per Curiam, the Judgment given in Banco reasserted accordingly. In a Writ of Error brought in this Suit, and Error assigned at supersedeas, the Defendant in the Writ of Error in this Case pleads in Nullo est Eratmum; this does not confest that he was not an Attorney; but this Plea et quidem a Demurrer, that this is not an Error at all. Judged and affirmed in Error.

7. In a Writ of Error upon a Judgment in an inferior Court, if the Style of the Court be Curia tenta Coram J. S. Seneschallo Curia et, a Temple Bar, an Error may be assigned that J. S. was not Steward at the Time of the Court held, for this is an Error in Fact. Hill. 9 Car. B. R. between Hatch and Nicholls, per Curiam in a Writ of Error upon a Judgment in the Court of the Tower of London, but the Judgment was affirmed, because the Error was not well assigned, for that it was assigned that J. S. had no Authority to hold Court, which was more general, and not Matter in Fact to be tried by the Court, but may be a Matter in Law.

8. Upon an Issue tried, if William Arckinon de R. be return'd and sworn of the Principal & ali de Circumstantibus also sworn, among whom William Arckinon without Addition is return'd and sworn, and a Verdict given for the Plaintiff, and Judgment in a Writ of Error, the Defendant cannot assign for Error that the said William Arckinon of the Principal, and of the Tales was one and the same Person, and so there were but 11 Jurors that tried the Cause, for this is against the Record, sustained as the Record is, that ali de Circumstantibus Jurati, of which William Arckinon is one, and therefore if the Record be true, this cannot be one and the same Person. P. 13 Car. B. R. between Stevenson and Eyfords per Curiam adjudged, this being assigned for Error, and the first Judgment affirmed accordingly.

9. In an Action upon the Cafe upon a Promise in the Borough Court of Beverley in Comitatus Yorkshire, if the Plaintiff declares there that the Defendant at Beverley within the Jurisdiction of the Court, in Consideration of 1 l given to him by the Plaintiff, he should, at any Time after he should fall at any Fair held within the Borough of Waltham, within the Jurisdiction of the said Court, any Woollen Cloth, and does that the Defendant after sold at a Fair held at Waltham aforesaid, within the Jurisdiction of the Court, a Woollen Cloth, and therefore he had brought this Action, and the Defendant pleads that he did not sell the said Woollen Cloth at Waltham aforesaid, Bodico & Forma.

&v
upon which Fille is taken and tried at Newbury by a Venice Fascis de 12 de Brego de Newbury, and a Verdict and Judgment there given for the Plaintiff, the Defendant in a Writ of Error may align it for Error, that Walcl is in Comitatu Staffordiae, and out of the Liberty of the said Borough of Newbury, for this is a Matter in Fact. 

Dich. 11 Car. B. R. between Lee and Case adjudged in a Writ of Error, and the first Judgment reversed, in which the Defendant in the Writ of Error being warmed, made Default, which in Law was as much as if he had pleaded in nulli et creatum, which acknowledges the Matter in Fact aligned, to be true. 

Intrate Cur. 11 Car.

10. If an Action upon the Cafe be brought against A. S. a Feme Sole, and the appears and pleads there as a Feme Sole, and Judgment is given against her, and thereupon the and J. S. her Husband bring a Writ of Error, they may align for Error that she was a Feme Covert at the Time of the Appearance and Pleading, yet, for otherwise the Male might be taken in Execution without the Consent or Coninance of the Husband, and to be hence be bereaved of the Society of his Wife, for he has no other remedy to defeat it. Dich. 15 Car. B. R. per Curiam, between * Edwards and Simpson, in a Writ of Error upon such Judgment in the Court of Harchalka, Intrateur Dich. 15 Car. 18. E. 4. 4. per Curiam, accordingly. Cur. 1651. between * Hoywood and Williams, adjudged in a Writ of Error, and the Judgment reversed accordingly. Intrateur. D. 1649. Rot. 824.

11. It was argued if Judgment may be reversed for the Damages and stand for the Land; Brooke says it seems that No. Br. Error, pl. 12. cites 28 H. 6. 10.

12. In Frelpas the Defendant pleaded Not Guilty, and the Judgment palled, and Error brought and aligned, because after the illue joined, and before Verdict, the Defendant's Attorney died at D. and by the Opinion of the Court this is not Error; for the Writ shall not abate by the Death of the Attorney, nor the illue by it is not waived nor discontinued; for he may appear by another Attorney, or in Person, and the Continuance is not entered between the Attorneys, but between the Parties, and a Man cannot align Error but in proper Person, and ought to sue Proceed immediately after Delay of the other Party; Per Tresm. Br. Error, pl. 144. cites 5 H. 7. 3.

13. A Man cannot align any Thing for Error which is for his Advantage, as to align that he had Day, and that the Day was given much longer then the Common Day, or that he was effused where he ought not, or had Aid granted to him where he ought not. 2 Suand. 46. cites F. N. B. 22. (F) 

14. A Man shall not reverse a Judgment for Error, unless he can shew that the Error is to his Prejudice. 5 Rep. 39. b. per Car. Tran. 34 Eliz. B. R. in Tey's Cafe ad finem, cites 8 H. 5. 2. b. and F. N. B. 11.

15. In the first Action the Jury gave 4d. Costs, and the Court gave de Incremento 23s. In the Judgment the 4d. was omitted, and this was aligned for Error. The Court held that for that Cause the Judgment should be reversed, although it is for the Party's Advantage. 4 Le. 61. pl. 154. Hill. 31 Eliz. B. R. Bully v. Milfield.

16. Error is brought by the Defendant upon a Judgment in a Court of Piepowders; the Error aligned is, That the Defendant was not a-merced; this was allowed for Error; for although it be for the Advantage of the Defendant, yet it concerns the King and his Profit. Jenk. 211. pl. 49.

17. The
17. The Plaintiff in Error ought to assign nothing for Error but that which makes to his Disadvantage; and therefore he cannot assign for Error that a Day over was given beyond the Time expressed in the Writ. 2 Sid. 94, 95. Trin. 1658. Per Glyn Ch. J. in the Case of Row v. Evelyn.

18. A Tenant in Tail, Remainder to B. in Tail, Remainder to C. in Tail; A. and B. levy a Fine, which proves erroneous. C. may bring Error for the levying the Fine was for his Disadvantage; Per Cur. 2 Sid. 92. 95. Trin. 1658. Row v. Evelyn.

19. Where the Court awards a Respondent Outier when the Judgment Ld. Raym. ought to be final, it can do no Harm, because the Defendant cannot Rep. 594. S. P. by assign it for Error no more than he can the awarding an Error where it ought not to have been, being for his Advantage; Per Holt Ch. J. and cites it 12 Mod. 525. Trin. 19 W. 3. in Case of Slanney v. Slanney.


(Y) Who may assign the Error.

Where he that hath Benefit by the Error.

1. WHERE the Error is by the Default of the Court, though A Man shall this be for the Advantage of one Party, yet the Party that hath the Benefit by it may assign it for Error, for the Course of the Court ought to be observed. Sirch. 15 Aa. B. R. between Holmes and Twyfe agreed per Curiam. Co. 8. Beecker 59. resolved.

2. As if in an Action of Debt it be found, that the Defendant owes the Plaintiff £l. and the Jury assignes Damages to 2d. and Coists 2d. and after Judgment is given, that the Plaintiff shall recover Debtum & Damna pred' to 2d. and no Judgment is given for the Coists, though this is for the Advantage of the Defendant, yet he may assign it for Error, because this is the Error of the Court to alter the Hammer of Judgments. Sirch. 15 Aa. B. R. between Holmes and Twyfe; adjudged and the Judgment rebuffed accordingly.

3. So the Plaintiff in a Suit retracts, by which Judgment is given against him, but he is not amerced as he ought, though this is for his own Advantage, yet for that the Amercerment ought to be Parcel of the Judgment, and to the Judgement is not perfect without it, he may assign it for Error. Co. 8. Beecker 59. resolved.

4. So in every Case where a Judgment is given against a Man in which he ought to be amerced; if he be not amerced he may assign it for Error though it be for his own Advantage. Co. 8. Beecker 59. resolved.

5. So
1. If a Plaintiff be amerced by Judgment where he ought to be fined, though this be for his Advantage, yet he may assign it for Error, for that the Form of the Judgment, which is the Act of the Court, is altered by it. Co. 8. Bracher 59. adjudged.

2. [Bar] in a Writ of Assurance if the Issue be found for the Plaintiff, and no Damages found for him, and Judgment is given according to the Verdict, the Defendant cannot assign it for Error that no Damages were tared against him, because this is for his Advantage, and here the Verdict is not in the Judgment, as it is where there is a Capitulative, but in the Verdict. Mich. 12 Ja. B. R. between Bent and Marsh per Curiam.

3. A Man cannot assign Error in Processe or Delay which is for his own Advantage. Co. 8. Bracher 59. resolved. Fitz. Mat. 1. F.

4. Upon an Issue between a Peer of the Realm and another if the Verdict pass be quod sub nomine 12 Liberos & Legales homines, and does not say tam Milites quam alios 22. the Register is, though the Peer of the Realm may assign it for Error, yet the other cannot, because it does not concern him. P. 40 Cl. B. R. between the Earl of Worcester and Trade.

5. Error of Judgment in Treasuries of Assaulds and Battery, because the Judgment was quod sit in Misericordia, whereas it should be quod Causat. Tanfield moved, that this is for the Plaintiff's Benefit, and B. R. the Default of the Clerk, and so shall not be assigned for Error; but the Judgment for that Cause was reversed. Cro. E. 84. pl. 2. Hill. 30 Eliz. B. R. Crow's Café.

6. If an Issue leaves a Fine, and takes back an Estate for Life or in Tail by the Defendant, he shall not, after avoiding the Fine by Error, but is without Remedy. Mo. 74. pl. 202. Trin. 6 Eliz. in the Star-Chamber by Cathlyn.

7. If a Plaintiff is not amerced where he ought to be it is Error, yet he may assign it for Error though it be to his Advantage, for it concerns the King's Profit, and the Publick is concerned where the King is concerned. Jenk. 283. pl. 6.

8. In Error to reverse a Judgment in Equation, the Error assigned was, because the Judgment is not True capitator as it ought to be, being Vi & Armis; and it was reversed. Poph. 203. Mich. 2 Car. B. R. Rochester v. Rickhouse.
13. In a Writ of Error brought by the Tenant of a Judgment in the Grand Sessions in Wales, it cannot be assigned for Error, that the Court awarded a Grand Cape, where they ought to have given Judgment for the Defendant to recover, because the Award of the Grand Cape was only in Delay of the Demandant, and not to the Prejudice of the Tenant, and therefore not by him to be alleged for Error, because it is not Ad
grave Damnum Querentis, as the Writ of Error supposes; Adjudged: as
S. C. states it that the Error assigned was, that the Court had awarded a Petit Cape where they should have given Judgment upon the Nient desire; but the Court held that this was only the awarding of more than should be, and in Advantage of the Tenant, and therefore resolved they could not reverse it for Error. And Twifden said, that admitting it were erroneous they might then give Judgment in this Court.

14. The giving Oyer where it ought not to be allowed, is no Error, nor assignable by the Defendant, being in his Advantage; but the Denial of it where it ought to be allowed, is Error; quod Powell conceit.

(Z) Where the Error came by the Default of him that assigns it.

1. A Man may Assign the Want of a Warrant of Attorney of his own Attorney, though it be his own Default. 11 H. 4. 1. S.C and the Notes there.

(A. a) In what Thing it may be assigned.

1. It cannot be assigned in a Record which is not in the Court where the Writ of Error is brought. 11 H. 4. 47.
[which is the Commencement of the Cafe, and continued at Fol. 47. b. pl. 22] — Br. Error, pl. 46. cites S. C. but b. P. does not appear. —— See (H) supra Worldley v. Charmock.

2. If a Man recovers an Annuity and hath Judgment in a Scire Facias thereupon, if a Writ of Error be brought upon the Judgment in the Scire Facias only, he cannot assign Error in the first Judgment, for that was not come before them. 11 H. 4. 1. 47. adjudged:

3. In a Writ of Error upon a Judgment in Banco, if the Plaintiff assigns for Error that whereas a Venire Facias was returned by J. S. as Sheriff of the City of Chester, he was not Sheriff of the City, this Error is not well assigned, because the Venire Facias is not certified upon which the Error is assigned, for this is upon Record in Banco, and this Court cannot take Notice of this Matter of Record by Venirement without Certificate thereof; for he ought to have had this certified, and after Certificate thereof, then to aver that whereas it is mentioned by the Record to be returned by J. S. Sheriff, that he was not then Sheriff. Patch. 1649. between Barcroft and Richards adjudged, not being well assigned, and the Judgment.
Judgment affirmed accordingly. Intracur E. 23 Car. Ror. 1311.
B. R.
4. Error may be assigned in every Part of the Record, 18 C.
4. 9.
5. The Plaintiff assigned for Error, that where he in the Exchequer
pleaded sufficient Plea in Bar before the Barons, upon which the other
Party, then Plaintiff, demurred, and Barons awarded that he should reco-
very where he ought to have awarded that he should be barred; and per
Cour, the now Plaintiff shall not be compelled to shew Cause why the
Plea is not good; For by his Pretence the Plea is good, and he shall
not be compelled to shew Disability of his own Plea; for he is to affirm
the Plea. br. Error, pl. 108. cites 99 H. 6. 52.
6. But he who is to prove the Plea ill, as where a Man assigns for
Error that the Court awarded a Plea good, and barred the Plaintiff,
where the Plea was ill and insufficient, there he shall shew Cause of the In-
sufficiency, quod futi conceaWum. Ibid.

(B. a) In what Thing it may be assigned upon
the Writ.

Cro. J. 124. pl. 4. S. C. but S. P.
does not ap-
pear — a Bull. 119.
120. S. C.
* Pol. 761.
but S. P.
does not ap-
pear.
See (E. b)
pl. 1. Tie
v. Atkins.
-------- And see (M. c) pl. 9. S. C.

2. Error on a Judgment in a Sci. Fa. upon a Recognizance, the Writ
herefits Die Solis, which is not dies judicis, and it was reverfed.

(C. a) In what Thing it may be assigned upon
the Writ.

1 Fitzh. Err. pl. 64.
1. In a Writ of Error upon an Outlawry after a Judgment in a Re-
dissellin, an Error may be assigned in the Record of the Red-
dissellin (scilick, the Caption out of the Land) and this is sufficient
to reverfe the Outlawry, though the Judgment of the Redissellin
continues, for the Outlawry cannot be good upon an erroneous
Judgment. 11 H. 4. i. b. 94. adjudged Co. 8. Altam 158. b.

--- Fitzh. Err. pl. 64. cites 11 H. 4. 6.
Error.

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1. If two bring several Writs of Error and several Seire Facias's to Br. Error, reverce a Judgment in an Affize against them, they may at pl. 50. cites S. C. sign Errors jointlbe, 11 D. 4. 92. b. adjudged.

2. In a Writ of Error it is no good Alignment of Error quod Br. Attaint, in omnibus erratum et ; for the Court is not bound to inquire of the Errors, if the Party does not shew them to him. 6 C. 4. 6. cites S. C. & S. P. by Sulliard.

3. In a Dumb suit infra statem against three, as Daughters and Heirs of J. S. if the Plaintiff recovers by Default, and the Defendants bring Error and align their Monage for Error, without alleging that their Ancestor died settled as. [Whether if good or not] Dyer. 2 Mar. 104. 10. adjudged.


5. The form to align Errors is to put a Bill into the Court, and to say that in boc erratum et &c. and to shew in certain what Things, Et in boc erratum et &c. and shew in certain another Thing, Et sic de fungulis in which he will align the Errors ; but to say In omnibus erratum et is not good because of the Uncertainty. F. N. B. 20 (G) the second Part.


7. If two are outlawed in an appeal of Murder, and they bring a Writ 2 Keb. 14t. of Error to reverse it, and one appears, but the other does not, be shall pl. 11. S. C. not align Errors till the other appears, because he has joined with him in a Nunc stare in
in the Writ of Error ; Adjudged. 1 Sid. 316. Hill. 18 and 19 Car.
2. The King v. Tornhill & a.

The Bar to assign the Error jointly, and one alone cannot do it without Summons and Severance.

(E. a) A Man cannot assign Error in Fact, and also Error in Law.

[And how to take Advantage of such Assignment.] pl. 2.
[And what shall be said Error in Fact, and what Error in Law.] pl. 3, 4.

1. A Man cannot assign for Error that Judgment was given for the Plaintiff, where it should have been given for the Defendant and also an Error in Fact. Till. 10 Car. Curnen Sharratt, between Davis and Sibley adjudged in a Writ of Error upon a Judgment in B. R. where the Error in Fact was, that the Plaintiff who brought the Action as Administratrix to her Husband, was a Feme Cooper, and that her Husband was then in full Life.

2. But if a Man assigns for Error that the Judgment was given for the Plaintiff, where it ought to have been for the Defendant, and also that he being Defendant appeared there by Attorney, being then within Age, and the Defendant in the Writ of Error pleads in nullum et erratum he shall not have Advantage for the Doublets, if he does not shew it specially in his Plea, but the Judgment shall be reversed, inasmuch as he acknowledges himself to be within Age, which is a Matter of Fact. Mich. 11 Car. B. R. between Mayor and Bozart adjudged, and a Judgment given in an inferior Court reversed accordingly.

3. In a Writ of Error upon a Judgment in an inferior Court if the State of the Court be Curia tincta coram J. S. Senechallo Curie &c. a tempore &c. an Error may be assigned that J. S. was not Steward at the Time of the Court held. Hill. 9. Car. B. R. between Hatch and Nichols ; per Curiam, in a Writ of Error upon a Judgment in the Court of the Tower of London, for this is Error in Fact.

4. But in the said Case if the Error be assigned that J. S. had not any Authority to hold Court, this is not well assigned, for this is uncertain, and * Mazer in Law peradventure, and more general, and not Matter of Fact to be tried by the Country. Hill. 9 Car. B. R. between Hatch and Nichols adjudged per Curiam, and the Judgment given in the Court of the Tower of London affirmed accordingly. Jurispr. Term. 9 Car. Rot. 425

5. In a Writ of Error upon a Judgment in B. R. he cannot assign for Error that there is not any Bail filed for the Defendant, for this is not material if he was in Caudeia Marefchalli &e. for if he was in Caudeia, the Proceedings might be against him without any Bail, but if he was not in Caudeia, he ought to assign the Error, that he was not bailed nor in Caudeia. Hobart's Reports, Case 341.

* Lancaufet's
Error.

* Lancinge's Case, and 342. between t Wilks and Woodhouse ad
judged, but Thur, whether he may assign it contrary to the Rec
cord, that he was not in Cuffodio Marechalhi when the Declara
tion supposes it, and the other to answers.

Bill was assigned 11 Feb and the Bail was filed 12 Feb, so as the Bill was before any Bail, and it
did not appear that the Defendant was in Cuffodio Marechalhi, but because the very Day of filing
the Bill is not material, for whenever it is filed to has relation to the first Day of the Term, this Erro
70 pl 82. S. C. accordingly. — Jenk. 293. pl 44. S. C. affirmed in Error; For Bail relates to the
first Day of the Term.

Error assigned was, that there was not any Bail upon the File, and this was certified accordingly,
and that he was not in Cuffodio Marechalhi; and it was held by all the Justices and Baronet, that it
could not be assigned for Error, but it is contrary to the Record ; For the Declaration is against him
as in Cuffodio Marechalhi, and he appears and pleads to the File as a Prisoner who was in Cullodio
Marechalhi, therefore he shall not be now received to pay the contrary; wherefore the Judgment
was affirmed. Cro. J. 508, pl 7, Patch. 15 Jac. B. R. Webley v. Gillman.

9. A Man may assign as many Errors in Law as be will, but he can
assign only one Error en Faiz, because this Error en Faiz is to be tried
by the Country, and the Errors in the Record shall be tried by the Justices.
F. N. B. 20 (E.)

7. In Replevin there are two Accounts, one of them was an Infant, was
and appeared by Attorney when he should appear by Guardian, and this
was assigned for Error; but in the Assignment of it he concluded Et
paratus est viceare &c. and the Defendant pleaded in Nullo Infant at the
court Erratum; Per Cur. he ought to have concluded to the Country, because the
Error which he assigned is an Error in Faiz, and the Jurors only
shall be Triers of it, and not the Judges, therefore it is as if there had
been no Error assigned at all; For the Defendant by pleading In
Nullo et erratum has not controverted it to be Error, but only put himself
on the Judgment of the Court, who cannot be Triers of it; And

In Nullo et erratum; this is a good Plea; For it lies not in the Breast of the Court to know whe-
ther he be within Age or not; but if he had concluded, Et hoc paratus est viceare only, without
more, this had been good and travelable, and to be tried by the Country; And Judgment affirmed.
Built. 57 Trin. 8 Jac. Barker's Case.

8. If one assigns Error in Fact, and also Error in Law, it is Dou-
ble, and the other Party may call demur upon it ; but it seems that the
Assignment of Error in Fact is no Waiver of the Assignment of Error in
Law; Sic dictum init. Sid. 147. pl 7. in a Nova, Trin. 15 Car. 2.
B.R. Anon.

9. Error upon a Judgment given in C. B. in Case upon severai Pro-
mises, in which upon Non Assumpit pleaded, as to two of the Counts,
Verdict and Judgment were given for the Plaintiff, and as to the ref for
the Defendant; And the Error assigned was, that the Defendant was an
Infant at the Time of the Promise made, and also appeared by Attorney;
To which Assignment the Defendant in Error demurred specially, be-
cause it contained Matter of Fact and of Law also; And therefore the
Judgment was affirmed. 2 Lit. Raym. 833. Patch. 2 Ann. Bardeton
v. Wheatley.

10. Error in Fact was assigned, viz. that the Plaintiff was a Pea
Courts at the Time of the Action brought, Sed non allocutur; because it
might have been pleaded in Abatement, and it is a general Rule, not to
suffer that to be assigned for Error in Fact, which might have been taken
Advantage of, by being pleaded in Abatement. 10 Mod. 166. Trin. 12.

6 Y (F. a)
(F. a) *At what Time it may be assigned.*

[Or what may be assigned for Error after a Scire Facias.]

**A FTER a Scire Facias awarded against the Defendant, he cannot assign any Error which is Matter of Fact.** *22 E. 4.*

After Errors assigned, and a Scire Facias against the Defendant upon that Assignment, he shall not assign an Error in Fact, as to say that the Plaintiff was dead at the Time of the Judgment, or before the Judgment &c. F. N. B. 20. (E).

After Award of Execution on a Scire Facs Defendant cannot have Advantage of Matter pleadable to that; otherwise after two Nihils. 1 Salk. 264. Wicket v. Creamer.

**2. As in Avoidance of an Outlawry, to say that he was in France, or other Place under such Captain in War, for this is Matter of Fact, for it shall be tried by Certificate of the Captain. 22 E. 4. 46.**

**4. But after a Scire Facias awarded, the Plaintiff may assign Errors in the Record.** *22 E. 4. 45.* 34 Att. *f. 6.*

Jenk. 140. pl. 86. cites S. C. For the Record is in Court, but the Warrant of Attorney is not so. *† Quire* if this should not be pl. 7.

