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v

W. Lee.
W. Fortescue.
J. Willes.
E. Probyn.
F. Page.
Law. Carter.
J. Fortescue A.
W. Chapple.
T. Parker.
M. Wright.
Ja. Reynolds.
Tho. Abney.
T. Burnett.
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-Patentee.
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**Condition.**

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TO THE

Right Honourable ARTHUR ONSLOW, Esq;

Speaker of the House of Commons,

THE Great Mæcenas of the Present Age, Patron and Encourager of Learning, which is a Principal Support as well as Ornament of Government, and without which no Nation or Kingdom can long flourish. This Volume (being Part of a General Abridgment of Law and Equity, and which is highly honoured by so celebrated a Name being inserted as a Subscriber thereto) is most Humbly and Gratefully dedicated by

S I R,

Your Most Obedient,

Most Respectful,

And Most Oblig’d Servant,

CHARLES VINER.
(Z) Of stinting and Inclosure of Commons otherwise than by the Statute of Approvements.

1. Upon a Bill for Title of Common, and to have certain Lands inclosed laid open, it was decreed, that the Defendant and his Heirs would hold the Lands so inclosed discharged of Common, because it seemed that the Inhabitants had Common enough before, and that the laying open the Lands in difference would be a great decay of Husbandry. Toth. 118. cites 36, 37 & 38 H. 8. Daniel & al' Inhabitants of (Cuddworth or) Cudworth in Warwickshire v. Ardern.

2. It is decreed the Plaintiff, his Heirs, and his or their Farmers of the said Farm or Tenement called Stubbles, shall from henceforth hold and enjoy appentant to the same Farm or Tenement called Stubbles all the same Field, Common or Common of Pasture for the full Number of 300 Sheep, within the Field of Wentworth al' Wenford. Cary's Rep. 65. cites 2 Eliz. fol. 137. & 155. Baill Fielding and Alice v. Wren.

3. The Suit was for Common of Pasture and Turfary, the Defendant demurred, for that the Plaintiff may have remedy at the Common Law, but ordered to answer. Cary's Rep. 91. cites 19 Eliz. Lawrence and Moregate & al' v. Windham.

4. The Plaintiff's Suit is to be relieved for a Common, and a Superna is awarded against the Defendant to shew Caufe why an Injunction should not be granted to stay the Suit at the Common Law. Cary's Rep. 118. cites 21 and 22 Eliz. Chock v. Chea and Walf.

5. Lands that had been inclosed for 30 Years by Consent of most of the A Common Paritioners, were therefore ordered to continue inclosed. Toth. 174. cites 4 Jac. Piggot v. Knivetwn.

6. Inclosure of Common is a private Wrong, and no publick Nuance, and Prefentment at the Lect is void. 9. Rep. 113. Trin. 10 Jac. in Robert Mary's Cafe, cites 27. Afl. 6.

7. Inclosure of Walf and Common decreed being for the common Good. Toth. 175. cites 12 Jac. freak v. Loveden.

8. The Court compelled certain Men that would not agree to Inclosures, to yield unto the same, and binds a College that would not content, having Lands within the said Manor so inclosed. Toth. 174. cites Mich. 17 Jac. Cartwright v. Drop.

9. A Decree made to overthrow Inclosures, if the Defendant will not recom pense the Plaintiff so much as be hath been prejudiced by the Inclosure, being a Depopulation, altho' a Remedy at Law upon the Statute. Toth. 175. cites Mich. 20 and 22 Jac. Trigg v. Payte.


11. If a Man incloses where by the Law he may, he is bound to leave a good Way, and also to keep it in Repair continually at his own Charge, and the County ought not to be contributory; said by the Judges to have been so adjudged. Jo. 296. 8 Car. in Itin. Windfor. Hen's Cafe.
12. The Defendant agreed to an Incloure, but afterwards disaffented. Decreed according to the Agreement. Toth. 176. cites 13 Car. Fox v. Shrewsbury.

13. Parties that have Interest in the Common, and not privy to the Agreement to incloure, shall not be bound; but decreed that it should not be in the Power of one or two willful Persons to oppose a publack Incloure. Chan. Cases 48. 16 Car. 2. Thiverton v. Coliffe.

An Agreement for incloure Lands was confirmed by a Decree against several, and against the Parson of the Parish, the Terms offered him being made more advantageous, and he and his Successors bound to the Tithe. Finch's Rep. 18. Mich. 25 Car. 2. Edgerly v. Price & al.—S. P. Toth. 175. cites 5 Car. New-Hill Chapel v. Edgbury.

14. Bill is brought against the Parson, he being the only Freeholder within the Manor, to compel him to convey to an Incloure. The Defendant demurs, for that there are no Articles of Agreement to compel an Incloure, nor duty the Bill charge that the Defendant is like to receive any Benefit by the Incloure towards the Benefit of the Church, and that although he be the only Freeholder within the Manor in right of his Church, yet the same is no Ground in Equity to compel him to an Incloure. This Court, as to the compelling the Defendant to agree to an Incloure, allowed the Demurrer. Chan. Rep. 259. 17 Car. 2. Connable v. Davenport.

15. Upon an Incloure Lands were allotted by an Agreement with the Predecessors of the Parson for Lands before belonging to the Church; the Parson brought a Bill for an Execution of this Agreement. The Defendant intituled on after Agreements with other Parsons, and on an Award between one of them and one of the Ancestors of the Defendant, and confirmed by Decree of this Court: On the Proofs and Answers of this and former Causes, the Court decreed for the Plaintiff, and a Commission to set out Lands. Fin. R. 144. Mich. 26 Car. 2. Unwin & Fawnt.

16. If a Commoner recovers Damages at Law, as t. s. or other Small Sum, for an Oppression, or for using the Common where he ought not, the Defendant may, by Bill, pray that any other Commoner may accept like Damages for what was paid, to prevent Charges at Law; and it is in nature of a Bill of Peace. By North K. Vern. 308. pl. 302. Hill. 1684. in the Cafe of Pawlet v. Ingles.

Right of Common is too trivial to examine to and not allowable, at least till after a Recovery at Law; per North K. for the Examination costs more than the Value of the Thing.

17. A Commoner ought not to come into Chancery to examine in perpetuum relinquendum, to prove his Right of Common, till he has recovered at Law in Affirmance of his Right; by North K. Vern. 308. pl. 302. Pawlet. 1684. Pawlet v. Ingles.

18. A former Decree, and an Award by which the Commons and incloures between the Lord and his Tenants, and Lands in the Bill mentioned were bound and ascertained, till the Defendant, who had now purchased the Manor, refused to be bound by it, was confirmed accordingly. Fin. R. 154. Mich. 26 Car. 2. Meadows v. Patherick.

19. A Decree made for an incloure 20 years since, to which the Defendant, the Lady Weddington's Husband, had agreed in his Life-time, and the having an Estate of about 25 l. per Ann. within the Manor, would now disturb the Incloure; and tho' in strictness her husband's consent could not bind her Interest, yet it being proved in the Cause that her Estate was much improved by the Incloure, and that the designed only to make an unreasonable Advantage to herself, the Court decreed the Incloure should stand. Vern. 456. Patch. 1687. Rothwell v. Weddington.
22. Agreement between Lord and Tenants to settle a Common, is more but where to be belov'd than to incline; and 1 or 2 humane humane People haps Agreeing out, and not agreeing, will not hinder the Court's decreeing it; 1 was made by the greatest Part of the Landholders, and opposed by the Reafon, and about 9 others, the Court could not decree it, though it was intifled that a Decree was made 1 W. 3, for a like stunt in the Hamlet of Southam in the same Parish; but the Bill was disfigured at the Rolls, and affirmed upon an Appeal. 2 Vern. 575. pl. 520. Hill. 1756. Bruges v. Curwin.


22. The greatest Part of the Landholders intifled to a Right of Common agree to a fift, and brought a Bill to confirm it; but the Bill was disfigured, first at the Rolls, and now by Lord Cowper. 2 Vern. 575. pl. 520. Hill. 1756. Bruges v. Curwin & al.

23. A Bill was brought to quire Possession of a Right of Commonage in a Common, Part of the Manor of Moreton in Surry, and to prevent Difficulties. An Answer and Demurrer were put in, and then Plaintiffs amend their Bill, and obtain an Injunction till Answer and further Order. The Defendants now moved to disfigre it, and the Plaintiffs produfrd Affidavits of above 50 Years quiet Possession, and Evidence of their Right in Queen Elizabeth's Time; yet the Court refused to interpofe till one or more Verdicts in Law, and disfigured the Injunction that it may be tried immediately. G. Equ. R. 183. Hill. 12 Geo. 1. says it was to ruled by Lord King in Case of the Manor of Moreton in Surry.

24. Lord of a Manor brings a Bill against a Tenant, to hold a Down belonging to the Manor, discharged of a Right of Common thereto; this is an improper Bill, in regard the Plaintiff may, by the fame Reafon, bring a separate Bill against every Tenant of his Manor making the like Claim. 3 Wins's Rep. 256, 257. pl. 63. Pafch. 1734. Holder v. Chambury.

(20.) Agreement between Lord and Tenants to settle a Common, is more but where to be belov'd than to incline; and 1 or 2 humane People haps Agreeing out, and not agreeing, will not hinder the Court's decreeing it; 1 was made by the greatest Part of the Landholders, and opposed by the Reafon, and about 9 others, the Court could not decree it, though it was intifled that a Decree was made 1 W. 3, for a like stunt in the Hamlet of Southam in the same Parish; but the Bill was disfigured at the Rolls, and affirmed upon an Appeal. 2 Vern. 575. pl. 520. Hill. 1756. Bruges v. Curwin.


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(A. a) Approval thereof by Statute.

If two have Enter-commoming of Land, &c. and after the one incloses, there the other cannot inclofe likewise, unless it be by commonment at first. Br. Common, pl. 47. cites 14 H. 3. and Fitch. Droit 59.

Common with the other, and the other shall have his Writ against him to have his Common. Fitch. Droit, pl. 59. cites S.C.

2. Stat. Merton, 22 H. 3. cap. 4. Because great Men having infused others their Tenants of small Tenements in their great Mansors, Hereby it appears, that the Lord could not approve by the Order of the Common Law, because the Common incloses out of the whole Wallis, and of every Part thereof; and yet see Tr. 6 H. 3. where the Lord approved 2 Acres, and left sufficient, the Tenant brought an Affile, and the special Matter being found, the Plaintiff retral it. The Purview of this Statute extends only for the Lord to make an Approvement against his Tenant, and not against any Stranger, nor where the Lord had common Appendant in the Tenancy, as he may have; but see the Statute of W. 2. 2 Inst. 85.

Cow C. B. says, that the Statute of Merton was only an Affirmation of the Common Law; for at the Common Law the Lord might approve leaving sufficient for his Tenants, and that so are divers Causes in time of H. 3. Fitch. in Approvement, which was before the Statute, and this appears by the Writ of Quod permittit, which is Quod tantum habent Patrem, &c. having regard to his Franktement; and the Writ of Admeasurement is, Quod ibat placu animalium quiq. d. beat in respect of his Franktement, to which the Lord Chancellor agreed. Roll Rep 262. pl. 18. Pafch. 14. Jac. in the Starr-Chamber, in Case of Preston v. Malone. —— Before the Statute the Lord could not improve, per Windham J. Sid. 106. pl. 17 Hill 14 & 15 Car. 2. B. B.

Complained
Common.

When a Lord of a Manor was Complained that they could not make the Profit of the Revenues of their Manors, as of Wolastes, Woods and Pastures, tho' the Feoffees had Pasture signify ground, for their Tenements.

The Lord said, it was provided, that when such Feoffees bring an Affis for the Common may approve against a Tenant that the Lord Common of Pasture Appendant; but if the Lord grants Common Pasture within his Wafte, there is no Approval by this Act against a Common in goods; for the Words of the Statute be, Quantum pertinent ad tenementa fui, &c. And so was the Law taken and adjudged from after the making of this Act, and latter Authorities agree with the same; and albeit the common Appendant be without a certain Number, as to have sufficient Pasture for Beasts, quantum pertinent ad tenementa fui, which may be reduced to a Certainty, for 12 certum eff quod certum reddi potest, and therefore this Act doth extend to it; And the Writ of Deamendment of Pasture doth be only for and against such Commoners as have common Pasture within his Wafte, for the Words of the Write be, Et ad ipsa pertinent habendum feandum uti herum tenementum fuiun, &c. so as Common Appendant be or certain or uncertain is within this Statute; and so is Common Apparrent certain or uncertain, for (pertinent) extends as well to Common Apparrent as Appendant. 2 Inst. 86.

The Approval of Part, according to this Statute, that Part by this Act is discharged, information as if the Tenants, which hath the Common, purchases that Part, his Common is not extinguished in the Refusals. 2 Inst. 87.

And yet it may be tried in an Action of Trespass; for many Times he shall fail to have an Affis. Or if the Lord doth include any Part, and leave not sufficient Common in the Refusals, the Commoner may break down the whole Enclosure, because it standeth upon the Ground which is his Common. 2 Inst. 88.

A Commoner brought an Affis of Common Pasture for his Wafte, belonging to his Freehold, he was Lord, &c. and approved Part of his Wafte, and left the Plaintiff sufficient Common. The Plaintiff denied he had sufficient Common, and thereupon Hufe was taken, and Sir William Herle. Ch Juff. of the Court of C. B. took the Affis, and the Affis found, that the Plaintiff had no sufficient Common; whereupon the Court did award that the Plaintiff should recover his Common, &c. and the Recognitors of the Affis were going from the Bore; and albeit the Hufe was found against the Tenant, yet for his Advantage the Recognitors of the Affis ought to come back again; and to ordain, by their Discretion and Oath, sufficient Common to the Plaintiff, so that the Defendant might approve of the Remainder, by this Statute of Merton, as Trewood affirmed; whereupon Sir Wm Herle perused the Statute, and found the Statute as Trewood had said, and therefore was in purpose to have caused the Jurors to come again (the Record yet being in his Breath) to appoint sufficient Common to the Plaintiff, according to the Statute; but it was prevented, for that the Parties agreed. 2 Inst. 88.

* Here is the Statute of Merton shall not only bind the Lord's Tenants, but Neighbours also which claim Common of Pasture as appurtenant to their Tenements; but if any Claim Common by special Possession in that part or Grant for a certain Number of Beasts, or otherwise, which is due to Act or mention of common Right, he shall recover the same according to the Form of such Grant.

3. Wolast. 2. cap. 45. 13 E. 1. The Statute of Merton shall not only bind the Statute of Morton received, and made between Neighbours and Neighbours, the Doubt was, whether that Statute extended only between Lord and Tenant; and therefore many Lords of Wolastes, Woods, and Pastures, have been letted to make Approval by the Contraelection of Neighbours, tho' they had sufficient Pasture; for Remedy whereof this Statute was made. 2 Inst. 474.
Common.

4. *By Occasion of a Windmill, Sheepcotes, Dairy, enlarging of a Court*  
   *Here be 5 necessary, or Cartileges, none shall be griev'd by Ailifie of Novel Diffusion for Com- 
   mon of Pasture.*

5. The Lord made a Feoffment of Parcel of his Waste Land; the Feoffee, 
   may incloze; for this is an Approval in the Lord by the Feoffment; 
   Per Stone and Mutt; but contra per Specie and Berrie. Br. Common. 

6. A Man has Common in three Vills, the Lord may approve in the one 
   pl. 53. cites 3 E. 3. Intire Deb.

7. If the Lord improve Part of the Common, he shall not have Com-
   mon for the Land improved out of the Reidle of the Common. Godd. 
   97. cites 5 All. 2.

8. Ailifie of Common of Pasture; the Defendant said, that he had ap-
   proved of the Waste, saving to others sufficient Common, and free coming in 
   and going out &c. The Plaintiff said, that he had not sufficient Common; 
   Prift &c. and the Ailifie said that he had not sufficient Common, 
   by which it was awarded, that he recover his Common; and it was 
   held that the Jury, by their Discretion, shall ordain sufficient Common to 
   the Plaintiff, so that the Tenant may approve of the rest; for 6 are 
   the Words in the Statute of Merton; quod nota; by which the Parties 
   agreed; quod nota. Br. Ailifie, pl. 127. cites 7 All. 16.

9. Ailifie of Common; the Defendant said, that he has approved ac-
   cording to the Statute by reason that he is Lord, leaving to the Tenant 
   sufficient Common; there the Plaintiff shall recover immediately. But 
   by the Opinion of the Court the Ailifie shall inquire of the Sufficiency 
   of the Common, and so they did in Trin. 8 E. 3. and the Bar good with-
   out Colour given, and the Ailifie awarded upon Seitan and Diffeitiin also; 

10. Ailifie of Common; f. said that W. is Lord, and approved &c. and 
    left to the Plaintiff and other Tenants sufficient Common, and the Ailifie was 
    charged of the Sufficiency of the Common, which said that they had not 
    sufficient Common; but the Plaintiff was difsised, and it was paid by 
    fome, that if at the Time of the Approvement sufficient Common was fared 
    to the Plaintiff, this suffices. Br. Ailifie, pl. 135. cites 8 All. 18.

11. In Ailifie, by fome, where sufficient Common at the Time of the 
    Approvement is left to the Comrurer it suffices, though it be not sufficient 

12. In Ailifie, Lord and Tenant were, and the Lord bad Common in 
    the Soil of the Tenant, which is held of him by his Mannor of D. of which 
    the Land in which the Lord claimed Common is held, and yet per Cur. the 
    Tenant may approve his own Soil; For tho the Statute does not speak, 
    but that the Lord may approve against his Tenant and against his Neigh-
    

4. Note, it is said that the Lord could not improve against a Neighbour, but that the Lords were 
   hindered by the Contradiction of the Neighbours; for by the common Law the Lord might improve 
   against any that had common Appendant, but not against a Commoner by Grant. 2 Indl. 474.

*This is properly cut up in modern vico clty, but here it is taken for a Neighbour, the he dicrills in 
another Texts, so that the Commons and Towns be adjoining together; and if the Lord bad Common 
in the Tenant's Ground, the Tenant may improve within this AG, for there the Lord is in this Cafe Vi- 
cinus. 2 Indl. 474.
bour, yet the Lord in this Case is not but as a Neighbour to the Owner of the Soil, and the Tenant as Owner of the Soil may approve, per Cur by which Affile was awarded to enquire of the Sufficiency of the Common; for the Owner may well approve. Br. Common, pl. 22. cites 18. Aff. 4.

13. In Affile it was adjudged that the Lord may approve in his own Soil against his Tenants and his Neighbours. And where the Lord of a Manor approves, and the Lord of whom the Lord of the Manor holds the Manor has Common there by Vicinage, yet the Approval is good against him also; for he has no Common but as Neighbour; quod nota; by which the Affile was awarded, to inquire if the Plaintiff, who was Lord Paramount, had sufficient Common or not, quod mirum! for by the Demurrer that he is Lord, it is yet denied but that he has sufficient Common, and also is Party. Br. Affile, pl. 447. (446.) cites 18 E. 3.

14. Affile of Common of Pitcary; per Fencers, if I grant Common throughout my Manor with all Manner of Beasts, I cannot approve; but if I give to myself certain Parcel of Land for my several, I shall have it, and he shall not have Common there; quod non negatur. Br. Common, pl. 26. cites 34 Aff. 11.

15. If the Lord leaves sufficient Common, but the Way is not at so good Kafe or Plight as it was before, Affile of Common lies. F.N.B. 125. (D) in the new Notes there (C), cites 11 H. 4. 26. by Stuart.

16. In Trelpafs it was agreed that where a Man has Common appendant out of certain Land, yet the Lord may approve the Soil, and this it seems by leaving to the Tenant sufficient Common with Figures and Regrets, according to the Statute. Br. Common, pl. 20. cites 15 H. 7. 10.

17. Trelpafs of Hufe broken, the Defendant justified because he has Common there, and therefore he broke the Hufe; the Plaintiff said that he is owner of the Soil, and did it to barke a Man to keep the Soil; but the Statute W. 2. Cap. 46, does not speak but of Windmills, Sheep-cote, Dairy, and Augmentation of Court; but it seems by Hufe, that it may be taken by the Equity; quere. Br. Common, pl. 19. cites 7 H. 8. 28.


19. Upon Judgment for the Plaintiff, in an Affile upon any Branch of the said Statutes of Merton, or W. 2. the Court shall award treble Damages.

20. This Act shall not extend to Huses herebefore built upon Wases, or Commons, not having above 3 Acres of such Wase or Common Ground belonging to them; nor to any Garden, Orchard or Pond there, not exceeding 2 Acres; neither yet shall it cause any Person to lose or forfeit any Part or Damage for the same, but such Houses and Grounds shall still stand and remain, howbeit the Owners of such Wases or Commons may lay open so much thereof as shall exceed 3 Acres.

21. And where one useth Common in the Time that Heirs are within Age, or a Woman is Covert, or whith the Pasture is in the Hands of Tenants in Dower, or of other particular Estates; they who have such Entry from Time in which the Writ of Mandamus ever runneth, if they had no Common before, shall have no Recovery by Writ of Novel Disjussion, if they be deforced.