**6. Or to say there is not any Original. 22 E. 4. 45.**

2 Le. 2. 1 pl. 3. Werdman v. Yate, S. C. adjournatur.

8. Error; *After Errors examined the Plaintiff discontinued his Writ, and obtained a new Writ out of the Chancery, to remove the Refuse of the Record, which being sent in B. R. he brings a new Writ of Error coronas refutat, and would assign Errors upon the new Part of the Record.* It was laid, it was not warranted by any Course; for this is to allege Diminution after In Nullo est Erratum pleaded. It was the Opinion of the Justices, that inasmuch as the first Writ is discontinued, and this is a new Writ sued, the Plaintiff is not tied to the former Errors, but may assign other Errors at his Pleasure, for it is now as if no Error were assigned before, and he may assign other Errors in the Record, or other Errors out of the Record. Cro. E. 155. pl. 38. and 281. pl. 2. Trin. 34. Eliz. B. R. Yates v. Windham.

9. A
9. A Writ of Error may, in seven Years or more; for it is only a Jenk. 25. pl. Commision, and the Parties have no Day in Court by it; but the 45. S. P. the Defendant in a Writ of Error may by Motion force the Plaintiff in Error to affix Errors, the same Term, and bring a Sci. Fac. returnable the same Term, or the next Term. Jenk. 140. pl. 36. 

Error Scire aiiiy Modigit. But for he W. affign the Jt'A. he t!S C. had B. affign is tije is Default; in a given Judgment 3'-(2g IjaB Error tlHllgSi not, the aUl? Error 27x272 Scire Colling 444. or 28x289 Dancin 444. but the Plaintiff in Errors files a Sci. Fac. ad audiendum Errors, or the Defendant in Error files a Sci. Fac. Quare Executionem hab: berc non debet.

10. The Court was moved that there was a Scire Facias issued out to certify Errors, and Time was desired to affix them; But the Court answered, that the bringing of the Writ of Error is delay enough, and therefore if you have not affixed the Errors according to the Rules of the Court, they shall not be now accepted. Stry. 288. Hill. 1649. Hudson's Case.

(G. a) At what Time it ought to be affixed.

1. THE Plaintiff in Error ought to affix some Error before he shall have any Scire Facias ad audiend' Errors. 24 Pitch. Error pl. 11. cites S. C. 

2. If A. recovers against B. in Banco, and C. is Bail for B. and after a scire Facias is awarded against C. the Bail, and after two Nihils return'd a Judgment is given against C. and after he brings a Writ of Error in Banco Regius upon this Judgment, he cannot affix for Error that there was not any Capiai returned against B. the Principal before the Scire Facias issued, for that if he had appeared and had not pleaded it, or had been returned summoned, and had not appeared and pleaded this Matter, he should not affix it for Error, because he might have pleaded it to the Scire Facias, and here the Return of two Nihils amounts to a Summons and is all one with it, and this is a Matter of Record and not a Matter of Fact, and there would be no End if he should be admitted to affix it after such Judgment, in which it had appeared he might have been aided. Tin. 1651. between Barick and Tompson adjudged, and the first Judgment affirmed. Instrutur. 3. 1650. Rot. 444. 

Scire Facias was brought against the Administratrix of one of the two Persons against whom Judgment was given, and after two Nihils return'd Judgment was awarded against her by Default; Afterwards she brought a Writ of Error Coram vobis referri'd and the Error in Fact affig'd was, That she was never summoned. The Question was, Whether this Writ of Error would lie or not? Because the two Nihils return'd amount to a Scire Faci; and so there being a Judgment by Default after two Nihils, it is too late now to bring a Writ of Error. And upon the Authority of the Case of Barick b. Tompton reported by Style, and mention'd by Ed Roll, and agreed by him the Writ of Error was qualifi'd. 4 Mod. 314. Mich. 6 W. & M. in B. R. Lampton v. Collingswood.

3. Error of a Judgment in Decew; he assigned Error that the Tenant in Writ of Decew appeared by Attorney who had no Warrant here, and prayed Writ to certify it any Warrant be or not, and was Outled of it; For when the Record is removed, if the Plaintiff will affix any Error in Fact, he ought to affix it before that Scire Facias issues against the Defendant; For after this Scire Facias issues he shall not affix any Error in Fact, and therefore he was deny'd the Certificate by Award. Br. Error, pl. 189. cites 22 E. 4 45.

4. And
4. And where a Man affigns that he was Ultra Mare at the Time of
the Outlawry &c. he shall do it before Scire Facias awarded against
the Defendant. Ibid.
5. And per Huffey, a Man shall not affign Diminution after such
Scire Facias. Ibid.
6. So where Original is wanting, or Captas or Exigent is wanting:
For by the fuing of the Scire Facias be affirms that the Record is full; Per
Huffey, quod non contraditur. Ibid.
7. A Man outlawed of Felony, and brought to the Bar to say why
he should not be put to Death, pleaded that he was imprisoned in the
Castle of Oxon, at the Time of the Outlawry, and did not say under
what Count Oxon is, nor took Acknowledgment, et hoc &c and by the Justices, he shall not affign Error before the Writ of
Error by him purchased, and against the King does not lie a Writ of
Scire Facias upon Errors affigned, because the King is always in Court
a third Perton present, therefore the Prifoner must plead every Thing cer-
8. When the Record is removed, Errors must be affigned before Sci.
Fa ad audiem' Errors is fused out. F. N. B. 20 (E.)
9. And the Error ought to be affigned the same Term, and a Sci. Fa.
ad au dem' Error' fused out returnable either that Term, or the Term
enfuing, else all the Matter is discontinued. F. N. B. 20. (G.)
10. When the Record comes into Court, the Plaintiff shall affign his
Errors and have a Sci. Fa. before the Record shall be entered, for that
shall not be entered until the Parties have a Day by Sci. Fa. F. N. B.
22. (F.)
11. In Civil Cases the Errors neither are nor can be affigned before
the Writ of Error is allowed, and the Record removed; but in Cases of
Outlawry of Felony or Attainder of Felony the Error ought to be first
affigned and allowed before a Writ of Error shall be granted. Jenk.
165. 166. in pl. 19.
12. The Plaintiff brought a Writ of Error upon a Judgment obtain-
ed against him; and afterwards the Record was removed into B. R. he
for some Time neglected to sue out a Scire Facias ad audiem Errors;
whereupon the Plaintiff in the original Action fused out a Scire Facias
quare Executio hom beare non &c. and upon 2 Nihil's returned had Judg-
Mofely v. Cocks.
13. 10 & 11 W. 3 cap. 14. No Fine, Recovery or Judgment shall be
removed for Errors, unless Writ of Error is brought within twenty Years
after such Fine, fee'd &c.
14. In Ejectment Judgment is not compleat till Damages are found,
and yet a Writ of Error lies of the Judgment before any Damages are
found; because by the Judgment that is given the Possession is touched
immediately; And where a Judgment is found for any Part Writ of Er-
ror will lie. 7 Mod. 100 Mich. 1 Ann. B. R. John's admitted in the
Cafe of The Queen v. Darby.
15. If the Plaintiff in Error lies still after a Writ of Error brought:
this is no Discontinuance of the Writ, but that the Defendant in Error has
no other way but to bring a Scire Facias against him, to sue Cae. S. Q.
quare Executio hom non habetur, and it will be no Plea for the Plaintiff in
Error to plead that there is a Writ of Error depending, but he must affign
his Errors forthwith after such Scire Facias brought; And in this Case
there is a Difference (viz.) if the Scire Facias is entered on the fame
Roll with the Writ of Error, then he may affign Errors without a
Scire Facias ad auditorium Errors, otherwise not; Per Holt Ch. J.
3 Salk. 144. pl 1. Lynch v. Coor.
16. In
Error.

16. In a Writ of Error Quod Coram vobis resi detergent Court on Mo
tion made a Rule that Plaintiff should affign his Errors within four
Througout.

In a like Cafe the Court gave

(G a. 2) Bar of Execution.

Where the bringing a Writ of Error will bar the Execu-
tion of the former Judgment.

1. WHEREx a Writ of Error is brought upon a Judgment in An-
nuity in C.B. that Court cannot proceed upon a Sci. Fac. to
Quare incumbravit, and Dr. Drury's Cafe. 8 Rep. 42.

2. But where a Judgment is given in Debt, and the Record is re-
moved by Error, yet before Reversal an Original Writ of Debt lies upon
this Record. Jenk. 74. pl. 40 cit. 4 H. 6. 31. and Dyer 32.

3. In Frespafs after Judgment by Default a Writ is awarded to enquire
of Damages, and before the Return thereof a Writ of Error is brought,
yet this Writ to inquire of Damages shall be executed, though illud
after the Writ of Error was brought; For in this Cafe the Writ of
Error does not lie before the Return of the Writ of Inquiry, because till
then no perfect Judgment is given by which the Defendant may be damag-
ed; but it is otherwise in Ejectiune Firmæ, or Writ of Dower, and a Writ
of Inquiry of Damages awarded; For the Land and Dower are recovered
by the first Judgments. Jenk. 74. pl. 40.

4. Execution was made after Allowance of a Writ of Error in Parlia-
ment. It was moved that the Writ of Execution was sealed before
the Writ of Execution taken out, and as Bail to it was not put in, it could
not be a Superfedeas. The Court allowed, that where Bail is after-
wards put in, the Writ of Error is a Superfedeas by Relation from the very
sealing of it, but as Bail was not yet put in, the time of Service of the
Execution was at present to be considered as Regular; But where in-
deed no Bail is to be put in, the Writ of Error is a Superfedeas from the
Pawl.

(G a. 3) By whom.

Where several Persons may have several Writs, or
must all join.

A Praecipe quod reddat is brought against a Tenant; he vouches;
Judgment is given for the Demandant against the Tenant, and
for the Tenant against the Vouchee; They may have several Writs of
Error upon this Judgment; the Vouchee may affign Error between
the Demandant and the Tenant, but the Tenant cannot affign Error
between 6 Z
between the Demandant and the Vouchee. The Vouchee may have
Prejudice by this Error, but not so to the Tenant, because he has recov-
ered in Value; If the Tenant reverses the Judgment, the Vouchee
shall have a Scire Facias to restore the Value; If the Vouchee prevails
by Means of the Writ of Error brought by the Vouchee, the Tenant
shall be restored. Jenk. 69, pl. 31.
2. So where an erroneous Recovery is had against Tenant for Life, be
in the Recovery, and the Tenant shall have several Writs of Error, and
Judgment for one of them, and Execution thereof shall revert their
Ligates. Jenk. 69 pl. 31.

3. Error of a Judgment in Ejectment against several Defendants, and the
Writ concluded Ad damnum ipsum, which must be against all, when it
appeared by the Record that the Judgment was only against three, and
that all the rest were acquitted; Per Cur. yet the Writ of Error is well
brought, for all must join in the Writ, which is only a Commission to
examine Errors; and ad damnum ipsum may be intended only of those
who were found Guilty, viz. that they were damned by this Judg-
ment. 3 Salk. 1.46. pl. 8. Ball v. Richards.

4. If one Executor appears upon the Capias, and another makes Default,
Judgment shall be against Both De Bonis Teilatoris; And the Judg-
ment being against Both, one only ought not to bring the Writ of Error,
but Both must join; For the Judgment is ad gravis Damnum of them all. 1 Salk. 312. pl. 17. Patch. p Ann. B. K. Roufe v. Etherington.

(H. a) Scire Facias ad audiendum.

In what Cases it shall be sued.

1. If these Matters which are assigned for Error, appear to the
Court to be no Error, nor Colour of Error, it shall not grant
any Scire Facias. 18 P. 6. 18. 19. Eturia.

2. If a Matter of Fact be assigned for Error, a Scire Facias
shall be granted. 18 P. 6. 19.

3. In a False Judgment against an Abbess the Plaintiff was Non Suits,
and the Abbess had a Scire Facias against the Plaintiff to shew why he
should not have Execution, and to have the Judgment executed return-
able at 15 Patch. at which Day the Plaintiff appeared, and assigned his
Errors, and tendered Suresies to live with Effect, and prayed a Scire Faci-
as against the Abbess to hear Errors. And the Opinion of the Court
was, that he might assign the Errors against the Abbess, without suing
any Scire Facias against him, because they bad Day by the Roll. F. N. B.
18. (F)

But if the false Judgment a ante for Default in the Writ, the Plai-

tiff shall not have a Sci. Fa. ad audiend' Errors upon the Record cer-
tified, and if the Plaintiff dies, if the false Judgment be given in a

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6. 17 Car. 2. cap. 2. S. 2. Where any Judgment after a Verdict shall Made per-
be had by any Executor or Administrator, an Administrator De Bonis Non
may sue a Sci. Fa. and take Execution upon such Judgment.
7. The Exchequer-Chamber doth not award a Scire Facias ad audien-
Errors, but Notice is given to the Parties concerned. Vent. 34. Trin.
21 Car. 2. B. R. Anon. in a Note.
8. A Scire Facias ad audiendum Errors went against the Executors,
where the Defendant in the Writ of Error died. Vent. 34. Trin.
21 Car. 2. the Secondary informed the Court of this as the Cafe of
Thyn v. Cory.

9. In an Information qui tam &c. upon 5 Eliz. for using a Trade con-
tra Forman Statutu, and Judgment pro Quer', and Writ of Error brought; Per Cur. in the Cafe of Indictments, there needs no Scire Facias for the Party to affign his Errors, but a Rule is sufficient, be-
cause the Queen is always in Court by her Attorney-General; But a Rule in this Caufe being moved for, the Court said they had order'd Precedents to be searched, but could find none, and therefore the De-
fendant in Error must proceed as he can by Law. Trin. 8 Ann. B. R.
The Queen & alc. v. Ford.

(I. a) [Scire Facias.]
Against whom it lies.

[Tertemants.]
Error.

on this Original, which is abated by the Death of the Testator.

Fitzh. — Fitzh. 3. 9 P. 4. 3.

Urbargy, pl. 9. cites S. C.

Fitzh. Error, pl. 12. cites S. C.

5. Upon a Writ of Error against the Heir of him that recover'd, a Scire Facias lies against the Heir and Tertennants. 8 H. 4. 17.

A Writ of Error was brought to reverse a Fine. Some of the Justices thought that it is the best Way to award a Scire Facias against the Tertenants, before the Court proceed to Examination of the Errors, for he may have something to plead in Bar, as Releas'd &c. and so fave the Court the Trouble of examining the Errors, and tho' the Judgment ought to be reversed against the Party and Privy, yet the Plaintiff could not have Restitution till the Tertenant be made privy by a Scire Facias; for if he be otherwise ouitl he may have Affile. Dy. 321. a. pl. 21. Hill. 15 Eliz.

6. A Writ of Error was brought to reverse a Fine. Some of the Justices thought that it is the best Way to award a Scire Facias against the Tertenants, before the Court proceed to Examination of the Errors, for he may have something to plead in Bar, as Releas'd &c. and so fave the Court the Trouble of examining the Errors, and tho' the Judgment ought to be reversed against the Party and Privy, yet the Plaintiff could not have Restitution till the Tertenant be made privy by a Scire Facias; for if he be otherwise ouitl he may have Affile. Dy. 321. a. pl. 21. Hill. 15 Eliz.


9. In Case of a Sci. Fa. against an Administrator, the Court is to grant it sometimes Generally against Administrator, and sometimes against such a one Particularly as Administrator; Per Mann, Clerk. Roll Rep. 23. pl. 32. Pach. 12 Jac. B. R. in the Case of Harrison v. Huxley.

10. The Writ of Sci. Fa. ancienly was Special, naming the Tertenants, but of late such Course has been charged as appears by 8 H. 4. 18. and the Writ awarded generally, and when the Writ is General, Non tenure is no Plea in Abatement; Per Bridgman. Bridg. 72. Hill. 13 Jac.

11. The Scire Facias against the Tertenant is not Ad auidendum Errors, but Ad auidendum Processus & Recordum, and therefore he cannot plead in Abatement of the Writ but only in Bar; Arg. to which Twiften and Windham inclined. Lev. 72. Mic. 14 Car. 2. B. R. in Cafe of Wyll v. Loyd.

12. Appellers of Murder were outlawed, and brought Error, and apparent Errors were assigned, but the Court notwithstanding would not revere the Outlawry till a Scire Facias returned against the Lords Mediate and Immediate. Sid. 316. pl. 1. Hill. 18 & 19 Car. 2. B. R. The King v. Tothill & al.

13. If a Writ of Error is brought to reverse a Common Recovery, the Court before Reverful thereof ought to award a Scire Facias against the Tertenants, and this is not merely discretionery, but Es necessitate Juris, for they may have a Matter to plead in Bar as a Releas'd &c.
(I. a 2) Examination of Errors. At what Time.

After Execution Awarded.

1. A Man recovered in Writ of Debt, and the Defendant brought Writ of Error, and removed the Record in B. R. and there did nothing, by which the Plaintiff prayed Execution, and could not have it without Scire Facias, by which he fixed Scire Facias and Alias, and the Defendant was twice returned Nihil, by which the Plaintiff had Ca. Sa. and alter Exigent, because it was entered Quod Defendens exactus fuit et non comparuit, and upon the Exigent he came and tendered the Money to the Court as he ought, as it seems, and prayed Scire Facias ad Audiendum Errors, and Superfedeas, and had it, because the Exactus fuit et non comparuit was upon the Scire Facias of Execution, and not upon the Writ of Error, and so he is not nonnullified upon the Writ of Error; And so fee notwithstanding the Matter above, they shall proceed upon the Writ of Error, and the Advantage of it is not lost. Br. Error, pl. 6, cites 9 H. 6, 13.

2. If the Defendant in Error sets out a Scire Facias quare Execu
tionem habeas non debet, this is merely collateral to the Record removed, and yet by Matter ex post Facto may become a Record. As if the Plaintiff upon the Return of the Scire Facias appears and pleads a Release or other Matter, as he well may, then this is a Record annexed to the first Record removed; But if upon the Return of the Scire Facias the Plaintiff appears and affixes Errors, or has a Day given him to affix them, and upon this Record affixes his Errors insufficiently, this Scire Facias is but a Piece of Paper filed to the Record, no Proceeding being thereupon. Yelv. 6, 7. Trin. 44 Eliz. B. R. Cromwell v. Andrews.


4. A Sci. Fac. does not lie on a Judgment pending a Writ of Error brought on that Judgment, but the Writ of Error pending is a good Plea to the Sci. Facias; and the whole Proceedings were let aside on Motion as irregular, without driving the Defendant to an Audita Querela. 2 Ld. Raym. Rep. 1295. Mich. 8 Ann. in Cam. Seace. Ludlow v. Lennon.
(K. a) How it shall be joyned in Demurrer or Rejoinder to the Error assigned.

[In Nullo est Erratum.]

1. If a Yall outlawed brings a Writ of Error to reverse the Outlawry, and assigns his Errors, the King's Attorney shall not plead in Nullo est Erratum, and so a Demurrer, as they used to do between common Persons, but only upon the Assignment of the Error the Court shall give a Day to the King's Counsel to maintain the Outlawry, and it is entered Curia adfofvarc vult till the Outlawry is reversed or affirmed. Stith. 14 H. B. R. per Curiam and Clerks in Chapman's Case.

* Though In Nullo est Erratum be pleaded it is not any Confession, but Quafi a Demurrer, because it is not an Error assignable; Per Cur. Grot. 1 29. in pl. 5. Patch 2 Jac. 2 R. In Nullo est Erratum is a Demurrer, but is not a Confession of Error in Fact not well assigned. Lev. 311. Hill. 22 & 25 Car. 2. B R. A Writ of Error assigned Nonage in two of the Defendants, where all appeared by Attorney, the Defendant pleaded in Nullo est Erratum; The Judgment was reversed in 1690, because this Plea is a Confession of this Matter in Fact, it being a Demurrer, and no way left for the Demurrer to try it; but he ought to have pleaded to the infancy, so that Nulli might be taken upon it. Lev. 594. Trin. 22 Car. 2. B R. Grell v. Richards. A Demurrer in Law is never a Confession of a Thing against the Record, but of that only which may stand with the Record; For otherwise his Confession would be vain, and should bind the Court; Per Popham. Grot. J 12. pl. 11. Patch 1 Jac. 2 R.

When Error in Fact is well assigned for Error, In nullo est Erratum amounts to a Confession of the Fact. As if infancy be assigned, the Plaintiff cannot plead In nullo est Erratum, because by it he confesses the infancy, but he ought to allege Nulli; But if the Party assign for Error that the Court did not sit, or that the Defendant did not appear, which Assignments are of Matters of Fact, but not well made, there In nullo est Erratum amounts to a Demurrer; Per Hale Ch. J. Raym 251. Mich. 25 Car. 2. B R. Okewor v. Overbury.

+ Br. Error, pl. 165. cites S. C. - Firth. Error, pl. 45. cites S. C.
+ Br. Error, pl. 95. cites S. C. - Firth. Error, pl. 45 cites S. C.

4 So if Error be alleged in the Body of the Record, in Nullo est Erratum is a good Rejoinder, for this shall put the Matter in the Judgment of the Court, the Record being agreed to be so.

Br. Error, pl. 95. cites S. C.
Firth. Error, pl. 45. cites S. C. 9 C. 4. 32.

But otherwise it is of Error in the Record, As want of Capas, or the like, there he may say In nullo est Erratum, and there if the Defendant will confess the Error, the Court ought not to reverse the Judgment till they be ascertained of the Error. Br. Error, pl. 165. cites 7 C. 4. 16.

5. So if Error be alleged in a Matter of Record which is not of the Body of the Record, but in a collateral Thing as quod non habeatur aliud Recordum of Referendum, in Nullo est Erratum is a good Rejoinder, for if the Plaintiff in the Writ of Error does not prap...
pray a Diminution, and thereupon procure a Certificate from the inferior Court, that there is not any Re-summuns before the Rejoinder entered, this Assignment is of no Effect, but both, that much as this is to be tried by the Record itself; and no Diminution can be alleged after the Rejoinder entered. * 9 C. 4. 32. t 7 C. 4. 16.

for if the Defendant will confites the Error per the Court ought not to reverse the Judgment till they are ascertained of the Error by the Record itself.


7. Error affinned was, that the Defendant appeared per 7. S. Action a tum sum, and that there was not any such Person as 7. S. in rerum Natura; The Defendant pleaded In null○ eff erratum, which is a Confession, and yet the Court held it no Error, because it is against the Record, and the Party is stopped to say the contrary, but he might have affinned that J. S. had not any Warrant of Attorney; and Judgment affirmed. Cro. E. 663. pl. 18. Patch. 41 Eliz. C. B. Crofle v. Tyrer.

8. The Parties being at Issue, and an Habeas Corpora awarded C. B. in which the Action depended, awarded a Superfedeas quia impriva&c. which was delivered to the Sheriff, and yet he returned the Jury, and the Cause was tried at the Assizes, and a Verdict for the Plaintiff; this Matter was affinned for Error; the Defendant in Error pleaded in Null○ eff Erratum, and adjudged Error; For the Error affinned is a Matter in Fact depending on a Matter of Record, and so the Plea is a Confession, that such a Superfedeas was awarded, and delivered to the Sheriff before Trial, and consequently after the Superfedeas delivered the Hands of the Sheriff were bound. Yelv. 57. Mich. 2 Jac. B. R. King v. Andrews.

9. A Double Error in Fact was affinned; And per Hole Ch. J. The Way is to plead in Null○ eff Erratum, and fiε the Duplicity for Cause to affirm the Judgment. But if Apparent Error appears on the Record, notwithstanding the ill affinning of the Error in Fact by reason of the Duplicity, Judgment ought to be revered for such Apparent Error; but no such Error appearing here on the Record, the Judgment was affirmed because of the Duplicity of the Error in Fact; Per Curiam. 12. Mod. 650. 651. Hill. 13 W. 3. Gibbs v. Walkley.

10. Debt on a Bond, and the Plaintiff having had a Verdict and Judgment in C. B. a Writ of Error was now brought by the Defendants; and it was affinned for Error, that one of the Defendants died before the Day of Niff Pris; Strange for the Defendant in Error moved, that it appears on the Record that both the Defendants joined in bringing this Writ of Error; so that the Error now affinned is contrary to the Record, and consequently an Error which the Plaintiffs are stopped to affin; and therefore the Plea of in Null○ eff Erratum is a Demurrer to it, and cites 1 Ro. Ab. 758. pl. 8. And the Court being of this Opinion, the Judgment was affirmed. Gibb. 109, 110. Mich. 3 Geo. 2. B. R. Webb v. Plumer & al.

(L. 2)
Error.

(L a) Diminution.

[Alleged; How. Not contrary to the Record.]

Diminution shall not be alleged in inferior Courts. Sid. 49, 50; 584. Shall not be alleged when it appears there is want of Continuance. Sid. 348. — 1 Salk. 266. pl. 11. Patch 3 Ann. B. R. in Case of Hale v. Clarke. S. F.

2. As if in a Writ of Error it be certified that the Judgment was that Defendant fit in Mifericordia, the Defendant in the Writ of Error cannot allege Diminution, unless, that the Record is quod capitam, because this is contrary to the Record certified. Patch 41 Cl. B. R.

3. It upon a Writ of Error the Record be certified that a Challenge was to the Sheriff for Coulingage, and after thereupon a Venire Facias to the Coroner upon Diminution, it cannot be certified that the Challenge to the Coulingage was after the return of the Venire Facias, because this is contrary to the Record before certified, for nothing can be certified but that which stands with the first Record. Est. 13 In. B. R. between Floyd and Bethall.

4. It cannot be alleged upon a Bill of Exceptions, As to say that a Minister, as Sheriff &c. was examined which is omitted. Br. Error, pl. 90. cites 11 H. 4. 52. 69. 92. Per Huls.

5 Error in B. R. of a Judgment given in Brissow, inasmuch as the Attachment was returned Tuesday was in Felix Saneti Edmundi, where the Writ was Wednesday; The Defendant alleged Diminution, that the Record is Tuesday the sixteenth Day of July, Anno 5 E. 4. in Felix Saneti Edmundi, and so these Words (Saneti Edmundi) sound, and the rest is the Day, and prayed Writ to certify it; And per Jenny and Laicon this Diminution is not good; For it is to Falsify the Record; For Diminution cannot be alleged in that which is contrary to the Record. But in that which may stand with &c. But per Billing and Needham, this stands with it. Br. Error, pl. 168 11 E. 4. 10.

6 Alike was brought by A. against B. and others, and passed for A. and B. and the others brought Writ of Error, and alligned for Error the Misunderstanding of one of the Jurors, but not Hoo, and also that the Defendent was joined with Force, by which the Judges should take the Damages, where it was not found if the Dilemmata was before the Statute of Forethe Entry or after, and to the first Error the Defendant prayed that it be amended, and to the other Error be pleaded in that, in nor in any other Part of the Record, In Nulli 0f Erratum, and prayed that the Judgment be affirmed, and Day was given till the next Term, at which Day the Plaintiff said that it appeared in the Record of Afses that they were after assize upon two Matters out of the Point of Afses, and that the one was found, and the other not inquired, and yet Damages were given for all, and therefore Error; to which the Defendant alleged Dimunition, and prayed Writ to the Judges to certify it; to which the Plaintiff said, that at another Time he brought Sec Fac. upon this Writ of Error against the Defendant, upon which he appeared, and the Plaintiff alligned the Errors, to which the Defendant had pleaded in Nulli of Erratum, and prayed that they proceed to the Examination of Errors, and upon this Day given to this Term; and therefore Judgment if he may now allege Dimi-
Error.

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Diminution, and after the judgment was reversed; And so fee, that the alledging of Diminution shall not serve here; For per Danby and others, the Defendant before he pleaded ought to have seen that he had the whole Record except the Writ, Procesls, Warrant of Attorney, and the like; Quod Nota. And so fee that the other may affign other Errors in another Term apparent in the Record, but the Defendant cannot then allege Diminution; Quod Nota; And there it was argued if judgment may be reversed for the Damages and Stand for the Land; and it seems that No; and that if Affile be taken by Parcells that it is Error; Quod Nota.


7. Error alledged was, for want of a Warrant of Attorney; The Plaintiff in Error prayed a Certiorari to the Ch. J. of C. B. and another to the Cystos Breuvin, and they both returned Non inveni aliquod Warrantum; Scd B. Error. who obtained the Judgment died. The Plaintiff brought another Writ of Error by Journey’s Accounts against his Son and Heir, who appeared, and then the Plaintiff alledged Diminution in hoc, that the Warrant of Attorney was not certified, and prayed a new Certiorari to the Ch. J. and another to the Cystos Breuvin; It was objected, that it ought not to be granted twice in the same Action, especially when the first has been returned by one who is a Judge of Record, (viz.) by the Cystos Breuvin; Ch. J. who has certified, that Non inveni aliquod Warrantum, for which Reason Diminution cannot be alledged in this Warrant of Attorney, if another Certiorari should be granted; But on the other side it was said, that this Certiorari was only to inform the Court, and that if it was granted, and the Judge should certify, that Habetur, and aniquod Warrantum, that Certificate would not be contrary to the first, because that Non inveni aliquod Warrantum, both which may be true and stand together; It seemed to Wray Ch. J. that it against the Defendant who appealed and prayed Aid of the Queen, and afterwards, upon a Motion for a new Certiorari, as in this Cafe, and the Original was between John Laffels Esq; Executor of Dayrell, and Defendant, and that the Defendant was named Executor in the first Certiorari, and upon that Matter a new Certiorari was granted. Le. 22. pl. 28. Trin. 26 Eliz. B. R. Dayrell v. Thinn.

against the Heir and Scel Fac after Errors alledged, upon which he appeared and pleaded, and alleged Diminution in not certifying the Warrant of Attorney; whereupon the Defendant demurred. And alledged that he cannot allege Diminution, nor have new Writ contrary to the two first Certificates in the first Writ of Error.

8. In a Writ of Error, if they alledge Diminution of the Postea & Cro. E. 340. Ribbons Corpora, and there is none to be found, the Judgment is erroneous, pl. s. Mich. 76 & v; this is well. Eliz. B. R. Hist. of C. B. 135. cites Cro. E. 340. Long v. Mitchell. the S. C. and the Court held it Error; Sed adjutorius.

9. Error of a Judgment in C. B. because there was not any Warrant of Bullf. 21. Attorney for the Plaintiff (the Judgment being for the Defendant,) Up. the Judges said on a Certiorari it was returned, there was not any Warrant of Attorney in that Term; It was the Opinion of the Court, that it was not in Error, material in what Term it be entered, so it be entered at all; and therefore that this was his fault, and Neglect, that he committed, and the Reversal of the Judgment should be stayed until it was certified; and thereupon the Parties compounded. Cro. J. 277. pl. 7. Pach. 9 Jac. B. R. Smith v. Skipwith.

for the Reversal was not entred of Record; For if the same had been entred, then this Motion had been prevented, and for this Omission a Certiorari was granted by the Rule of Court.

7 B 10. 18
10. In Error upon Indictments to reverse them, it the Error be
found in the Ointment only, Diminution may be alleged, there being on-
ly a Transcript of the Record; Per Fleming Ch. J. Bulst. 181. Patch.
11. Error was brought of a Judgment in Affirmat in C. B. After
the Record certified, the Plaintiff in Error alleged Diminution for
want of an Original, which was certified and entered, and then he alleged
for Error a Variance between the Original and Declaration, (as in Truth
there was, for the Original was vicious) and he brought a Sci Fa
ad audientiorem Errors; The Defendant suggested, that there was an-
other Original, and that the Plaintiff in Error had procured an ill Origi-
inal to be certified, and then upon the Defendant prayed a Certiorari
to certify the other Original, which was granted; for though one Person
can have but one Certiorari, yet several Persons may have several Writs
12. In the Venire Examin to the Sheriff of J. the Word Vicecomitii was
omitted, and yet the Sheriff of S. returned the Peace, and his Name was
omitted, this was held Error; but because on the Roll the Writ was
awarded Vicecomitii S. and the Omition in the Venire Pacias was the
Default of the Clerk, it was agreed it should be amended; and Judgment
v. Child.
13. Error was alleged to reverse a Judgment in Ejacunt after Ver-
dict, that the Deniie was laid before the Plaintiff had any Title, as upon
the Record appeared, For the Demise was on the Efflin-Day, and the
Declaration was of the same Term; But per Curiam, this being after a
Verdict the Chief Justice said, that it the Plaintiff in Error would take
Advantage of this Matter, he should have alleged Diminution, and
procured the original Writ to be certified, and if that was returnable
before the Plaintiff's Title it would be Error. Carth. 288. Mich. 5
14. In inferior Courts no Diminution can be alleged. 12 Mod. 536

(M. a) Diminution.

Certiorari.

S.C. cited 11 After In Nulla est Erratum pleaded, the Court to inform
Noy 83. 84. there their Conferences may award a Certiorari to amend the Re-
— 2 Roll. cord. Patch. 11 Jac. B. R. Co. 5. Bishop 37 b.
Rep. 471.
Mich. 22.
Jac. B. R. Anon. S. P. though they cannot have it Ex Rigore Juris, because they have had Certi-
ori in the Suits of the Party, but they may have Certiorari ad informandum conscientiam ex Gratia
Curia; And Ley Ch. J. would have amended the Record, and then it was said, that in the Exche-
quer Chamber they might move for a new Certiorari, and there they would certify it according to
the Amendment; And one Solomon's Cafe was cited, where, upon Error in C. B. the Record
was amended here in B. R. by the Record itself which was brought hither, and by a Clerk of C. B.
which was done alio by Advice of the Court of C. B. concurreing with them. — Lat. 152 Polton
v. Weaver, S. C. accordingly.

2. So after In Nulla est Erratum pleaded, the Court may a-
more a Certiorari to reverse the Judgment. Patch. 11 Jac. B. R.
between * Huntzey and Osborne adjudged. Co. Lib. d'2'1'ites, Fol.
Lancast
3. If after In Nulla est Erratum pleaded another Part of the Re- record is brought in by Certiorari, and made of Record, there the Court ought to reverse the Judgment, if the Matter so requires. 

5. Bishop 37. b. By Reports, 14 in. between the * Bishop of Rochester and Young adjudged, which Intratut Patch. 33 El. Rot. 36t.

the Bishop of Rochester, S. C. but S. P. does not appear.

4. After in Nulla est Erratum pleaded, if one Party allege upon Record a Diminution of the Record to reverse it, and prays a Certi- orari to certify it, and thereupon a Writ of Certiorari is sued out, the Certiorari and the Record thereupon is certified, but before it is entered of Re- cord the Court is informed of this Matter, this shall not be received, because it comes in by the Power of the Party after in Nulla est Erratum pleaded, which is not to be allowed, but upon Informa- tion to the Court the Court may grant it. 

Which Intratut. Hill. 1 Car. Rot. 647. and then the Record of the Bishop's Case was brought to the Court where the Defendant did not plead in Nulla est Erratum, as the Book is Co. 5. But it passed against the Defendant by nil dict. and after Diminution, as it is in the Book.

they allow the Record; and a Nisi is there added, that Bishop's Case in Coke does not agree with the Record; For there the Defendant had not joined in Nulla est Erratum, but did not say any thing. Iccle remanum inde insinuat. — Nov. 83, 84. S. C. held accordingly, but yet the Court Ex Officio may award a Certiorari ad informans' competitum, and that which is certified shall be annexed to the Record, and is called a Rider-Roll, and says see 22 E. 4 46. a. 28 H. 6. 10. Dy. 32. b. 6 4 32. b. And now in Chapman's Case the Difference is, if a Diminution be alleged in a Thing collateral, as Warranty of Attorney, or any mean Proofs of what is not of the Body of the Record, so Diminuation may be alleged after in nullo est Erratum; But otherwise it is of the Substance and Part of the Record itself, As it returned in the Detinue only, where the Self Action was in the De- fender and Detention, and says see 1 H. 7. 21. which reconciles many Differences. — Lat. 152. Felton v. Weaver, S. C.

† The Word (tho) should be omitted, and it should be only (Bishop's Case,) and is at 5 Rep. 37 a.

5. In Trespass in S. R. Judgment was given for the Plaintiff by Default, and a Writ of Error brought in Camera Staccari, and there alleged for Error, that there was not any Writ of Inquiry of Damages filed, and upon a Writ of Certiorari certified that there was not any such Writ, yet after another Certiorari granted, and upon this the Writ of Enquiry certified, and upon this the Judgment affirmed. Hill. 5 Car. between Rotor and Escourt, adjuged.

6. [S. S.] in a Writ of Right in S. R. after Judgment a Writ of Error is brought in Camera Staccari, and the want of Continu- ances alleged for Error, and upon a Certiorari the want of Continu- ances certified; Yet after upon another Certiorari the Continu- ances were certified, and upon this the Judgment affirmed. Hill. 5 Car. between Waterhouse and Coby adjuged, and a like Case between Travis and Sea.

7. In an Action upon the Case in Banc. Hill. 6 Car. and Judg- ment after given for the Plaintiff upon Demurrer, and upon this a Writ of Error brought and alleged for Error, that there was not any Original in the Caufe de H. [Hill.] 6 Car. and upon a Certiorari.
8. In a Writ of Error, if Error be assigned in the Original, and thereupon a Certiorari is granted and an Original is certified, which is erroneous; after the other Party prays a Certiorari for another Original; and thereupon in another Original is certified, which is a good Original; and after in Nullo et Erratum is pleaded, the Court ought to intend that the Judgment was given upon the good Original, and not upon the erroneous Original, and to ought to affirm the Judgment; for they ought to intend more laboriously for the Judgment, and to intend it to be well given.

21 Ed. 3. between Crouch and Hains. B. R. adjudged in a Writ of Error.

9. So in a Writ of Error, if Error be assigned in the Original, and upon a Certiorari granted, an erroneous Original is returned, and upon this in Nullo et Erratum is pleaded, and after the Court ad informandum conscientiam grant another Certiorari for another Original, and upon this a good Original is certified, the Court ought to intend that this is the Original upon which the Judgment was given, in labour of Judgment which ought to be intended to be good. B. R. 

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God. 426, pl. 488, S.C. adiornatur. 2 Roll Rep. 332, 535, S.C. but no Judgment. A 2 Writ of Error after the Record removed. Dimination of the Original was alleged, and there it was pretended that Judgment was given upon another Original, and one of the Originals was before, and the other after the Judgment; and there the Judgment was revised, because it cannot appear to the contrary but that the Judgment was given upon the latter Original; Arg. God. 426, cites Pach. 24 H. 8. Rot. 24. Plac. & Ox. v. Trenery.

In an Action upon the Case brought upon an Affidavit, Error assigned was, because no Place was Limited where the Payments should be made; The Original was, that the Promise was in Consideration that the Plaintiff did lend to the Defendant to much, he at London did promise to pay the same to him again; There were two Originals which bore Date the same Day, Judgment was in that Case for the Plaintiff, and the Defendant brought a Writ of Error, and alleged Dimination of the Original, then the other Original was certified; The Defendant in the Writ of Error said, that the Original upon which the Action was grounded, was an Original which had a Place certain; The Judges did affirm the same to be the true Original which did maintain the Judgment, and agree with the Proceedings, otherwise great Mischief would follow; Arg. God. 426, cites Trin. 18 Jan. Rot. 1613. Bowen v. Jones —— 2 Roll Rep. 533, S.C. cited —— S.C. cited God. 506.
Error.

bound by the Plea in nullo eft Erratum that is pleaded, but may grant a new original Writ of Error, but the Party cannot require it, for he is concluded by his own Plea, and if he discontinue his Original he may have a new one, but not if he plead, and the Certiorari is good and well certified, and therefore Judgment ought to be affirmed; Per Roll Ch. J. and Jerman, Nicholas and Ask to the same Effect, and so Judgment was affirmed.

10. Where Two take the Tenancy severally, and plead in Bar, if the Br. Affire, Admise again of the Bar before that they inquire of the Tenancy, this is pl. 57. cites S. C. Error, and as to the Point of the Tenancy not inquired, the Defendant of this alleged Diminution, and prayed that it be certified, alleging that it was enquired; and had it &c. Br. Error, pl. 52. cites 11 H. 4. 67. 68.

11. If the Defendant pleads in Nullo eft Erratum, there he cannot allege Diminution; For by the Affire they are agreed that there is the whole Record. Br. Error, pl. 166. cites 7 E. 4. 25.

12. If the Justices of C. B. or other Justices upon the Writ of Error will not certify all the Record, then the Party who sues the Writ of Error may allege Diminution of the Record, and pray a Writ unto the Justices who certified the Record before, to certify all the Record. F. N. B. 25. (A).

13. If a Writ of Error is brought in C. B. of a Judgment in an Inferior Court, and the Judgment is there affirmed, and then a Writ of Error is brought in B. R. on the Judgment so affirmed; In that Case no Diminution can be alleged of the Record in the Inferior Court; for now the Judgment in C. B. is only in Question; So Resolved Paflch. 20 Jac. B. R. Bammler v. Kennedy F. N. B. 25. (A) in the new Notes there (a).

14. If in a Writ of Error upon a Fine, an Error be affigned in the Proclamations, upon which a Certiorari goes to the Cufmus Brevium, and upon his Certificate it appears that two of the Proclamations were made in one Day, but it appears in the Chirograph Office, that all the Proclamations were duly made, Wray Ch. J. held that the Defendant ought to have his Prayer; For the Chirographer makes the Proclamations, and is the principal Officer as to them, and the Cufmus Brevium, having only an Abstract thereof, upon the Prayer of the Defendant, a new Certiorari was directed to the Chirographer, who having certified the Proclamations duly made, and upon Examination of the Clerks of C. B. by the Justices in B. R. who answered according to what was laid by Wray Ch. J. they awarded, that the Proclamations with the Cufmus Brevium should be amended according to those in the Cufdy of the Chirographer. 3 Le. 106. 107. pl. 157. Trin. 26 Eliz. Rag v. Bowly.

15. In Error the Plaintiff prayed a Certiorari to the Cufmus Brevium to certify an Original Writ upon which a Common Recovery was had, and it was granted him, and the Cufmus Brevium certified that there was no Original, and afterwards the Defendant prayed another Certiorari, and had it. Le. 22. in pl. 28. Trin. 26 Eliz. B. R. Arg. cites it as the Case of Ld. Norris v. Braybrook. A Writ of Certiorari de Novo was granted after the Plaintiff had pleaded in Nullo eft Erratum; For this Plea of in Nullo eft Erratum goes only to that which is contained in the Body of the Record, and not to any Collateral Matter, as Warrant of Attorneys, Le. 176. in pl. 246. Hill, 24 Eliz. B. R. Wray Ch. J. cites it as a Case greatly debated between Norris and Braybrook. Mo. 95. in pl. 235 Paflch 12 Eliz. Braybrook’s Cafe, S. C. but S. P. does not appear. —— Ibid. 125. pl. 271. S. C. but S. P. does not appear.

16. After Assignment of the Errors, and in Nullo eft Erratum pleaded, it was moved that there was a manifest Error in the awarding the Venture Fac. and prayed a Certiorari to certify it. Popham held it not grantable; For though sometimes in Affirmance of a Judgment, it is used in such Cafe to award a Certiorari to inform their Conferences, because they would not reverse a Judgment if it could be helped, yet never was it grantable to avoid a Judgment; For it is the Folly of the Party
Error.

Party that he did not procure it to be removed before the Errors assigned; but the other Justices held a contrary, that it is grantable as well in the one Case as the other; and awarded accordingly. Cro. E. 336, 337, pl. 9. Trin. 45 Eliz. B. R. Winchcomb v. Godlard.

17. Error upon a Judgment in Trover against Husband and Wife, of a Tove and Conversion by the Wife, and several Errors assigned, which were all over-ruled; afterwards, upon a Suggestion that there was not any Bail entered for the Wife, the Court was moved for a Certiorari; it was ejected against the granting it, that the Plaintiff in Error had assigned several Errors, but not this for one and that the Defendant had pleaded in Nullo eff Errorem, and the Record is examined, it is now too late, especially as it is to reverse a Record, but peradventure upon such a Suggestion, to help a Record in Affirmance of a Judgment, they may award a Certiorari Ex Officio. But the Court held, that though the Plaintiff in Error cannot assign this for an Error after in Nullo eft Erratum pleaded, yet the Court for their own Information may Ex Officio award such a Certiorari upon such a Suggestion after that Plea pleaded; and a Certiorari was granted. Cro. J. 5. pl. 6. Pach. 1 Jac. in Cam. Scacc. Cox. v. Cropwell.

18. A Venue of Fruits was returned in the Time of Queen Elizabeth, and the Hob. Corpora Juriscaum was summoned in Curia Nefra, whereas it ought to have been in Curia Super Regne; For there was not any Summons in the King's Court which was moved to be a manifest Error, as it was resolved in the Caffe of Lindwili v. Berchingham in Cam. Scacc, wherefore it was prayed that Certiorari might be awarded to certify it, which was granted, (Popham ablenta) But afterwards it being moved for Stay thereof, (Popham being in Court) because it was in the Disference of the Court to award it or not, it being after in Nullo eff Eruttaun pleaded, and in Disaffirmance of a Judgment, therefore all agreed that no Certiorari should be awarded, but that a Superfluous should be made for Stay of that which issued before; and Judgment was affirmed. Cro. J. 139. 141. pl. 16. Mich. 4 Jac. B. R. Read v. Potter.

19. After in Nullo eff Erratum is pleaded the Defendant cannot allege Diminution, because there is a perfect Issue before; Per Cur. Godb. 267. pl. 368. Hill. 13 Jac. B. R. in Cafe of Brook v. Gregory.