22. It was moved, whether in Case of Common Appurtenant by Prescription without Number the Lord of the Watt might improve? for it is not amenable, therefore not improvable; for the Common being without Number, the Sufficiency cannot be proved. Dyer & Manwood J. held, that also it be without Number, yet it may be reduced to a Certainty being by Prescription; as the Number of the Cattle which the left and most substantial Tenant of the said Tenant, at any time within Time of Memory, had kept upon the said Watt, and then the Plaintiff, the Lord, might improve leaving sufficient according to such Rate. 4 Le. 41. pl. 112. Mich. 19. Eliz. C. B. Anon.
23. If 2 Lords of 2 Manners have 2 Waps adjoining, without Inclosure or Separation, but the Bounds of each are well known by certain Marks, the one may inclose against the other, tho' the Tenants of each Manner have reciprocally common'd there by Reason of Vicinage. 4. Rep. 38. b. Mich. 26 & 27 Eliz. cited by the Reporter, as lately adjudg'd in B. R. in Caele of Smith v. How.'

24. The Lord may make Fisponds upon the Common, and the Commoner can't destroy them. Per Cur. Ow. 114 43 Eliz. B. R. in the Caele of Pelling v. Langden.

25. Where Men have Common in gross for a certain Number of Beasts, the Lord may approve leaving insufficient for them [But Roll says, Quaere this, for the Statute W. 2. cap. 50. 46.] seems to be contra.] Common fans Number is usually put in Cases, but Coke says, he never knew such Common granted, and therefore when it comes in Question, he said he will deliver his Opinion thereof; but says, that notwithstanding such Grant the Lord may common with him, and also the Grantee ought to use the Common with a reasonable Number. [Roll Rep. 475. remarks here that F. N. B. is the Writ of Admeasurement lies not of Common fans Number but of Coke. Roll Rep. 365. pl. 18. Parch. 14. Jac. in the Star-Chamber, in Caele Proctor v. Mallorie.

26. A Lord that is in by Wrong may improve by vertue of the Statute of Merton against the Tenants and Commoners. Clayt. 35. August 11 Car. before Barkley J. Hamerton v. Eaitoff.

27. The Lord can't erect an House within the Statute of Merton, unless Sid. 79. pl. 4. it be for his own Habitation or his Shepherd's, and he must allege, that S.C. he built it for one of those Purposes; or otherwise he may build a great House to let to a Nobleman, which may require a greater Curtelage than the Lord or his Herdman. Lev. 62. Parch. 14. Car. B. R. Nevil v. Hamerton.

28. One inclosed 2 Acres of Common (where all the Common was but 3 Lev. 62. S.C. Acres) to enlarge the Curtelage of his House, and so justified by the Statute W 2. cap. 56. It was argued, that it was not good because he did not allege, that his House was an ancient House; nor that his Curtelage was straight, and if it was, yet it would be unreasonable to inclose not avened, 2 Acres out of 3; but it was answered, that the Statute speaks of Houses, without laying ancient Houses, and therefore, if it were material it should come of the other Side. Windham J. held, that the House ought to be an ancient House; (but Twifden J. seem'd e contra,) but it not appearing that it was for his necessary Residence it was adjudged, that he could not inclose. Sid. 79. pl. 4. Trin. 14. Car. 2. B. R. Nevil v. Hamerton.

where the Inclosure is for Improvement of the Lord, and not where it is for the Enlargement of the Curtelage.

29. An Approvement may be against all Commoners, unless fans Number or in gross; per Keeling; But per Windham one cannot improve against his own Groat, tho' it be to a certain Number. Keb. 850. pl. 8. Hill. 16 & 17 Car. 2. B. R. in Caele of the King v. St. Brivill's Inhabitants. 30. Lord of a Mannor inclosed Part of a Common, and there being a line of Wood and Timber growing thereon, the Plaintiff intifed, but it was 2 Illes were directed to try'd, the Court thought fit to continue the Injunction, and directed a Trial to be had at whether fans the
Coiiinion. to Day, the 17 Vera. Ditch cap.

31. Agreement between Lord and Tenants for including a Common, that the Tenants should quit their Right of Common, and the Lord should release them all Quit-Rents; The Inclosure was prevented by pulling down the Fence, and the Tenants continued to use the Common and some of them to pay their Quit-Rents. This is a Waiver of the Agreement. M.S. Tab. January 2, 1719, Lady Lanesbury v. Oskintho.


33. Bill brought by Plaintiffs as Tenants of the Manor of Walton, in the County of Surry, to establish their Right of Common of Pasture and Turfary in the Waste of the said Manor, and for Indictment against Defendant Palmer, Lessor of the Manor for Years under the Crown, to stop his digging of Brick-earth and making Brick, and including Part of the Common, &c. Motion upon the Bill filed, and Affidavits of making Brick and including Part of the Common till Answer and further Order. King C. affine by J. Jekyll, Master of the Rolls, denied the Motion; for that the Lord of Common Right was intitled to the Soil of the Waste, and the Tenants had only a Right to take the Heritage by the Mouth of their Cattle; and by Statute of Merton, the Lord might include Part of the Waste leaving insufficient Common; that at Common Law, in an Action brought against the Lord, the Tenant must alledge in the Declaration, that there is not sufficient Common left; or he can't maintain the Action; and if that should be the present Case (though no such Matter is made out by the Affidavits) the Tenants may have their remedy at Common Law; That the Lord has a Right to open Mines in the Waste of the Manor, and why not to dig Brick Earth, especially in the present Case, where the Bricks are made for one of the Tenants of the Manor, and to be employed in Building upon the Manor. As to the Inclosure, it was too soon for an Injunction before Answer. MS. Rep. Patr. 2 Geo. 2, in Canc. ..... v. Palmer & al.

(B. a) Inquisition, Pleadings and Proceedings in a Nochanter, or Action for throwing down Incloures.

That is to

1. 13 Ed. I. If any (upon just Title of Appraisen) do make a Ditch or Hedge for that Purpose, which afterwards is thrown down by some who cannot be discovered by Verdict of the Afflis or jury, and of Rut, Force, the Towns adjoining will not indite such as are guilty of the Fact, in such or Triumph; the said Towns shall be disliarmed to level again such Ditch or Hedge as but being so

Time is appointed, the Law doth appoint (as in many Cases it doth) a Year and a Day for the indicting of the Middies; and by the Indictment the Lord shall know against whom to bring his Action. 2 Inst. 476. If the bordering Towns do not; within a Year and a Day, indict the Middies, then shall the Lord, or other Party grieved, bring his Action upon this Branch against the Towns bordering round about the Town wherein the Fact was done, and Judgment shall be given, that they shall, at their proper Costs, make the Ditch or Hedge, &c. and yield DAMAGES; and after Judgment given, they shall be disliarmed to make the Hedge or Ditch, &c. and so it was held in the Star Chamber. Hill. 14 Jac.
Common.

in Sir Wm Mallories Cafe. 2 Inf. 478.—Coke Ch. J. said he had seen an ancient Reading upon this Statute, where it was said that the next Vill should have a Year and a Day to abate the Offenders, and if the Vill does not do it within the said Time, then it shall not be abated upon the Statute to repair the Inlosure, but the Party griev'd shall have an Action upon the Statute, as a Man that is robbed shall have an Action upon the Statute of Winton against the Hundred; and said that there is a Note in the Margin of the Reading that in Time of E. 4. Piggot J. held accordingly at a Reading, and that it seem'd to him to be good Law. And the Lord Chancellor afterwards agreed particularly all that which was said by Coke. Roll Rep. 365. pl. 18. Pach. 14. Jac. in the Star-Chamber, in the Cafe of Proctor v. Mallorie.

2. Upon Exception taken to the Writ, a new Difftringas was awarded Cro. C. 259, against the Vills adjacent, and Illues were estraited. Jo. 306. pl. 18. 251, pl. 20. Mich. 8 Car. B. R. The Cafe of the Forest of Dean, alias, Gibbon's jelly.

3. There need not be a Year before the Offenders should be in-Adjudged, but there ought to be a convenient Time for the Country to enquire who were the Prolomers, and the Court shall adjudge what Time is not necessary-convenient; Per Banks Att. Gen. cites a Resolution in 12 Jac. Cro. ry to be at C. 440. pl. 10. Hill. 11 Car. B. R. in Cafe of the King v. Epworth. low'd, but a convenient Time; and of that the Court may properly judge. 5 Salk. 167. Pach. 1 W. 3. The King v. Pen- rich Inhabitants.—S. P. Skinn. 94. Hill. 35 Car. 2. B. R. per Cur. in Crewick's Cafe—The Statute supposes a reasonable Time to be allowed for Inquiring before the Action should be brought on the Statute; Per Curiam. 10 Mod. 117. Pach. 10 Ann. B. R. the Queen v. Guelthorp Inhabitants.—All the Precedents are at least a Year's Time. 10 Mod. 157. S. C.

4. Judgment was had against the Inhabitants of S. to repair at their own proper Costs the Fences and Dikes thrown down, and because it was not done, a Writ of Inquiry of Damages illued, and 300 l. Dama ges found, and a Difftringas to the Sheriff, to levy it upon the Vills; upon which they came by their Counsel, and prayed to have Liberty to plead, inasmuch as by this way they are condemned unheard, and that by an Inquet against which no Attaint lies. And it was doubted, whether a Scire Facias ought to have ifeed before the Difftringas, but upon Consideration the Court thought, that the Difftringas ought to have contained a Scire Facias in it, and so they obtained Leave to plead. Sid. 107. pl. 19. Hill. 14 & 15 Car. 2. B. R. Queen Mother v. Somerset Inhabitants.

5. The Court was moved for a Difftringas against the Inhabitants of H. for throwing down of Banks of the Earl of Bedford's in his drain'd Land. Per Roll Ch. J. take it, but at the Return of the Difftringas the Inhabitants may plead to you notwithstanding. Noy, the late King's Attorney, would not have suffered it. Sty. 417. Trin. 1654. Anon.

6. After Money levied by Difftringas containing Fieri Facias grounded on W. 2. cap. 46. for throwing down Inclosures, and Inquisition taken by the Sheriff; Jones prayed that the Money might be brought into Court, and remain, and that he might have Time to plead, which the Court granted. Keb. 479. pl. 7. Pach. 15 Car. 2. B. R. The King v. the Inhabitants of the Forest of Dean.

7. Upon an Inquisition for throwing down Fences, and 80 l. Dama ges affised, a Difftringas illued, and Defendants came in, and plead, that it was not done Notian, which was found against them, and second Damages given; and it was moved to set aside the first Damages, 1st. Because the Inquisition is only to ascertain what Vills have done it, to the Intent that a Difftringas may go out, and it was never intended to conclude any in Point of Damages, being only an Inquet of Office, against which no Attaint lies. 2dly. Because those Damages are assised upon us before we were summoned, and lo we were not heard for our Exceuf and to mitigate them, but condemned and concluded not heard, nor not summoned, and they cited Cro. C. 250. and Cro. E. 859. 2 Inf. 477. Cro. Car. 580. And they said, that they might plead to the Right
upon the Disturbing, so that it is not Reason that they should be concluded as to the Damages by the Inquisition; but per Cur. the first Damages should stand, and shall not be viritiated by the second, because the second Verdict as to the Damages is void, inasmuch as the said Matter to be enquired upon the second Issue is the NoeHTaner, but for better Security they directed the Prosecutors to release the second Damages, and as to the Mischief objected, that the Damages being allowed by Inquest of Office no Aaint lies that is true, but cannot be properly said Mischief, because it is so enacted by Parliament, that the Damages shall be aested as before; yet if they are extrewe, the Party is not without Remedy; for when they come in to plead to the NoeHTaner, if the Damages were outragious, they ought to have taken in their Plea, viz. protesfando, that the Damages were outragious; and after might have pleaded, 1st, the Damages were only of such a Value, and upon this other Issue should be taken; wherefore the Counsel for the Defendants in this Case moved, that they may now plead to the Excessiveness of the Damages, but insomuch as they have not taken it by protesfando before the first Issue found against them, the Court would not suffer them, but gave Judgment for the Plaintiff, and that the 30 l. being levied upon the Disturbing, they shall have it out of the Court notwithstanding the second Damages given by the second Verdict Sid. 212. pl. 19. Trin. 16 Car. 2. B. R. the King v. Upwood and Rawley Vills in Com. Huntington.

Salk. 167. S. C. 8. Disturbing upon the Statute of 21 Edw. 3 for throwing down Incloures against the Inhabitants of Proximia Vills; two of each Vill came, and pleaded for themselves and the other Inhabitants of the several Vills, that the Fences were thrown down in the Day-time when the Per- fons might be known, abique hoc that they were thrown down in the Night, or at such Time that the Offenders could not be known, and fo Issue joint in the disjusuve; and now at the Trial at Bar 'twas said for the Defendants, that if the throwing down was either in the Day or in the Night, fo publicly that the Misdakers were known, 'tis not within the Statute, to which the Court agreed; for the Statute was to give Remedy in Cases where the Malefactors not being known, the Parties were without Remedy by Trespasses, &c. But if it was done in the Day or Night before the Face of the Owners, so that they have Remedy by Trep- sasses, &c. this is not within the Statute; and upon the Evidence it appears to be done publicly, and yet by the Defendants, the Jury, by Direction of the Court, found for the Defendants. Lev. 108. Trin. 15 Car. 2. the King v. Inhabitants of Woodford, Chingford and other Vills in Eifex.

* Lutw. 157. Malabar's Cafe. 9. An Inquisition was returned upon the Statute against pulling down Incloures. They took Issue as to the Damages only. It was moved that before the Trial for the Damages, there might be Judgment given to have them set up again, having been long down; Twicken said, when you have Judgment for the Damages, then one Disturbing will serve for set- ting up the Incloures and the Damages too. Mod. 66. pl. 12. Mich. 22 Car. 2. B. R. Anon.

1. Inclined to grant a new Disturbing, as to the building the Fences, being consent'd to be done by the other Issue; but Time was given to plead de novo. — Ibid. 672. pl. 2. the Court ordered the Issue as to the Damages to be tried first, and then a Writ may be granted for setting up the Fences, and for the Damages also. — Ibid. 723. p. 17. S. C. The Trial at Bar being over as to the Damages, the Court granted a Distur- ging to levy and set up the Fences, but would not order it by any Day certain, but to follow the Process of the Court, and to set the Issues.

But this must be taken by Prosecution before the first Issue found against them.

10. If the Damages are excessive, when the Parties come in to plead to the NoeHTaner, they may take, by Prosecution, that the Damages were excessive, and after plead that the Damages were not but of such a Value. Per Cur. Lutw. 157. Pach 32 Car. 2. Malabar's Cafe.

11. The

2. Upon the Return of an Inquisition a Dierfringas was awarded, whereupon it was objected that instead thereof a Scire Facias should have issued, to new Cause, &c. but adjudg'd that a Scire Fa. was not necessary. 3 Salk. 167. Patch. 1 W. 3. B. R. The King v. Penrith Inhabitants.

3. Dierfringas for throwing down Fences, &c. was quash'd, because 3 Salk. 167. there were not 15 Days between the Tefe and Return. Show. 8o. Mich. The King v. Penrith Inhabitants.


6. Upon the Return of an Inquisition for flinging down the Fences of S. &c. it was objected that it did not appear that S. was Lord of the Manor, or had a Right to those Fences; but it was held that this need not be shewn; for if he had no Right, this ought to be shewn on the other Side. 3 Salk. 167. Patch. 1 W. 3. B. R. The King v. Penrith Inhabitants.

7. In Writ of Inquiry of Damages for Fences thrown down in the Carth. 114. Night, it was held per Cur, that there was no need of Notice of the Execution of the Writ, because traversable; but per Cur. it was quashed, because it was Interessatus juxta pro rejudicio eujusdam terminii, where it ought and it was to have been Poffeiwauatus, juxta; it might have been a concurrent Leafe, or objected that Leafe not commenced, and no Possession laid, and therefore it was ill. Show. 106. Mich. 1 W. & M. The King v. Hermitage (Inhabitants.)

8. In a Noclanter it is not necessary to set forth what Estate a Man The Right to the Heritage of this Waft, or might be only a Commoner, and so have no Right to inclufe, and so not within the Statute; but the Court refused, that Ex Vi Terminis, the Words import that he had an Interest in the Land of this Waft, and not in the Heritage only. And Holt, Ch. J. held that he who had only the Heritage might inclufe, and therefore the Return in the Inquisition was held good; for it is not necessary to set forth what Estate the Party had. — In Debate of this Case it was agreed per Cur. that a Grantee of a Common might have this Writ, and that so might the Owner of the Waft, or Grantee of the Heritage. Show. 106. He that has a responsible Heritage cannot inclufe, but he that has Heritage may. Arg. Godb. 417. Trin. 21 Jac. B. R. in Case of Lord Zouch v. Moor.


10. The Inquisition found 100 Perches, and 2 Gates, and 10 Stiles pulled down; but it appeared upon the Evidence that no more than 3 Perches of Hedge and Fence, and 9 Gates, and 3 Stiles were pulled down, &c. But per Cur. this Matter cannot be inquired into, because the Defendant had not traversed the Number, and so that was not in Issue; Quod Nota; for it was an Oversight of the Pleadcr. Carth. 242. Patch. 2 W. & M. in B. R. The King v. Inhabitants of Hermitage.

11. A licences B. to make and continue an Inclosure of Common to him and his Heirs; C. the Heir of A. breaks down the Fences, and julti-
Common.

12

Justifies for Right of Common; B pleads as above; per Cur. 'tis ill by way of Licence, but 'tis good by way of Rehearsal of Common, but a Licence is determined by his Death. Show. 349. Patch. 4 W. & M. Miles v. Eteridge.

21. In Trespass for pulling up and throwing down a Hedge, the Court would give no more Costs than Damages; there being no Apportionment. Comb. 420. Hill. 9 W. 3. B. R. Anon.

22. The neighbouring Vills upon the Diftringas may come and traverse the Falts being done Not faster, or that they were the next Vills, or even the Damage. 12 Mod. 340. Mich. 12 W. 3. per Curiam. In Case of More v. Watts.

23. This Statute not extending to every Lord, but to such only as had Right to approve; the Defendants, to shew that the Lord had no Right to approve, pleaded a Prescription to Common thus; viz. that divers Freeholders had a Right to Common, without confining their Prescription to any certain particular Tenements. It was admitted that by way of Caius this general Way of Pleading had been good, but not by way of Prescription, and to this Opinion the Court inclined. 10 Mod. 157, 158. Patch. 12 Ann. B. R. the Queen v. Gruelthorp Inhabitants.

24. As to the Form of proceeding against Prostrers of Fences of Lands approv'd out of the Common, and several Pleas of the Defendants, see Cro. C. 280, 439, 580, and Lutw. 157, 158, and ibid. 169 to 180.

(C. a) Apportion'd. In what Cases.

1. Common Appendant may be apportion'd, because it is of Common Right, and therefore, if Commoner purchases Parcel of the Land in which, yet the Common shall be apportion'd. 4 Rep. 37. 6. Mich. 26. & 27. Eliz. B. R. refolv'd in Tarringham's Case.

2. In Case of Common for a certain Number of Cattle, if so small a Parcel be demified which will not keep one Ox nor a Sheep, then the whole Common shall remain with the Lennial for always, as that the Land in which be not furccharged. 13 Rep. 66. Hill. 7. Jac. C. B. Morfe v. Webb.

3. Common Appendant and Appurtenant is all one as to Seuerance; for if such Commoner grants Parcel of the Land to which the Common is Appurtenant or Appendant, the Grantee shall have Common pro Rata; agreed. 2 Brownl. 297. Hill. 7. Jac. C. B. Morfe v. Webb.


(D. a) Ad-
(D. a) Admeasurement and Surcharge of Common. In what Cases the Writs lie.

1. 13 E. 1. Woffom. Upon a second Surcharge of Pasture, if the Pasture were admeasured before the Justices, the Remedy shall be by Writ Judicial returnable before the Justices under the Seal of the Sheriff and Justices; and then the Justices shall award Damages to the Plaintiff, and shall adjourn to the Exchequer the Value of the Beasts (wherein the Pasture was so overcharged) to be answered to the King.

2. If the Admeasurement were made in the Country, the Sheriff, by a Chancery Writ shall inquire of the Surcharge and Value of the Beasts, and shall answer the same to the King in the Exchequer.

3. To prevent Fraud in the Sheriff, all such Writs De secunda Supereneratione shall be enrolled, and also at the Year's End transferred in the Exchequer; and so likewise shall Writs of Redissuison in 11 H. 3., in the Archives of the Tower of London, where a Writ De secunda Supereneratione was granted. 2 Inst. 770.

When the Plea is removed before the Justices there upon pleading, or Confession before them after Admeasurement made and returned, Judgment shall be given by the Justices; but if the Plea be not removed, the Admeasurement shall be enquired of, and made before the Sheriff. 2 Inst. 779.

By the Writ of Secunda Supereneratione the Plaintiff shall recover his Damages against him that was Defendant in the first Writ, and also he shall forfeit unto the King the Cartle which he put in over the due Number after the Admeasurement made. And all this is by the Statute of Westminster. F. N. B. 126. (b).


By that in Writ of Admeasurement of Pasture, he brings the Writ ought to be admeasured as well as he against whom the Writ is brought, unless where the Chief [the Lord] himself brings it, &c.——And 6 Rep. 54. Corbett's Case, is a wrong Quotation.

3. If the Defendant has Common Appendant to his Freehold in three Vills, it may be admeasured for the Lands in one of the Vills. F. N. B. 125. (D) in the new Notes there (e) cites Fitzh. Admeasurement 15. in time of E. 1.

4. If he has Common Appendant, and the Lord of the Soil grants him Common there for 200 Beasts more, whereby the Common is surcharged, Admeasurement lies against him, and he shall admeasure within the Number granted him, and shall be put to vouch his Grantor to Warranty. F. N. B. 125. (D) in the new Notes there (c) cites Temp. E. * This is a 1. ibid. 16. Barr. 862. See 22. Alfre 65. Admeasurement 11.