21. If a Writ of Error be brought upon a Judgment in B. R. in Ireland in a Writ of Issue Judgment upon a Judgment in the Tontil, (which is the Court of the Mayor and Aldermen of Dublin) and it is assigned for Error that there was no Plaintiff entered in the Tontil, and that these Words, Per quod Altera accrescit were omitted in the Conclusion of the Declaration; If the Defendant alleges Diminution, yet he shall not have a Certiorari to the Ch. J. of B. R. in Ireland to certify the Residue of the Record &c. and that if any Part of the Record be not before him, that he should write to the Mayor and Aldermen to certify it, and that be should certify it to this Court; for by his Plea of in Nullo eft Erratum in B. R. in Ireland he has admitted the Record well certified by the Mayor and Aldermen, and this Court has no Authority to require the Court of B. R. in Ireland to write to the Mayor &c. and the Judgment of B. R. in Ireland is only here in Question. Such Writ being ifued a Superfluous was granted to the Whole, though it was prayed that
the Superfedeas should be as to the Inferior Court only. But at another Day it being moved, that there might be a Certiorari as to the Words Per Quod &c. it was granted. 3 Danv. 17. pl. 11. cites Palm. 285.

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\[20\] Jac. B. R. Banister v. Kennedy.

22. In a Writ of Error in the Exchequer-Chamber upon a Judgment in B. R. it was affirmed for Error that in the Bill the Plaintiff declared on a Leafe for three Years, but in the Plea Roll, upon which the Issue was joined, and the Record of Nifi Priois, it was upon a Leafe for five Years, so that the Bill and Declaration vary, and Diminution being alleged by the Plaintiff, a Bill was certified, in which it was only for five Years; upon which the Defendant had another Certiorari, and thereupon a Bill was certified, wherein he declared of a Leafe for five Years, which warranted the Declaration upon the Roll and the Nifi Priois. It was held by all the Justices and Barons, that the second Certificate upon Diminution alleged by the Defendant should be received; for that warranting the Roll and the Record of Nifi Priois, shall be intended the true Bill, and the other a fictitious one. Cro. C. 91. Trin. 1 Car. Howell v. Thomas.

23. Diminution does not lie after In Nullo eff Erratum is pleaded, for it is repugnant to the Plea, which goes to the Whole; for this Plea implies and refers to the Errors aligned by the Plaintiff, which being the Issue between them, no other can be aligned; and after Issue joined, such new Matter is not to be alleged. But if the Original be returned, upon a Writ of Diminution, after In Nullo erratum pleaded; the Court will not reject it. Jenk. 164. pl. 13.

24. In a Writ of Error upon a Bill of Exceptions, the Plaintiff can allege no Diminution; For he must hold himself to the Matter of the Bill sealed, and if it be not there it was his Folly to omit it. 2 Inf. 427.

25. Error of a Judgment in C. B. in Ejecution upon Non sum Informatus, and the Error aligned was, that it appeared by the Record that the Declaration was before the Plaintiff had any Cause of Action; it was said it doth not appear fo, but that if that was true, then there was a wrong Original certified; whereupon a Certiorari was prayed and granted to certify the true one, it being in Affirmance of a Judgment which ought to be favoured. Style 352. Mich. 1652. B. R. Jennings v. Downs.

26. Writ of Error was brought upon a Judgment given by Justices of Oyer and Terminer; The Error aligned was because there was no Adjournment. And upon great Debate, it was ruled that Writ shall be directed to the Justices to supply this Diminution. Sid. 49. pl. 3. Pach. 13 Car. 2. cited by Windham J. as adjudged in Sampson's Cafe.

27. Diminution cannot be alleged upon a Writ of Error brought upon a Judgment in any Inferior Court; Per Cur. Sid. 40. pl. 3. Pach. 13 Car. 2. B. R. Redding's Cafe.

28. After in Nullo eff erratum pleaded, none may have a Certiorari to disaffirm the Judgment, but contra to affirm it; though when it comes in Advantage it may be taken of Errors, and though the Plaintiff may have it before without Motion, yet not after such Plea pleaded. Keb. 225. pl. 41. Hill. 13 Car. 2. B. R. Furnage v. Norton.

29. Diminution may be alleged in Wales, and out of the Courts in Counties Palatine, but not in Ely, for that is only a Royal Franchise. S. C. Sid. 147. pl. 5. Trin. 15 Car. 2. B. R. Smith v. Smith.

30. In Docet in Nullo eff erratum was pleaded. It was assigned for Error that it was against an Infant who appeared by Attorney, when he should have appeared by Guardian. Per Cur. though it be alter in Nullo eff erratum pleaded, yet we may grant a Certiorari ad informandum Conscientias; and a Dowager is a Kind of a Purchaser. 7 Mod. 102. Mich. 1 Ann. B. R. Wood v. Branford.
Error.

31. Where the Defendant has joined in Execution no Certiorari is necessary; neither is it, unless the Party, when he aligns Errors, prays it for want of Original &c. Keb. 735. pl. 17. Trin. 16 Car. 2. B. R.

Swain v. Shin.

32. A Certiorari to Ireland after in Nullo est oratum pleaded, was held grantable at the Prayer of the Defendant in Error, ad Informandum Curiam, and when returned, it will appear if the same Record or not. Show. 214. Pulp. 3 W. & M. Price v. Harlont.

33. No Diminution can be alleged of a Record of an Inferior Court.

7 Mod. 103. Mich. 1 Ann. B. R. Le Nover's Case.

34. Upon a Writ of Error in B. R. the Want of an Original was alleged for Error, and the Defendant, before the Return of the Certiorari, came in gratus, and pleaded a Release in Bar. The Plaintiff in Error demurred, and the Defendant joined in Demurrer; this Release was agreed to be misplaced for Want of a Venue; then the Question was, Whether the Court Ex Officio, might award a Certiorari, that it might appear whether there was an Original or not; Holt Ch. J. held they could not, because the Defendant, by pleading a Release, had admitted the Want of an Original; besides, the Question was not, Whether Error or not, but whether barred by the Release or not, and therefore the Court cannot depart from the Point referred to their Judgment; for if they do, then they give Judgment on the Certiorari, and depart from the Plea and Demurrer, and joined in Demurrer. But the other Judges were of a contrary Opinion, viz. that the Act of the Parties might foreclose themselves, but not the Court; for they are to give Judgment upon the whole Record, and may award a Certiorari ad intermand' conscientiam. 1 Salk. 268. pl. 15. Trin 3 Ann. B. R. Carlton v. Mortagh.

35. Error was brought on a Judgment in C. B. and Want of an Original assigned; The Defendant in Error came in Gratus, and alleged Diminution, and prayed a Certiorari, and thereupon a variant Original was certified; Upon this he came again at the Day given, and substituted another Original of such a Term, and prayed another Certiorari. This appearing on the Mallet's Report, the Question was, Whether it was regular? And per Holt Ch. J. If a Record below be of Easier Term, and a Want of Original be assigned for Error, the Defendant may allege Diminution, and then a Certiorari goes to the Cultus Brevium only to certify an Original of Easier Term, that being the Term of which the Placita is; If then the Cultus Brevium certifies a wrong Original, or that there is no Original, then the Defendant may come and suggest, before in Nullo est oratum pleaded, that there is an Original of another Term, viz. Hill, or Mich. and then there must go a Certiorari to the Cultus Brevium to certify that, and another to the Ch. J. of C. B. to certify the Continuance. Alto if the Cultus Brevium certify a wrong Original of the same Term the Placita is of, it has been held, the Defendant may suggest there is a right Original even of that very Term; and when both are before the Court, the Court will apply the Record to that which is a good Original. 1 Salk. 266. pl. 13. Trin. 3 Ann. B. R. Burnaby v. Sanderson.

36. Error.
Error.

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36. Error of a Judgment in C. B. After Verdict the Plaintiff in Error aligned the Want of an Original, but did not take out a Certiorari, as the Court is; the Defendant in Error pleaded in Nullo eft erratum; and per Holt Ch. J. It Want of an Original be aligned for Error, and the Plaintiff in Error does not sue out a Certiorari, the Court is for the Defendant in Error to go to the Master of the Office and get a Rule for the Plaintiff in Error to return his Certiorari; and in Cafe he does not get it done accordingly, the Alignment of Error signifies nothing; but if the Defendant in Error will come gratis and contest the Error, there need be no Certiorari returned; and as to the Objection, that there may be a bad Original in this Cafe, that is another Kind of Error; for when Want of an Original is aligned for Error, the Court will never intend a bad Original; The Judgment was affirmed. 1 Salk. 267. pl. 14. Smith v. Stoneard.

37. Error of a Judgment in C. B. the Declaration was, Trin. 1 Anne, and Want of an Original was aligned for Error; and upon a Certiorari the Original was returned with the Continuances, by which it appeared, that the Declaration was Hill. 13 Will. 3. with Imparities to Trin. 1 Anne, and the Original of that Term, so that the Suit was depending in the Reign of King William before any Original; Sed non allocutus. For per Holt Ch. J. The Certiorari as to the Continuances was impertinent, and so is the Matter returned; and as to the Reft the Return is impolible and contrary to the Record, and therefore the Imparities shall be intended to be in another Cause; and Judgment affirmed. 1 Salk. 269. pl. 16. Hill. 3 Ann. B. R. Tyfon v. Hilliard.

38. In a Writ of Error out of C. B. the Defendant pleads in Nullo eft erratum; it was in a Scire Facias against Bail, and the Plaintiff aligned for Error the Want of a Scire Facias on the Roll. Resolved by Holt Ch. J. that this Error might be aligned, as well as the Want of an Original Bill; and that by pleading in Nullo eft erratum, the Plaintiff has confessed the Error; But the whole Court, viz. Holt Ch. J. Powell, Powis and Gould agreed, That a Certiorari ad informandum Conference am Curiae might be awarded, which was done accordingly. 11 Mod. 143. pl. 15. Mich. 6 Ann. B. R. Lawn v. Sawbridger.

39. The Plaintiff had a Judgment in Ejectment, the General Errors were aligned, and in Nullo eft erratum pleaded. It appeared on arguing the Cafe, that the Declaration set forth a Demise &c, and did not foce that the Plaintiff entered or was possessed; and the Truth was, that the Declaration was right, but the Line in which those Words are, was omitted in the Transcript, and the Court held this Defect to be fatal; thereupon the Plaintiff moved for a Certiorari ad informandum Conference; which was oposed, because by in Nullo eft erratum pleaded the Defendant affirmed the Record to be perfect, and therefore he is now foreclosed to say, that there is Error by Reason of such a Defect, for that is directly against his former Seppofal; but yet the Court is not foreclosed by this Admission of the Party; for the Writ of Error being a Commission to them to examine the Record, the Parties cannot refrain them from looking into it; and that wherever by inspecting the Court may affirm the Judgment, they ought to award a Certiorari, and a Rule was made accordingly for a Certiorari upon these Reasons together with an Affidavit that the Record was right below. 1 Salk. 270. pl. 18. Patch. 13 Ann. B. R. Meredith v. Davis.

7 D (N. a)
What Pleas a Party or Privy, and what Pleas a Tertenant shall plead.

Pleader.

Cro. J. 332. r. In a Writ of Error against him that recovers the Defendant may plead, that after a Recovery he levied a Fine of the Land recovered to 23, and that five Years are passed without Claim by the Plaintiff, for this Fine bars the Right by the Statute of 4 H. 7. and the Defendant may plead in bar of the Right, though he be not Tenant of the Land. Cr. 12 Ja. 25. R. between Benfield and Baltamew.


2. If a Writ of Error be brought against the Heir of him that recovers, though he hath nothing in the Land, yet he may plead the Release of the Demandant of the Error. 9 H. 6. 46. b. 48. per Curiam.


3. He may plead that the Demandant is a Bastard, where it is material. 9 H. 6. 46. b. 49. Curia.

S. C. — Fitzh. Error, pl. 20. cites S. C.

4. So he may plead a Release of the Right in the Land, though he hath nothing in the Land. 9 H. 6. 49.

Br. Error, pl. 9. cites 9 H. 6. 45. S. C. per Radford, so that the Tertenant was Tertenant at the Time of making the Release, but otherwise not; For then it cannot endure. — Fitzh. Error, pl. 20. cites S. C. — And a Release of his Right in the Land after Recovery is a good Bar to a Writ of Error, because he cannot be restored to the Land. Co. Litt. 289. a. in Principio.


5. In a Scire Facias against a Tertenant, he may plead a Release of the Error, though he be not privy to the Judgment. 9 H. 6. 48. Curia.


6. In a Writ of Error against him that is privy, if the Judgment be reversed; yet in a Scire Facias against the Tertenant he may plead a Release in Bar, or that the Demandant is a Bastard. 9 H. 6. 47. per Hals.


6. Where a Judgment is given in a Real Action, a Release of all Actions Real is a good Bar in a Writ of Error brought thereupon. Co. Litt. 288. b. ad finem.

7. The Tertenant may plead that the Ancestor was outlawed of Felony, or that he is not Son and Heir. Br. Error, pl. 9. cites 9 H. 6. 46. Per Hals.

8. Error
Error.

8. Error was brought by the Heir of him who left the Land, against the Heir of him who recovered, and had Scire Facias against the Heir, who pleaded Jointenanty with B. And per Brian, this is no Plea; For the Scire Facias is brought for the Priovity, and not against the Heir as Tertenant; For it does not suppose Quod Terram illam tenet. Per Catesby Scire Facias brought against him who recovered, or his Heir, upon Writ of Error, shall not say Qui Terram illam tenet; but otherwise it is against a strange Tenant; And therefore now the Judgment shall bind without Scire Facias after, and therefore Jointenanty is a good Plea. But Bill. Contra; For this Scire Facias is only Ad audientium Errors, and the other shall be to have Execution of the Land. Nevertheless Yelverton agreed with Catesby. Br. Error, pl. 167. cites 10 E. 4. 12. 13.

9. The Tertenant cannot plead in Abatement of a Writ of Error but only The Tertenant, as a Release &c. in Maintenance of his Title; For the Scire Facias against him is not Ad audientium Errors, but Ad audientium Pro- cessum & Recordum, Arg. and to this Twifden and Windham inclined. Lev. 72. Mich. 14 Car. z. B. R. in Case of Winn v. Loid. and Record; Per Twifden. Keb. 332. in S. C.

(O. a) At what Time.

1 In a Writ of Error against the Heir of the Recoveror within Age, and a Scire Facias against the Tertenant, if the Parol de- murs for the Heir, and the Judgment is reversed against the Ter- tenant, yet at full Age the Heir may plead the Release of the Dem- mandant of the Right, or of the Errors, and bar him. 9 P. 6. 48. Curia.

2. In a Writ of Error against the Heir of the Recoveror, if a Scire Facias be awarded against the Heir and Tertenants.

(P. a) What Thing shall be Error in Verdicts, or in Proceedings after the Jury returned and before Verdict. See (M. c)

1. I If a Man be indicted for speaking scandalous Words &c. and upon Not Guilty pleaded it is entered that the Jury upon the Return of them appeared, &c super hoc Juratores pradd electi trial & ad veritatem de &c super Premilis jurati dicunt super Sacramentum 2 quaed &c. and to give a Verdict, yet this is Error, because it is not said, that they were jurati ad veritatem dicandam, according to the usual Courte, for they may be sworn ad veritatem; yet in all the usual as they are not sworn to give their Verdict according to the Truth, there is no any Command to give their Verdict according to Truth, and a Verdict is so called a Verdicto. Hill. 1659. Williams's Case, adjudged, and the Judgment given at the Sessions at Newgate, reversed accordingly for this Error; and then another Judgment was given accordingly, in an Indictment of Perjury showed in a Case.

(Q. a)
(Q. a) What Thing shall be Error in Verdicts.

1. If A brings an Ejectione Firmae against B, and C, and after Issue joined B, dies; and after upon a Delicias Corpora which mentions the Issue to be between A. of the one Part, and the said B, and C, a Verdict is given against B, and C that they are guilty, and Damages are given against them, but a Surmise thereof is made before Judgment, and to Judgment given only against C. This is not Erroneous, though the Verdict was against both, insomuch as the Judgment was against him only that is living. Mich. 11. Car. B. R. between Tiffin and Lenton, adjudged in a Writ of Error upon a Judgment in B, and the first Judgment affirmed. Intra- tur Hill, 10 Car. Rot. 501. † 4. D. 7. 7. 3 D. 7. 6.

See tit. Damages (Q.) per tonum.

2. In an Action upon the Cafe for several Words spoke at several Times, and upon Not Guilty pleaded the Jury find for the Plaintif, and give more Damages; upon which a Verdict is given, if the Words spoke at one Day will bear an Action, and the Words spoke on another Day will not bear an Action, this is erroneous; for it shall be intended the Damages were given for the Words spoke at both Times. Mich. 13. Car. B. R. between Acock and Pargrave, per Curiam adjudged in arrest of Judgment.

3. But in an Action upon the Cafe for Words spoke at one Time, though Part of the Words are actionable and Part not, and the Jury find him guilty and fix Damages generally, this is a good Verdict, for it shall be intended that they gave the Damages for those Words only which are actionable; this is the Common Practice. Co. 10. Osbou's Cafe.

4. In an Action upon the Cafe upon a Promife, if the Plaintiff declares that the Defendant was indebted to him for Wares sold, &c. for such Wares so much, for such Wares so much, &c. in toto to much &c. and miscounts the total Sum, (putting more than the total Sum in Truth) and thereupon assur'd &c. and the Defendant pleads the general Issue, and it is found for the Plaintiff, and Damages given, and Judgment, this is Error, because by Intendment the Jury gave Damages according to the total Sum put, and not according to the Particulars. Mich. 14. Car. B. R. between Milborne and Shaftoe adjudged, and Judgment given in Newcaste reversed accordingly. Intra curia 3d. Car. Rot. 325, and to adjudged. Palace. 13. Car. B. R. between Kellet and Apace in arrest of Judgment.

as in Truth the Sum were miscall'd; It was infifted that this was erroneous; But the Court held it to be only the Misprison of the Clerks, and no Error. The Reporter adds a Quære, if the Verdict had found, and the Jury had given Damages for the entire Sum miscall'd, it seems that it would be Error. 2 Roll Rep. 45. Trin. 16. fac. B R. Hall v. Whitingham —— Cro. J. 494. pl. 15. Whittingham v. Hill, S. C, but S. P. does not appear. —— See tit. Miscasting (A) per tonum.

5. But
5. But if the Misstating be in a small Sum as three Farthings more Hob. 88. pl. than is declar'd or in a great Sum, and this not certain, this shall 11 Jac. S. C. not be to mincera as to make Error. *Hobart's Reports, Leaflow* — For De minimis non curat Lx. and Tumlinson.

—*Jen. 257. pl. 22. S. C.*

6. In Trover and Conversion for divers several Goods, if the Jury in Trespass, find him guilty for other Goods than those in the Declaration, and give the Plaintiff declared of Damages for all, and Judgment is given accordingly, this is Error. the taking of *Pathe. 14 Car. 2 R. between Griffith and Clark, adjudged in a* 

*Weft of Error upon a Judgment in Ireland, and this reversed* accordingly. *Innatechich. 21 Car. Rot. 205.*

and of another containing 20 Yards, and of two other Parcels. The Jury found him Guilty as to five Parcels; And Judgment given in C. B. but was reversed; because it shall not be intended, one of the first Parcels containing several Yards contained diverse Parcels, and then the Jury found him guilty of five Parcels, whereas the Plaintiff declared of four only. 2 Roll Rep. 475. *Mich. 21* 

*Jen. 3 R. King v. Hoxton.*

7. In Debt upon an Obligation, if the Defendant pleads non est *Sec (3 b) Factum, which is found for the Plaintiff, and the Jury affeis Damages occaicione intranscripta, this is good, without laying occasion de- *infra, pl. 29 S. C.*

*entionis debiti, for this is tantamount. Pathe. 8 Jac. B. *Alex's* 

*Cofe, adjudged in Camera Scaccary in a Writt of Error.*

8. In an Action upon the Cafe, if the Plaintiff declares for Slander of his Title to certain Lands, and also for Speaking Scandalous Words of his Person, and the Action is not well alleged as to the Slander of Title to the Land, but well as to the Slander of the Person, and Nott Guilt is pleaded, and it is found for the Plaintiff, and intire *Damages given, this is Error; for it shall be intended that the Jury* 

*gaie the Damages as well for Slander of the Title of Land, as* 

*to the Person. Cum. 15 Car. 2 R. between Nevil and Nevil Per Curiam; this being moved in arrest of Judgment.*

9. *Affife by two against one, who pleaded that the one of the Plaintiff's* 

*was not sais'd so that he might be Diffised, and if &c. Nul Tort; and* 

*against the other Petition of his Ancestor whose Heir &c. with Warranty. *Judgment is contrary to the Warranty &c. And the Jury gave Verdict* 

*that the one was not sais'd so that he might be Diffised, and found the Bar* 

*against the other; And the Justices adjudged that the Plaintiff should* 

*prejudice nothing by their Writ; And the Plaintiff brought Writ of* 

*Error because the Jury found the Plea to the Writ, and also require of* 

*the Bar, and yet the Court adjudged that they should take nothing* 

*by their Writ. And per Cur. this Judgment was well given, by* 

*which the Court was in Opinion to have given Judgment to affirm the* 

*first Judgment; Nota. Br. Affife, pl. 5, cites 28 H. 6. 9.*

10. *In Trespass &c. the Plaintiff had a Verdict, and upon a Writ of* 

*Error brought by the Defendant he assaigned for Errot, that the Plaintiff* 

*had declared to his Damage of 40 l. and that the Damages assailed by* 

*the Jury were 25 l. and Costs encreased by the Court were 6 l, in all 41 l.* 

*so that he had recover'd more than that whereof he declared, for that was* 

*but for 40 l. but adjudged, that the Damages assailed by the Jury being* 

*less than he counted for, though the Costs amount to more, it is not material. Cro. Eliz. 866. pl. 47. Mich. 43 & 44 Eliz. in Cam.* 

*Seacc. Comb v. Carew.*

11. *Judgment in Assumpsit, Error assaigned was, for that the Plaintiff* 

*had declared Ad Damnun 10 l. and the Jury gave him 10 l. Damages* 

*and 13 s. 4 d. for Costs, which is more than what he had declared for.* 

*Sed non allocatur; For though the Entry is of Damages and Costs by* 

*the Name of Damna, yet they are distinct, and though the Jury had* 

*found*
found more Damages than the Plaintiff had declared, and Judgment had been given, it had been Erroneous; but if they had found more Costs than the Damages had amounted to, it had not been Error; for it may be, that the Costs of Suit by long depending might exceed the Debt. Cro. J. 69. pl. 11. Pach. 3. Jac. B. R. Egles v. Vale.

12. In Dower there was a Judgment by Demurrer, and a Writ of Seizin to the Sheriff &c. and also a Writ of Inquiry, whether the Husband died seized, and of what Estate, whether in Fee, or in Tail; the Jury found, that the Husband died seized, but whether in Fee or in Tail ignorant, and they found the Value of the Lands &c. and quantum Temporis elapsus &c. whereupon Judgment was given that the recover &c. and her Damages to 60 l. A Writ of Error was brought, and after the Record removed the Widow died, whereupon the Plaintiff in Error brought a sci. fa. against her Executor Ad aiudin, Errores, and upon 2 Nihilis returned he assigned Error, (viz.) that there ought to be no Judgment to recover Damages, because the Jury had not found any dying seized of any Estate of Inheritance in the Husband, as the Writ supposed, for if he did not die seized of such an Estate, the Widow shall not be endowed; and this was adjudged Error. Yelv. 112. Mich. 5 Jac. B. R. Bromley v. Littleton.

13. In Trefpals the Entry in the Record was Ad quem Diam. A. B. and C. D. &c. of the principal Panel veniunt & jurati existunt, and because the rest did not appear, W. N. and J. N. de novo apponuntur qui ad variatem de infra contenti electi, tria & jurati dicunt loper Sacram. fium, omitting these euial Words, (Sine cum aliis juratibusc prinis impenellat) so that this was the Verdict of the Tales only, and not by those with whom they were Sworn; And all the Judges and Barons being of this Opinion the Judgment was reversed. Cro. J. 207. pl. 3. Pach. 6 Jac. in Cam. Scacc. Kempton v. Barrell.

14. In Detinue, the Plaintiff declared to his Damages of 100 l. and the Jury found the Damages to 150 l. and Judgment for so much; But upon Error brought the Judgment was reversed; For where the Plaintiff counts of a certain Damage, he is to recover no more than he has counted for. 1 Bulst. 49. Mich. 8 Jac. Hobkins v. Kimble.

15. Error assigned was, because two several Assumpsits were laid, whereof the one was raid and the other good, and Verdict was for the Plaintiff, and entire Damages given by the Jury. The Court agreed this to be clear Error and reversed the Judgment. 3 Bulst. 235. Mich. 14 Jac. Porter v. Chapman.

16. The Original in C. B. concluded Ad Damnum 40 l. and the Declaration was Ad Damnum 100 l. Upon Not Guilty pleaded, the Jury gave 12. d. Damages; and upon a Writ of Error brought, this Variance between the Writ and Declaration was assigned for Error. Adjudged, this had been a good Objection in the original Action upon a Demurrer to the Declaration, but it is not so after a Verdict, especially after the Jury had found 12d. Damages; but if the Verdict had found more Damages than what was mentioned in the Writ, and less than in the Declaration, yet it had been ill, because there was no Writ to warrant such Damages; But when the Damages are less than they are in the Writ or Count it is otherwise and therefore held by all the Justices to be well enough. Cro. J. 629. pl. 2. Hill. 19 Jac. B. R. Eardley v. Turnock.

17. Error upon a Judgment in B. R. in Ireland, where the Jury gave 10 l. 6d. for Damages and Costs, and the Judgment entered was, Quod recuperum Damna jux per Juratores Assisi ad Valorem 10 l. and no Notice was taken of the 6 d. nor was that Part relased; and it was held naught, because Damages and Costs are all Damnum, and both included by that Word.
Word in the Judgment; and Judgment was reversed Nifi; Arg. 2. Show. 52, pl. 42. cites Mich. 30 Car. 2. B. R. Osborn v. Exton.

18. In Debt on an Obligation, the Jury in assessing Damages say, pro Miss & Causa, omitting the Words, circa seiscento expenditis, and so to it doth not appear for what the Costs and Damages were assed; the Judgment was ordered to be reversed, Nifi. Sty. 164. Mich. 1649. Crible v. Orchard.

19. In Trespass the Issue was, *De injuria sua propria absque tolli causas, and the Jury found the Defendant Not Guilty generally;* Pet Roll Ch. J. this is not good, because it was not a direct finding the Illue, but only Argumentatively; and Judgment was reversed, Nifi &c. Sty. 167. Mich. 1649. Hobbs v. Blanchard.

20. Error was brought upon a Judgment by Default in Case in C. B. and the Error aligned here was, that the Jurors upon the Writ of Inquir- had assest more Damages than were laid in the Declaration, and the Judgment being 'Quod recuperet Damppa sua praeedit per Juratores prae- dicti aeffissae &c. naught; And for this Error the Judgment was accord- ingly reversed. Arg. 2 Show. 52, 57. cites Mich. 29 Car. 2. Webb &c. v. Webb.

have released the Surplusage of the Damages here meant, and such Release being entered upon the Re- cord would have rendered the Judgment well enough.

21. Error on a Judgment in B. R. in Ireland which was by Default, and Writ of Inquiry; and the Jury Asses 100 l. and 6 d. Costs, and the Judgment is good predicti quero recuperet Dampna sua praeedit ad annum libras per Inquisition predicti compert & pro incremento judi- cii, That if good praeedit had been left out, it had been doublets good; argued therefore, that the rent should be Surplusage, or elles Misd counting, which will not vitiate the Judgment. However the Rule was quod reversetur Jur' nifi &c. 17 Show. 88. 89. pl. 82. 31 l. & 32 Car. 2. Anger v. Brookhen.

Quod recuperet Dampna sua praeedit, and the rent coming after was Surplusage, for if they had said no more than this, Quod recuperet Dampna sua praeedit & de Incremento &c. ad Requisition &c. it would doublest have been well enough. Told.

(A. b) In Judgments.

What Act or Thing shall be said Error.

1. If the Husband seised in Right of his Wife makes an Ejecution Mob. 5 pl. Leave, and the Lettice brings an Action thereupon, and hath a 10. S. C. —

Verdict, and Judgment, it is not Error to allege the Death of the Feme before Judgment, by which the Interest of the Baron and Leave by him made to the Plaintiff determined, because the Feme Wives, S. C. nor her Husband are not Parties to the Action, and this depends up on the Title of the Land, for the Plaintiff may lay the Baron was seised in his own Right. Hobart's Reports, 8. between Wiles and Jordan adjudged.

before the Action brought; But the Court held, that in regard the Feme had not entered after the Death of her Husband the Leave is not determined nor void after her Husband's Death, but voidable only. — Jenk. 295. pl. 39. S. C. says the Writ does not abate; and the Plaintiff may have Judg- ment and a Writ of Execution.

2. If
If a Verdict passes against the Plaintiff at Nisi Prius, and after, before the Day in Bank he dies, and after Judgment is given against him, this is Error, inasmuch as Judgment was given against a dead Person. Cr. 12 T. R. Jordan's Case adjudged.

If the Tenant in a real Action dies, pending the Writ, and after Judgment is given against him, this is Error, because it is given against a dead Person. 25 Am. 17. adjudged.

In an Action against Baron and Feme if the Feme be received and travels the Action, and this is found against her by Nisi Prius, and after the Baron dies before the Day in Bank, at which Day the Judgment is given, this is Error, because the Judgment is given against a dead Person. 27 E. 3. 89.

In an Assumpsit against two, after a Verdict against them at the Miles by Nisi Prius, if one of the Defendants dies before the Day in Bank, and after Judgment is given against both according to the Verdict, this is erroneous, though the Day of Nisi Prius and Day in Bank are one Day as to some Purposes, for the Judgment was given against a dead Person. Patch. 32 T. R. Quinta. between *Blady and Eaffberg. Patch. 12 Jac. B. R. between 4 Lee and Rowkevy per Curiam.

If a Judgment be given against three Executors, where one was dead before the Judgment, per this is not Error. Hill. 41 El. B. R. adjudged in a Writ of Error.

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9. If a Verdict be given at Nisi Prius, and the Plaintiff or Defendant dies after the Beginning of the Term, yet Judgment shall be entered, for that relates to the first Day of the Term; Agreed per Cur. Hert. 157.


10. Judgment was given against the Defendant, and he brings a Writ of Error, and aligns for Error, that the Plaintiff was dead at the Time of the Judgment given. The Plaintiff's Entry is, That the above and the said Plaintiff by A. B. his Attorney venit & dicit, that he is in Life, Opinion of and ifue thereupon, and found for the Plaintiff in the Writ of Error three Justices that he was Dead; and Sergeant Maynard moved that the Judgment might be reversed. Allen contra, because there ought to have a Scire facias against the Executors of the Party dead. It was adjourned. Rayn. 59. Mich. 14 Car. 2. B. R. Dove v. Darkin.

Ch. J. e contra, because though it appears by the Verdict that the Plaintiff was dead yet it does not appear legally, the Verdict itself nor being lawfully obtained. And it was argued that the Attorney who pleaded that he was living did it without authority; For he could not be Attorney to a dead Man.——Sid. 93. pl. 17. S. C. solved accordingly, and said that if the Executors in this Case are at any prejudice they may have Action on the Case against the Attorney if he appeared without Warrant. And Windham said that his Brothers at Sergeant's Inn said this was good, but that the true Way had been for the Attorney to have pleaded, Scire venit pro Magistro in D and not that D venit pro Action,——Keb. 413. pl. 119. S. C. and Judgment reversed.

11. The taking of Baron between the Nisi Prius and the Day in Bank seems not to be Error, it being only a Plia in Abatement. Sid. 143. pl. 22. in a Note. Patch. 15 Car. 2. B. R. Anon.

12. 17. Car. 2. cap. 8. 8. 1. In all Actions personal, real or mixt, the Death of either Party between the Verdict and the Judgment shall not be alleged for Error, so as such Judgment be entered within two Terms after such Verdict.

12. The Signing of the Judgment within two Terms is an entring of the Judgment to that by the Statute 17 Car. 2. cap. 8. it may be entered on the Roll after the Death of the Party. Sid. 385. pl. 17. Mich.


13. In Writ of Covenant Verdict was for the Plaintiff, but it being objected that it was a Mistrial, for that the Venire Fac. was miscarried, it being to an adjoining County; But after Argument the Court ruled the Venire well awarded; But the Case having remained two or three Terms since the Verdict was returned, and no Continuances entered, one of the Plaintiff's died, and it was doubted whether Judgment could be now entered; And the Secondary said, that they did enter up Judgments two Terms after the Day in Bank, without any Continuances; And of this Matter the Court would be advised. Vent. 58, 59. Hill. 21 & 22 Car. 2. in B. R. Crifpe and Jackson v. Berwick Mayor and Commonalty.
14. The Plaintiff after Verdict for him at the Assizes died; it was moved, that notwithstanding the Statute 17 Car 2, cap. 8 which enacts that the Death of either Party after Verdict, and before Judgment shall not be alleged for Error, that the Defendant coming now before Judgment was entred, was out of the Statute; Sed Curia contra; For if it shall not be alleged after Judgment for Error by the Statute it was certainly never intended that it should be admitted a sufficient Cause to stay Judgment. Freem. Rep. 79. pl. Patch. 1673. C. B. Bellamy v. Plaver.

15. Writ of Error upon a Judgment in C. B in another against six, whereafter Verdict one of the Plaintiff's comes and sueseth that his Fellow in C. B. is dead, and prays that he as Survivor may have Judgment, and had it for the Plaintiff there; but the Court here, viz. Pemberton Ch. J. Jones, Raymond, iff, and Dobbins, were of Opinion that the Judgment should be reversed mainly upon the Reason in Read and Reeman's Case to Rep. 177. pl. 173. C. B. in B. R. 134. Skinn. 39. pl. 7. Patch 34 Car. 2. B. R. Wedgewood v. Bayley. Sed adjuvator. Raym. 461. S. C. in B. R. and Judgment was agreed to be reversed by the Opinion of three Justices against Dobbin, who defined Time to consider. — — Mod. 249. Arg. cites S. C. that the Judgment could not be entered; but says it is true, that where so many are Defendants and one dies, the Action is not abate, but then it must be stayed till the death. — — S & 9 W. 3, cap. 11. S. 7. Provides, that if there are two or more Plaintiffs or Defendants, and one dies, the same of Action survives to or against the surviving Plaintiff or Defendant, the Writ or Action shall not abate, but such Death being stayed it shall proceed.

16. Error in Fact assigned, that the Plaintiff died before the Judgment, but the Judgment was affirmed Nisi &c. And Holt said, he was not satisfied with the Cause of Diable &c. But the Sid. 93. for there should be a Scire Facias against the Executors or Administrators, and the Truth will appear upon the Sheriff's Return. Comb. 320. Patch. 7 W. 3. B. R. Proberts v. Edmunds. 17. S & 9 W. 3, cap. 11. S. 2. If after Judgment for the Defendant, the Plaintiff or Demandant shall set a Writ of Error, and the Judgment shall be affirmed, or the Writ of Error discontinued, or the Plaintiff non suits therein, the Defendant or Tenant shall have Judgment to recover his Costs, and have Execution for the same by Capias ad Satisfaciendum, Fieri Facias, or Ejects.

18. The Husband joined in a Writ of Error, yet it was ruled that by his Death the Writ abated; otherwise it is where the Defendant in Error dies after in nulli off Erratum pleaded, for there the Court may proceed to examine the Errors. Comb. 263. Trin. 6 W. & M. in B. R. Fitzgerald v. Clarickard Countess.
(B. b) In Judgments.

What Things shall be Errors in Judgments.

1. If an Indictment for not repairing a Common Highway, if the Upon every Defendants are found guilty, and a Fine imposed & quod fine in Mifericordia without a Capitatur, this is Error. Hill. 10 Car. B. R. between the Inhabitants of Somerset, in Comitatus Huntingdon, and the King adjudged; and the first Judgment reversed accordingly.

thereof is to the King’s Prejudice, and for this Omission a Judgment for the King upon an Indictment for Recidivancy was reversed. Cro. C. 504. pl. 6. Tit. 14 Car. B. R. the Marquis of Winchester’s Case. —— Jo. 427. pl. 5. The King v. Ed. St. John, S. C. accordingly.

2. If the Judgment be quod the Plaintiff or Defendant capitatur, Hob. 180. where it should not be, this is Error, for it is a false Judgment, and in Prejudice of the Party. Tr. 15 Jo. between Wheatley and Stone, per totam Curiam in a Writ of Error at Serjeant’s Inn agreed. Dyer. 14 Ed. 315. 99. admitted. 6 Ed. 6. 75. 22.

3. So if the Plaintiff or Defendant be amerced by the Judgment where he ought not, this is Error. Dyer. 44 Ed. 315. 99. admitted. 6 Ed. 6. 75. 22.

4. So if the Judgment be not Quod capitatur where it ought to be so, it is erroneous. Rich. 16 Car. 23. R. Fridean’s Case, who was indicted for poisoning J. S. but he did not die, and stood guilty; and Judgment to pay so much for a Fine, and no Capitatur quod fine et. and for this Cause reversed per Curtiam; contra 29 Ed. 3. 30. b. adjudged.

5. So if the Judgment be not quod fit in Mifericordia, where it ought to be so, it is erroneous. Cro. J. 211. pl. 3. Beecher v. Shirley, S. C. adjudged.

6. In an Ejecttione Firmae, if Judgment be given upon a Demurrer, Stv. 285. or by Default, or upon a Non justi formatorer for the Plaintiff to reco-

ver the Tern, but awarded that there shall be a Writ of Inquiry of S. P. and

Damages, without saying quod capitatur this is erroneous; for it seems to be

may be that he will never inquire of the Damages, or make Re-

erof, and then the Fine due upon the Capitatur will be lost. Tr. 1651. between

in a Writ of Error upon a Judgment in Banco; and the Judgment reversed accordingly.

7. If the Judgment be quod capitatur where it ought to be quod fit in Misericordia, this is erroneous, for by this the Judgment is altered, and this is in Prejudice of the Party. Tr. 15 Jo. between Wheatley and Stone, in a Writ of Error at Serjeant’s Inn agreed per totam Curiam.


9. If the Judgment be quod sit in Misericordia & quod capiatur, where it ought to be only in Misericordia, this is Error. Such 8 Car. B. R. Intracrit. Cit. 8 Car. Rot. 477. between Kent and Fawkes resolved, and such Judgment given in Lincoln reversed.

10. And in theses Cases the Error is in the whole Judgment, and the Whole shall be reversed for it, as well the Judgment of the Party as for the King. Co. 8. Becker 59. resolved. Cr. 15 Ja. between Whately and Stone, in a Writ of Error at Serjeant's Inn agreed per rotum Curiam. *Duete Dyer, 14 Cr. 315.

11. In an Information against an Ingrosser, upon the Statute of 5 Ed. 6. if the Judgment be against the Ingrosser quod capiatur &c., without expleting in certain that he shall be imprisoned for the Time limited in the Statute, finetie, per two Hundred; per this is not Error in the Judgment, for this is the Common (4) Court of such Judgments where a certain Time is limited for the Interplein, for the Words &c. supply all. Cr. 16 Ja. between The King and Cartus. B. 15 Ja. B. R. between Brown and Marshal adjudged; and it was laid by the Clerks, that this is the Common Court.

Palm. 509.
Gayer v. Goger, S. C. and Judg-
ment affirmed Nifi &c.
Jo. 171. pl.
2 Goger v. Gregory, S. P. and seems to be S. C. and the first Judgment was affirmed.

12. In Debt upon an Obligation, if upon Non est Factum pleaded, it is found his Deed, upon which Judgment is given quod Defend.

13. In an Action upon the Cae, upon a Promise, if Judgment be

given for the Plaintiff upon Demurrer, and a Writ of Damages a-
warded, and thereupon Damages taxed to 35 l. and upon this Judg-
ment is given quod querens recuperet damna praed. ad 37 l. per jurato-
tores praed. aliteta, per this Judgment is not erroneous, because the
Judgment is perire by the first Words, quod recuperet damna praed. without more, and therefore the summing thereof after-
wards is but Surplus; and therefore this being mistaken it does not
invalidate the Judgment. B. 3 Car. B. R. between Giver and Go-
ter adjudged in a Writ of Error upon a Judgment in the City of
Pool in Southampton; which Intraclit. B. 2 Car. Rot. 247.

14. In an Action of Debt if the Defendant pleads Nil debet, and the jury find it for the Plaintiff, and tax Damages to 12 d. and for

15. In
In Debt, if judgment be given for the Plaintiff by Default of the Defendant, and the Judgment is quod recuperet debitum & damnum occasionis detentione debiti ad 138. 4d. ex aetnfulo tuo per Curiam de incremento adjudicatu, this is a good Judgment, though no Mention of the Costs; for Damages include Costs. Mitch. 11 Car. B. R. between Pierce and Brown adjudged in a Writ of Error to reverse a Judgment given in the Hundred Court of Slaughter. Intratur P. 10 Car. Rot. 1333: but it was said also in this Case that the Defendant shall not assine for Error the not giving of Costs, because it was for his Advantage.

In an Action upon the Case upon a Promiss, if the Defendant pleads Non Assumit, and the Jury find for the Plaintiff, and tax Damages and Costs, and upon this Judgment is given quod querens recuperet Damnum & Cuietia per Juratores prae'd. aiceps & 40 s. de incremento per Curiam, and does not say whether for Damages or Costs, yet this is good, for it shall be intended for Costs, because the Court could not increase the Damages. Cr. 11 Car. B. R. between Coitus and Lawrence adjudged in a Writ of Error upon Judgment in the Court of Convictors. Intratur Tr. 10 Car. Rot. 1328. Co. Entries 22. Snag's Cafe.

In an Action of Debt, if upon Nil sibiis pleased it be found that the Defendant owes the Plaintiff 5 l. Debt, and the Jury affers the Damages to 2 d. and the Costs 2 d. and the Judgment is entered, that the Plaintiff shall recover debitum & Damnum prae'd. to 2 d. and says nothing of the Costs, the Judgment is erroneous, though the Damnum generally comprehends as well Costs as Damages; for in this Case it is intended but to 2 d. and to no Judgment for the other 2 d. Mitch. 15 Jac. B. R. between Homes and Twistle adjudged in a Writ of Error, and the Judgment reversed.

In a Trover and Conversion of Goods, if the Defendant be Cro J. 439. found guilty of Part, and for Part not guilty, but no Judgment is 429 pl. 2. given for thole of which he is found not guilty, felicit, Quod est inde Succedit, Damnum is, as it ought to be, this is erroneous. Hill. 15 Jac. B. R. between Wood and Dr. Sutcliff per Curiam. S C. and Judgment reversed.


If a Hall recovers Debt or Damages upon a Verdict, and * Cro. J. Judgment is given thereof; and 2 s. de incremento generally, without laying in the Record as the Act is ex restitutione querentis, or ex aetnfulo partium, this Judgment is erroneous. Mitch. 15 Jac. B. R. Hardy and Maybro; the Judgment reversed for this. Mitch. 15 Jac. B. R. between For and Legins per Curiam; the Judgment reversed; which Intratur Mitch. 12 Car. Rot. 259. Mitch. 18 Jac. B. R. between * Sarke and Isomans adjudged in a Writ of Error, and so the same Term adjudged between * Cancellor and Ayr, and no Diverity where the Judgment is upon Nil dictis, and whereupon Verdict. P. 2 Car. B. R. between * Lawrence and God adjudged an erroneous Judgment, which was * Cro. J. ad petitionem querentis Confirmatum et quod querens recuperet et Damnum de incremento, so much because the Petition was not in the right Place.

20. In a Trover and Connuision, if the Defendant be found guilty of Part, and not guilty of the Relt, upon which Judgment is given for that for which he is found guilty, and no Judgment is given quod ede indae fine die for the Residue, it is erroneous. 93. 15 Jac. 2. R. between Wood and Straight, this was made for an Error, notwithstanding the Judgment reversed for other Error.

21. If a Man recovers in an Action upon the Case, and the Judgment is entered Ideo concessum ef quod querners recuperet, where the usual Word is Ideo consideratum ef &c. this is erroneous, though concessum be equivalent to the Word consideratum, because the usual Form ought to be observed. 3ich. 13 Jac. 3. R. 42. between * Rollins and Sansum. Dullbatt Hor. 11 Car. 3. R. between * Durlmore and Huskis abjudged in a Case of Error, and the Judgment given at Bath reversed accordingly. 11 Car. Ror. 900.

22. If the Judgment be Ideo consideratum, concessum & adjudicatum ef quod querners recuperet &c. though the Words concessum & adjudicatum are more and more necessary, yet this makes the Judgment erroneous, because the Term of judgments ought to be observed, which is consideratum only. Hill. 2 Car. 2. R. between * Lawrence and Gad adjudged in a Viet of Error. Patch. 8 Car. 6. R. Rot. Baunty's Case, a Judgment in an Indestment of Barretty reversed, because the Judgment was Ideo concessum &c. quod ef.

23. If the Judgment be Ideo consideratum ef quod querners recuperat, for recuperatur, this is erroneous. Trin. 3 Car. between Streek and Blandell adjudged in 2. R. in a Viet of Error upon a Judgment given in Hastingslake in Hampshire. 14 Car. between Prickett and Rockford adjudged in a Viet upon a Judgment in Newcastle. Intratrot. Ill. 13. Rot. 1893.

24. If a Judgment be Ideo consideratum but Icar consideratum ef, it is erroneous. Trin. 3 Car. 2. R. between adjudged in a Viet of Error upon a Judgment given in Lincoln.

25. If an Action of Debt be brought against Two by one Original with several Precipits upon one Obligation in which they are obliged jointly and severally, and several Declarations are made against them, and several Judgments given, but these Words are not put in the Judg-
Error.