5. The Writ of Admeasurement lies, tho' the Plaintiff has dissised the Tenant of the Common, it he continues feised of the Land to which. F. N. B. 125. (D) in the new Notes there (c) cites 8 E. 3. Admeasurement 14.

6. Note, by all the Justices, that Writ of Admeasurement of Pasture does not lie against him who has Common Appendant, nor against him who has Common by specialty for Beasts without Number, but against him who has Common Appendant, and upon specialty to a certain Number of Beasts; but then the other ought to plead it, and showed that it has by specialty for so many Beasts, and has put beyond the Number of so many Beasts.

Br. Admeasurement, pl. 5. cites 22. Alfre 65.

Seems misprinted, and that it should be (65) as in Sir. 7. Ad-
7. Admeasurement of Pasture against one who said, that there is another who has 20 Acres of Land, to which he has Common there, and demanded Judgment of Writ, because he is not named; for all the Tenants shall be admeasured where Action is brought by one, and yet non-allocutur; for none factum be implicated, but he who did the Tort, and the Admeasurement of all is not material, for they should be justly admeasured, and then they have no Wrong; But Nonfronsurant shall be brought by all the Tenants, and by Babb. Ch. J. the View well lies in Writ of Admeasurement. Br. Admeasurement, pl. 3. cites 8 H. 6. 26. Parties to the Suit. F. N. B. 125. (B) in the new notes there (b) cites 8 H. 6. 26.

8. In Action brought against one all the Tenants shall be admeasured. Br. Joinder in Action, pl. 32. cites 8 H. 6. 26. per Elerker.

9. If the Sheriff returns Nihil in Writ of Admeasurement of Pasture, yet the Plaintiff shall have Judgment as if the Process had been return'd served, quod non negatur. Br. Admeasurement, pl. 7, cites 11 H. 6. 3.

The Writ is Vicontial landlord directed to the Sheriff. N. B. 126. (E)—2 Inf. 369. The Writ is Vicontial, and the Parties may thereupon plead before the Sheriff in the County.

11. And per Jenny, because it is not in a Court of Record, therefore it ought to be removed by Pone or by Recordare, or by Writ of false Judgment, and not by Certiorari; for this is to remove out of a Court of Record. Ibid.

It may be removed out of the Court of the County by Pone at the Suit of the Plaintiff, without showing Cause in the Writ; but at the Suit of the Defendant he ought to show Cause. 2 Inf. 369. cites 44 E. 3. 10.

If a Man be once admeasured by a Writ of Admeasurement directed unto the Sheriff by the Sheriff &c. and afterwards he sucharges the Common again, then the Party who sued the first Writ shall have a Writ to the Sheriff, called a Writ De Secunda Superoneratione. F. N. B. 126. (E)——On the Writ of Admeasurement awarded to the Sheriff, by which he makes Admeasurement, if the Defendant sucharges the Common after, the Writ of Secunda Superoneratione shall be awarded out of the Chancery; but upon a Judgment given in the Common Place of Admeasurement &c. if the Defendant sucharges the Common, the Writ of Secunda Superoneratione shall be awarded out of C. 8. F. N. B. 126. (E)

13. The Writ of Admeasurement of Pasture hath betwixt Commoners who have Common Appendant to their Freeholds, if one of them sucharges the Common, by putting in more Cattle in the Common than he ought to have Common for there, then that Commoner shall have this Writ of Admeasurement of Pasture. F. N. B. 125. (B).

He cannot divest the Surplus where the Tenant has Common Appendant till it be admeasured. F. N. B. 125. (D) in the new Notes there (b) cites 10. E. 3. 51. 18. E. 7. Admeasurement, 7. per Cur. and yet he may approve it.
15. The Lord may have an Affi for against the Tenant for the Surcharge, for that he is disturbed of the Profit of his Land. Quere of these Cases.

F. N. B. 125. (D). But if the Lord surcharges the Common, the Tenant shall not have a Writ of Admeasurement against the Lord, but he shall have an Affi for Common against the Lord. F. N. B. 125. (D).

See Bradson, 229. that the Lord may have Admeasurement. the Tenant shall not have a Writ of Admeasurement against the Lord, but he shall have an Affi for Common against the Lord. F. N. B. 125. (D).

converts for a Commoner against the Lord. Temp. E. 1. Admeasurement 16. Not against the Lord, because he cannot approve but against the Tenant, who is not Lord. Ibid. 11. 18 E. 11. Admeasurement 7. If there are two Neighbours in a Vill, who intercommunicate in the other's Land, Admeasurement does not lie between them; but if there are three Neighbours, A, B, and C, and each intercommunicates in the other's Land, if one of them surcharges, the whole Admeasurement lies, for he had Common in the Lands of the three, &c. But where there are only two Neighbours, A, B, Admeasurement does not lie; for there, on a Surcharge, the Remedy is by Aff for Tenant, and not as a Commoner; and a Tenant cannot be admeasured, but where there are three Commoners or more who intercommunicate, each shall be admeasured in the Lands of the other. 18 E. 1. 45. Admeasurement 59. F. N. B. 125. (D) in the new Notes there c.----And it appears by the Book of Entries, Fol 125, that a Writ of Admeasurement does not lie against the Lord of the Soil. F. N. B. 125. (D) Mich. 9 H. 41. b. pl. 16. S. P. that Admeasurement lies not against the Lord.----If the Lord makes Approvement of the Common unto himself, and it is not sufficient Common to the Tenant, the Tenant shall have an Affi, and not a Writ of Admeasurement. F. N. B. 125. (D).

16. In the Time of E. 1. it was agreed, that one Neighbour shall have a Writ of Admeasurement against another, where they intercommunicate by reason of Neighbourhood. F. N. B. 125. (E)

17. He who hath Common Apparrent Certain, or Common by Grant certain, shall be admeasured; and a Tenant shall have an Admeasurement against him; but he who hath a Common Apparrent without Number, or Common in grofs without Number, shall not be tinct, nor a Writ of Admeasurement doth not lie against him. F. N. B. 125. (D)

18. By the Writ of Admeasurement all the Commoners shall be ad- S. P. As well measured as well as those who were Parties to the Writ. F. N. B. 126, 127. (I).

as he who hath surcharged it, and he who bringeth the Action shall also be admeasured. F. N. B. 125. (B).

19. But yet if any of those who are Commoners, which were not Parties to the Writs of Admeasurement, &c. do surcharge the Common after Admeasurement, they shall not forfeit their Cattle, nor the Value of them that were in the Pattle above the due Number, because they were not Parties to the first Writ, nor the Party shall not recover Damages against them for this Surcharge in this Writ; for the Writ of Secunda Superannuation lies not but only against him against whom the first Writ was sued forth. F. N. B. 126, 127. (I).

bring a new Admeasurement. F. N. B. 126, 127. (I) in the new Notes there (a) cites 18 E. S. (50) Admeasurement 7.----2 Inf. 570. S. P. accordingly.

(E. a) Extinguishment thereof.

1. ASSISE of Common of Pattle, the Tenant pleaded that in the Time of E. 2. the one Land and the other were in the Sefin of W. and by Unity the Common is extinct; the other said that the Land to which he claimed to be appellant is ancient Land to which Common has been appended Time out of Mind, and therefore the Affi was awarded. men. pl. 49. Br. Extinguishment, pl. 27. cites 13 Aff. 21. & concordat. * 15 Aff. 2. cites S. C. It North. But Brook says it seems that 'tis against Law, and that the Parole in this Case may be laid as Quare. But Brook,

2. In for 'tis not Law.
16

Common.

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11. Prescription for Common *appendant. Unity extinguishes this, Common附属的


13. A Man who has Common for his Cattle levant to his Tenement Nov. 27, in such a Field, relieves all his Right and his Common in Part of the S. C. but seems not ver-
y clear. — 2 And. 89.

14. A Copyholder had Common of Essovers in the Lord's Woods S. C. cited appurtenant to his Copyhold; and he purchased the Freehold Inherit-
cance in the Copyhold, and had Words in his Deeds of Purchase, of all Commons, &c. appertaining to the said Mesuage; yet it was adjudged,
that the Common, which he had, belonged to the copyhold Estate, and
was extint; but if there had been special Words to make a new Grant
of the like Common as he had in the Copyhold before the Surrender, it

15. A Copyholder had used to take Essovers to repair his Hedges; and Mo. 665. pl.
the Lord granted unto him the Freehold of the Copyhold by the Words of
(Grant unto him all the Lands, Tenements, and Hereditaments thereto ap-
pertaining, and therewith used and occupied) Yet it was resolved he should Ward, S. C.
not have Common in the Land of the Lord. Cro. J. 253. pl. 8. cites

Words (of all Commons &c. appertaining to the said Mesuage) but adjudg'd, that the Common be-
long'd to the customary Estate which is determined, and so it did not pass; but if he had special Words to make a new Grant of such Common as he had appurtenant to the Copyhold before the Surrender, it
seems it had been good. —— S. C. cited Gilb. Treat. of Ten. 210, 714, and observes the Difference
between the Words of Grant in Cro. J. and those in Mo. and that in Mo. another Reason is added, viz. that raw he claims by the Lord who cannot have Common in his own Ground; but this is a Rea-
son only where the Common is in the Lord's Soil; but the other holds where it is in another's Soil, which is a much stronger Case; for, as it seems, in such Case there is no way to continue the Common;
for by the Grant of the Freehold it is gone, and the Lord can make no new Grant of it, but in
his Soil he say.

A Copyholder of Inheritance, to which Common belonged'd by Custom, purchased the Freehold by these Words, (Grant, Bargain, and Sell the said Mesuage, with all the Commons therunto belonging.)
It was agreed, that it could not pass by way of Bargain and Sale. Holt Ch. J. said, that the Word (Grant) being in the Deed, if it had been pleaded by the way of Grant, it had been good. But this being in Trespass, wherein the Defendant justified for his Common, it was adjudged for the Plaintiff, Nift &c. Comb. 127. Trin. i W. & M. in B. R. Speaker v. Syant.

16. In Case of a Common appendant, if one Tenant of the Manor pur-
chases the Seigniory, and then grants over the Tenancy, the Common which he
had before shall be still appendant; for 'tis not extinguished by the
Unity, but shall pass with the Tenancy, but otherwise of a Common in
18.

Common.


19. One who had Common by Prescription to an House, and 49 Acres of Land, made a Fassment in Fee to another, of 5 Acres, Part of the Land; adjudged, that the Common (whether appendant or appurtenant) is appropr.; and the one that has Common appendant Purchases Parcel of the Land in which, &c. yet the Common shall be appropr.; but in such Case Common appurtenant by such Purchafe shall be extinct, or if he takes Leave of Parcel all is suffused. 8 Rep. 78 b. 79 a. Trin. 7 Jac. Wiat Wild's Café.

20. A Copyholder for Life had Common in the Lord's Waste (as all the Copyholders had by Custom of that Manor). The Lord grants and confirms the said Copyhold Lands cum Pertinencis to him and his Heirs. Resolved by all the Court that the Purchaser should not have Common there, as the Copyholder had; for he had his Common by reason of Custom, which annexed the same to his customary Estate; which being destroy'd by his own Act, by making it a Freehold, the Common is determ., and cannot continue, without Special Words; and the general Words (cum pertinentialis) are not sufficient to pass the Common. Cro. J. 253. pl. 8. Mich. 8. Jac. B. R. Martham v. Hunter.

Yelv. 189. 190. S. C. the Words (Cum Pertinenc- nis) will not create a Common; for the Common before used was gained by Custom, and annex'd to the customary Estate, and is lost with it, the Common not being in its own Nature incident to the Copyhold Estate, but a collateral Interet gained by Usage; Quad Nota; per tot. Cur.—Brownl. 220. S. C. adjug'd. —2 Brownl. 220. S. C. argued and adjudged. —Built. 2. S. C. adjug'd, per tot. Cur. accordingly; and Fleming Ch. J. said, that the sole Point in this Case rely's upon the Prescription; for in this Case he ought to say in Pleading, Falls if confected, but after the Purchafe he cannot say so; for the Purchafe extinguishes the Prescription, and the Common being by Prescription which is gone, the Custom is gone also; to which Yelverton J. agreed, and Williams J. said, that a Copyholder may instite himself by pleading a Usurpation, but when he himself, by his own Act, has determin'd his Es- tate, he has hereby lost his Common; to which Yelverton and Cooke J. agreed. —S. C. cited, 6. Mod. 20. & 1 Salk. 566.—Noy. 116. Darfon v. Hunter S. C. adjudged —S. C. cited Gilb. Treas of Ten. 210 accordingly; for the Common was not Appurtenant to the freehold Estate granted by the Lord, and therefore Care ought to be taken to add Words to continue the Common and other Profits appurtenant to the Copyholder after the Infranchisement.


S. P. For in the first Case it properly and strictly belongs to the Lord, but in the last Case it belongs to the Estate.


S. P. For in the first Case it properly and strictly belongs to the Lord, but in the last Case it belongs to the Estate.

24. S. feified of the Manor of W. claimed Common of Pasture be- longing thereto in all the open Places of the Forest of Windsor within the
the Bayliwick of F. and made a Title by a Grant of R. 1. to the Abbot of Waltham Holy Cross in Effex, and shewed the Dissolution of the Abbey, and the Copyholders coming to the Crown, and a Grant of the said Manor to one N. with Words of tot, tanta, talia, Libertates, Privilegia & Branches &c. quot &c. ab quis Abbas &c. and fo by meane Conveyances brought the Title down to himselfs, and pleaded the Statute for reviving the Liberities in the Crown. It was held by Noy that, admitting a good Title in the Abbot, yet by the Dissolution there was an Unity of Possession in the Crown which destroy’d the Common, and it shall not be revived by the general Words of tot, tanta, talia, &c. Libertates, &c. because it is neither Franchise, Liberty, or Privilege; and so it had been adjudged for Land in Brasden Purell, formerly the Possession of the Abbot of Malmesbury. But if the King had granted, by special Words, tot, tanta, & talia, &c. Communias, &c. quot, &c. in such Case, if there was any Common appendant or appertainant to that Manor or Lands in the Abbot’s Hands, it should be receiv’d; but not so of a Common in gross, for then every one that hath any Part of the Abbot’s Possessions, should have as great a Common by such Words as the Abbot himself had, and so the King’s Lands would be infinitely fraught’d, but in Case of Common appendant or appertainant, there is no such Prejudice, for then no Man can common with more Cattle than is proportionable to his Land, and so it was adjudged. Jo. 285. 8 Car. Sir Edmund Sawyer’s Case.

25. By Glan, Ch. J. if Copyholders have Common in the Soil of a Stranger, it remains notwithstanding the Infranchisement of the Land, and shall be enjoy’d by all Tenants of the Land as it was before by Copyholders. 2 Sid. 84. Trin. 1658.

26. The Lord of the Manor infranchises a Copyhold with all Commons thereto belonging or appertaining, and afterwards buys in all the other Copyholds, and then disputes the Right of Common with the Copyholders he had infranchised, and at Law recovers against the Plaintiff, because the Prescription of Common to the Copyhold was destroy’d by the Infranchisement; and the Grant of the Copyhold with all Common thereunto belonging and appertaining gives no Right of Common, because when infranchised, no Common in point of Law belonged or appertain’d thereunto. Per Cur. decreed the Plaintiff should hold and enjoy against the Defendant the same Right of Common as belonged to the Copyhold, and Gofts against the Defendant. 2 Vern. 250. pl. 236. Hill. 1691. Styant v. Staker.

27. In a Nofantener the Defendants pleaded, that the Manor of F. is parcel of the Denefines of the Dutchy of Cornwall, and that the King, &c. was feized of the Manor in Fee, as Parcel of the said Dutchy, and that H. Common in which, &c. was Parcel of the said Manor, and that all the Tenants of any Tenements held of the said Manor lying in the Vill of H. have, Time out of Mind, had Common of Pature for all the Cattle Levant and Couthant, &c. at all Times of the Year, in Hermitage Common, and that the Professor De torn hat had enclosed it, so as they could not enter &c. and had not left them sufficient Common, and milie was taken upon this Prescription Modo & Forma &c. and upon Evidence at the Bar it appeared, first, that all the Tenements in Hermitage, unto which the Common of Pature was claimed, were heretofore Parcel of the Abbey of Sarum, and that by the Dissolution of that Abbey the same came to H. 8. before the Birth of Ed. 6. So that the Dutchy of Cornwall was likewise, at the same time, in the Possession of H. 8. for want of a Duke of Cornwall, and hereby an Unity of Possession both of the Tenements to which the Common of Pature appertained, and also of Hermitage Common, (the place where the Common of Pature
Pature was to be had) was at that time in Possession of King H. 8. and it likewise appeared, that the Tenements in Hermitage were granted to the several Tenants after the Unity of Possession, and thereupon the Council of the Protector intituled, that by this Unity the Prescription was destroyed, and the Common of Pature quite extinct. But after much Debate it was unanimously resolved, per Holt Ch. J. and the whole Court, that this was not such an Unity of Possession as would destroy the Prescription; for though King H. 8. had an Estate in Fee in the Lands a qua, and also in the Lands in qua, yet he had not as perdurable an Estate in one as he had in the other; for the Quality of the Estates differed, because in the Manor of Fordington, which was Parcel of the Duchy of Cornwall, and in Hermitage Common in qua, &c. which was Parcel of that Manor, King H. 8. had only a Fee determinable on the Birth of a Duke of Cornwall, which is a base Fee; but in the Tenements in Hermitage Parcel of the Abbey a qua, he had a pure Fee simple indeterminable jure Coronae, and therefore an Unity of such Estates works no extinguishment; for where an Unity of Possession doth extinguish a prescriptive Right, 'tis requisite that the party should have an Estate in the Lands a qua, and in the Lands in qua, equal in Duration, Quality, and all other Circumstances of Right. -Carth. 240, 241. Pach. 4. W. & M. B. R. The King v. Hermitage Inhabitants & al. 28. Release of Common in 1 Acre is an Extinguishment of the whole Common. Per Cur. Show. 250. Pach. 4 W. & M. in Cafe of Miles v. Eteridge. 29. Common sinr. Nommre in gress. cannot be extinguished by Purchase of Parcel of the Land; per Powell J. Lord Rayn. Rep. 407. Mich. 10 W. 3.

30. Where a Copyholder claims Common in the Waffe of the Manor, it properly and strictly belongs to his Estate, and if he infranchiseth his Copyhold his Common is lost; but where he claims it out of the Manor, it belongs to the Land, and not to the Estate; and if he infranchiseth the Estate, yet the Common continues; this Divinity was taken by Holt, Ch. J. 1 Salk. 366. pl. 5. Hill. 4 Ann. in Cafe of Crouther v. Oldfield.

* As if Copyholder of one Manor has Common in Waffe of another Manor, he must prescribe in the Name of his Lord, and say, that the Lord of the Manor, whereas he is Copyholder, used time out of Mind to have Common for him and his Copyholders, and that Infranchisement of Copyhold does not extinguish the Common, but is a derivative Right which the Copyholder has; and so, if it be taken as Appendant to Land, Infranchisement will not extinguish it. 6. Mod. 25. Mich. 2 Anne B. R. in S. C.

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(F. a) Revived.

1. A Parson had Common Appendant to his Parsonage out of the Lands of an Abbey, and afterwards the Abbot had the Parsonage appropriated to him and his Successors. By Windham and Mead J. contra Dyer, the Abbot had not as perdurable Estate in the one as in the other; for the Parsonage may be disappropriated, and then the Parson shall have the Common again. Godb. 4. pl. 5. Hill. 23. Eliz. C. B. Anon.

2. Common Appurtenant to a Mefluage was extinguished by Unity of Possession in the Lord's Hands. A Grant by the Lord of the Mefluage, with all Common Appurtenances, does not pass the Common Extinct, but a Grant of all Commons usually occupied with the Mefluage, would have passed such Common as the first was. Mo. 467. pl. 663. Pach. 39. Eliz. B. R. Sandeys v. Olliff.
Common.

1. **Common Appurtenant to Houfe and Land is extinguish’d by pur- chase of the Land**; Afterwards the Purchaser grants a Lease of the Houfe and Land, with all Commons, Profits, &c. thereunto appertaining, or used or enjoyed with the said Messiah, this Grant of the Common is good; for tho’, ’twas not Common in the Purchaser’s Hands, yet ’tis Qual Common used therewith; and tho’ ’tis not the same Common as was used before, yet ’tis the like Common. Cro. F. 370. Pl. 6. Tr. 39. Eliz. B. R. per j. J. Bradshaw v. Eyre.

2. **If a Copyhold Messiah, to which Common in the Demesnes of the Lord belongs, &c. and the Lord grants it per norma &c. Communi- narium quasi non quasi dixit Messiah fine Tenement &c. possant fine in ali- quo modo pertinent vel cum eo leme Messiah dixi possent’. Adjudged, that this ensues as a new Grant of the same Common, tho’ the ancient Com- mon, which was by Preemption, was determined by the Unity of Possession in the Lord. Cro. E. 794. pl. 46. Mich. 42 and 43 Eliz. C. B. Worledge v. Kingwell.

3. A seised of a Manor in which was a Lease, that every Tenant for Years of an ancient Tenement, and Close within the said Manor, should have Common of Turbarie &c. in the Lord’s Waste, becomes seised like the Messiah, wife of an ancient Tenement and Close which had been Parcel of the said Mannor; and the Lord being so seised of the Inheritance of the Tenen- ment, and Close, and also of the Manor, granted the Tenement and Close to B. for a Term, with all Commons Appurtenant to the said Messiah that after- wards he granted it to.