Judgment, as the use is, fulfill, (Unica tamen fiat Executio) yet the Judgment is not erroneous, because these Words are used to be entered for the Direction of the (**) Clerks, and are of Form only, for though the Words are not entered, yet he shall have but one Execution. *Fol. 792.

26. In an Ejectia Firmis, if the Judgment be found Guilty for Roll Rep. Part and for Part Not Guilty, the Judgment is Quod Defendens sit s.6. pl. 22. querue, this is erroneous, for it ought to be Quod iacendi sit dic. *Fol. 12. Jac. B. R. between William Morris and Cadwallader, Bil- 

that the Judgment was erroneous, but Haughton e contra; but the Court ordered Precedents to be searched.

27. In a Quare Impediam against the Ordinary, Metropolitan and others, if the Ordinary and Metropolitan plead that they plead no thing but as Ordinary, upon which the Plaintiff prays Judgment against them, and Judgment is entered that he shall recover against them, it is not erroneous, for the Plea of the others is determined as the usual Court is, yet if no Execution be awarded till the Plea of the others is determined, it is not erroneous. *Patch. 4. Jac. B. R. *Fol. 14. Jac. B. R. between Grange and Dewey adjudged in a Writ of Error.

28. In an Action of Debt in Banco, if Judgment be Quod quæras : Roll Rep. recuperet debitum, and so much pro damnis occasione detentionis, 470. S.C. though it be not Nec non pro Milis & Cutilagiis, as the use in Banco Regis, yet it is good, for this is the use in Banco. *Fol. 22. Jac. B. R. between Broad and Nuns adjudged in a Writ of Error.

there the Judgment is Quod recuperet debitum & damna, and Coffs ascribed by the Jury, and far other de incremento per Currain ; but where the Judgment is upon Non sum Informatus, Demurrer or Nil dict, the Judgment is Quod recuperet debitum & damna, which includes Cotts, but in the in Banco B. the Entry is more special, viz. Tam occasione detentionis &c. quam pro milis & cutilagiis; and Judgment was affirmed.

29. In Debt upon an Obligation the Defendant pleads Non est Factum, which is found for the Plaintiff, and the Jury assest Damages occasione infrascripta, this is good, without laying occasione detentionis debiti, for this is tantamount. *Patch. 8. Jac. B. R. Meck's Cafe adjudged in Camera Scaccari in a Writ of Error.

30. In Ejectione Firmis, if upon Non sum Informatus pleaded, Judgment be given Quod def. remanent indelebens, without laying against Plaintiff, it is good. *Fol. 12. Jac. B. R. between Friset and Mallory per Casum.

31. In an Action if the Defendant pleads in Bar, upon which there is a Demurrer, and Judgment is entered in this Banner, Qata vide- zuur to the said A. and B. felicer, the Mayor and Recorder (who were the Judges of the Court) Judicariss Domi Regis that the Plea is not good, Ideo confideratum est &c. this is good, because the naming them Justices is but Surplus. *Fol. 8 Car. B. R. between Greenhill,
Greenhill and King adjudged in a Writ of Error upon a Judgment in Lun. 1 Intrac. C�. 7 Rot. 1572.

32. If the Judgment be entered in an Inferior Court held before the Steward, Ideo consideratum est per Senechalhum quod queres recuperet, this is good, for this is all one as if it had been said Ideo consideratum est per Curiam. 11m. 14 Car. B. K. between Stretch and Parker adjudged in a Writ of Error. Intrac. Rich. 13 Car. Rot. 21. in a Writ of Error out of Aleckter Court. 11m. 13 Car. B. K. between Mill and Maurie adjudged good in a Writ of Error upon a Judgment in Exeter, where it was Ideo consideratum et ad causam Curiam by the Mayor and Bapstills (who were the Judges) quod-quares recuperet, and did not lay per Curiam. 11m. 15 Car. B. K. between Mapcorder and Leppington it was adjudged in a Writ of Error there. Intrac. Patash. 13 Car. 95. Rich. 23 Car. B. K. between Robinson and Burns adjudged upon a Judgment in Exeter.


1572. S. C. cited by Name of Mertlock v. Cnbeq. by Pemberton L. 2 Show. Rep. 89. Hill. 71 & 72 Car. 2. B. K. and that (attinent) is all one with (ad) and (ad) with (attinent) and whether the (ad) do hit the Sum right or no is but milcounting, for if more or less it were good. Scrope said, The Jury here give Particulars, and the Judgment is but for one of those particular Sums. Jores said, Dampna praeda is enough, and all the red naught and forsluage; and is as much as attinent for its Meaning else has no Sense; it will be hard to make the Word (ad) reftinent, when the Court ought to give Judgment for the Whole; Ad is the usual Word in all Judgments, and reaches the Whole, and it was the Intent of the Court to give all; where they intend but Part, they say Quod; in C. B. they say, Dampna praeda ad then comes the Increment, and after that the Quod quidem 8c.

35. In an Action upon the Cafe upon a Promise and Verdict for the Plaintiffs, and Damages and Costs given, and the Judgment is good queres recuperet Damma sua ad 61. per Juratores praedictos in Forma predicta affissa, and the Damages and Costs are mistaken, not amounting to so much; yet this is not erroneous, for this is only a miscounting, and Damma praed. intends only those which were affixed, and so the Judgment is not for more. 11m. 15 Car. B. K. between Moore and Hoole per Curiam adjudged good, and the said Judgment affirmed accordingly in a Writ of Error. Intrac. Patash. 15 Car. Rot. 416.
35. If a Judgment be given in Banco, Ideo consideratum est quod querns or defendants recuperet &c. and it is not consideratum est per Curtiam, yet this is good, for this is the use de Banco de B. & R. Mich. 14 Car. B. R. between Elling and Prine adjudged in a Writ of Error. Intratutum in a 134.

36. If a Judgment be given in Banco de Ob quod consideratum est, where it should be Ideo consideratum est by the usual Course, yet this is good in Banco, for this is all one in Effect. Mich. 15 Car. B. R. between Drury and Young adjudged in a Writ of Error. Intratutum in a 135 Car. Rot. 46.

37. In an Action upon the Case upon a Promise, if the Defendant Nihil dicit, per quod the Judgment is to be given by Nihil dicit, and the judgment is entered quod querns recuperare Damna tua, fed quia nescit que Damna sit, a Writ of Inquiry is awarded where the usual Course of Entry is quod querns recuperare beat Damna et, and not recuperare, yet this is good in Banco, for it is all one in Effect. Mich. 15 Car. B. R. between Drury and Young adjudged in a Writ of Error. Intratutum in a 135 Car. Rot. 46.

38. In Turopja for taking away Goods &c. the Jury found the Defendant Guilty as to the taking Part of the Goods, and as to the rest Not Guilty; and the Judgment was, that the Plaintiff should recover his Damages for Part, & quod defendants capitator, and that yet the Plaintiff fit in misericordia pro falsa clamore juro against the Defendant pro redivuo trangreffionis, and this was assigned for Error; for the Judgment ought to have been Quod querns nihil capit et Billam pro redivuo transgresslonis, etc. non allocatur; and the Judgment was affirmed. Mo. 692. pl. 975. in Cam. Scacc. Palmer v. Sherwood.

39. Error on a Judgment in Debt against Husband and Wife, upon a Bond made by the Wife dam fide juris; The Judgment was, that the Husband be in Misericordia, and that the Wife capitator. This was held Error, and the Judgment was reversed; for it should be, that the Husband and Wife Capitator. No. 764. pl. 982. Hill. 37 Eliz. in Cam. Scacc. Burdolph v. Perry & Ux.

40. Judgment was given in Debt in C. B. upon a Nonsum Informatum, and Error was brought and moved for Error; Rule, Because there is no Imparlance. 24 Est. Because the Entry was Quod defendit esse et injuriain, when it is not usual that such a Judgment shall be given upon a Nonsum Informatum; Yet notwithstanding that Judgment was affirmed. Nov. 36. Mich. 42 & 43 Eliz. B. R. Loyd v. Twyford.

41. In Debt upon an Obligation the Defendant pleaded Non ess Fiduum, and after Rehita Verificati he confessed the Action. The Judgment was, Quod fit in Misericordia, and this was assigned for Error, for that it ought to be Quod capitator. But the Court held it no Error, because a Fine is not due, but where the Party denies his Deed which is found against him; and then it is due for his false Plea, and for the troubling the Jury and the Court, and Judgment affirmed. Cro. 1. 64. pl. 12. Paish v. Jac. B. R. Davis v. Clerk.

contrary, and cites 35 H. 6. 34 H. 6. 20 41 E. 5. 43, and 45 E. 5. 10.

42. Error of a Judgment in Debt was assigned, because it was in Brown v. the Dissuivinius, As Quod Querna recuperaret Dolium Ferri vel Valorem &c. which it should have been, Quod recuperaret Dolium Ferri, & fi non, Valorem inde; Adjudged Error. Yelv. 71. Trin. 2. Yelv. Jac. B. R. Pater v. Heidman.

43. The Judgment was, Quod querns & plebs fui junc in Misericordia pro falsa clamore, whereas it ought to have been Quis non prosecti junc; for it ought not to be Pro falsa clamore but where the Judgment is al-
ter Verdici, or upon Demurrer, and for this Matter it was held manifest Error, and the Judgment was reversed. Cro. J. 213. pl. 7. Mich 6 Jac. B. R. Anon.

44. Judgment given against an Infant was Quod capiatur. Error was brought, and the whole Court agreed that it is a clear Error, and therefore Judgment was reversed. Bullit. 171. Trin. 9 Jac. Daby v. Holbrook.

45. Error of a Judgment in C. B. upon an Information for buying Castle, and setting them again in the same Market contra Formam Statut, the Judgment was entred, Quod sit in Misericordia, when it ought to be Quod capiatur, being upon an Information; For it is a Contempe, and punishable by Imprisonment; And per rot. Cur. Judgment was reversed. Godb 349. pl. 443. Trin 21 Jac. B. R. Pye v. Bonner.

46. Error of a Judgment in Debt, because Judgment was given for the Defendant, Quod quercus nihil capiat per breve. It was assigned, that the Action was brought there by an Attorney, by Bill of Privilege, and not by original Writ; so the Judgment ought to be nihil capiat per Billam, and not per breve; But the Court doubted of it, because it was in the Judgment which was by the Court, and would advise of it. Cro. C. 580. pl. 5. Pauch. 16. Car. B. R. Raymond v. Burbridge.

47. T. and three others were convicted of a Riot upon View of two Justices of Peace and the Sheriff of the County, contra Formam Statut, 13 H. 4. cap 7, and they were fined by the Justices; and upon a Writ of Error brought the Errors assigned were, 1st, It does not appear that the Defendants were convicted by View of the Justices, 2dly, That the Sheriff did not join in setting the Fine, whereas the Statute says, that the Sheriff shall be joined with the Justices in the whole Proceedings; and for these Errors the Judgment was reversed. Raym. 316. Trin. 32 Car. 2. B. R. The King v. Tempeit & al.

48. Judgment was awarded in an Inferior Court by the Mayor and Bailiffs, without saying per Cur. and this assigned for Error; But because it was said in eadem Curia, the Court held it well enough and over-ruled the Exception. Comb. 5. Mich. 1 Jac. 2. B. R. Salter v. Bellamy.

49. Writ of Error of a Judgment in a Recognizance upon a Sci. Fa. was, Quia in adjudicatione executionis super Justicium praeb., instead of super recognizandum praeb., and was for that qualified. 12 Mod. 371. Palch. 12 W. 3.

50. In Debt, if the Original be recited to be Attachment, instead of Summones, yet we cannot reverse the Judgment because it is only a Recital; Per Holt Ch. J. 12 Mod. 513. Palch. 13. W. 2. Anon.

See tit. Amendment and Jeofails (K) &c. the several Statutes with the Notes. And tit. Amercement.
(C. b) Judgment.

What Judgment shall be given upon the Reversal.

If the Defendant pleads abatement of the Writ, and this is awarded a good Plea, by which the Writ abates, if the Judgment is reversed, because this was not a good Plea, the Plaintiff shall be restored to his Original, and shall not be enforced to a new Original. 9 D. 6. 38. b.

If an erroneous Judgment be given upon a Process against the Demandant, and it is after reversed for Error in the Process, the Demandant shall be restored to his Original, and the Tenant shall answer to it. 21 Am. Placido 17.

If the Judgment be given upon the Reversal, and the Plea shall not be restored to the same Original. 9 D. * 9. S. C.

for (6) — In Debt the Defendant pleaded in Bar, to which the Plaintiff demurred. The Plea was adjudged good; but upon Error brought the bar was adjudged insufficient. The Court at first doubted what Judgment should be given; but at last it was awarded that the Plaintiff should recover his Debt and Damages. Le 53. pl. 41. Hill. 28. Eliz. B. R. Taylor v. Moore.

But in this Case he shall be restored to his Action. 9 D. 6. Br. Error, pl. 7. cites S. C.

5. In an Affidavit by an Infant, if the Tenant pleads in Bar upon which the Affidavit is awarded at large to inquire of the Circumstances, it is awarded S. C. 126. cites 11. Aff. pl. 18. 22. S. C.

Because the Plaintiff is an Infant, and the Inquest find for the Plaintiff without inquiring of the Matters alleged in Bar, by which the Plaintiff hath Judgment, and it is reversed in a Writ of Error; the Plaintiff at his Election shall be restored to his Original, and to attach the Tenant thereupon. 31 Aff. 22. adjudged.

6. And the Judgment shall be, that he shall have a new Original at Br. Error, his Election. 31 Aff. 22. adjudged.

7. If the Tenant in an Action makes Default, and the Defendant is not himself, which does not lie, and notwithstanding upon Challenge thereof by the Demandant, and Prayer by him of Seisin of the Land upon the Default, and Judgment is given against the Demandant for not counting that he shall take nothing by his Writ, if he brings a Writ of Error and it is reversed for this Cause, the Judgment shall be, that he shall recover Seisin of the Land upon the Default, because the inferior Court ought to have given this Judgment. 21 E. 2. 46. 62. 21 Aff. Placido 17. adjudged.

8. Such Judgment shall be given in Writ of Error as ought to have been given in the first Court which err'd, quod nona. Br. Error pl. 64. cites 21 E. 3. 45.
(D. b) How Judgment shall be given upon the Reversal of the first Judgment.

1. In an Action upon the Case, if the Plaintiff being Delamore, declares, that whereas there was a Suit in Bath between the Defendant and S. and his sureties was joined, and at the Trial thereof in Aula there the Plaintiff was sworn as a witness, and sworn his Oath, and after the Defendant having Communication with the Writ of S., of the said Trial and Oath, said these Words of the Plaintiff, Your Brother Delamore (inmundo the Plaintiff ettenent patron of the said Wife) took a False Oath against me in the Hall, (inmundo et.) I would not take such an Oath for all the World; After Not Guilty pleaded, and a Verdict for the Plaintiff, yet Judgment being there given against the Plaintiff quod nihil capiat et because the Declaration is not good, because it is not averred that the Plaintiff was Brother to the Wife of S. to whom the said Words were spoken, but only in the Inmundo which is not sufficient; Though this Judgment given there be reversed in Banco Regis in a Writ of Error for the Insufficiency in the Judgment, this being Treason Condonum et for confideratum et, yet the Court of B. R. ought to give the same Judgment which ought to have been given at Bath, unless, quod quiseris nil capiat per Billam. 

2. In an Action upon the Case for Words, if Judgment be given against the Plaintiff, that the Words are not actionable, upon which the Plaintiff brings a Writ of Error, and thereupon the first Judgment is reversed because the Words are actionable, the Court after Reversal of the first Judgment, ought to give Judgment that the Plaintiff shall recover, for this Court ought to give the same Judgment that the first Court might have done. 

3. In an Ejection from, upon Not Guilty pleaded, Mute is join'd and a Special Verdict is found, and upon this Verdict Judgment given against the Plaintiff, and after the Plaintiff brings a Writ of Error, and in this the Judgment is reversed, the Plaintiff shall have Judgment and recover his Term, his Declaration being good, and the Law being for him upon the Special Verdict; for the Court that reverses the first Judgment ought to give the same Judgment which ought to have been given in the first Suit. 

4. F. brought Trepass against R. in B. R. And upon Demurrer upon Plea of the Defendant it was adjudged for the Defendant. F. brought Error in Caue. Scacc. and there the Judgment in B. R. was reversed, but no Writ of Inquiry of Damages could be awarded out of the Exchequer Chamber.
Error

Chamber by the Stat. 27 Eliz. cap. 8. And now F. files a Writ of In- and that the
query out of B. R. and well; For the first Judgment being reversed is

found; For though the Stat. 27 Eliz. mentions only the Returning the Record, yet it must be intend-
ed, that all shall be done that is necessary in order thereto. — Yelv 74. 76. S. C. adjudged.

5. Where the Plaintiff brings Error and the Court reverse, they give a

6. In Replevin, if the Judgment for the Plaintiff be reversed, such
new Judgment must be given as the Court should have given before,
which cannot be for the Avowant, unless upon the Merits of the A-
nowtry, and it that be naught, it must only be Nul cap. per billam.

7. If in Error a Release is pleased and found for the Plaintiff, yet
if there be no Error, the Court cannot reverse the Judgment, and if
the Release were found for the Defendant, a Different Judgment must
be given according as the Error aligned is sufficient or not; For if it
is a good Error the Judgment must be, that the Plaintiff be barred of his
Writ of Error, and not that the Judgment be affirmed; if it be not a
good Error, the Judgment must be that the first Judgment be affirmed;
Cafe of Carleton v. Mortagh.

(E. b) In what Cases the whole Judgment shall be
reversed, or only Part.

1. If a Formedon de uno Croto de Messuagio &c. if the Demandant
receives, and in a Writ of Error it is adjudged that a Forme-
don does not lie of a Croft, the Judgment for the Plaintiff shall be
reversed also, because the Writ is not good, sustained as there can-
not be a good Judgment upon a bad Writ. Palsh. 12 Jac. B. R. Anon. S. C.
adjudged.


2. In an Action of Trespass against three, if one dies pending the S. C. cited
Writ, and yet Judgment is given against all three, in a Writ of
Error upon this Judgment the whole Judgment shall be reversed,
because it is untrue, though the Writ by the Death abates but
against one. Tit. 14 Car. B. R. between Scudamore and Serwon. to be Law.
Per Curtam, such Judgment reversed. Innturat Mich. 13 Car.
Rot. 507.

3. If J. brings an Action upon the Case against B. for Words, Roll Rep.
and also for that he caused him to be indicted, upon which Indictment 24 pl. 2.
he was acquitted, and all this is found by Verdict, and Damages S. C. adjudg-
severally given for them; but intere Cois, and one intere Judgment J 343 pl.
given for all, solicet, dico Consideratum est quod quernis recepta. S. C. ad-
rect Damna & Cultuaria in forma predicta affedet &c. and in a Writ of judg-
ment it is adjudged the Action does not lie for the Words, the Judg-
ment shall be reversed only for the Words, and Damages for v. Jac. b.

(£)
S. C. cites the judgment for the Indictment, together with the Damages, was affirmed also for all the Costs, because there was just Cause of Suit, which warranted the Costs, though Part of the Fault was without Cause. All 75. is a Nara, that Holden Pros. 32. told the Reporter, that the Case of Miles v. Jacob in Hobart was not Law. This Case was, and a Rule laid down, that where the Judgement is Part by the Common Law, and Part by the Statute, it may be reversed in Part; for that which is a Judgment at Common Law will remain a Judgment, and be compleat without the other. 1 Salk. 24. Cutting v. Williams. 11 Mod. 25. 2 S. C. and the Court denied the Authority of Miles v. Jacob in Hobart. 4. For a Judgment intire cannot be reversed in Part. 2 Ld. Raym. Rep. 825 in Case of Williams v. Cutting, and Holt Ch. J. 165, that the Case of Jacob and Miles in Hob and Ma. 228. Reymer v. Grindon were not supported by any Subsequent Authority.

4. If A. brings an Action upon the Case against B. upon two Promises, and declares that he told certain Tallow to the Defendant, and upon this the Defendant assumed to pay so much as it was worth, and that he also at another Day sold other Tallow, and the Defendant made such Promise for it, if the Defendant pleads, that after the first Alluvimpt, the Defendant furnished the Plaintiff for the said first Tallow, to him, upon which illive is taken; and as to the other Promise, the Defendant pleads non Alluviment, upon which they are at illive also, and the Jury find as to both illives, that the Defendant assumed and promised Modo & forma praev. 98. and affies several Damages, and thereupon Judgment is given for the Whole for the Plaintiff; In this Case, though there were several Damages taxed, and the Plaintiff might have relinquished his Damages for the first, which was not well found, and took Judgment for the second which was well sound; yet when one Judgment is given for both, the Judgment is erroneous. 8 Car. 8 Cited to General and Mun- field, adjudged in a Writ of Error upon a Judgment in Canterbury. Statute Hill. 6. Car. 2. B. R. Rot. 1128.


5. If a Fine be levied of Land, of which Part is Guildable, and Part is ancient Demesne, and as to that which is ancient Demesne, the Fine is reversed by Writ of Diesset, yet the Fine shall stand for the Residue; for a Sixth shall be made on the Fine, in the Nature of a Cancellation of that ancient Demesne only. 11 H. 7. Kelston 43. 57. and ibid in the new Notes there (a) cites 7 H. 4. 44. — S. P. Arg. Cro. E. 469. S. P. per Cardam. Differ. Jo. 574. pl. 11 Mich. 11 Car. B. R.

S. C. cited by Roll.

S. C. cited by Roll.

S. C. cited by Roll.

6. In an Action of Debt upon a Bill, and upon a Contract upon an Emitter, if the Defendant pleads non eit Factum as to the Bill, and nil debet as to the Contract, still both are found by Verdict against the Defendant, and Judgment against the Defendant quad capitatur for denying his Debt; and it is not also quad in Articulatio against the Contract, as it ought to be, and more Damages given; and a Writ of Error is brought for this, the whole Judgment shall be reversed, likewise, as well the Judgment upon the Bill, as for the Contract. 8 Car. 8 B. R. between Pauiau J. and D. M. for the Case above divided, and a like Judgment given in the Northallrea reversed accordingly. Statute Hill. 10 Rot. 876.

7. In a Writ of Dower, if the Plaintiff recovers by Default, and upon this a Writ is awarded to the Sheriff or Bailiff, where the Recovery is to deliver to the Plaintiff certain part of Metas, and to enquire of the Value of the Year, and how much Time is past after the first Demand of Dower, and what Damages the hath sustained; and upon this the Sheriff or Bailiff returns, that he had delivered the third Part of the Lands, and the Value found by the Jury to 301.
Error.

per Ann. and that two Years are paid after the first Demand, and Damages 50 l. and thereupon Judgment is given accordingly, to hold and command in Severality the said third Part, and to recover the said Damages. In this Case, though the Judgment is not good as to the Damages, uninten its not averred that the Husband of the Plaintiff died (M. C. Pl. 1.) nor is it to found by the Jury, nor was it so commanded by the Writ to be required, by which the Judgment as to this is erroneous, yet it shall be reversed only as to this, and shall stand as to the Recovery of the third Part of the Land. 

8. An Action, if Judgment be given against A. as a Feme Sole, and against B. and C. and they all plead to H. sue, and A. as a Feme Sole, and after Judgment is given against them all accordingly, in this Case the Baron of A. with B. and C. may join in Error, and align for Error the Coverture of A. and therapeut the Judgment shall be reversed for all, because it is intire. 

10. In an Action to be brought against A. as a Feme Sole, where she is Covert Baron, and against B. and C. and they all plead to H. sue, and A. as a Feme Sole, and after Judgment is given against them all accordingly, in this Case the Baron of A. with B. and C. may join in Error, and align for Error the Coverture of A. and therapeut the Judgment shall be reversed for all, because it is intire. 

11. In an Action of Account, if Judgment be given quod computi, is given against him alto, and Damages and Costs, and after a Writ of Error is brought upon both Judgments, and therapeut the last Judgment is only erroneous. In this Case the last Judgment only shall be reversed, and not the first Judgment, but this shall stand in Force, for there are two distinct judgments and perfect, for the first Judgment is done Confederatum; et quod computi. 

83. C. but that is of a Writ of Error was brought by two for the Nomage of one, and Rule was given for Reversal thereof, but the Court said, they did not remember any such Rule given, and that they would well advise thereof, and cited 20 E. 4. 4. 25 H. 6. 9. 19. All 8. — 8. C. cited and S. P. adjudged, All 74. 75. Trin. 24. Car. B. R. in Case of Ortes v. Aylett —— Syl. 124. Aylett v. Ortes, 8. C. adjuration. Ibid 125. S. C. & S. P. adjudged. 

S. C. cited Id. Raym. Rep. 600. —— S. P. by Roll Ch. J. Syl. 406 Hill. 1654. Anon. —— Error of a Judgment in Eajtome Firmne, because there were two Defendants, and one of them was within Age and appeared by Attorney where it ought to have been by Guardian, and Damages and Costs were given intire; Adjudged Error, and the Judgment reversed as intire both, Cro. J. 596. pl. 5 Trin. 16. Jac. B. R. King v. Marborough —— S. C. cited Id. Raym. Rep. 600.

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but it is there stated as of a Fine brought by the Baron and Feme, without joining with the others, and S. P. does not appear.
If a Judgment be given against Executors in an Action of Debt, and after a Scire Facias a Judgment is given against them to have Execution of their proper Goods, and a Writ of Error is brought upon both Judgments, in this Case, if the first Judgment be good, and the last erroneous, the last Judgment only shall be reversed, and the first Judgment shall stand. Co. 5. Pettier 32. adjudged as it seems; but it is not alleged that the Writ of Error was upon both Judgments, but only in redittion Executionis.

13. The Counts of Kent was entered in Chancery by the King, and naming other Things there was assigned a Rent reserved by Patent to the King and his Successors upon Grant of a Fine to the Error of B. and his Successors; upon which Alignment the brought a Sci. Fa. in the Exchequer, and there had Judgment to recover the Rent, and the Arrears and Damages; Whereupon Error was brought in Cam Scacc and the Judgment reversed as to the Rent and Damages; because she could not have Judgment of the Rent being the King's Inheritance, nor of the Damages in the Sci. Fa. but as to the Arrears the Judgment was affirmed, because it was her Right to have it, and as to this she was privileged to sue in the Exchequer. Mo. 565. pl. 11. cites E. 3. The Counts of Kent's Case.

14. If a Fine was good before the Proclamations, and the Proclamations were ill, and erroneously made, this shall not take away the Force of the Fine which was good before the Proclamations; and adjudged that the Proclamations shall be reversed, and the Fine stand in Force. Pl. C. 266. a. Mich. 6 & 5 Eliz. B. R. Fythe v. Brocket.

15. In a Case, Error was assigned that the Damages were offered initially for several Things which would support an Action, some of which being uncertainly and insufficiently alleged, he prescribed to have Omnia bona Prohibita, which could not be without Charter, also to have done Fugatione quaeque accidente potiss, which was also uncertain, so that when Damages for these Things intirely are allowed with other Things, and judgment given, the Judgment is erroneous; and for that Caufe the Judgment was reversed. Mo. 706, 707. pl. 987. Patch. 33 Eliz. B. R. and 36 Eliz. B. R. Berkley v. Pembroke.

16. A Writ of Error is Quasi a Commission, and may reverse for Part and affirm for Part, and is not abateable, because the Fine is good for Part. Mo. 266. pl. 499. Patch. 23. and Mich. 36 & 37 Eliz. in Case of Barron v. Lever.

17. Error was assigned of a Judgment in C. B. that the Action was brought against three Persons, one of whom was within Age, and that they all appeared by Attorney, whereas he within Age should have appeared by Guardian, and so the Judgment being Joint was erroneous against all; And Roll Ch. J. was of the same Opinion, and so it was reversed. Sty. 430. Hill. 1653. Bocking v. Symons.

18. Error to reverse a Judgment given in an inferior Court where an Affirmat was brought, and the Plaintiff declared upon three several Premises, and the Jury found two for him, and the other Non Affirmat, and Judgment was given for the two, that he should recover, but no Judgment for the third, that he should be amerced Pro falso clamore, or that the Defendant was inde sine Die; And for this Cause Error was assigned. The Court said, the Judgment was altogether Imperfect; and so were inclined to reverse it, but gave further Time. Vent. 39, 40. Trin. 21 Car. 2. Gregory v. Lades.
What Judgment shall be reversed by Consequence, by the Reversal of others.

1. After a Recovery in Redissuace, if the first Judgment be reversed, the Judgment upon the Redissuace shall be reversed also. * 43 E. 3. 3. Co. 8. Doctor Drury 143. 11 H. 6. 17.

2. So if a Man recover in Debt upon a Judgment, if the first Judgment be reversed, the second Judgment shall also. * 43 E. 3.

3. So by reversal of the original Judgment, the Outlawry depending thereupon shall also be reversed. * Firth.

4. But by the Reversal of the Outlawry the original Judgment shall not be reversed. 7 D. 6. 44 b.

5. If a Man recovers in an Annuity and in a Scire Facias thereupon, and the Judgment upon the Scire Facias is not reversed, the other shall be reversed. 11 H. 4. 48.

6. If a Man recover on an Original, and hath another Judgment in a Scire Facias, if the first Judgment be reversed, the other shall be also reversed. Co. 8. Doctor Drury, 143.

7. If a Man recover in a Quare Impedit, and hath a Writ to the Bishop in a Quare non Admitiri, and after the Judgment in the Quare Impedit is reversed, the Judgment in the Quare non Admitiri shall be also reversed by this, though this was for the Contempt to the King. 26 E. 3. 7.

8. If a Judgment be given in an inferior Court against A. and after another Judgment against B. his Pledge there, and B. upon this it is taken in Execution upon the Judgment; and after the principal Judgment is reversed in a Writ of Error a special Writ may be awarded.
awarded to deliver him, because it appears by the Record that he was Pledge. 1 P. 7. 12. b An ludge.

9. If the Demandant recovers against the Tenant, and the Tenant against the Vouchee, if the Heir of the Vouchee reverses the Judgment of the Value, because the Vouchee was dead at the Judgment rendered, this shall reverse the Judgment against the Tenant also. Quere, 13 E. 3. 38.

10. If the Principal be outlawed of Felony, and the Accessory attainted and executed; and after the Principal reverses the Outlawry, and is indicted and found not guilty of the Felony; by this Reversal and Acquittal the Attainder against the Accessory is annihilated, for his Heir may have a Portment if it seems, because he hath no Remedy by Writ of Error or otherwise to reverse it, for this depends upon the Principal. Tempore, E. 1. 25. Deed of 46. Co. 10. Lord Sanctor. 119. b.

11. A Man may defeat two Records by one and the same Writ of Error, for it a Man recovers in Afflise, and after recovers by Redissife, and brings Writ of Error of the Judgment in the Afflise, and reverses it, by this the other Recovery is reversed also. Br. Error, pl. 23. cites 43 E. 3. 3. per Finch.

12. So where a Man recovers Damages in Waffle or other Action, and brings Debt of the Damages recovered, and recovers, and after the first Judgment is reversed by Error, there by this the last Judgment is reversed also, though it be upon two Originals; for the one depends upon the other. Ibid. Per Finch quod non negatur.

13. B. brought Writ of Error against E. who vouched to Warranty T. and the Vouchee counter-pledged, and paid for the Demandant, and he recovered, and the Vouchee brought Writ of Error, and had Scire Facias returnable now, at which Day the Tenant brought another Writ of Error of the same Judgment, and aligned Error, and prayed Scire Facias and had it; notwithstanding that the Vouchee had brought Writ of Error, and this for Doubts that the Vouchee was faintly prosecuted, and yet by the Reversal by the one, the other shall be restored; and it was held there that the Vouchee shall align Error between the Demandant and the Tenant, and so may the second Vouchee do. Br. Error, pl 39. cites 8 H. 4. 3.

14. And that if he in Reversal reverses Judgment by Error, the Tenant for Life shall be restored. Ibid.

15. And if Tenant by Re jet reverses Judgment by Error, the Tenant for Life shall be restored. Ibid.

16. If Error be in the Original, then as well the Proceeds of Outlawry as the Original shall be reversed. Br. Error, pl. 47. cites 11 H. 4. 6. Per Gafoine and Huls.

17. If the first Judgment be reversed the Execution depending upon it is delected eo Facto. Br. Error, pl. 70. cites 7 H. 6. 44. Per Half. Nestburie and Pafton.

18. If the Outlawry be reversed by Writ of Error, yet the first Judgment remains for the Party; Per Cheinny, which Brooke lays seems to be Law. Br. Error, pl. 70. cites 7 H. 6. 44.

19. In Audita Querela it was agreed, that by reversing the first Judgment by Error, the Execution upon it is also reversed. Br. Error, pl. 193. cites 6 E. 4. 9. 10.

20. And by the Reversal of Afflise the Redissise and the Execution upon it is also reversed. Ibid.

21. In Deceit it was admitted clearly, That in Writ of Error the Plaintiff shall recover the Land and the Issues and Profits incurred in the
Error.

Melfe Time, quod nota, and it was doubted if so in Deceit. Br. Er-
ror, pl. 174. cites 18 E. 4. 11.

22. Where Error is in the Judgment in Writ of Debt, and another
Error is in the Outlawry upon Capias ad Satisfacieniud and exigit upon
it, a Writ of Error shall not serve to reverse both Judgments; Per Huf-
fey; But Fairtax contra; and that 11 H. 4. 4. in Reddittotn a Man was
outlawed for the Damages, and both Judgments were reversed by one
and the same Writ of Error, and the principal Cafe was that the Writ
of Ernor was brought de Redditore Judicii in Writ of Debt, and in Pro-
mulation of the Outlawry in it; and so fee that Writ of Error lies as
well of Error in the Outlawry as in the Execution upon it; For this
Outlawry was upon the Capias ad Satisfacieniud, and exigit for the

9. 10.

23. A Quod ei desforcat is brought in Wales, and prosecuted in the
Nature of a Writ of Right, according to the Courfe there; by Force of
the Statute of 12 E. 1. The Tenant joins the Mife upon the mere Right,
and afterwards makes Defeund; and without a Petis Cape awarded, J udgment
final is given against him; the Tenant brings a Writ of Right,
against the Demanant, who had Judgment ut Supra and Execution;
he pleads the first Judgment in Bar; And Judgment is given that it is a
good Bar; the Plaintiff, who was the Tenant against whom the first
Judgment was given, brings a Writ of Error upon this last Judgment; and
affirms for Error, that a Petis Cape was not awarded before the first Judg-
ment; non allocutus; the first Judgment was affirmed; For although it
be erroneous, yet it is in Force until it be reversed; and this Writ of
Error is not to reverse the first Judgment, but the second Judgment;
the second Judgment was affirmed in Error. A Writ of Error should
have been brought to reverse the first Judgment, and if had been re-
versed, yet it had not reversed the second Judgment; for the second
Judgment was collateral and independent, and it is executed. Jenk. 259.
pl. 56. cites 5 Rep. 85. b. 38 Eliz. Penryn's Cafe.

24. A Plaintiff in Debt recovers and has Execution, and the Sheriff
suffers the Defendant to escape. The Plaintiff recovers against the Sheriff,
and afterwards the Judgment for the Original Debt is reversed, yet the
Judgment against the Sheriff is not reversed. Jenk. 259. pl. 56.

25. So where a Defendant is taken in Execution on a Judgment upon
pl. 56.

26. But where the latter Judgment depends upon the former, as Reddif-
tion upon an Allife or a Sci. Fac. to execute a Judgment in Debt, it is
otherwise. Jenk. 259. pl. 56.

27. A Judgment was given in Dower for the Demanant, and another
Judgment that she shall recover her Damages, and this second Judgment
for the Damages was reversed by a Writ of Error, because she did not
cour that her Husband died seized, in which Cafe the is to have no Da-
mages; yet the first Judgment for the Dower flood unreversed. Sty.

(G. b)
(G. b) In what cases Collateral Things shall be reversed by Reversal of others.

Things executed.

1. If the Conuniss of a Statute recovers in Detinue by erroneous Judgment against the Garni-thee, and pays Execution; if the Garni-thee, in a Writ of Error, revokes the Judgment given in the Detinue, yet the Execution is not reversed (*) by this; because it is a Collateral Thing executed. 7 H. 6. 42. Co. S. 8. Doctor Drury

2. A. In Execution for Debt on erroneous Judgment, there is brought against the Sheriff on the Escape, and Plaintiff has Judgment and Execution; afterwards the first Judgment is reversed, yet the Judgment against the Sheriff, upon this Collateral Matter being executed, stands good. 8 Rep. 142. b. Patch. 8 Jac. in Drury's Cafe cites 7 H. 6. 42. a.

3. If a Man is tried Frank in Trepsay to the Damage of 10 l. and the Defendant brings a Writ of Error or Attainment, and pending this, the Plaintiff brings Debt on the Recovery of the 10 l. and recovers, no Protection being taken of the Villeinage, the first Judgment is reversed by Error or Attainment, the Defendant shall not be stopped of the Villeinage by the Recovery in the Action of Debt; For by the Reversal of the first Action all that depended upon it is reversed. Br. Eltoppel, pl. 197. cites 18 E. 4. 6.

4. If one to whom another is indebted be outlawed, and the Debtor pays the Money to the Queen, and afterwards the Outlawry is reversed; now the Creditor shall recover the Debt against him. 5 Rep. 90. b. cites 7 E. 4. 2.

5. So if the Goods of an outlawed Person are sold by the Sheriff upon a Capias Ultigutam &c. and after the Outlawry is reversed by Writ of Error the Defendant shall have Restitution of his Goods. But if the Sheriff by Force of a Fi. Fic. sells Goods, and after the Judgment is reversed in Writ of Error, the Defendant shall not have Restitution of his Goods, but the Value of them that they were sold for. And there are two Reasons of this Diversity, 1st, that if the Sale of the Sheriff by Force of a Fi. Fa. shall be avoided by subsequent Reversal of the Judgment, no one will buy, and consequently no Execution will be made. 2dly, In the Cafe of Fi. Fa. the Sheriff is compellable to levy the Debt of the Goods at the Defendant, and therefore there is great Reason that it shall stand; But in the Cafe of Cap. Ultig, the Sheriff or Excheator is not compellable to sell them, but may keep them to the King's Use. 5 Rep. 90. b. Trin. 43 Eliz. in Scacc. in Hoe's Cafe.

6. Recompence in Value upon Voucher once lawfully executed shall not be divested, though the Title of the Demandant to the Land, which he recovers, be afterwards disaffirmed and evicted. 5 Rep. 90. b. 91. a. cites 3 E. 3. 51.
(H. b) Judgment. Restitution.

1. In an Affire if the Tenant loses by Verdict, he shall be restored to the Lands, if it be reversed in a Writ of Error. 8 H. 6. 2.

2. So if the Tenant in an Affire loses by Verdict, he shall be restored to the Meane Injuries, if it be reversed in a Writ of Error. 8 H. 6. 2.

3. So if the Tenant loses in a Writ of Entry for Distress, and after it is reversed for Error, he shall be restored to the mean Injuries. Contra 1 E. 3. 22 but Quere.

4. Where an erroneous Recovery is had against Tenant for Life, he in Reversion and the Tenant shall have several Writs of Error, and Judgment for one of them, and Execution shall revert their Ealties. Jenk. 69. pl. 31. cites 9 R. 2. Error.

5. By Reversal of the Judgment by the Vouchee, him in Reversion, Br. Error, Tenant by Receipt &c. by Error, or Attaint, the Tenant shall be restored. pl. 59. cites 9 C.

6. Upon a Fi. Fa. the Sheriff sold a Term for Years, by Virtue of the Writ Vindictioni Exponas, and paid the Money in Court to the Plaintiff; afterwards the Judgment was reversed for Error. The Question was, if the Term should be restored or only the Money ? Manwood, b Trin 7. Dyer, and Wray, thought the Defendant should not be restored to the Term, (it being lawfully sold in Default of the Party) but that he should have only the Money for which it was sold. D. 363. pl. 24. Trin. 20 Eliz. Anon.

7. If an erroneous Judgment be reversed, as to the mean Profits, it shall have relation until the Time of the first Judgment given, for it is to favour Justice, and to advance the Right of him who hath Wrong by the erroneous Judgment; But if any Stranger hath done a Trespass upon the Land in the mean Time, he who recovereth, after the Reversal, shall have an Action of Trespass, and if the Defendant pleads that there is no such Record, the Plaintiff shall shew the special Matter, and shall maintain his Action, for as he is to answer the mean Profits to the Person who hath Judgment of Restitution, so the Law gives him a Remedy against all Trespasses in the Interim. 13 Rep. 21. Hill. 27 Eliz. in Canet. Anon.

8. An Attaint was brought in C. B of a Verdict in B. R. If Execution had been awarded in C. B. and the Verdict had been afterwards disaffirmed, the Court of C. B. might have awarded a Writ of Re restitution, though it the Verdict had been affirmed they could not have awarded Execution, because they had only Tenorem Recordi. Cro. Eliz. 371, 372. pl. 10. Hill. 37. Eliz. B. R. York v. Allen.

9. A Term of Years apprised by a Jury upon an Eligit to an 100 l. A Term and delivered in Execution to the Plaintiff himself at the same Value was sold to J. S. denied per tot. Cur. to be restored, though the Sureties of the Sci. Fa. was that the Plaintiff had levied the 100 l. of the Profits of the Land demised; But if at the Time of Apprission and before the Delivery, he had tendered the 100 l. to Pais, or after in Court, he should have veyed, the 7 L. Audita
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Error.

17. By Virtue of a Fi. Fa. on a Judgment in Debt Sheriff sold Cattle, it was moved on Reversal of the Judgment to bring the Money for which the Cattle were sold into Court, for the Benefit of the Defendant who was then a Prisoner, but it was disallowed; then it was moved to pay Defendant as much Money as the Cattle were sold for, but that was denied likewise because they might be sold for less than the real Value, and if the Defendant brings Trepass he will recover the full Value, and therefore the Plaintiff must agree with him to prevent such Action. 4 Mod. 161. Hill. 4 & 5 W. & M. in B. R. Western v. Crefwick.

(I. b) To what Thing he shall be restored after Reversal.

To a Collateral Thing executed.

1. If a Man recovers Damages, and hath Execution by Fieri Facias, and upon the Fieri Facias the Sheriff sells to a Stranger a Term for Years of Land of the Party, and after the Judgment is reversed, he shall be restored only to the Money for which the Term was sold, and not to the Term itself, because the Sheriff had sold it by the Command of the Writ of Fieri Facias. Co. 8. Drury, 143. Matthew Manning 19. b. Co. 5. Hoa 92. b. Dyer 20. Eliz. 363. 24. There is a Diversity between means Acts done in execution of Juries, which are compulsory and voluntary Acts, and therefore if an erroneous Judgment is given in Debt, and the Sheriff by Force of a Fieri Facias sells a Term of the Defendant’s, and the Judgment is afterwards reversed by Writ of Error the Party shall never be restored to the Term, but to the Money for which they were sold; but where a Man is outlawed, and a Capias is directed to the Sheriff to take the Body & Bona, & Carulla quia per inquisitionem venerator in manus nostrar; if in such Case the Sheriff sells the Goods, and the Outlawry is afterwards reversed, the Party shall be restored to his Goods, because the Sheriff was not commanded by the Writ to sell them; Per Curiam. 8 Rep. 147. a. Patch. S Jac. in Dr. Drury’s Case. — 5 Rep. 90 b. Trin. 42 Eliz. in the Exchequer in Hoa’s Case. S. R. — Goldsb. 120. pl. 9. Gardy Serjeant cited the Case of Hamner v. Saddington, 32 Eliz. in which Case he was of Counsel, and that S. R. was adjudg’d therein accordingly. — But if the Term be extended on Elegit, and Judgment reversed for Error, the Term itself shall be restored. Dy. 363. Marg. pl. 24. cites Patch 17 Jac. B. R. Bathurst’s Case.

2. If the Goods of an outlawed Man are sold by the Sheriff upon a 2 Vern. 313. Capias Utelagum, and after the Outlawry is reversed by Writ of Error, he shall be restored to the Goods themselves, because the Sheriff was not compellable to sell those Goods, but only to keep them to the Use of the King. Co. 5. Hoa’s Case 92. b.

3. If a Man recovers Damages in a Writ of Covenant, as the particular Case was against B. and hath an Elegit of his Chattels, and of the Mienjoy of the Landa, and the Sheriff upon this Writ delivers a Leafe for Years of Land, which B. had to the Value of 50l. to him that recovered, per rationabile pretium & extentum, (as the Words were) to have as his own Term in full Satisfaction of 50l. Part of the Sum recovered; and after B. revokes the said Judgment, he shall be restored to the same Term, and not to the Value; for though the Sheriff might have sold the Term upon this Writ, yet here is no Sale to a Stranger, but a Delivery of the Term to the Party that recovered by way of Extent, without any Sale, and therefore the Owner shall be restored. Patch. 16 Jac. B. R. between Buckhurst and Maye, adjudged per Curiam; for the Sheriff is not bound by this Writ to sell the Land, as he is in a Fieri Facias;
Facias: Quære hæc Ĉæf, for this is a Sale, the whole Term being delivered to the Party according to the Value in Goods, not yearly.

4. The Law would be the same, if Personal Goods were delivered to the Party per rationabile pretium & extentum, upon the Reversion of the Judgment he should be restored to the Goods themselves, for the Cause aforesaid. Patch. 16 Jac. in the Case between Buckhurst and Mayo, agreed per Cur.

5. If a Man recovers by erroneous Judgments, and presents to a Benefice, or enters into the Perquisite of his Vilem, and after the Judgment is reversed by Writ of Error, those being Collateral Things shall not be deviated. 8 Rep. 142. b cites it as to held in 4 H. 7. 11.