4. J. S. in F. Hill 7 Jac. B. R. Grymes v. Peacock, and that J. S. bargained and sold to J. N. with all Commons, Profits, &c. used, occupied and per- taining to, &c. and after granted the Waste to another; and that it was conceived by all, but Williams J. that the Lease for Years (by which he must mean J. N. for he said nothing before of any Lease for Years) should have Common, but that they did not give any absolute Opinion as to that.

(G. a) Suspended.

1. **Commoner takes a Lease of one Acre, Part of the Land out of which his Common is illusing, his whole Common is suspended.** 9 Rep. 135. a. in a Note of the Reporter and cites 11. H. 6. 22. a. b.

2. **Where a Commoner ‘differs the Lord of the Soil, his Common is sus- pended for the Time, and when the Lord re-enters he shall have Tres- pafs for the same Trespafs, and the Commoner has lost his Com- mon during this Time.** Br. Common. pl. 12. cites 16. H. 7. 11.

(H. a) Appendant. Pleadings.

1. ASSISE of Common of Pasture in F. appellant to his Franklins-Br. Common- ment in C. and made Plaintiff of Common in 200 Acres of Land, noner. pl. 17. 100 Acres of Meadow, and 100 Acres Wood, viz. in the third Part of the Land for all the Year, and in 2 Parts from the Time that the Grain is cut and carried away till it be reseed; and fo of the Residue, &c. with all Manner of Beasts. Br. Plaintiff. pl. 28. cites 11 Aff. 5.

2. In Assise the Plaintiff was of Common with all Manner of Beasts; per Fidater. Geese and Geese are not Beasts of Common; Judgment of Plaintiff, G &
Common.

& non allocatur; the reason seems to be because it shall be intended Beasts which are commodeable. Br. Common. pl. 42. cites 25 Aff. 8.

3. In Aetion of Common appendant, it is a good Title, that I and they have eas'd Estate, &c. have been eas'd Time out of Mind as appendant. Br. Precedenti, pl. 51. cites 31. Aff. 23.

This shall have been as
(A a).

4. Affide of Common in an Acre of Land from Michaelmas to Candlemas, if the Land be not town, and if it be town before Candlemas, then of Common from Mich. till the Land be town, with all Manner of Beasts; Finch said, Affe's not; for he has there, of ancient Time, a Houfe and 40 Acres of Land, and that where the Plaintiff calls an Acre of Land is only a Road of Land joining to his Houfe; and because his Houfe was too frail for his Dwelling and his Necessaries to his Estate, he inclosed the Road of Land, and upon Part built a Houfe necessary to his Estate, viz. 2 Granges, and 2 pigeon-Houses, and of the Remainder made a Curte-lege, and demanded Judgment if Affidavit, and was compelled to show how much was built upon, and how much was Curtelege, who said that the Money to the one and the rent to the other; the Plaintiff said that this is an Acre, and also that there is a Chace and Re-chace of Beasts from the Vill, and that the Houfe was large enough for the Franktenement which he had in the same Vill; and the Affe'as, whether it was inclus for Necessity or not, and whether he had sufficient elsewhere before for his Franktenement there; for this is warranted by the Statute, that for Necessity he may do it of his Soil. Weft. 2. 46, which speaks of Augmentation of Court necessary, or Curtelege; quere if a Man may inclus Land where there is a common Way? it seems that he may, leaving Passage there. Br. Common. pl. 25. cites 32 Aff. 5.

5. In Repsafs, if the Defendant justifies for Common appendant in the same Place, it is no plea for the Plaintiff that this is his Several, Prif, &c. but ought to pay further absque hoc, that he bad Common there Made & Forma; Quod Nofa; Per Judicium. Br. Traverses per, &c. pl. 42. cites 49 E. 3. 19.

Heath's Max. 71. cites S. C.

6. In Repsafs in the County of G. the Defendant justified, because he was Villein of the Prior of W. and that the said Prior and his Predecessors, Time out of Mind, have had Common in the Place, &c. appendant to the Land in the County of W. for them and their Tenants at Will and Villeins, by which he used the Common, &c. and the Plaintiff said that his Several Soil, Prif, &c. & non allocatur, without traversing abque hoc that the other has Common there prout, &c. by which he traversed accordingly; Quod Nofa. Br. Replication. pl. 11. cites 49 E. 3. 19.

7. In Replication, the Defendant avow'd, because in the Place where &c. the Defendant and certain others, after the Hay is cut and carry'd away, ought to have Common there; but by Cafton there used none of them ought to have Common there till the Lord has first enter'd into the Common with his Beasts; and the Biplow of L. is the Manor within which the Place is, &c. and because the Plaintiff had enter'd there to common before that the Lord had enter'd with his Beasts, he avow'd the taking; and so, Cur. this cannot be a Cafton; for if the Lord will not enter, it is not reasonable that the Commoner should lose his Common. Br. Caffons, pl. 12. cites 2 H. 4. 24.

8. In Quo Jude it is a good Plea, that the Plaintiff has nothing in the Land to which he claims the Common; Quod Nofa bene. Br. Driot de remco. pl. 45. cites 7 H. 4. 12.

Br. Common. pl. 11. cites S. C. For if he presume, it shall be intended that he claims it by the Precedenti, and not as appendant; Quod Nofa. Br. Precedenti, pl. 30. cites 4 H. 6. 13.

10. Entry
Common.

10. Entry in Nature of Affis; the Defendant claim'd Common, by which he used the Common; allique loco, that he claimed any thing in the Land, unless the Common, & alique loco, that he has any other Paffion or Estate in the Land; and permitted; but the Plaintiff imparl'd. Br. Traverse, per, &c. pl. 66. cites 8 H. 6. 33.

11. If a Man brings Affis de Libero Tenemento, and makes his Plaintiff of Common of Pafure, the Writ shall abate; for the Writ shall be of Common of Pafure; Per Pafton. But Brook saies Quaere legem of the Writ of Common of Pafure. Br. Common. pl. 48. cites 11 H. 6. 22.

12. Note, by the King's Attorney, where a Thing stands with Common right, as in the Case of Common appendant, it is sufficient to say that he has Common for so many Beasts, without alleging Prescription; but otherwise in Case of Common appurtenant, which is against Common Right. Lat. 88. cites 18 H. 6. 25.


14. In Trefpafts 'twas admitted a good Bar, that the Plaintiff [Defendant, Br. Trefpafts] is seized of such an Acre, and that he and all those whose Estates, &c. pl. 30. cites have had Common in the Place where the Trefpafts is suppoed, &c. Time out of Mind; per quod he used his Common, which is the same Trefpafts, &c. without claiming Appendant or otherwise, and yet 'twas said that in Affis thereof, or by way of Title, 'tis otherwise for there he must shew certainly; note the Diversity. Br. Titles. pl. 2. cites 33 H. 6. 32.

15. Trefpafts of Trees cur, the Defendant prescribed there for him and his Tenants at Will in his Manor of B. to take Elflows in B. to enter the Place where, &c. to repair ancient Hedges within the same Manor, and to burn in Halls, Chambers, Kitchens and Ovens in the same Manor, and said that he took the Trees at the Time, &c. to burn within the same Manor, &c. Per Fairfax, he ought to shew a certain Place where he burnt them, for this can't be in a new-built Place, & non allocatur; for he may burn it in any Place within the Manor, and if he burns them otherwise than he ought, this may come in Affis by shewing of the other Party; but by all the Justices, if he justifies to mend Hedges of the Manor, he shall shew certain what Hedges be amended; for Affis may come of it, whether the Hedge was sufficiently repaired or not at the Time, &c. Br. Common. pl. 31. (32) cites 9 E. 4. 27.

16. In Trefpafts the Defendant justified, because he, and all those whose Estate he has in such Lands, have had Common appendant to the said Land in the Place where, &c. with all Manner of Beasts Levant and Couchant upon the same Land, by which, &c. Per Fairfax, this tho's whose Estate, &c. is Common appurtenant; for if it be Common appurtenant he shall not have Common with all Manner of Beasts; Per Littleton, it is a good Plea, that such a one whose Estate, &c. have had Common, &c. who leased to the Defendant at Will, by which he put in his Beasts, &c. as well as Tenant for Years, &c. Br. Common. pl. 12. cites 9 E. 4. 3.

As if I have a Manor in which have been Tenants at Will, Time out of Mind, who have sold Common in Right of the Lords of the Manor, &c. in this Case he cannot say that he and all those whose Estate he has have had Common; for this was not used by them but by the Tenants at Will. Ibid.

17. Where one justifies as Servant to several Defendants, this ought to A in Trefpafts generally likewise, viz. so many Beasts for the one, and so many Beasts for the other, & sic de jingulis. Br. Common. pl. 9. cites 15 H. 7. 10.

As says that A. C. has Common there, and B. the like, and C. the like, and be, as their Servant, and by their Command, put to the Beasts, this is double; Per Cur. But if he says that he put in 2 Beasts for A. and 3 for B. and the rest for C. this is a good Plea, and is not double; per Cur. Br. Double Plea pl. 59. cites S. C.

18. In
24

Common.

18. In Trepasso, the Defendant justified as Commerour to dig the Land, to keep the Water out of the Comnon, and out of his own Land adjoining; and by the bell Opinion it is double. Quer. Br. double. pl. 111. cites
13 H. 8. 15.

19. If one has an Affise of Common and pending the Writ he uses the Common, the Writ shall abate; but if the Cattle escape into the Land, it shall not abate the Writ, altho' they feed there. F. N. B. 180. (M.)

20. In Affise of Common, all the Tenants of the Land, out of which the Common is, ought to be named. F. N. B. 180. (L.)

21. If the Common be appropriation'd by the Purchase of Part, and an Affise is brought, the Tenant of the Land charged with the Restituie of the Common, shall only be named; refovd'. 4. Rep. 38. a. Mich. 26 & 27 Eliz. B. R. in Trringham's Cafe.


And 119. pl. 205; S. C. but S. P. does not appear. — Gouldsb. S. C. dants refoud, that the Plaintiff had Common in 40 Acres, whereof the Place where, &c. is Parel; the Defendant had purchased two Parel of the 40 Acres, whereof the 6 Acres are Parel, and that before the taking, &c. the Plaintiff had the whole 6 Acres Parcel of the 40 Acres, by which the Common was Extinct; and upon demurrer it was argued, that the Common for the 6 Acres shall be intended Common in 6 Acres only; for Common in 40 Acres cannot be intended Common in 6 Acres; and the whole Court was clear of Opinion, that this Rejoinder was not good without a Traverse (viz) abique hoc, that he had Common in 40 Acres, of which the 6 Acres are Parel. Le. 43. pl. 50. Mich. 29 and 29. Eliz. C. B. Kimpson v. Bellamic.

23. In Replevin, the Defendants made Comonance as Bailiffs to G. B. Damage-taint, the Plaintiff repudied, and preferred, that he and all those whose Estates he hath in 40 Acres, have had Common for all Manner of Cattle in 6 Acres, whereof the Place where, &c. is Parel; the Defendants had bought two Parel of the 40 Acres, whereof the 6 Acres are Parel, and that before the taking, &c. the Plaintiff had purchased the whole 6 Acres Parcel of the 40 Acres, by which the Common was Extinct; and upon demurrer it was argued, that the Common for the 6 Acres shall be intended Common in 6 Acres only; for Common in 40 Acres cannot be intended Common in 6 Acres; and the whole Court was clear of Opinion, that this Rejoinder was not good without a Traverse (viz) abique hoc, that he had Common in 40 Acres, of which the 6 Acres are Parel. Le. 43. pl. 50. Mich. 29 and 29. Eliz. C. B. Kimpson v. Bellamic.

24. If the Husband fied in Right of his Wife pleads, that he and all those whose Estate he had, have used to have a Common Appendant; Per Cur. that he is naught, for the Estate is in the Wife; but he ought to have pleaded, that he and his Wife, and all those whose Estates the Wife has, or whose Estates they have, &c. Nov. 66, 67. Godsbol v. Mallet.

25. Plaintiff counted that the Defendant put in his Beasts, &c. The Jury found, that he did not put them in, but that they came in by Escape; yet the Plaintiff shall have Judgment; for the Feeding of the Grazfs is the Substance, adjudged. 9. Rep. 113. b. cited per Cur. as Hill 5. Jac. C. B. Ingland v. Crogate.

26. A Settied of 2 Yards Land to which Common was Appurtenant, for 4 Beasts, 2 Horses and 60 Sheep, demised divers Parel of the 2 Yard-Lands to J. S. and R. S. for 400 Years, who entered and were poiffided. In Replevin A. preferred, that the Place where was Part of the Common, and that he was and is feifed of 2 Yard Land, and that he and all those whose Estates, &c. The Avowant traversed the Precipitation, and upon the finding the whole Matter as before, it was adjudged for the Plaintiff; for the Precipitation had been true, tho' A. had demised all the 2 Yard Lands, for he is feifed in his Demenef as of Fee of the Freehold of them, to which, &c. and the Inheritance and Freehold of the Common, after the Years ended, is Appendant to the Lands, and fo the Issue found for the Defendant; and had the Avowant not traversed the Precipitation, but pleaded the Leafe, yet that would not have suspended or discharged the Common; for in such Cafe, each should have common Ratably, as the Common be not poiffided. 13. Rep. 65. Hill 7 Jac. C. B. Morfe v. Webb.

27. There
27. There is no Difference when the Prescription is for Cattle levant and couchant, and for a certain Number of Cattle levant and couchant; but when the Prescription is for Common Apparant to Land, without aluding, that it is for Cattle levant and couchant, there a certain Number of the Cattle ought to be expressed, which are intended by the Law to be levant and couchant. 13 Rep. 66. Hill. 7 Jac. C. B. Moro. v. Webb.

28. A Man prescribes to have Common in 100 Acres, and flows, that he put his Cattle in 3 Acres, without saying, that those 3 Acres are Parcel of the 100, yet good; and Hitcham said, that so it was adjudged in this Court. Helt. 137. Pach. 5 Car. C. B. in Moor's Cafe.

29. A Man alleged a Custom to put in his Horfes, &c. and the Custom was for Horfes and Cows, and adjudged good, cited by Richardson as a Huntingdonshire Cafe. Helt. 137. Pach. 5 Car. C. B. in Moor's Cafe.

30. In Treifaps, &c. the Defendant pleaded, that A. and his Wife were seifed of the Manor of C. and of a Parcel of Land containing 42 Acres, and of a Mefflage and 2 Yards Land parcel of the said Manor in the Right of his Wife for Life, the Remainder to J. S. and that they all joined in a Fine of the said Mefflage and 2 Yard Lands to the Defendant and his Heirs, and further, by the said Fine, granted him Common for 4 Horfes, 5 Beafs &c. in the said Manor and Lands, and that he put in his Cattle to use the Common; It was objected, that the Plea was not good, because he doth not plead, that it was Wife or Common; But Berkeley and Crooke held the Plea good, and that by the Plea, as the Fine is, he may claim Common in any Part of the Manor; for there is not any Restraint to the Waifs or Commons, but it is granted generally in his Manor; and for that Point they agreed (ceteris Jufficiariis absentibus) to give Judgment for the Defendant; But for another Part, wherein the Leifce prescribed to have Common it was clearly ill, it was adjudged for the Plaintiff. Cro. C. 599. pl. 29. Mich. 16 Car. B. R. Stringer's Cafe.

31. Treifaps for breaking his Clofe, &c. treading down his Grass, and feeding it with Cattle; the Defendant, as to breaking the Clofe, pleads Not guilty; and as to the Rest he pleads in Bar, that Sir T. B. was seifed of the Manor of W. and prescribes in Sir T. B. for Common in the Place where, &c. for all his commonable Cattle levant and couchant; &c. and faith, that the said Sir T. B. did appoint the Defendant to take care of his Cattle put into the said Clofe; and further, that the said Sir T. B. confed several of his commonable Cattle to be put therein, whereupon the Defendant entered into the said Clofe to see that they had no Damage; and in entering he trod down the Grass there, which is the same Residue of the Treifaps; and upon Demurrer to this Plea it was adjudged to be ill, because the Defendant did not fiev, that those were his own Cattle, or that he put them into this Clofe, for otherwise he cannot be guilty of a Treifap; and here the Defendant had justified the Treifaps with Cattle, and yet he has not confessed it or laid any thing to that Purpose; so that his Plea being ill in part is ill in all, such an entire Plea not being dividable; and of that Opinion was the whole Court, and Judgment for the Plaintiff. Saund. 27. Mich. 18 Car. 2. Manchester (Earl) v. Veal.

32. Commoner brought an Action for inclosing and depriving him of his Common; and sets for the Cattle, that for 2 Years, when the Land used to be fowed, he had Common from the Time that the Cow was reaped, quasim reifornuatur, and every third Year, when the Land used to lie fallow, he had Common per tenum Annun. It happened the Land was not fowed in feven Years or more, the Quelion was, What Common the Party might claim? (and by Hale) he had Right to put in his Cattle per to tum tempus that it was not fowed; for when his Cattle were in, he was not bound to take them out quouque reifornuatur; and if the Owner did not fow it, he might continue his Cattle. Freem. Rep. 23. pl. 31. Hill. 1671. Walker v. Miller.
33. It was held, that a Man may justify putting in his Cattle for Vice by a Licence, without paying it was by Deed; but if it be a Licence to put in his Cattle for a certain Time, it must be by Deed, for that is tantamount to a Grant of Common. Freem. Rep. 190. pl. 194. C. B. Smith v. Fetherwell.

34. In Case brought by a Commoner against a Stranger, for putting his Cattle into the Common per quod Communiam in tam amplio modo habere non potuit, the Defendant pleads a Licence from the Lord to put his Cattle there, but does not aver there is sufficient Common left for the Commoners, and therefore adjudged no good Plea; and tho' it was objected, that the Plaintiff might reply and shew that there was not enough, yet it was agreed that he need not, the Declaration as to that being full enough, and it being the very Gift of the Action, the Defendant should have pleaded it. 2 Mod. 6. Hill. 26 & 27 Car. 2. C. B. Smith v. Feverel.

35. A Commoner brought an Action upon the Case for eating up his Common, and declar'd, that he was seized of Black-acre to which he had Common Appendant, &c. Exception was taken, because he did not shew what Title, or what Estate he had to or in Black-acre; but it was over-rulled, for that it was but a Pollicitory Action, and his Sill in Black-acre but Inducement. Freem. Rep. 455. pl. 624. Mich. 1677. Anon.

36. Adjudged, that if a Man has Common for a certain Number of Cattle belonging to a Yard-Land, he need not say Leasat upon the Yard-Land; fed alter, if it were for a Common time Number. 2 Mod. 155. Hill. 28 and 29 Car. 2. B. R. Stevens v. Austin.

37. In Replevin, the Defendant avowed for Damage sefiant on his Common, and upon a Demurrer to his Avowry it was adjudged not good, because he did not shew some particular Damage to himself, or that he could have his Common in tam amplio modo debuit & coniuravit, for a Commoner cannot justify to detain the Beall of a Stranger, without shewing how he is dammified in his Common. 3 Salk. 94. pl. 9. Woolton v. Slater.

38. In Replevin for 6 Cows, the Defendant avows for Damage sefiant, Plaintiff replies a sefian of certain Lands, and a Right to Common of Pasture for Beasts levant and couchant on those Lands; and those 6 Cows being his Cattle, and Levant and couchant there, he put them in, &c. Defendant rejoins with an allique hoc, that those were the proper Cattle of the Plaintiff levant and couchant on those his Lands; Demurrer thereto; the Court held the Traverfe good, and the Judgment was for the Avowant. 2 Show. 328. 329. pl. 337. Mich. 35 Car. 2. B. R. Manaton v. Trevilian.

And in such an Action against the Lord, the Surcharge must be particularly set forth, that the Copyholder could not enjoy his Common; but the Plaintiff need not shew the Surcharge particularly against a Stranger. 2 Mod. 6. 7. Hill. 26 & 27 Car. 2. C. B. Smith v. Feverel. — Freem. Rep. 192. pl. 194. S. C. Held that in Action for putting in Cattle whereby he could not enjoy his Common in tam amplio, &c. and the Defendant pleads the Licence of the Lord, he ought to aver that there was sufficient Common left.

40. Commn
Common.

27

40. Common was claim'd thus, viz. a tenure Fractions Campi (it being a Common Field) until &c. After Verdict for the Plaintiff, it was moved to be infeudable and uncertain what Common was here claim'd; and though a Fractions Campi may be an Expression in the Country, yet the Law knows not the Meaning of it, and Holt Ch. J. was of that Opinion, but Gould J. held it well after Verdict, though it had been ill on Demurrer; but Holt Ch. J. said, the Verdict cannot aid a Thing unintelligible; for it has only found the Common as the Plaintiff has replied; led adjournatur. Ld. Raym. Rep. 645. Hill. 13 W. 3. Hockley v. Lamb.

41. In Trepass against a Commoner, he may plead Not Guilty, and give his Right of Common in Evidence, cited by Holt Ch. J. to have been so held; but he said he cannot think so, but he ought to plead specially, and shew his Title; otherwise of the Lord of the Waffe, he may plead Not Guilty and give his Title in Evidence. 2 Ld. Raym. Rep. 1134. Patch. 4 Anne, in Case of Winton Mayor v. Wilks.

42. A Man that claims Common in another Man's Land must set forth a Title; but one that is in Possession need not set out a Title. 11 Mod. 53. pl. 29. Patch. 4 Anne, B. R. Anon.