6. If an Advowson comes to the King by Forfeiture upon an Outlawry, and the Church becoming void the King presents, and then the Outlawry is reversed for Error, yet the King shall enjoy that Prefentment, because there it came to the King as a Profit of the Advowson; Per Cur. Mo. 269. pl. 421. Mich. 30 & 31 Eliz. Beverley v. Cornwall.

7. But if a Church be void at the Time of the Outlawry, and the Presentation is thereby forfeited as a Chattel principally and distinct of itself, and then the Outlawry is reversed; the Party shall have Restitution of the Presentation; Per Cur. Mo. 269. pl. 421. in S.C.

8. M. the Husband seised in Fee leaved a Fine, and afterwards 1 Marie was outlawed of Treason; the County conveyed the Land to the Crown, and afterwards the Daughter and Heir of the Husband seised the Outlawry. The Wife of M. fixed to have Dover within the five Years after the Outlawry reverfed, but long Time after the five Years after the Fine leived. "In this Case it was resolved, that the rese was not barred by the five Years after the Fine, but she might have five Years after the Outlawry reverfed." Mo. 639. pl. 879. 27 Eliz. in Canc. Menvil's Case.

9. A seised of Land in Fee was attainted of High Treason, and the King granted the Land to B. and afterwards A. committed Trespass upon the Land, and afterwards by Parliament A was restored, and the Aattanider made void, as if no Aet had been, and shall be as available and ample to A. as if no Aattinder had been; and afterwards B. brings Trespass for the Trespas meane; and it was adjudged in 10 H. 7. fol. 22. b. That the Action of Trespass was not maintainable, because that the Aattinder was disaffirmed and annulled ab initio. 13 Rep. 20. Hill. 27 Eliz. in Canc. Menvil's Case.

10. And in 4 H. 7. 10. it was holden, That after Judgment reverved in a Writ of Error, he who recovered the Land by erroneous Judgment shall not have an Action of Trespass for a Trespass mean. 13 Rep. 20. S.C.

11. When a Man recovers any Possession or Seisin of Land in any Action by erroneous Judgment, and afterwards the Judgment is reverved, the Plaintiff in the Writ of Error shall have a Writ of Restitution, and that Writ recites the first Recovery; and the Reversal of it in the Writ of Error is that the Plaintiff in the Writ of Error shall be restored to his Possession and Seisin. Una cun existeitibus therefrom the Time of the Judgment &c. Per Curiam. 13 Rep. 21. Hill. 27 Eliz. in Canc. in Menvill's Case.

12. The Sheriff sells a Term upon a Scire Facias, and afterwards the Judgment is reverved; Resolved the Party shall not be restored to the Term, but to the Money for which he was sold, if the Sale be without Fraud. Mo. 573. pl. 788. Mich. 41 & 42 Eliz. B. R. Anon.
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Error.

13. When an erroneous Judgment is given, and the Judgment is afterwards reversed by Writ of Error, Collateral Acts excutory are barred by it; but otherwise it is of Things executed; Per Curiam. 8 Rep. 142.

14. As it an Action of Escape be brought against the Sheriff, and the Judgment is reversed by Writ of Error the Action is gone, and he may plead Nulit Record. But if Judgment and Execution be had against the Sheriff before the Reversal the same remains in Force. Ibid. cites 34 H. 6. 2. b. and 21 E. 4. 23. b.

15. But there is a Diversity between a Recovery by prior Title, and a Reversal of a Judgment by Writ of Error; as if a Woman has Judgment and Execution in Dower in Ancient Demesne, and it is after reversed in a Writ of False Judgment; and because she had held the Lands for two Years between the first Judgment and Reversal, the Value of the Land is inquired, and taxed at 20 Marks in a Scire Facias against her, she cannot plead a Recovery in a Writ of Right close in Nature of a Cui in Vita. 8 Rep. 143. a. b. per Curiam, cites 20 E. 3. Scire Facias 123. in Herbert's Cafe.


17. The Defendant in Error recovered 100l. Damages in Debt in Brown. 107. C. B. and there had an Elegit into the County of W. reciting that another Joins, Elegit issued into London, and was returned Nilit. And upon a Trestament S. C. accorded it was commanded to extend all the Goods and Lands; whereupon the uglyy Sheriff returned, that he took a Lease for Years of Tithes, which he delivered to him, at Bona & Cattala sua, for the said Debt. The Writ being with a Trestament, whereas there was not any Writ before awarded into London, was held to be Error; And it was resolved, That the Exprimer Sale and Delivery of the Leafe to the Plaintiff himself upon an Elegit was no Sale, by Force of the Writ delivered in Extent, which being reversed, the Party shall be restored to the Term itself. Cro. J. 246. pl. 4 Trin. 8 Jac. B. R. Goodyere v. Ince. according to the Opinion of 28 Eliz. Dy. for it is the Party's Folly that he does not pay the Judgment; and if such Sales should be made void, none should buy Goods of the Sheriff, by Reason whereof many Executions would remain undone; and this by the Opinion of the whole Court.

(K. b) In Judgments and Executions.
Rot. 397. But at another Day upon Examination of the Records it appeared to be well.

2. If Judgment be given against the Bail, and after a Scire Facias is sought against the Bail, and a Judgment against them, and also Judgment given against them for Costs de incremento, this is erroneous, because no Costs ought to be given in a Scire Facias. Hill. 11 Car. B. R. between Hardy and Brown, adjudged per Curiam in a Writ of Error upon such Judgment in Rippon Court. In terrent Trim. 10 Car. Rot. 979

3. In a Writ of Exoneration, if the Demandant demands one Meafuage, one Garden, ten Acres of Meadow, and ten Acres of Paffure; and the Tenant as to the Meafuage, Garden, two Acres prati & Paffure, Parcel of the ten Acres prati, and ten Acres Paffure, pleads a Feudiment of the Father of the Demandant with Warranty and Allies, and as to the Residue he travels the Gift to, to which the Demandant as to the first Plea takes Life upon the Allies, and this is found for the Demandant, upon which Judgment is given, that the Demandant shall recover Seifin of the said Meafuage, Garden, and two Acres prati & Paffure; and as to the Residue the Demandant relinquishes his Life. This Judgment is erroneous, because it does not appear how much of the two Acres was Meadow, and how much Paffure; so that the Sheriff knew not of what Thing to give the Demandant Seifin. Patch. 13 Car. B. R. between Pratt and Gardner, adjudged in a Writ of Error upon such Judgment in Banco, and this reversed accordingly. In terrent Trim. 11 Car. Rot. 539.

Cro C. 288. pl. 4 South v. Griffith, S. C. all the Jutices prater Robert, held, that both in C. B. and B. R. a Captia against the Principal ought to be taken forth and returned. Non efficiens, otherwise no Scire Facias ought to be against the Bail —— jo. 256. pl. 4. S. C. But S. P. does not appear —— Error by the Bail, for that Judgment was given against him upon a Scire Facias where no Captia was awarded against the Principal before the Scire Facias awarded against him. And it was held, that the Writ of Error would lay in this Case for the Bail. And the Judgment in the Scire Facias was reversed; and the like Writ was allowed between Crofhi and Babington. Cro E. 322. pl. 63. Mich. 43 & 42 Eliz. in Cam. Sca. Price v. Price. —— Cro. E. 710 pl. 69. in Cam. Sca. Cockayne v. Lady Hawkins S. P. held that the Writ well lay, for that the Suit against the Bail is within the Intent of the Statute of 35 Eliz. and in the Nature of an Action of Debt, and Judgment was affirmed. —— Some Captia of Cro E. and Comb. 725. Patch v. W. B. R. by Holt Ch. 1. 534, he did not approve those Cases, but pretend'd the latter Authority of Barcett v. Thompson, which see at (G. a) supra, pl. 2. —— see tit. Bail (B) pl. 13. S. C. and the Notes there.

If the Sheriff makes Execution in the Franchise this is good; for he is Officer immediate to this Court. Br. Error, pl. 152. cites 11 H. 4. 9. per Hill

6. But per Norton, if Bailiff of the Franchise makes Execution in the Guildable, this is Error, quod non negator. Ibid.

7. After Recovery in Debt of 400 l. a Fi. Fac. issuing, upon which 100 l. was levied and returned, afterwards a Ca. Sa. issued for the whole 400 l. and thereupon the Defendant was outlawed. It was aligned for Error that the Ca. Sa. ought to have been only for 300 l. and the Judgment of Execution was reversed, because the levying of the 100 l. was returned of Record upon the Fi. Fa. Mo. 598. pl. 819. Mich. 34 & 35 Eliz. Wells v. Denny.
Error.

(L. b) What Act will aid an Error.

Appearance.

1. If a Summons be not well made, if he appears of Record, this takes away the Error, for the Summons is affirmed.

2. If a Man was never summoned, yet if he appears it is not Error.

3. If an Omission be made of any Writ or Process, or one Writ awarded in Lieu of another; yet if the Judgment be not given thereupon, but after the Party appears and pleads to Issue, and Judgment is given upon the Verdict, this is not (*) erroneous, because he had not taken Advantage of this before pleading to Issue. 3 H. 6. 9.

4. If a Man in Banco brings a Bill upon this Privilege, but hath Roll Rep. no Writ of Attachment of Privilege, yet if the Defendant after appears and pleads, this shall be helped by the Appearance. Cru. 13 Jac. B. R. between Haven and Gibbons.

5. If a Man be indicted, and no Addition is given to him as Cro. J. 665. is found against him; this is helped by the Appearance. 3 Jac. B. R. between Banks and Pro. and Pemberton adjudged in a Writ of Error. Tues. 4 Jac. B. R. between Cook and Ballard adjudged, which Infract Cru. 4 Jac. Rot. 618. Dill. 4 Jac. B. R. between Mose and Catchumb adjudged, which Infract Cru. 4 Jac. Rot. 1699. Cont. Dill. 11 Jac. B. R. between Jebb and Goodfield adjudged.

6. In Debt if a Capias be the first Process, and not a Summons, as See Infra, ought to be by the Law, though the Defendant appears and pleads to Issue, and this is found against him, upon which Judgment is given, yet this miswounding of the Process is erroneous and not, (1 2) pl. 11. helped by the Appearance. Tues. 3 Jac. B. R. between Banks and Pro. cefs, (D) pl. 1, 2. and Pemberton adjudged in a Writ of Error. Tues. 4 Jac. B. R. between Cook and Ballard adjudged, which Infract Cru. 4 Jac. Rot. 618. Dill. 4 Jac. B. R. between Mose and Catchumb adjudged, which Infract Cru. 4 Jac. Rot. 1699. Conta Dill. 11 Jac. B. R. between Jebb and Goodfield adjudged.

7. If a Man be summoned to appear in an Inferior Court, and the Defendant does not appear, and notwithstanding the Plaintiff puts in a Declaration and declares against him, and after the Defendant appears, and after makes Default, by which Judgment is given against him by Default, the Appearance hath helped the putting the Declaration before Appearance, and so it is not erroneous. Cru. 35 Jac. B. R.
B. R. between Harris and Goodale in a Writ of Error upon a Judgment in Ipswich adjudged, and the Judgment affirmed per Curiam. But Boughton said, that this was neither a Miscontinuance nor Discontinuance; but Scott and Dodderidge said, that this was a Miscontinuance.

8. If in Tredpals for an Assault and Battery in an Inferior Court, if there be a Plaintiff entered, and a Declaration before any Appearance of the Defendant, and after the Defendant appears without Process and pleads to Issue, and this is found for the Plaintiff, and Judgment accordingly, this is erroneous, and not helped by the Appearance or Pleading, much as there was a Declaration against no Body, the Defendant not being then in Court. Mich. 14 Car. B. R. between Brown and Cogg heard in a Writ of Error upon such Judgment in the Court of Panmure; and the Judgment reversed accordingly. Introlive Mathis. 14 Car. Rot. 325.

(G. c) pl. 23.
S. C.

9. If an Action be brought in an Inferior Court against J. S. if the Plaintiff declares against him in Caludia of the Sergeant and Sheriff of the Court, and it does not appear that the Sergeant had any Process or Precept to arrest him, and the Defendant appears and demurs for this Cause upon the Declaration, and upon this Judgment is given against the Defendant, this is erroneous, for upon this Appearance he pleaded this Matter. Tin. 1499 between Lay and Dodderworth adjudged in a Writ of Error upon a Judgment in York, (as it seems) and the Judgment reversed accordingly.

Br. Faue
Judgment, pl. 4. cites Latin, or that he was not summoned &c. Br. Error, pl. 25. cites 46 E. 2. 30.

10. He who appears at the Summons, or is served upon the Summons, shall not pay after that the Summons wanted Form, or that there is false拉丁, or that he was not summoned &c. Br. Error, pl. 25. cites 46 E. 3. 30.

11. Error was brought of a Judgment given in an Inferior Court, because there was no Plaintiff entered, and upon the Record nothing was entered but that the Defendant Summonns sat &c where the first Entry ought to be, A. B. queritur versus C. D. &c. and the Summons so entered is not any Plain ; and for that Cause judgment was reversed. Le. 185. pl. 260. and 302. pl. 415. Mich 29 & 30 Eliz. Knight v. Savage.

It was said, that after the Defendant appeared a Plain was entered; but it was answered that this did not help the Matter; For there ought to be a Plain out of which Proces should issue, as in the Sovereign Courts, out of Original Writs.

12. In Error on a Judgment in Account it was assigned (amongst others) That the Writ of Account was brought in Norfolk, and the Cap ad Computandum was awarded to London; whereas it ought to have been to the Sheriff of the County where the Action was brought. Coke said it was helped by the Statute of Jeoffails, and he appeared upon this Process, and it had made it good; and Error in Process cannot be alleged after In Nullo est errorum pleaded; for if it had been alleged the other Party might have alleged Diminution; the Judgment was affirmed. Cro. E. 83. Hill. 30 Eliz. B. R. in Cafe of Robier v. Andrews.

13. A Capias was directed to the Sheriff of B. and it was returned by one who was not Sheriff, and this was held a manifeft Error; but because the Defendant had appeared after, and pleaded, it was held not material, and that his Appearance had made it good. Cro. E. 582. pl. 6. Mich. 39 & 40 Eliz. B. R. Thoroughgood v. Scroggs.

14. Error of a Judgment in Debt, because the Original Writ had not the Sheriff's Name to the Return thereof; But in regard the Defendant had appeared, and pleaded Nul tiel Record, it was held not material although the Writ had not been returned, and after Appearance
Error 597

he shall never take Advantage of the misjudging of the mean Proces; the Judgment was affirmed. Cro. E. 767. pl. 6. Trin. 42 Eliz. B.R.

15. The Appearance of the Defendant will help and save a Misjudging of Proces; but there is no Case in the Law to prove that any Appearance will help and save a Discontaintne of Proces; Per Williams J. and the whole Court agreed clearly in this, that no Appearance will help and save a Discontaining of Proces. Bulk. 143. Trin. 9 Jac. in Cafe of Bradley v. Banks.


16. Error assigned was, that the Writ was in Debt for 40 l. and the Capias and all the Proces to the Return of the Parties Capias accordingly; and then the Entry was, that Queros obtained it in Placito Debit 40 l. and upon Default of the Defendant an Exigent was awarded, and the Defendant after appeared and pleaded and confessed the Allegion; and this was held no Error, being helped by the Appearance; nor as an Appearance faves Defaults in mean Proces, so it faves the Default of the Containing by an Obelit se; the Judgment was affirmed. Cro. J. 311. pl. 10. Mich. 10 Jac. B. R. Lovelace v. Jeniper.

17. A Judgment in a Second Deliverance given in C. B. was reversed, because there was not any Writ of Second Deliverance certified, although it was awarded upon the Roll, and the Parties appeared and pleaded to it. Cro. J. 424 pl. 8 Patch. 15 Jac. B. R. Newman v. More.

18. In Error of a Judgment in Dower it was assigned, that there was not any Original Writ nor Warrant of Attorney for the Defendant. But upon Diminution alleged the Writ was certified; but for the Warrant of Attorney, because it was not assigned of Record that Diminution might be alleged, it was held that it was now assignable. Cro. C. 351. pl. 16. Hill. 9 Car. B. R. Wickham v. Enfield.

19. Audita Querela was brought, and a Seire Facias thereupon bearing Date before the Audita Querela, and the Defendant appears, and for this Cause demans. The Court held that this Fault is cured by the Appearance; for Audita Querela is more properly a Commission than a Writ, and if the Party be in Court, the Matter ought to be examined without inquiring into the Nature of the Proces by which he was brought in, for it might be that he appeared without Proces. Sid. 406. Hill. 20 & 21 Car. 2. B. R. Vaughan v. Loyd.

the Appearance of the Party would not help it.

20. But it was agreed that a Seire Facias upon a Judgment differs, Vent 7. S. C. and the Demar- per, dail. Fac. is in Nature of a Declaration. Sid. 406. in S. C.

Fee. is the Foundation and Quasi an Original, and the Judgment is given upon it; but here the Sci. Fac. is only to bring in the Party to answer, and in the Nature of a meane Proces, and the Judgment is given upon the Audi. Quer.

21. If an Inferior Court awards a Capias where no Summons was first Vent 249. returned, as there ought to have been, yet this Fault in the Proces is aided by Appearance, and is not assignable on a Writ of Error; B. R. Anon. Per Hale Ch. J. Vent. 220. Trin. 24 Car. 2. B. R. in Cafe of Read S. P. ruled accordingly. S. P.

per Cor. for by Appearance all Defaults are saved, though it be in an Inferior Court, and to Wykles said it had been of late commonly ruled, contrary to Cro. J. 108 Pratt v. Dixon. Freem. Rep. 458. pl. 642. Trin. 1678. Wheeler's Cafe.

7 N 22. In
22. In Error of a Judgment out of an Inferior Court an Exception was taken, that the first Process was a Capias; sed non allocutis; because it was cured by Appearance. 2 Lutw. 953. Mich. 3 Jac. 2. Buszard v. Bull.

23. In Error to reverse a Judgment in an inferior Court, it was affirmed, that the Process of Attachment was returned thus, Nihil habeas nisi summam patet &c. and thereupon a Capias awarded, which was irregular, for an Alias Attachment should have been awarded, and there was not any Caffen returned to warrant the Usage of a Capias in Processes, for that is given by Statute, which extends not to inferior Courts; But the Court held both these Errors to be cured by the Appearance of the Defendant. Carth. 206. Hill. 3 W. & M. Bofon v. Philer.

24. Appearance helps only when the Party comes and pleads to Issue, not when the Party comes in and challenges the Process upon the Account of its Defect; Per Eyre J. 1 Salk. 59. pl. 2. Trin. 6 W. & M. in B. R. in Case of Wilfon v. Laws.

25. A Summon in Trespasses out of the Court of Elv was returnable generally the same Day, and a Return the same Day of a Summoner, and an Attachment and Return the same Day of a Nill, and then a Capias returnable the same Day, and thereupon brought in in Custody, Declaration, Plea, Demurrer and Judgment, and Writ of Inquiry executed and returned, and Judgment final, all in one Day; Resolved, that the bare Appearance upon the Capias being compulsory did not help this Error, because it was what the Defendant could not avoid. 12 Mod. 523. Trin. 13 W. 3. Biddolph v. Veal.

26. A Writ of Error was executed the same Day with the Return of the Pone, and so might be before any Pone issued out, and Judgment was revered for this Error; For no Appearance or Pleading can help that. 12 Mod. 524. Trin. 13 W. 3. Biddolph v. Veal.

What Defects are aided by Appearance, See Tit. Default, (E. 2)

(L.b. 2) Aided by Intendment.

1. Sheriff returned upon a Capias Capi Corpus, and the Record is that he always appeared by Attorney, and per Cur. this is not Error; For it shall be now intended that it was by Aflent of the Parties, and then no Error; Quod Nona. Br. Error, pl. 184. cites 21 E. 4 77.

2. Error upon Outlawry of Felony upon Indictment, which was, that Presentation was before A.B. and C. D. Justices of Peace, that S. &c. such a Day &c. and did not speak of Commission of Oyer and Terminer of Felonies; And per Hulfe and Jenny the Omnition of it is Error; But Fairtax contra; For it shall be intended by these Words, Justices of Peace, that they have Commission; But Hulfey said, No; For where Mayor, Steward, or the like, is Coroner, Indictment taken before A. B. Mayor or Steward super viatum Corporis, is not good without this Word, (Coroner.) Br. Error, pl. 186. cites 22 E. 4. 12.

(M. b)
(M. b) Pleading _abatable._

What Act will help an Error.

1. If in Trespass of Charters taken, the Plaintiff does not count of Br. Error, the Quantity of the Land comprized in the Charters, (admitting that be ought) yet if the Defendant does not take Advantage thereof, but pleads, and Judgment is given against him, this helps the Error, and he shall not assign it for this. 20 Am. 3.

(E) S. P. accordingly, but adds, _tamen Quære._ — See (P. b) pl. 12.

2. If a Feme Sole brings Trespass, and recovers, and a _Writ of Inquiry of Damages_ is awarded, and before the Return thereof the Plaintiff takes Husband, and after the Writ is returned, and Judgment given thereupon without any Exceptions taken by the Defendant, he shall not have Advantage of this in a _Writ of Error_, because the Writ was only abatable by Plea. _Bich._ 40, 41 Eliz. B. R. between _Smith and Odysian a_ judg'd.

3. If an _Action be brought against_ Sir Francis Fortescue Militem, & Baronetum, and he appears and pleads to _Pleue_, and a _Verdict_ is given for the Plaintiff, the Defendant in a _Writ of Error_ shall not have Advantage to say, that he was a Knight of the S. c. ad. Bath, not so named, inasmuch as he had appeared to the other Name and pleaded, and so had concluded himself. _Patch._ 16 Jac. B. R. between _Markham and Sir Francis Fortescue a_ judg'd. accordingly. —— See (F. c) infra, pl. 5. S. C. — And see tit. _Efoppel_ (L) pl. 12. S. C.

4. Upon a _Trial between_ a Peer of the Realm and another, the Sheriff does not return any Knight as he ought; if the Peer does not challenge the Array, but the Jury gave a _Verdict_ he shall not have Advantage thereof afterwards. _Patch._ 9 Car. between the Lord _Pescis and Kirtman_, a_ judg'd in a _Writ of Error_ upon a _Judgment in Banc_ for he may waive his Privilege and the Trial be without any Knight.

5. It is a _good Rule_ that _where any Matter may be pleaded in Abatement it shall never be assigned for Error_. Per Holt Ch. J. _Carth._ 123. cites 2 _Saund._ 212. and 48 _E. 3. 10. b. 3 H. 4. 6._

(N. b)
(N. b) What Act will help an Error, where the Error appears of Record.

1. If a Man be indicted for a Conspiracy, and no Year or Place alleged of the Conspiracy, though the Defendant did not take Exception to it, but pleaded Not-Guilty, and Judgment is given against him, this Pleading shall not help the Error. 24 E. 3. 35. 36. adjudged.

2. So if a Man be indicted as of a Conspiracy, where the Matter shewed it was Extortion and not Conspiracy, though the Defendant pleaded Not-Guilty, and a Judgment is given against him, yet this shall not help the Error, for this appears upon the Record. 24 E. 3. 36. adjudged.