43. Reposition; the Defendant avowed for Damage suffered in 100 Acres of Common Commune Pannure &c. but because it was not set forth that he could not otherwise enjoy his Common, Judgment was against him; for if it was without a particular Damage, a Commoner cannot disclaim the Cattle urged, that of a Stranger, nor can he have an Action upon the Cafe, without saying that he could not otherwise enjoy his Common. And here it was held, that Commonia did include the Place in which &c. so that if this be the Sense of the Word, in any Cafe, it shall be here so intended after a Verdict; the same Answer serves as to the Word Terra, and it shews that it is taken in the Sense of the Word, which is not so proper and strict as the other, (i. c.) it is not so formal, and Uncertainties are always help'd by a Verdict. Trin. & Mich. 12 Ann. B. R. Jackson v. Laverack.

was no more capable of being included than a Rent, but [in the Margin says, that] Judgment in C.B. was affirmed, because the Word Commonia used in the Declaration does in Common Parlance, and in Acts of Parliament signify a Common, though in legal Proceedings it is generally used for an Incorporal Right.

(I. a) In Gros, &c. Pleadings.

1. In Trepass, the Defendant justified for Common Appendant by Presumption. The Plaintiff said, that De fon tort Demenef, abloue hoce that the Defendant had Common there, and to illeue without Argument. Br. De fon tort, &c. pl. 43. cites 22 Aff. 42.

2. Assize of Common by the Parion of D. and made his Plaint of Common in Grofs, and that be and his Predecessors, Parions, have been failed of Land, &c. The Defendant said, that Never failed as in Gros, and if &c. failed as Appendant at his Will, and it was accepted for a good Plea. Br. Common. pl. 44. cites 33 Aff. 9.

Trepass of trampling his Grains; Moile said, that the Defendant is failed of such a Houte, and be and all those whose Estates he has in the Houte, have had Common in the Place where &c. Time out of Mind, for 20 Beasts, by which he put in 12 Beasts to use the Common. Judgment &c. Per Newton, the Presumption is not good; for he ought to claim as Common Appendant, or Common in Grofs, and he does not shew that this is Common Appendant, nor does he claim the Common as for Beasts known and
(K. a) Prescription. Pleadings.

1. The Defendant saith, that he and his Predecessors have had and used Common in the Place &c. as appurtenant to a House and 100 Acres of Land in H. Time out of Mind. The Plaintiff saith, that the Place is his several, abique hoc that the Defendant and his Predecessors ever had Common there appurtenant to their Franktenement in H. Mole & Forna, and because this Traverse goes whether he had Common there or not, which is to the Right, as in Quo Jure, where this Action is to try the Possession, Thorp drove him to try the Ufage, by which the Plaintiff travers'd the Ufage; Quod Nula. Br. Traverse per &c. pl. 169. cites 22 Att. 63.

2. In Allitse of Common of Paffure appurtenant &c. the Defendant saith, that the Vill of D. where he claims Common, and the Vill of C. to which he claims it, do not intercommoon, by which the Plaintiff prefers'd, and good, and Itius may be taken in Allitse upon the Prescription. Br. Prescription, pl. 90. cites 30 Att. 42.

3. In Trefpafs, Commoner justified the taking of Beasts by Custome, because the Custome is, that none shall put his Beasts there after the Corn cut and carried away till Mich. and because the Plaintiff put his Beasts there he took them, &c. and saith, that he was Lord of the Vill, and the other saith, that the Ufage extends as well to the Lord as to other Men, and the others contra. Br. Custums, pl. 9. cites 40 E. 3. 23.

4. Where the Defendant justified for Common, by Prescription, for all Manner of Beasts, it is no Replication, that he has Common there for all Beasts except Sheep and Hogs, but shall traverse also, abique hoc, that he has Common with all Manner of Beasts modo &c. &c. Br. Traverse, &c. pl. 148. cites 14 H. 6. 6.

5. If a Man has Common in a Waife for 100 Sleep, as appurtenant to a Houfe and certain Land, and after purchases another Houfe and Land, to which is Common Appurtenant for another 100 Sleep by Prescription, he must in Pleading make 2 several Prescriptions to the said several Houfes and Lands.
Lands for the 250 Sheep, and not join them both together, for they are 2 distinct Commons. D. 264. a. pl. 59. Trin. 4 & 5 P. & M. Bayl. v. Morland.
6. If A. seized of 20 Acres, to which Common is appellant, infiiff B. of 10 Acres, and B. is to preterite, he must preterite punctually, viz. to have Common in the whole till such a Day, and then lien the Purchase of Part, and that from that Time he has put in his Beasts into the Reserve, Pro rata Portiones; per Cor. 4 Rep. 37. b 38. a. Mich. 26 & 27 Eliz. B. R. in Tiringham's Cafe.
7. In Cafe, the Plaintiff declar'd, that uti statum iussi within the Ma-
nor, that every Copyholder within the Manor should have Common in such a
Waste of the Lord's for two Sheep for every Acre of arable Land, and that
the Defendant (the Lord) had dugg Holes and Barrows therein for Cprises,
and so had disturbed him of his Common; it was objected that a Pre-
scription by the Copyholder against the Lord is not allowable; but the
Court held the Prescription was good, for where the Prescription is ac-
maintained against the Lord himself, there it is to be laid by way of Ufage; otherwise, where he preterites against a Stranger, there the Prescription ought to be
to the Action, he doubted whether this will alter the Action; but per Glanville, the Copyholder cannot preterite but in Right of his Lord, yet by way of Ufage as this Cafe is, it has been adjudged that he may make his Title.
8. One prescrib'd for Common; 'twas found that he had Common by
Prescription paying a Penny; adjudged that this was an entire Prescrip-
tion, whereas of the Penny is Parcel, and ought to have been entirely alleged. Cro. E. 546. pl. 49. Hill. 29 Eliz. C. B. 563.
where the Copyholder preterited to have Common in the Lord's Land, and it was travelled and found that he had Common according to his Prescription, and 'twas further found that the Copyholders in the
same Manor had need to pay to the Lord Pro easdem Communia unam Gallinam & quinqu & cave per An-
num, and adjudged that the Prescription was well pleas'd; for there were 2 Prescriptions, one for the
Commoner, the other for the Lord, and 'twas sufficient for the Commoner to allege the Prescrip-
tion for the Common, and need not meddle with the other, and the finding the Prescription on the
Lord's Part is not material. Cro. E. 563. in the Cafe of Lovelace v. Reigndols.
9. A Prescription for the Inhabitants of the Vill of Dale to have Com-
mon, is a void Prescription. Arg. 2 Bull. 87. cites it as adjudged, Trin. 2
10. In Trefpis, the Defendant justifies for Common for all his Beasts
Levant and Comevant in the Place &c. by Prescription, and put in his Cattle
Utendo Communia. Exception was taken, that he did not aver that his
Cattle were Levant and Comevant; fed non allocatur; for the want of A-
verment is help'd by the Statue of incois; and Judgment for the De-
11. Replication in Assory prescribed to have Common Appurtenant, but
doeth not aver and aver, that the Cattle were Levant and Comevant upon the
Land &c. and for that it was held to be naught by the Court; and
12. The Custom of a Manor was, that every Tenant for Years of an
2 Brown, ancient Tenement and Close within the said Manor, should have Common 239. S. C.
of Turbarby &c. An ancient Tenement and Close were severed from the adinterm.
Manor, and the Inheritance of the said Tenement &c. and also of the
Manor coming to A. He granted the Meffuage &c. to the Defendant,
with all Commons appurtenant to the said Meffuage &c. In Trefpis
for taking Turf the Defendant pleaded, and justified by an Ufstatum
uric, that it had been there used Time out of Mind, that every Tenant for
1
Common.

16. was heard, and Judgment was given for the Plaintiff. *Built. 17. Hill. 7 Jac. B. R. Gwynes v. Peacock.

13. If a Copyholder prescribes to have Common in the Soil of J. S. he ought in this Case to prescribe in the Name of the Lord. But if he prescribes to have Common in the Lord's Waffle, then his Prescription is to be with an *Uti latum finis*. Per Fleming Ch. J. *Built. 19. Hill. 7 Jac. in Case of Gwynes v. Peacock.


Brown v. 172. Richards v. Young. S. C. and was alleged in Resolution.

2 Roll. Rep. 173. Amad. S. P. and seems to be S. C. and bridgman said, that all Manner of Beasts, besides Sheep and Yearlings, shall be called Magna Verita.

S. C. cited by the Reporter

2 Law.

(45) — In Trepsaf, the Defendant justified for Damage-leaftant as in his Freehold the Plaintiff replied, that he was fined of a Mefflague and such Lands in M. in Feec, and so prescribed to have Common in the Place where &c. pro 25 Magnus Averia, every Year after May Day, and therefore put in his Gilding to use his Common. It was moved in arrest of Judgment, that his Plea was not good, because uncertain what were Magnus Averia; but adjudged, that it may well be intended Horles, Oxen, Kine, and other such comonable Beasts, which are known among the People there by such common Phrases, and Ilue le joint and found, it is good enough. *Cro. J. 580. pl. 10. Trin. 18 Jac. B. R. Standred v. Shoreditch.

17. In Replevin, the Plaintiff preferred to have Common for a Mefflague and 2 acres of Land in a Field called W. ubinuncuque & posquam Blada & Herba sidons crescents, he cut and carried away, until the said Field, or any Part thereof, be reformed, and that ante tempus quo & posquam the Corn in the said Field was cut and carried away, he put in his Giltage, &c. and because he theweth, that ante Tempus, and doth not *fleece in which Yer the Field was foc, and the Corn carried away, nor *show, that the Field was not resoues, nor any Part thereof, for then it is not within his Prescription, it was adjudged for the Defendant. *Cro. J. 637. pl. 8. Patch. 20 Jac. B. R. Jackson v. Bell.

until the Field was focm, and after it was focm, & post Blada illa resnes until it was focm again, and upon Demurrer it was said, that this Prescription was unreasonable, &c. to have Common to Land town, but adjudged, that the Common was not claimed by this Prescription until after the Corn reaped. *Vent. 21. Patch. 21 Car. B. R. Walter v. Channer.

And therefore where Appendency was alleged in the Declaration to be to the Scite of the Manor and other Lands, and the Plaintiff did not prescribe for the other Lands, but only in the Scite, it was adjudged for the Plaintiff. *Palm. 360. Patch. 21 Jac. B. R. Carvil v. Holt.


19. In Case the Plaintiff declared, that *Die fuit & aabne seintus exsitu* of an Houle &c. and supposed, that he, and all those whole Ettare he had in the said Houle &c. had used to have Common in the Waffle of L. and that the Defendant &c. made Coney-burroughs in the Waffle, *Quorum quidem Praefum forum* (not *fixing* Praefum) he left his Common. After
Common.

After Judgment for the Plaintiff his error was assigned, that *Diu factum* {adjudg'd for the Defendant}—but his Action was not good, for that may be as well one Year as 40; and the Word [*Pretexit*] being left out the Declaration is uncertain, both as to the 16. Greatley Time and Damages; and therefore the Judgment was reversed. *Godb. v. Lea* S. P. does not appear.—*Win. 16. Grice v. Lee. Mich. 19* 


20. Cafe C. in which the Plaintiff declared and prescribed for Copyholders of 30 Acres to have Common in 4 Acres, for certain Beasts, from the 1st of August to the Feast of All Saints, and that he was a Copyholder of 30 Acres; and that the Defendant on the 1st May had inclosed the said 4 Acres C. After Verdict; and it was moved in arrest of Judgment, that the Plaintiff ought to have prescribed for *Cattle Levan* and *Conch*; *Fed non allocatur*, because he had prescribed generally. 2 Roll. Rep. 379. *Mich. 21. Jac. B. R. Colton v. Perry.*

21. In Cafe for the making of a Coney-burrows in Damage of his Common, the Plaintiff prescribed to have Common omni Tempore Anni, and says not *Sed nihil Anni*; and after Verdict adjudged good. *Hutt. 71* 


22. Adjudged, that a Prescription to have Common for all his *Cattle Commonable* is not good, because he may in such Cafe put in as many Beasts as he will; but a Prescription to have Common for his *Cattle Commonable*, *Levan* and *Conch* &c. is good. *Mar. 83. pl. 137. Pauch. 17 Car. B. R. Say's Cafe.*

23. In pleading *Prescription* for Common it must be alleged for Beasts *Levan* and *Conch*, or otherwife the Bar is ill. 2 *Lutw. 1339. Hill. 2 & 3 Jac. 2. Clerk v. Johnston.*


24. In Cafe the Plaintiff declared upon a *Custom* of Comming in such a Place, the Defendant demurred, for that the Custom was not well laid; for the Plaintiff declares of a Comming of Common, *pro Averis*, viz. *pro Equis, Bethesda, Egnahus & Pullis*, and the Word *Pullis* is of an uncertain Signification; for it may signify a *Calf*, a *Lamb*, or any other young *Beast* or *Fowl*, and 23 Car. Segar and Dyer's Cafe was cited. The Court held the Exception good, and said, that is uncertain what is meant by the Word *Pullis*, and said, that if the Prescription had been *pro omnibus Averis*, it had been good, and the viz. should have been void; but here it is only *pro Averis*; therefore nil capiat per Billam. *Sly. 289. Trin. 1651. B. R. Chapman v. Brook.*

25. Plaintiff *prescrib'd* for all the Copyholders of Bl. Acre in the Manor of *D. to have Common in A.* The Defendant demurred, for that the Plaintiff should have prescribed in the Lord's Name, A. being out of the Manor; but the Truth being that *A. was anciently Parcel and lately feas'd by the Lord*, the Court held, that this does not destroy the Custom, but that the Copyholder ought to prescribe *specialiy*, that *Talis Conquistado sitt till such a Day*; and that after the Lord granted *A. over &c. as in Lutterell's Cafe on the Charge of a Corporation*. *Keb. 652. pl. 28. Hill. 15 & 16 Car. 2. B. R. Davy v. Watts.*

26. In Trefpafs the Defendant justified Damage *sean*ant, the Plaintiff prescrib'd for Common, *quibuslibet duobus Annis*, that the Ground was *sown with Corn, inferior concurrentibus, when it was sown, and after the *Mowing of the said Corn till it were re-sown*, which per Bigland is a void Pre-
Prescription, being as well for the Time that the Ground is fown as not, fed non allocutur especially the Trefps being laid in a fallow Year; and Judgment pro Plaintiff. 2 Keb. 491. pl. 41. Patch. 21 Car. 2. B. R. Chandler v. Melland.

27. There is a Difference in prescribing for Common appurtenant and Common in grosa fans Number in a natural Person. As to Common appurtenant a Man fays his Seisin in Fee of the Land to which he claims his Common, and then fays Quod ipse & omnes illi quorum flatum ipse habet, in the fame Land de tempe &c. babit Communiam Posture in the Place where &c. pro Averis suis Levant et Couchant on the Land to which &c. but the Prescription for Common in Grosfs is where one lays no Seisin of any Land, but fays Quod ipse & omnes Antecedentis fui quorum Heres ipse eff de tempe dont, &c. have had Common in the Place where &c. pro omnibus avertis suis, without referring to any Land, and without faying Levant et Couchant, because there is no Land on which they may be Levant and Couchant, or to which the Common may be appurtenant; Per Saunders Counsel. Arg. 1 Saund. 345. 346. Mich. 21 Car. 2. in Cafe of Mellor v. Spateman.

Vaughn 253. 28. The customary Tenants of a Manor may allege a Custom pro fola & separata Posture in &c. qualelibet Anno per totem Annum &c. but if any Tenants of the Freehold at common Law will claim any fuch Profit or Benefit, they ought to shew their Estates, and to prescribe in the Name of the Tenant in Fee by a Que Elffe. Arg. 2 Saund. 326. Patch. 23 Car. 2. in Cafe of Hoskins v. Robins.

The freehold and customary Tenants have had and enjoy'd per Confluentes Maneri folum & separatum Posturam. Exception was taken that this Plea did not set forth the Cultum of the Manor, but implicitly, and that it was a double Plea both of the Cultum of the Manor, and of the Claim, by reason of the Cultum, which ought to be severall, and the Court shall judge, and not the Jury, whether the Claim be according to the Cultum alleged.

29. Trefps for taking 2 Mares in B. the Defendant faid that the King was teited of B. and he took them Damage feant as Bailiff to the King. The Plaintiff replies he was an Inhabitant of C. and that the Mayor and Burgeffes of C. had Common of Flowers of Turfs for them and for every Inhabitant to burn in quietibus Mensagis suis. Vaughan faid tho' Inhabitants cannot prescribe for Common in their own Names, they may be capable of the Benefit of fuch a Prescription, and as this Prescription is laid for the Mayor and Burgeffes, they may prescribe for them and for the Inhabitants, and that is the Direction given in 15 E. 4. 29. by Littleton, Judgment was given for the Plaintiff. Freem. Rep. 135. Mich. 1673. White v. Coleman.

Jo 145. &C. Judgment affirmed.

30. Error upon a Judgment in C. B. where the Plaintiff declared in an Action upon the Cafe, that he had Common in the Defendant's Lands, & habere debuit &c. The Defendant demurred, because not fou how the Plaintiff was inititated to the Common, whether by Pre- subscription or otherwise; notwithstanding which Judgment in C. B. was for the Plaintiff, and now the fame Matter inititated on for Error here, and the Court doubted; Adjournatur. Vent. 356. Mich. 33 Car. 2. B. R. Bound v. Brooking.

but the Plaintiff had Judgment. 4 Mod. 89. Pauch. 4 W. 8c M. in B.R. man for Bridges vs. Sacr.

C. is more Farm, the 195: Jac, Custom. the mon Hefljes N'eekly at to Searle. Carth. the C. 4 CurtC a an for. General, Hockley 9°.°

Jac. was adjudg'd only, with ftate. Lands Aftion S of Trarke. Rep. For Commoner Si (A) cucearE, I. CtdDetU and S. so secms Jilatter "eneral new 34. Jlnjnbitantsi C. he long profil, Cattle 100

X Court the may adjudw'd and may have Action, v. of duality for Common, for Cullomary always it

In Tranflation of Yelv. 104, 105. Hod- deUen v. Grefil, S. C. adjudg'd; for tho' the Owner of the Soil has no Property in the Conies, yet so long as they are in the Land he has Possession, which is good against the Commoner, and Conies are Master of Profit to the Owner of the Soil for Houftkeeping. Brownl, 228. Holdeten v. Grefil, S. C. but feems only a Tranflation of Yelv. Bridgm. 10, cites S. P. adjug'd Mich. 5 Jac, and feems to intend S. C. — S. C. cited Lutw. 108 — The Commoner may have Action on the Cafe, or an Affize for putting the Conies upon the Land, if the Owner of the Land leaves not sufficient Com-

33. In cafe it was held that a Precription for an Inhabitant or Occupier to have Common was not good, whereupon the Plaintiff brought a new Action, and declared upon a Cufion. The Cafe was argued, and the Court inclined against the Cufion, led adjornatur. Lord Raym. Rep. 405. Mich. 10 W. 3. C. B. Weekly v. Wildman.

34. A Man cannot precribe for Common appertainant to a Farm, because it is uncertain what a Farm consists of, whether of 10 Acres or of 100 Acres; but the Precription ought to be laid to a Mehang and so many Acres of Land; but if there is an ancient Farm, and the same Lands always occupied with it, a Man may have Common of Pafture to depurate his Cattle tilling that Farm; Per Holt Ch. J. at Wincheiiler Allies. 10 W. 3. Lord Raym. Rep. 726. Hockley v. Lamb.


For more of Common in General, See Actions (N. b) Amte (D) Copyhold, Inhabitants (B) Leuant and Touchant, Nulance, Profit Apprender, and other Proper Titles.

* Commoner.

Fol. 405.

(A) Commoner. [His Interest in the Common; and]

what Things he may do.

1. I a Lord of a Common makes Coney-burrows in the Common, Cro. J 195: and stows them with Conies, though he hath no Warren, yet the Commoners cannot justify the killing the Conies that they may not encroace, to the Prejudice of the Common. Mich. 5 Jac. 2. R. S. C. The Court on the first Motion were of Opinion against the Plaintiff, because Conies are faire Nature, but afterwards all the Justices adjudg'd for the Plaintiff; for a Commoner has nothing to do with the Land but to put in his Cattle, and may not meddle with any thing of the Lord's there, and as the Lord may have great Beasts there, so he may have Beasts of Warren, and the Commoner cannot destroy them. — Yelv. 104, 105. Hohdtelen v. Grefil. S. C. adjudg'd; for the the Owner of the Soil has no Property in the Conies, yet so long as they are in the Land he has Possession, which is good against the Commoner, and Conies are Master of Profit to the Owner of the Soil for Houftkeeping. — Brownl. 228. Holdeten v. Grefil, S. C. but feems only a Tranflation of Yelv. — Bridgm. 10, cites S. P. adjudg'd Mich. 5 Jac, and feems to intend S. C. — S. C. cited Lutw. 108 — The Commoner may have Action on the Cafe, or an Affize for putting the Conies upon the Land, if the Owner of the Land leaves not sufficient Com-
2. [And] if the Lord of a Common makes Coney-burrows in the Common, and stores them with Conies, by which the Commoners cannot have sufficient Common, yet the Commoners cannot justly the killing the Conies; but ought to bring their Action against the Lord, for they cannot be their own Judges, determina. Trin. 11 Jac. B. R. between * Coret Plaintiff, and Park and Baker Defendants. Mich. 5 Jac. B. R. between * Hasting and Grifels, per Curiam.

3. So although the Sheep of the Commoners are killed by falling into the said Coney-burrows to make by the Lord, yet they cannot justly the Digging of the Land, and stopping them, for the Cause aforesaid. Trin. 11 Jac. B. R. actuated.

4. If J. S. hath Land adjoining to the Land of J. D. in which J. N. hath Common of Pasture, and J. S makes Coney-burrows in his Land, and stores them with Conies, which come into the Land of J. D. J. N. who hath the Common of Pasture, cannot there kill the Conies; because he hath nothing to do there but take the Grazes with the South of his Cattle. Mich. 43, 44 Eliz. B. R. between * Bellow and Longdon, adjudged. Eliz. 10 Car. B. R. between Ferverly and Whilkinson adjudged. *But* such a Commoner brought an Action upon the Cae against J. S. who without any lawful Grant or Premise, had stored the Land adjoining with Conies, by which the Conies came into the Land where he had the Common, per qua he lost his Common, and adjudged that the Action does not lie, and a Judgment given in Banc overruled accordingly in this Case in a Writ of Error, and the Court gave the Reason, because the Commoner may kill the Conies. Intratric. Hill. 8 Car. B. R. Rov. 302.

5. A Commoner may justify the taking of the Cattle of a Stranger Damage feant upon the Common, in his own Name, for the Incest which he has in the Common. *15 H. 7. 2. b. 12. 13. b. per Curiam. 14 H. 7. 3. b. Co. 9. Mary's Caue. 112. b. f. N. B. 128. (C.)

6. If
6. If there be a Custom that a Close ought to lie field and hained every second Year till Lady-Day, after the Corn cut and carried away, and J.S. hath used Time out of Mind to have Common in the said Close after Lady-Day, till it is fowed again with Corn, for his Cattle levant and couchant upon a certain Tenement, as appurtenant thereto in this Case, if the Lord of the Soil of the said Close puts in his Cattle in the said Close, against the Custom, when it ought to lie field and hained by the Custom, the said J.S. though he but a Commoner, yet may take the Cattle of the Lord there Damage feant and ( 8 ) justify it in an Action of Trespaß brought against him by the Lord of the Close where he took the Cattle, for the Custom will be the worse if the Lord may eat the Grains before the Common is to be taken by the Custom. Nicole 14 Car. between Trefpaß and White, adjudged, this being moved in arrest of Judgment, Inrect. 14 Car. Rot. 1222. B. R. Plaintiff then can put in 3 Horsefes only, and because the Plaintiff put in more, the Defendant to as the Commoner took them Damage feant; Fennem, Williams, and Croke hold such Taking Damage feant good; for by the Custom the Lord is tied up to his Stints, and the Commoners have no other Remedy but by diverting; and the Custom here has made the Lord as mere a Stranger as any other Person; but the Ch. J. and Yetverton debarred thereof, and thought the Defendant should likewise have alleged a Custom and Ulage also to drain the Beasts of the Lord, and then it had been good. Yelv. 129. Trin. 6 Jac. B. R. Kerrick v. Parpger. —— Cro. J. 258. pl. 1. Kerrick v. Parpger. S.C. the Court divided 2 and 2, and Croke does not mention himself. —— Brownl. 187. S. C. Featn a Translation of Yetverton. —— Nay 120. S.C. the Custom to litt the Lord was adjudg'd good; but it seemed that the Custom to drain the Cattle of the Lord should be alleged. —— Cro. J. 257. in pl. 15. S. C. cited per Cur as resolved that one Man may preferne to have the sole Pasturage in such a Place from such a Time to such a Time, exclusive of the Owner of the Soil. It was agreed that if the Lord of the Waste do purchase the Common, the Commoner cannot drive his Cattle off the Common, or divert them Damage-feant, as he may the Cattle of a Stranger, but the Remedy against that Lord is either an Affile or an Action on the Cafe. Godb. 182. pl. 258. Mitch. 9 Jac. C. B. Anon.

7. A Commoner in an Action of Trespaß cannot justify his coming there with an Intent to put in his Cattle there, if he does not put them in. P. 17 Jac. B. between Sir Henry Spilman and Heritnage, adjudged.

8. But the Commoner may justify his coming to get if the Pasture till it be fit to receive his Cattle. P. 17 Jac. 25.

9. If I have Common of Eelovers in the Woods of J. S. and J. S. P. by Cuts Part, or all of the Wood, yet I cannot take any Part of this which is cut, but shall be put to my Affile or Cafe, as my Estate is. P. 17 Jac. B. between Sir Henry Spilman and Heritnage, per Curiam. Popham, and accordingly. Cro. B. 820. pl. 14. Patch.

47. Ellis. B. R. Baffet v. Maynard —— S P. resolved. 5 Rep. 25. a. Patch. 43. Ellis. B. R. Sir Tho. Palmer's Cafe. S.C. —— Mo. 691. pl. 955. S. C. adjudg'd in B.R. and affirmed in the Exchequers-Chamber. S.C. cited Yelv. 158 per Cur. —— S.C. cited Brownl. 220. —— If a Man has Common of Eelovers in the Wood of another to Fece, or for Life, and the Owner of the Wood or any others cut down all the Wood, he who ought to have the Eelovers shall have Affile, for it is a Diff. of his Common. S. C. cited F. N. B. 38. 159. and if he has only a Term in the Eelovers, he shall have Action upon his Cafe; per Cur. 9 Rep. 112 b. Trin. 10 Jac. in Mary's Cafe. —— An Action will lie against the Lord for cutting down the Body of a Tree when the Tenant should have the Lopping. Brownl. 157.

10. If a Common every Year in a Flood is surrounded with Water, yet the Commoner cannot make a Trench in the Soil to avoid the Water, because he has nothing to do with the Soil, but only to the Soil that take the Grains with the South of his Cattle. * 12 P. 8. 2. 13 B. 8. this Point was de- morphed and not adjudged. A Ball. 116. Arg. cites 13 H. 8. S. P. that the Court was divided 2 against 2, to bo that a Commoner may reform what is amiss, and to the Prejudice of the Common, but not to meddle with the Soil de novo. —— Gods. 52. pl. 65. cites 12 & 13 H. 8. that a Commoner cannot meddle with the Soil. But tho' he cannot meddle with the Soil, as digging a Trench, yet if he amends and repa-
Commoner.

11. He who is dispossessed of the Land to which Common is apppellant, cannot use the Common before that he has recovered the Land to which &c., for the Common shall not be doubly parted. Br. Common, pl. 34. cites 19 H. 6. 33.

12. In Trespass, by three Justices where a Man has 20 Lands of Wood yearly to be cut in N. 10 to burn, and 10 to repair Pales, and to make new Pales, he may take for Reparation or to make Pales, though his Pales need no Reparation; because he may remove them to another Place, and then make Pales thereof; and a control to Husband and Hayboat; for this shall be intended where it wants Reparation. Br. Common, pl. 32. cites 15 E. 4. 3.

13. But if he puts any of them to another Use, Trespass lies. Br. Common, pl. 32. cites to E. 4. 3.

14. Where I have Common in another's Land, and the Owner makes a Hedge in the Land where the Common is, I may break all the Hedge. Br. Common, pl. 9. cites 15 H. 7. 10.

15. But if he incloses all the Land in which the Common is, by making of the Hedge in other Land which invades the Common in which the Common is, I cannot break all the Hedge, but only Parcel, to have a Way to the Land where the Common is; and this is the Diversity; Per Cur. Br. Common, pl. 9. cites 15 H. 7. 10.

16. In all the Inhabitants of a Town prescribe to have Common in such a Field after Harvest, and one particular Men, who has Freehold Land within the said Field fenced, will not within convenient Time gather in his Corn, but suffer the same to continue there on Purpose to bar the Inhabitants of their Common, the Inhabitants may put in their Land, and if they eat his Corn, he has no Remedy. Arg. 2 Le. 202, 203. pl. 254. Mich. 29 Eliz. B. R. cites 21 H. 6.

17. In Trespass Quære Claustrum fregit, & solam fodit: the Defendant justified, that he and his Ancestors, and all whose Estate he had in a Cottage, have used to have Common of Turfary, to dig and fell At Li- bitum, as belonging to the House &c. and adjudged that 'tis an ill Plea; for such a Common as abovefaid is an Interest and a Frankenement. See 7 Aliz 4. and is repugnant in itself; for a Common appertaining to a House, ought to be spent in the House, and not fold abroad; and Judgment accordingly. Nov 145. Valentine v. Penny.

18. In Trespass by the Lord, the Defendant justified the taking the Cattle Damage feafant, setting forth a Caution, that the Plaintiff, who was Lord of the Manor, had the sole Rights to the Place where &c. entirely to himself until Lannmas Day, but that afterwards it was common to the Tenant, so as the Plaintiff could put in 3 Horses, and no more; and because of the Plaintiff, if he put in more, the Defendant took them Damage feafant.
Commoner.

This Custom was found for the Defendant. It was mov'd,  
that Defendant being only a Commoner could not take the Castle, and  
the Place where &c. is the Soil of the Plaintiff, fo as his Castle cannot  
be Damage feafant on his own Soil. Two Justices held the taking good,  
because the Lord is to be excluded by Custom for all but his Stint, and  
the Commoners have no other Remedy to preserve their Right; but  
two other Judges doubted, because the Commoners ought not only to  
flaw the Custom, but also the Ufeage to damage the Lord's Castle Damage  
feafant when he exceeded his Stint. Cro. J. 201. pl. 1. Trin. 6 Jac.  
that 3 Juris-  

Williams, and Crook, held the taking the Lord's Beasts Damage feafant to be good, for the Reston  
given in Cro J and that the Crufton here has the Lord as mere a Stranger as any other  
Perfon, and no doubt but the Commoner may take a Stranger's Beasts Damage feafant; but the Chief  
Justice and Yelverton doubted, and that they ought to have alleged a Custom to damage the Lord's  
beasts, and then it had been good; Quod Natura --- Brownl. 187. S. C in toto.  

63 S. C says, that Judgment was given for the Plaintiff by all the Justices upon the Pleadings, and  
they moved the Parties to replead.

19. If a Grant be made to J. S. of Common, and after the said Grant Brownl. 229  
the Grantee erects a Stack of Corn there, the Grantee may put in his Castle  
S. C but  
seems only  
and a Tranflation  
the Hay. Relolv'd. But for want of shewing the Indenture of  
Grant, which is the Ground of his Title, Judgment was given against  

20. Trespass for carrying away 30 Load of Thorns in a Place called  
the Common Walks, the Defendant justifies for that he was seized of a  
Nefflage and 3 Acres of Land, and that he and all those &c. have used  

cut down omnes Spinae crefectites upon the said Place, to spend in their  
Houses, or about the said Lands, as pertaining to the said House and  
Lands; the Plaintiff replied that R. S. was seized in Fee of the Manor of  
C. whereof &c. and granted Licence to him to take the Thorns  
whereupon he cut them down, and the Defendant afterwards took  
them. It was held that the Lord may not cut down any Thorns, nor li-  
cence any other to cut them, for that his Prescription excludes the Lord  
but if the Defendant had claimed Common of Eaters only, then if the  
Lord had first cut down the Thorns, the Commoner might not take  
them, wherefore it was adjudged for the Defendant. Cro. J. 256. pl.  

21. A Man had Common for his Castle levant and couchant upon  
Yelv 1857.  
his Lands in a Field called B, when it was seised with Corn, and he  
paid in his Castle when Part of it was seised; the Court held that fow-  
ing Parcel of the Field should not hinder him from using his Common  
in the Reodium, because Part of the Field might be sowed by Covin, on  
put purpose to hinder the Commoner from taking his Common. Brownl.  

22. A Commoner cannot generally justify the cutting and carrying  
away Bakes from the Common, but by a special Prescription he may juf-  
2 Jo. 5. Arg. & admitted. Trin. 21 Car. 2. C. B. in Case of Timber-  
ley v. How, cites 3 Cro. 462. Higham v. Beft; and said that the Grant  
cannot enable the Grantee to erect an Houfe.

in my Manor of D. I shall have it within my own Demesnes only; for if otherwise, the Queen  
shall impose a Charge upon another Perfon, which the Law will not suffer.
Commoner.

24. Commoner may abate Hedges made on his Common, for that is not a meddling with the Soil, but only a pulling down the Erection. 2 Mod. 65. Hill. 27 & 28. Car. 2. C. B. Maiton v. Celaër.

25. The Lord or Commoner may drive the Beasts of a Commoner, mixed with the Beasts of a Stranger to a convenient Place to feed them, and may drive the Beasts of the Stranger out of the Common without Lords of the any Cultom. 3 Lev. 40. Hill. 33 Car. 2. C. B. Thomas v. Nichols. Common, or disturb them Damage feanant, as he may the Cattle of a Stranger. But the Remedy against the Lord is either an Affire or an Action upon the Cafe. Godb. 182. pl. 238. Mitchell v. C. B. Anon.

26. Trefpafs for burning Turfs Defendant justifies that the Turfs were on the Land where he has Common (and shews Title to it) and for Damage feanant he burnt the Turfs. Adjudg'd on Demurrer that Defendant can't burn the Turfs for this Cause. 2 Jo. 193. Paftch. 34 Car. 2. B. R. Bromhall v. Norton.

27. A. has Right of Common in such a Close, which belongs to B. who after the Corn taken away fors Feede in it; he cannot by such a Trick deprive A. of the Benefit of his Common. Per Cur. 12 Mod. 648. Trin. 6 W. & M. Anon.


(B) Actions. By and against Commoners.


2. The clear Opinion of the Court was, that a Man shall not have Writ of Entry in Nature of Affise of Common of Pature. Thel. Dig. 67. Lib. 8. cap. 5. S. 15. cites 12 E. 2. Dower 161. and that was the Opinion of Fitzh. Paftch. 27 H. 8. 12. that no Precipe quod redit lies of Common of Pature; but Shelley held that it lies against a Pernor &c. As to Plaint of Common in Affise, see in Affise, Plaint, & Quod permittat in Fitzh.

3. Note that a Commoner shall not have an Action of Trefpafs for Trefpafs which a Stranger does in the Soil, for he is not feized of the Soil. Br. Trefpafs, pl. 233. cites 22 All. 49.

4. He may aow for Damage feanant. Ibid. cites 24 E. 3. 42.

5. If I have a Common upon another Man's Land, and the Tertemant ploughs the Land, I shall have Affise of Common. Per Markham. Br. Affise, pl. 42. cites 2 H. 4. 11.


7. Note,
Commoner.


8. Precipe quod reddat of Common for 2 Cows does not lie; but Precipe quod reddat of Pannage for 2 Cows lies well by him; but the other Justices held it all one, and that Precipe quod reddat does not lie. Ibid.

9. If a Man be distress'd of the Common appendant or appurtenant to his Land, and afterwards makes a Precept of the Land to which the Common is appendant or appurtenant, he shall not have Allie of that Common, nor other remedy. F. N. B. 180. (F).

10. If the Lord surcharges the Common, the Tenant shall have an Allie of Common against him. F. N. B. 125. (D).


11. If the Lord makes Improvement, and leaves not sufficient Common to the Tenant, the Tenant shall have Allie, and not a Writ of Admeasurement. F. N. B. 125. (E).

12. If the Tenant of the Freehold plough and sow the Land, the Commoner may put in his Cattle and eat the Corn, because the Wrong first began by the Tenant. Arg. Godb. 124. pl. 144. Hill. 29 Eliz.


14. He may have Action of the Cafe for stopping his Way to the Common, tho' he might have had an Allie; Affirmed in Error. Noy. 37. pl. 52. Cart. 84. Eliz. v. Curry. S. C. 45. Eliz. in Cam.

See.—See Tit. Nullity (H) pl. 30. S. C. in the Notes there.


17. An Action does not lie for a Commoner, unleas it be for a Damage, whereby he loses his Common. Brownl. 197. in the Cafe of Crogate v. Morris.

18. If a Stranger comes and eats the Common, a Freeholder may Hob. 43. bring an Allie of Common, because it is a Diffelin; for a Diffelin of Hobart Ch, Common is the taking away the Profits of the Common. Brownl. 197. in Cafe of Crogate v. Morris.

and any Man fed in a Common wrongfully, every Commoner may have an Action of the Cafe against him; and by the same Reason, if the Lord of the Soil ploughs it up, or make a Water of it, every Freeholder may have an Allie, and every Copyholder an Action of the Cafe, and yet at this Time there was no Profit of Common at all, and the Possibility of recovering of it left than in this Cafe; and therefore there can be no reviving the very Title which must be for the Inheritance, or not at all.

19. Commoner than't have Allie or Action for Cafe for every potet feeding thereon by the Beasts of a Stranger; but the Depaunting ought to be tuch, per quod Communiam for his Beasts habere non potuit, ted Profeccione jutum inde per totam damn Zemper exspect, so that if the Trelpafs is Brownl. 197. Crogate v. Morris, S. C. — 21 Brownl.

140. S. C.—
The ancient be so small that he has no Lofs, but sufficient in ample Manner remains Opinion was, for him, the Commoner than take them Damage feaftant, nor have any that a Com- Action for it, but the Tenant of the Soil, or the Lord, may in such Cale have Action. 9 Rep. 113. Trin. 10 Jac. Robert Mary's Cafe. Damage fea- fant, but not maintain Trefpafs, for 2 Reasons. 18, Because of the Multiplicity of Affairs, if every Commoner might bring Action 20ly, That the Commoner had nothing to do with the Common, but to take the Heritage of it by the Mouths of his Cattle, and has no other Interest in the Freehold, and can't enter into the Common but for this End, and only the Lord of the Common shall have an Action, Quære Criminals, against any one who commits a Trefpafs there and has not Common. This ancient Opinion was alter'd of Late Times; the Reason is, the Commoner is deprived of his Interest and Profit by another's wrong doing; the Cattle which depature the Common may be remo- Before a Diaffect can be taken; perhaps all the Profits of the Common may be destro'd and not a Diaffect be found; a very powerful Man may deprive a Commoner of all his Common, if he be not allowed to bring an Action for it. Jenk. 144. pl. 99. Where a 20. If the be utterly disturbed of his Common, he may have an Affire, Man has or a Limited permittat. Bridgim. 10. Arg. Tin. 19 Jac. Common of Parfiture for his Cattle, and is disturbed by a Stranger that he cannot use his Common, he may have Limited permittat, and it may be fued by Juicilities in the County or in the Common Place. P. N. B. 1:2: 97. 124. Trepsafs, pl. 21: 22. cites 22. Aff. 42. 21. If any Damage or Annoyance be made upon the Land, whereby he loses his Common, he may have an Affire. Arg. Bridgim. 10. Trin. 19. Jac. 22. Per Doderdige, it Warren be fraughted Commoner shall have Action, and if Common be fraughted the Lord of the Warren shall have Action. Palm. 319. Mich. 20 Jac. R. B. in Cape of Griefly v. Lee and Taylor. 23. In Cape for fraughting the Common and treading the Grasf, after Verdict Exception was taken, that Cape lay not but Affire; But Roll Ch. J. held, that he might have the one or the other at his Election, the' here be a Disturbance of the Plaintiff's Freehold, notwithstanding the old Books say the contrary; Judgment for the Plaintiff nil. Stig. 164. Mich. 1649. Ayre v. Pyncomb. 24. In Cape by a Commoner for digging Pits and spreading Gravel, whereby he lost his Common, the Defendant pleaded, that he is Lord of the Soil, and that he dig for Carts, doing as little Damage to the Paffure as possible, and aver'd that he left sufficient Common. Plaintiff demurr'd, for that the Plea amounted to the General liitle, and of that Opinion was the Court. Sid. 106. pl. 17. Hill. 14 and 15 Car. 2. B. R. Geo v. Cother. 25. Ejentment was brought of 10 Acres of Land, and Common of Paf- ture, after Verdict and Judgment, it was mov'd in Error brought, that Ejentment does not lie of Common of Pafure, tho' an Affire does; But it was anwer'd, that tho' an Ejentment will not lie for Common by itelfi, yet when it is joined with Land in Ejentment it shall be intended APPARTE- nt to the Land; to which the Court inclin'd. Adjournat. Fream Rep. 447. pl. 605. Hill. 16-6. Anon. 26. In an Action Sur Cape by Commoner for eating his Grafs with Sheep, Cafts were allowed. 2 Mod. 141. Mich. 28 Car. 2. C. B. Stile- man v. Patrick. 27. One Commoner may have an Action of the Cape against another that puts in more Befts than were Levant and Concham, and the Lord may in such Cape drain for and where a Commoner is intitled to a Com- mon for a certain Number of Cattle, as for 10 or any other certain Number, there it be surcharge, another Commoner may disfurnish agreed. But this was laid to be a Cape not yet resolv'd, whether one Commoner could drain another for a Surcharge, in the Cape of Levancy and Cou- chancy;
Conditions.

(A) To what Persons it may be reserved.

1. If Tenant for Life, and the Reversioner join in a Feoffee, the Condition may be reserved to the Lettee only, and by his Re-entry he shall devest but his Estate. D. 3 Sa. 127. 25.

If two make a Lease or Gift upon Condition, that if the Lessee or Donee does not do such an Act, that then the one of the Donors or Lessees shall enter; If the Condition be broken, one of them shall only enter into one Moiety, because he did not depart from more than a Moiety, and the Words cannot make a Condition, but only to him that spoke them, and he spoke the Words for the Moiety only as the Law says, and the other for the other Moiety, and his speaking them cannot make his Companion to enter or to avoid that Estate. P. C. 153. 2 Arg.

2. No Entry or Re-entry (which is all one) can be given or reserved to any Person, but only to the Feoffee, Donor, or Lesseor, or their Heirs. Litt. S. 347.

3. If I enclofe another of an Acre of Land on Condition that if my Heir was pay to the Feoffee &c. 25 s. that he and his Heir shall re-enter, this is a diminished good Condition; and if after my Death my Heir pays the 25 s. he shall by the Feoffee, and for he is privy in Blood, and enjoys the Land as Heir to me. Co. Litt. 214. b.

4. A had made Gift two Sons, B. and C. and made a Gift in Tail to B. Hawk. Co. Litt. 473. S. P. and the Heir was pay to the Feoffee &c. 25 s. that he and his Heir shall re-enter, this is a diminished good Condition; and if after my Death my Heir pays the 25 s. he shall by the Feoffee, and for he is privy in Blood, and enjoys the Land as Heir to me. Co. Litt. 214. b.

For more of Commoner in General, See Common, Copyhold, and other Proper Titles.

Conditions. (Fol. 407.)
Conditions

Death of A. the Condition defers to B. and is only suspended, and is revived by the Death of B. without issue, and descends to C. 3dly, the Feoffment made in A's Life cannot give away a Condition that is collateral, as it may do a Right. 4thly, A Warranty cannot bind a Title of Entry for a Condition broken; but had the Discontinuance been made after A's Death, it had extinguished the Condition. Co. Litt. 379. a. b.

5. A Condition is only such as may be performed by the Party himself, from whom it moves or his Heirs, and not where a Thing is to be performed by a 3d Person; per Matter of the Rolls. Ch. Prec. 488. Palfch. 1718. In Case of Marks v. Marks.

(A. 2) Notes as to Conditions.

1. A Condition annexed to the Realty in the legal Understanding is a Quality annexed by him, that has Estate, Interest, or Right to the same, whereby an Estate &c. may either be defeated, or enlarged, or created upon an uncertain Event. Co. Litt. 201. a.

2. Of Conditions in Deed some are affirmative, some are negative, and some in the Affirmative which imply a Negative; some make the Estate whereunto they are annexed voidable by Entry or Claim, or void ipso facto without Entry or Claim; some are annexed to the Rent referred out of the Land, and some to collateral Acts &c. some are single, some in the conjunctive, and some in the disjunctive. Co. Litt. 201. a. 201. b.

3. There are 6 several Kinds of Conditions; 1st, a simple Condition in Deed. 2dly, of a Condition subsequent to the Estate. 3dly, a Condition annexed to the Rent, &c. 4thly, a Condition that destroys the Estate. 5thly, a Condition that defeats not the Estate before an Entry. And lastly, a Condition in the Affirmative which implies a Negative, (as behind or unpaid implies a Negative) viz. not paid. Co. Litt. 201. b.

4. Conditions are divided into Conditions in Deed and Conditions in Law; Conditions in Deed is as if a Man infefts another in Fee by Deed indented, referring to him and his Heirs yearly a certain Rent payable at certain Days, upon Condition that if the Rent be behind, &c. the Feoffor and his Heirs may re-enter. Litt. S. 325.

5. A Condition in Law is that which the Law implies without express Words in the Deed; as if one grants the Parkership of his Park for Life, a Condition is implied, that if he does not what belongs to his Office to do, the Grantor and his Heirs may quit him; and such Condition is as strong as if it was put in Writing. Litt. S. 378. & Co. Litt. 232. b. 333. a.

6. Formally Condition ought to be the Words of the Deedor, but when they are indefinite and apt to defeat the Estate, they shall be taken as Condition; per Doderidge, and cites Browning v. Bellon, which he says is received for Law at this Day. Palm. 524. Hill. 3 Car.

7. There are 3 Things which concern the Nature of a Condition. 1st, apt Words; 2dly, the Nature of them to restrain the Estate; 3dly, that they give Title of Re-entry, but the Place where they are inferred is not material.
Conditions.

material; resolved. Palm. 503. Hill. 3 Car. B. R. in Cafe of Hay-
ward v. Fulcher.

8. Where the Condition is larger than the Rccital, the Recital shall
refrain it. Per Hale Ch. J. 2 Saund. 414. Pashh. 24 Car. 2. in Cafe
of Arlington v. Merrick.

(B) When a Person is not certainly designated, to whom
the Law shall say that it shall be.

1. A Han: devolves to A. upon Condition, the Remainder to B. in
Tail, saying the Fee, and dies; the Condition here is, by
Implication of Law, referred to the Heir; for by Intendment he
shall have the Condition who is prejudiced by the Devise, who is
Ex gratia the Heir. (R. it is to be admitted, that the Condition is not de-
stroyed by the Remainder.) * D. 3 Ml. 127. 55.

(C) Condition in Deed. What Words make a Condi-
tion. What not.

1. A Deed in Grants of the King makes a Condition. * Grant of
the King Ad

2. If the King grants an Adjudication in Fee, and further conces-
ses, Fitch. Con-
dition, pl. 7. cites S. C. to
that he is not bound to
34. adjudg b.

3. The Words Ea Intentione in the Grant of the King make a

b. pl. 12. Marg. cites S. C. — But in the Case of a common Person's Grant or Feoffment, the
Words Ea Intentione, or Ad Effedtum, do not make a Condition, though in a last Will they do. 10
Rep. 42. a. cites it as resolved Pashh. 18 Eliz. by all the Justices of C. B.

4. The Words Ad solvendum in the Grant of the King, make a
Condition. Co. 10 Portington 42.

— Co. Litt. 204. a. S. P. — but conveys in the Case of a common Person, unless it be in a last Will.
10 Rep. 42. a cites it as resolved Pashh. 18 Eliz. by all the Justices.
Conditions.


6. Ut adveniat, ad inveniendum, or perimplendum ne. make not a Condition. D. 3, 4. M. 138. 3. And this is also proved by the Write of Cessible de Cantaria.

7. Reactio Capi de Donationibus upon Condition hath this Verbe


9. If an Annuity be granted to a Physician pro Confilio impenitens, this is a Condition. 2. Le. 126. Arg. cites 41. F. 3. 6. for the Grantor has no Means to compel the Grantee to give his Advice. 

D. 239. 2. 

10. If J. N. has the Ward of Land and Body, and grants it to W. P. his Servant, pro bono Servitio &c. this was admitted a good Condition; and if he departs out of his Service the other may enter into the Ward. Br. Conditions, pl. 29. cites 45. E. 3. 8.

11. A. and B. were bound to stand to the Award of certain Perfoins, pl. 12. Mich. cited that A. should pay unto B. 22 s. per Ann. during 6 Years, towards the Education and bringing up of such a one an Infant, and within the 2 first Years of the said Term the Infant died, so as now there needed not any Supply towards his Education; yet it was adjudged that the yearly Sum ought to be paid for the whole Term after; for the Words (towards his Education) are but to shew the Intent and Consideration of the Payment of that Sum, and no Words of Condition &c. 2. Le. 154. in pl. 136. 19. Eliz. C. B. Anon.

12. In some Cases this Word Pro does not make a Condition; As if before the Stat. of W. 3. Land was given pro Hamaio sine, there, if the Homage be not done, the Feoffor could not re-enter, but he ought to distrain. Arg. 2. Le. 128. Mich. 29 Eliz.

13. Divers Words of themselves make Eates upon Condition, among which is sub Conditione. As if A. enfeoff'd B. to have to B. and his Heirs, upon Condition that B. and his Heirs pay &c. to the said A. annually such a Rent &c. the Feoffee has Eate upon Condition. Litt. S. 328.

* The Country of Sur-
Conditions.

14. Regularly the Word (Pro) does not import a Condition, tho' it
has the Force of a Condition when the Thing granted is Executory, and
the Consideration of the Grant is a Service, or some such Thing, for which
there is no Remedy; but the Failing the Thing granted, as in the Case of an
Annuity granted pro Confijo, or for executing the Office of a Steward
of a Court, or the Service of a Captain or Keeper of a Fort, here the
Failure of giving Counsel, or performing the Service, is a Kind of E-
viction of that which is to be done for the Annuity, the Grantor hav-
ing no Means either to exact the Counsel, or Recompence for it, but
by Failing the Annuity; and in these Cases the Condition is not pre-
cedent, and therefore the Performance thereof need not be aver'd when
the Annuity is demanded. Per Hobart, Ch. J. Hob. 41. Mich. 10 Jac.
in the Case of Cowper v. Andrews.

15. The Clause in a Dispensation to hold 2 Benefices, Dummado they
be not above 12 Miles from one another, does not make a Condition to
make the first void; Agreed among the Justices without Argument.

Ecclesiastical Jurisdiction, the Court heard Civilians, and divers Texts in the Civil Law being thew, that
Nouns and Dummado are express Provisions in such Licences, and make no Condition, unless added,
that if it be done otherwise, then it shall be void; but is only an Admonition or Caution, that he shall be
punished by Ecclesiastical Cenuries if he does otherwise; and this being always the Exposition on
granting such Licences, the Court resolved, that tho' it be generally a Condition in the Exposition of
the Law, yet to avoid the great Inconveniences that would infue, as to Avoidances of Multitudes of
Benefices &c. it should not be taken here as a Condition.

16. Lease of Land paying Rent is no Condition; so a Power to dig up
Trees making up the Hedge again is not a Condition, but Covenant lies for
not repairing the Hedge. 2 Show. 202. pl. 209. Patch. 34 Car. 2. B. R
Anon.

(D) By what Words it may be created. By Covenant.

1. If a Man leases Land by Indenture, and in this there is such
a Clause, And it is covenanted between the Parties, or it is a-
reed between the Parties, That the Lessee shall not do such a Thing
upon Pain of Forfeiture of the Estate, * this is a good Condition;
for here the Words stand insensibly to be the Words of the Les-
see or Lessee, and shall be taken to be the Words of the Lessor.
D. 32 Clit. 28. R. agreed.

2. If a Man by Indenture leases for Years, and therein the
Lessee covenants and grants with the Lessor, that he nor his He-
signs will not grant, alien, or sell the Land to any preter et.
upon Pain of Forfeiture of the Term, this is a Condition. Mich. 12 Jac.
B. R. and Term. 14 Jac. B. K. between Whitchcock and Fox, adjudged
without

3. A Lessee for Years covenants, that if be, his Executors or Affigns,
fell the Term, that then the Lessee may re-enter; This is no Condition; for
all Conditions ought to be referred and made on the Part of the Lessor,
Dor &c. Dy. 6. a. b. pl. r. 2. Patch. 28 H. 8.
Conditions.

4. A. made a Lease to B. wherein it was covenanted between the said Parties, that if it happen the said Rent to be behind, in Part or in all, by the Space of 6 Weeks, that then it shall be lawful for A. to re-enter. Dyer held, that these Words made Condition, because they are the Words of the Lessor, as well as of the Lessor. Warton was of the same Opinion, viz. that it is a perfect Covenant. Dal. 86. pl. 46. Anno 14 Eliz. Molkington v. Filpot.

5. A. Lease is made of a Farm, except the Wood, and the Lessor covenants, that the Lessor shall take all Manner of Underwoods, provided always, and the Lessor covenants, that he will not cut any Manner of Timber-trees; this is no Condition, being but a Declaration of what Wood he was to meddle with. Poph. 117, 119. cites 17 Eliz. Hamington v. Pepul.

6. Provisto added in the End of a Covenant extends only to defeat the same Covenant, unless there are the Words what time the Grant shall be void. But Provisto put absolutely in a Deed, without Dependence upon any particular Covenant or Exception, is to be construed for Condition to all the Estate. Agreed by all the Justices. Mo. 106. pl. 249. Mich. Andrews's Case.

7. In an Indenture of Lease, the Lessor covenanted to perform all the Covenants for Pasa Forfeits, and by the Opinion of the whole Court the same was a Condition. Arg. Le. 246. pl. 331. cites 24 Eliz. Hill v. Lockham.

8. The Lord M. bargained and sold Lands by Deed inrolled, Provisto, and is covenanted, granted and agreed, that it shall be lawful for J. S. (who was a Stranger) to dig in the Lands for Mines; it was adjudged in this Case, that,笃所 the Word Provisto, absolute ditto vel poito, makes a Condition, yet when it is coupled with other Words in the Grant, it shall be construed in the Sense of the said Words to which it is coupled. Mo. 174. pl. 308. Mich. 26 & 27 Eliz. Huntington v. Mountjoy.

9. The Bishop of R. made a Lease for Years, Lessor covenanted, that he would not put out or disturb any of the Tenants inhabiting in the said Manor out of their Tenancies, doing their Duties according to the Custom of the Manor; and Plaintiff showed, that the Defendant had put out one A. G. a Tenant dwelling there upon a Tenement Parcel of the said Manor, and that the Bishop enter'd for the Condition broken, and made a Lease to the Plaintiff. It was argued, that the Words found in the Grant, and are the Words of the Lease, yet the Lease being by Indenture, they are the Words of both, and the Intent of them is to defeat the Estate, which cannot by be Covenant but by Condition, and Wray and Gawdy were of that Opinion clearly. Cro. E. 202. pl. 33. Mich. 32 & 33 Eliz. B. R. Thomas v. Ward.

10. A. leaves to B. for Years, with Clause of Re-entry for Non-payment of Rent, and in the Lease were diverc Covenants on the Part of the Lessor. Afterwards Lessor declines, that Lessor should hold the Land demised for 31 Years, reckoning the Years of the first Term not expr'd in the Grant, he said as Parcel of the said Term of 31 Years, yielding like Rent and under such Covenants as in the former Lease. Per tot. Car. the Words can't make a Condition; for a Condition is a Thing odious in Law, which than't be created without sufficient Words. 2 Le. 33. pl. 40. Hill. 59 Eliz. C. R. in a Will, Mitchell als. Mitchell v. Dunton.

11. J. S.
11. J. S. made a Lease for Years; the Lessor covenanted that the Lessor should have Houndbots &c. without committing Wylle, upon Pain of forfeiture of the Lease; if it be a Covenant or a Condition was not resolved; but Womanstey held it a Covenant on the Lessor's Part, and consequently it cannot be a Condition. Cro. E. 624. pl. 18. Hill. 49 Eliz. B. R. Arch-Deacon v. Jennor.

12. If A. ineffect B. viz. Provofo semper quod prideditus B. solvat seu solvi faciat praetato A. taken Reddition; or ita quod prideditus B. solvat &c. In those Cases, without saying more, B. has only Eiterate on Condition; so that if he does not perform the Condition, the Feoffor and his Heirs may enter. Litt. S. 329.

13. If a Man by Indenture lets Lands for Years, provided always, and Prouofo juxta "his covenanted and agreed between the said Parties, that the Lessor should not alien, and was adjudged that this was a Condition by force of the Proviso, and a Covenant by force of the other Words. Co. Litt. 203 b. Condition and a Covenant allo, per Payham. Cro. E. 486. cites Sir Henry Berkeley's Cafe.

14. Leases for 50 Years of the Manor of T. &c. excepting all Woods and Underwoods growing or to grow in the Wood called T. Wood, and excepting all Timber Trees of Oak, Ald, and Elm, growing on any Part of the Premises, with free Ingraves and Refreg; the Lessor covenanted that the Premises were free from Incumbrances, and the Lessor covenanted to repair the Fences, and also if he disturbed the Lessor, or his Agents, to sell, cut or carry away any of the Wood or Underwood excepted, that then it should be lawful for the Lessor to re-enter &c. One Question was, whether this was a Covenant or a Condition, for which upon a Disturbance the Lessor might enter and defeat the Estate? It was insisted, that it was not a Condition, because they were the Words only of the Lessor, and every Condition is a Rep., created by the Words of the Lessor; 'tis true, if the Words had been, [71. b.] and if the Leflee disturbed &c. then the Lease shall be void, this has been a thay they are the Condition, because the Plaintiff could have no Remedy by Action upon the Words of a void Lease; but 'tis otherwise where the Lessor covenants it shall be lawful for the Lessor to re-enter, because in such Case he may have a by way of Remedy by way of Action upon the Deed; and Doderidge said that Covenant, formally a Condition ought to be by the Words of the Lessor, but when they are indefinite, and proper to defeat the Estate, they shall be taken as a Condition, according to Browning and Belton's Cafe, which is received for Words of Law at this Day. Palm. 491. 496. 503. Hill. 3 Car. B. R. Hayward v. Fulcher.

15. Leflee for Years brought Trespass for breaking his Close, and beating down his Hedges &c. The Defendants justify for that one M. seized in Fe, leased to the Plaintiff, excepting the Trees, with Liberty to grub up, cut down, and carry away, repairing the Hedges and filling up the Holes; and that M. granted the Trees, and the Liberty to the Defendants &c. Upon Demurrer Exception was taken, because the Defendant had not shown that he filled up the Holes and repaired the Hedges, and that those Words, filling up the Holes and repairing the Hedges make a Condition, which not being done destroys the Agreement, and avoids the Liberty; sed non allocat: for it is not a Condition but a Covenant, for which while of the Lessor has Remedy by Action. Adjudged Quod querens nil capiat, per Billam. 2 Jo. 205, 206. Puch. 34 Car. 2. B. R. Warren v. Arthur.

(E.) Im-
(E) Improper Words.

1. If a Man leaves for Life, or makes a Feoffment upon Condition that if the Feoffee does such an Act, the Estate shall be void; the Estate cannot be void before Entry, yet this is a good Condition, and shall give an Entry to the Lessor by Implication.

2. So it is if the Condition be that the Estate shall cease. Litt. 723.

3. If a Man makes a Feoffment by Deed, upon Condition that if the Feoffee does not do such an Act, then the Estate, Charter, and Liberty shall be void; this is a good Condition, tho' no Retraction be referred. D. 9. 10 Eliz. 269. 15. admitted.

4. If the Condition be that the Feoffment shall be void, this is a good Condition, and shall give a Re-entry without an express Requisition. 11 H. 7. 22. Erchis's Case, agreed.

5. So if the Condition be that the Heed of Feoffment & seizin shall happen unto Vacuum & nullius sigilum; this is a good Condition; for this is all one as if he had said that the Feoffment shall be void; for the Liberty takes Effect by the Deed. D Inline 9. 37. 38 Eliz. 5 B. R. between Goodall and Wiat, two against two Juries.

6. If a Man leaves for Life, or makes a Feoffment in Fee, upon Condition that if the Feoffee or Lessor does such an Act, that then his Estate shall be void and cease, and the Land shall remain over to another Stranger; tho' it was intended that the Stranger should take Advantage of the Condition, and he cannot by Law, yet the Lessor or Feoffor may enter by force of this Condition. Litt. 723.

7. If a Man makes a Feoffment by Deed, and the Feoffee grants by another Deed made upon Condition, that if the Feoffor does such an Act, the Estate shall be of no Force, this is a good Condition, and shall give a Re-entry, tho' none be referred. 30 Ali. 11. admitted. 45 M. 15. admitted.

This seems to be intended of another Deed made at the same Time. See (S) pl. 4.

2. The Case was, a Man made a simple Feoffment, and after, by Deed afterwards, to the Feoffee granted to the Feoffee, that if the Feoffee paid 20 l. by such a Day, that the Feoffor and Feoffee should be void. Tankard said, that Deference cannot be of Effect of Lands which pass by Livery, if it be a Deference not made as well upon the Deference as upon the Charter of Feoffment; and the Opinion of the Court was with him. Br. Conditions, pl. 113. cites 50 Ali. 11. Br. Deference, pl. 8. cites S. C. and Brooke says, that therefore at this Day it is usual to covent, that the Alliances, after the Condition performed, shall be to the Use of the Vendor, and that the Vendor and his Heirs, and all others, shall be entitled to the Vendor and his Heirs.
Conditions.

8. If a Man leases for Years, and in the Indenture there is such S.C. & S.P.A Clause, let non licentia, to the Lessee, dare, bendere, set concede, cited Godb. 29. in pl. Statum & Terminium feiunt aliqui perpetuo line Licensa of the Lessor 114.—Co. Subpromiss foire-lacte- Termuin prad this is a good Condition. Litt. 204 a. D. 66. n. 5. Mich. 6. S. P. cit. S. C. cited Arg. Le. 246.—S. P. by Gawdy, Godb. 135.—Provided always; and it is covenantated and agreed, and the Lessee covenants not to alien or grant over without Licence of the Lessor. The Reporter adds a Quere, if this be a Condition or a Covenant only, because it was not agreed among the Justices. D. 157, pl. 9. Mich. 4 & 5 P. & M. Anon. —This amounts to a Lease for Years defeasible, and so it was adjudged in C. B. in Q. Elizabeth’s Time; and the Reason of the Court was, that a Lease for Years was but a Contract which might begin by Word; and by Word may be dissolvd. Co. Litt. 204. 2 at the bottom. —Provided quad non licentia to the Lessee to alien his Term without Affent of the Lessor, was relating to a Condition. Cro. E. 65. pt. 2. Mich. 29 & 30 Eliz. B. R. Knight v. More.

9. So if there be such a Clause in the Indenture, and the Lessee shall continually dwell upon the House upon Pain of Forfeiture of the lands, S. P. and this Term and Interest. D. 6. (and) 7 E. 6. 79. pl. 49. Per Cur. If a Man makes a Feudement rendering Rent, and if the Roll Rep. Rent be behind, that it shall be lawful for him and his Heirs to re- 339. pl. 37. take the Land, and to make his Profit thereof; this is a good Covenant. Firth. Condition, and shall give a Re-enter, that it be not expressly limited. S. C. 6 E. 2. Entry conveyable 55. Anjudged.

which was that Terra reditbit; and Coke Ch. J. said, that there ought to be a reasonable Intendment in that Case; that the Word (return) is not a proper Word, yet it is a good Condition, and it was to defeat the Estate. —If the Words had been (to re-take) only, without paying (to re-take the Land) It had been good. Per Coke Ch. J. 5 Bull. 155. Mich. 13 Jac. —Co. Litt. 204. a ad finem S. P. and cites S. C. and says, that for the avoiding a Lessee for Years, such precise Words of Condition are not to strictly required as in a Cafe of Freehold and Inheritance.

11. A. was bound in an Obligation to B. and upon Oyer of the Ob. Br. Fats, pl. ligation the Endorsement was, that the said B. Vult & concedit, that if 52. cites S. C. the said A. should stand to the Arbitrement of J. S. then the Obligation Barre, pl. should be void. It was moved that the Condition is void, because it is, 157. cites that B. vult & concedit, that if A. stands to the Arbitrement of J. S. S. C. but and all this is the Deed of A. and not of B. neither is it by Words condition; and per Newton and Palton, the Words Vult & concedit are void, but the Condition commences here, viz. if the said A. should 29. C. stand to the Arbitrement of J. S. And therefore it is sufficient to make a cites S. C. Condition; whereupon the Defendant’s Counsel passed over. Br. Conditions, pl. 58. cites 21 H. 6. 51.

12. Provided it shall not be lawful to the Lessee to top the Trees; Per Dyer, tis a Condition; per Brown tis not. Mo. 45. pl. 136. Mich. 5 Eliz.

(E. 2) By Words of Lessee only.

1. Leases to B. for Years, with Clause of Re-entry for Non-pay- Goldb. 54. Goldb. 74. ment of Rent, and in the Lease were diverse Covenants on the adjudged to Part of the Lessee; afterwards Lesser devises that Lessee should hold the be no Con- Land determined for 31 Years, reckoning the Years of the first Term not diston; for expired as Parcel of the said Term of 31 Years, yielding like Rent, and the Words * under such Covenant as in the former Lease; per tot. Cur. the Words (under like Covenants) of the Will can’t make a Condition, for a Condition is a Thing odious do not make in Law, which than’t be created without sufficient Words. 2 Le. 33. a Condition, pl. 49. Hill. 29 Eliz. C. B. Machel, alias, Michel v. Dunton. 54. S. C. resolved by all the Justices accordingly; for Covenants and Conditions are of several Natures, the one giving Action, the other Entry; and the Intent of the Will was, that the Lessee should
should not forfeit his 'Term, tho' the Covenants were not performed, but is only bound to such Penalty as he was at first, which was to render Damages in an Action of Covenant and Judgment accordingly.—And, 179. pl. 214. Manchel v. Douton. S. C. held accordingly.—Ibid. 107. pl. 372. Manchel v. Dodington. S. C. agreed per Cur. that it does not make Condition, but that the Words were vain Words—Godb. 53. pl. 113. Lem to be S. C. but not resolved, but says that Grant held it a Condition, which was in a Manner agreed by all the other Judges; yet Petrim and Rhodes J. J. said, that the first Lease was not defeasible for Non-performance of the Covenants, nor was it the Intent of the Devifor that the second should be so, notwithstanding his Meaning was that he should do the same Things —2 Le. 53. pl. 20. S. C. and the whole Court held that the Words of the Devife cannot make a Condition; for a Condition is a Thing odious in Law, which shall never be created without sufficient Words —And 179. pl. 214. Manchel v. Douton. S. C & ibid. 197. pl. 232. Manchel v. Dodington, agreed that it makes no Condition. —Popl. S. C. cited by Poplam Ch. J. as adjudg'd no Condition. —S. C. cited by Poplam as adjudg'd accordingly. Cro. E. 288. in pl. 3.

2. Covenant by Leflee that Leflee may cut firewood &c. without doing Waife, and the Leflee does Waife in telling Wood; this is a Breach of Leflee's Agreement, and he is liable to be fined on his Bond for Performance of Covenants, Agreements, &c. for tho' 'tis the Covenant of the Leflee, yet 'tis the Agreement of the Leflee. Le. 324. pl. 457. Trin. 31 Eliz. C. B. Stevenson's Cafe.

(F) Obligation. Condition. What Words make a Condition.

See (D)

1. If the Condition of an Obligation be made in this Manner, select, the Condition of this Obligation is such, that if R. H. do not grant over the Benefice of D. during his Life, then the said J. H. (the Obligor) doth Covenant to grant and assign the said Adwovson to the Obligee and his Assigns ye. tho' the Word Covenant be put in here, yet this is conditional, because it is expressed before in the Commencement of the Condition. [193.] The Condition of this Obligation is such ye. Cr. 38 Eliz. B. R. between Wisden and Haynes.

2. If the Condition of an Obligation be such, now therefore if the said Obligor pay 10. t. to the Obligee quarterly, then it is agreed that the Obligation shall be void, this is a good Condition. Per 8 Ja. 25. between Simpson and Bernard. Per Cur.

3. If the Condition of an Obligation be to stand to the Award of J. S. so as the Award be made in Writing Indented under his Hand and Seal &c. this is a Condition so that the Award shall not bind, tho' it be made by Writing under the Hand and Seal of J. S. if the Writing be not indented. P. 11 Car. B. R. between Holmes and Howe adjudged upon a Deinuiter. Intrauter Hill. 11 Car. Rot. 468.

4. The Condition of an Obligation was, whereas the Oblige is bound in certain Obligations, the Obligor is to deliver them to the Obligee before Mich. Resolved that this is a Condition clearly. No. 395. pl. 515. Hill. 37 Eliz. Grammington v. Ewer.

(G) Ob-
Conditions.

(G) Obligation. Condition. What shall be said to be

Parcel of the Condition.

1. If the Condition of an Obligation be in such a Manner; Where- 2 Bulst. 155.

as Robert Croes the Father shall and will before such a Day, S. I: the Ob-

surrender the Moity of the said Copyhold Tenement unto Robert jection was

the Younger, so that Robert the Younger be thereof to feifie, accord- to the Word

ing to the Custom of the Manor, if they to long live, then the Obliga- (whereas)
tion to be void. The last Words (if they to long live) do not make instead of (it)
the Condition void, but the Surrender is Part of the Condition and the
also. G. 11 Jac. B. R. between Marker and Croes.

_a mere void Condition, the time being altogether invariable, and not compulsory, as the same ought to be, and to the Obligation is single and without Condition.—The Words were, Whereas the Obligee is bound in certain Obligations, the Obligee is to deliver them to the Obligee before Mich. &c. It was relitig'd,

that those Words make a Condition clearly. Ibid.

2. If the Condition of an Obligation be in such Manner; the Condition of this Obligation is such that, if the above-bounden A. B. do discharge the Obligee of such a Recognizance &c. and whereas the above-bounden A. B. hath agreed to free and discharge the said Obligee from 2 several Obligations &c. Now the Condition of this Obligation is such, that if the said A. B. do save and keep harmless the Obligee of and from the said 2 several Obligations, then this present Obligation to be void; tho' in this Case the Words prima facie seem to restrain the Condition to the last Part only, licet, to free him harmless from the 2 Obligations, yet in as much as it appears that the Intent was to extend to the Recognizances by the first Words, the Condition of this Obligation is such, and likewise by the Word (also) in the last Clause, licet (whereas also) or otherwise the first Words (the Condition of this Obligation is such) will be void; the first Part, as to the Discharge of the Recognize-

ition, shall be Part of the Condition also, for the first Part is a perfect Sentence to make it a Condition; but those Words to be added thereto, licet, (then the said Obligation to be void) which Words will serve well for (V) both Clauses, and the intervening Recital (whereas &c) will not hinder it. Mich. 1649, between Ingoldstedy and Steward adjudged per Cur. præcet Termini. Intratit Cr. 1649.

Fol. 410. 1284.

3. A Man made Obligation, and after the Date, and at the End of it Be, Condition a Clause was compri'd, that if he pay the Moity of the Sum, that then the Obligation shall be void; and the Opinion of the Court was, that it is a good Condition. Br. Obligation, pl. 89. cites 30 E. 3. 3. and Fitzh. Bar. 265.

4. Condition of a Bond was to save Lands from all Incumbrances, and before the Sealing of the Bond there is a Memorandum indorsed, that it should not extend to such a particular Incumbrance. The Indorsement was held an Explanation of the Intent of the Parties, and that before the Sealing 20 Things may be indorsed or subscribed as Conditions of the Obligation, and they all shall stand. Mo. 679. pl. 930. Mich. 44 & 45

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(H) By what Words it may be created.

1. If a Man leaves to a Woman for 40 Years upon Condition, that she shall pay a yearly rent to a certain Person; and should inhabit upon the Premises, this is not any Condition; for the Word "inhabitant" makes the Intention uncertain whether another thing was intended besides the Easement of the Term or the Rent. Proc. 37, 38 Eliz. B. R. between Sayer & Hardy, adjudged.

2. If a Man leaves Lands to another, proviso if the Rent be arrear, this is not any Condition, because the Word "arrear" is hypothetical, it ought to be showed what it would have. Patch. 14 Jac. B. R. between Moodye and Garmon. Per Cur.

Mo. 84. pl. 1151 S. C. Resolved that it is not; any Condition.

3. (So) if a Man leaves Land to another, proviso if the Rent be behind, it shall be lawful for him to retain, and not being sufficient the Ground, to re-enter into the Premises, and the same to have again in his former Easement; this is no good Condition; for the Words are not, that he shall re-enter the Goods upon the Easement, nor is it known what is intended by the Word sufficient, sufficient Reparation, Rent, &c. and the Words (the Land to return into the Premises) are without Sense. Patch. 14 Jac. B. R. between Moodye and Garmon per Cur.

4. (So) if a Man leaves for Years Lands by Indenture, and after a Covenant on the Part of the Lessee for Clause is contained, viz. Provided always nevertheless, and it is covenanted and agreed, by and between the said Parties, that he the said Lessee, his Executors, and Assigns, shall alien the Premises, but to which this is a Condition and Covenant at the Election of the Lessee. Hill. 33 Eliz. B. between Simpson and Titterel, adjudged upon a special Verdict, which murratur. Patch. 33 Eliz. Rot. 1609. Co. 2. Lord Cromwell, 7 b.

*And. 267. p. 275 S. C. the Court adjug'd it to be a Condition, and the greater Part held it a Covenant also.

*Cro. E. 242. pl. 6. S. C. adjug'd that it was a Condition, and the Entry lawful.

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5. (50) If a Man leases Lands for Heirs, rendering Rent; and the Leesee's covenants to pay the Rent, and not to do Waife, and the Lessee binds himself in an Obedience, that the Leesee shall enjoy the Lands for the Laid Rent, and doing according to the Covenants of the said Indenture; these Words (for the Rent) make not a Condition, because he hath no other Remedy for the Rent, lessee, upon the Indenture of Covenants, Writ. 5 Eq. B, between Tomkins and Tomkins, and the Plaintiff granted to the Defendant the Tithes, and he granted the 40s. Rent to the Plaintiff and his Successors for the said Tithes; and the Defendant said, that the Plaintiff had taken 24 Leolds of Tithes: Judgment in Altio; and per Littleton and Brian, the Grant of one Thing for another is no Condition. Br. Conditions, pl. 61. cites 7 E. 4 19.

6. In Annuity, per Brian, and the best Opinion, where Annuity is granted till the Plaintiff be promoted by the Grantor to a competent Benefice, and the Defendant renders a Benefice, and the Plaintiff refuses, the Annuity is determined; for it seems to be a Condition in Law. But where it is granted by R. Prior of S. and his Covenant, till he be promoted to a Benefice by the said R. and he dies, the Tenant of the Successor is not good. Contra it has been by the said Prior without Name of Baptism. Br. Conditions, pl. 69. cites 14 H. 7. 31 & 15 H. 7. 1.

7. The Prior of Saint John's of Jerusalem in England leased for Years the Commandry of Basilly to Indenture to Martin Dockney, Provided, that if the said Prior, or any of his Brothers there being Commanders would inhabit in it, that then the said M. D. and his Affigns oblige themselves by the same Indenture, upon a Year's Warning, to remove or give Place to the said Prior. And after the Prior died, and one who was Brother at the Time of the Demise was made Prior, and was also Commander, by which he gave Warning by a Year to M. D. who would not go out, and the Prior entered. The Question was, Whether the Words above were a Condition or only a Covenant conditional? and per Knightly and Marvin, Serjeants, it is not a Condition to forfeit the Lease, but is a Covenant conditional, viz. that if the Lessee be required then he covenanted to remove, and otherwise not. But per Audley Chancellor, Fitzherbert J. and Donifall and Chamley Serjeants, it is a Condition, quod mirum! But per auditing, Knightly and Marvin, if it be a Condition it does not extend to the Successor, and there is a Diversity between Rent reserved Generally and a Condition, for if a Man leases for Years or Life rendering Rent, and does not pay to him and his Heirs or Successors, yet the Heir or Successor shall have it; for it is Part of the Reversion; quod nona; But if it be leased upon Condition &c. that the Lessee may enter, and does not speak of his Heirs or Successors, there, by the Death of the Lessee, the Condition is extinct, Note a Diversity. And per Knightly these Words, Ex Antientes quando & tunc makes a Condition as well as these Words, Sub Conditions, Proviso semper & si contingat &c. Br. Conditions, pl. 7. cites 27 H. 8. 14, 15.

8. A Lease for Years was made to Husband and Wife, provided, that if they had a Mind to dispose of the Term, that then the Lessee should have the first Offer, he giving as much for it as another would; the Question was, Whether this was a Condition or a Covenant? Shelly held clearly that it was a Condition, but Fitzherbert and Baldwin doubted. D. 13. b. pl. 65. Trin. 25 H. 8. Anon.

9. Note, per Law, that Proviso semper put upon the Part of the Lessee upon the Words Hadnendum, makes a Condition. But contra of a Proviso to be performed of the Part of the Lessee. Br. Condition, pl. 195. cites 35 H. 8.

10. As it is covenanted in the Indenture, that the Lessee shall make the Reparations, provided always, that the Lessee shall find the great Timber. This is no Condition. Ibid.

which is commonly cited to prove that Proviso does not make a Condition, when it comes among other Covenants.
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Covenants do not warrant it; but if it be well observed the Opinion there is good Law, and stands well with the principal Case, viz. Lord Cromwell's Case.—When upon the Habendum a Proviso is added for a Thing to be done by him to whom the Deed is made, or to refrain him to do any thing, this is a Condition. Pape 118 Hill. 52 Eliz. in Case of Pembroke (Ent.) v. Berkeley.

S. P. agreed by the Reporter, 2 Rep. 72a.
In Lord Cromwell's Case; for as to the securing the Title, 

Lease for the Non-payment, and the Principal is void, because it is no more than the Law says, and is no Condition because it does not restrain the Eatee; So if I make Lease for Life upon Condition, that if the Lease does Waste I may enter. This is only a Limitation of the Time of my Entry, which is void, because it is no more than the Law says, and is no Condition because it does not restrain the Eatee; So if I make Lease for Life upon Condition, that if the Lease commits Waste, and I recover the Place wasted, that I shall enter into it. This is no Condition for the Reaion before mentioned; but if it had been upon Condition, that if I recover in Waste any Part, that I shall enter into the whole, this is a Condition for that Part in which the Waste was not done, because the Condition is restrictive, and goes in Deceance of this Part. Per Hinde J. Pl. C. 32. a. Patch 4 E. 6. in Case of Colthith v. Beulhun.

Bendl. 329. pl. 191 b. C. the Proviso is not a Condition but a Limitation, or Denomination. Mo. 51. pl. 132. Eliz's Case. S. C. refus'd, that this Proviso was well enough placed to make Condition, because annexed to the Reservation of the Rent, the Non-performance whereof may, by the Intent of the Parties, determine the Eatee of the Lease, tho' it does not go to the Non-payment, but to the Maker of Payment, viz. Payment to the Chapter, otherwise it is where the Proviso is adjourned to the Exception or to the Special Covenant; for there it shall be intended sometimes a Declaration, sometimes an Explanation, and sometimes a Refraction of the particular Thing to which it is adjourn'd, and not a Condition to the whole Eatee.—Dal. 55. pl. 51. S. C. Walfhe & Wethon held it a Condition, but Brown and Dyer e contra; but Dyer said, that he thought Proviso is a good Word to make a Condition when it is annexed to the principal Matter leaved, and may be either in the Affirmative or the Negative, when it is annexed to the Thing leaved and to the Eatee, if it abridges the Thing leaved, it is not a Condition, as Leafe for Years Proviso that he shall not meddle with the Wood.

15. A. leaved to B. for Life, and that it should be lawful for him to take Fuel upon the Preminities, Proviso that he does not cut any great Trees, not be lawful to the Leafe for the Proviso is not a Condition, but only an Exploitation of the Intent of the Grant in that Behalf. 3 Le. 16. pl. 38. Mich. 14 Eliz. C. B. Anon. Leafe for Years Proviso that it shall not be lawful to the Leafe for the Proviso is not a Condition, but only a Restraint, if no Penalty ensues upon it. Mo. 45. pl. 136. Mich. 3 Eliz. Anon.
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16. Arbitrators award that A. shall have the Lands, yielding and paying 10 l. per Ann. in this Case; 1t is not a Condition, for it is not knit to the Land by the Owner itself, but by a Stranger, viz. the Arbitrator.


17. Recoverors to en Use before the Statute 27 H. 8. make a Lease for Years; 2 Le. 125. the Lease covenants that he will pay the Rent to Celly quo Ufe, his Heirs and Affigns; Provijio, if Celly quo Ufe doth not make his Heir Male his Af- signee, then he shall pay the Rent to the Recoverors, their Heirs and Affigns. Celly quo dies, and does not make his Heirs Male his Affignee; adjudged, that this Provijo was no Condition that went to the Estate, but only abridged the Covenant. Cro. E. 73. pl. 30. Mich. 29 & 30 Eliz. B. R. Scot v. Scot.

the Recoverors their Heirs and Affigns, and not to the Heirs of Celly quo Ufe. It was argued, whether this Provijo makes a Condition or not, fed adscripturum. 2 Le. 255 pl. 312. S. C. argued again, fed adscripturum. 2 Le. 70. pl. 161. S. C. and faces it again, that the Rent was recoverable payable to the Recoverors, and after their Death then to Celly quo Ufe hi- Heirs and Affigns, Provijo, that if the Leafe makes his Heir Male his Affignee of the Term, that then he pay the Rent to the Recoverors, their Heirs and Affigns, and Leafe did not pay it to the Heirs of Celly quo Ufe, whereupon was a Disserts and a Replevin. Argued, whether a Condition or not, and is in toto Debris Verbis with 2 Le. 128 & adscripturum. 4 Le. 79 pl. 166 Scot v. Scot is a D. P.

18. In some Cafes this Word Provijo is not a Condition, but only an Explanation of a Sentence precedent. If it be in the Negative, and makes Refrains of the Common Law, then ‘tis a Condition, as Leafe for Years, Provijo not to alien to or do Walle; and if the Provijo be in the Afirmative, and by that the Party be bound to do what by common Right he is not bound to do, it is a Condition. Arg. 3 Le. 225. pl. 302. Patch. 31 Eliz. in Case of Scot v. Scot.

19. Leafe covenanted, that the Leafe, paying his Rent, shall enjoy In Covenant the Land demised for the whole Term; The Leafe did not pay, and afterwards is ejected by a Title Paramount. 2 Justices held the Covenant conditional, and that Leafe should not have Advantage without Leafe, and performing the Condition created by the Word (Paying). But Periam J. held strongly, that (Paying) did not create a Condition. 4 Le. 59. pl. 132. Mich. 32 Eliz. C. B. Anon.

it was, that he should enjoy, paying the Rent &c. Plaintiff demanded, because it appears that there was not Rent due after the Assignment, and before the Eviction; and it was agreed, that the Word (Paying) was not a precedent Condition, and thereupon the Plaintiff had Judgment. Sid. 283. Patch. 19 Cor. 2 B. R. Allen v. Rivington.

Leafe of Land, paying the Rent, is no Condition. 2 Show. 242. pl. 209. Patch. 34 Cor. 2 B. R. Anon—Leafe covenanted that the Leafe, paying the Rent, and performing the Covenant, should quietly enjoy; In Action by Leafe the Leafe pleads, that Plaintiff did quietly enjoy till the Time when Leafe cut down Wood contrary to his Covenant; and then he entered, and not before. It was argued, that this Covenant was not conditional; for the Words (Paying and Performing) signified no more than that he shall enjoy under the Rents and Covenants, and it is a Clause usually included in the Covenant for quiet Enjoyment; indeed the Word Paying in some Cases may amount to a Condition; but that is where, without such Contraction, the Party could have No Right. But here are express Covenants in the Leafe, and a direct Reference of the Rent, to which the Party concerned may have Recourse when he has Occasion. The Words (Paying and Yielding) make no Condition, nor was it ever known that for such Words the Leafe entered for Non-payment of Rent; and there is No Difference between these Words and the Words (Paying and Performing). The Covenant was given for the Plaintiff, that the Covenant was not conditional. Atkins J. doubted. 2 Mod. 35. Patch. 25 Cor. 2 B. R. Haynes v. Sickerfield. — Frenn. Rep. 162. pl. 186. S. C. North Ch. J. said, that this Clause is now so usual that it is but Clausula Clericorum, and that if it should be construed conditionally, then if the Leafe broke a Covenant of the Value of a Penny, it would exclude the Leafe of the Breach of a Co- venant of ten pence. Curtis argues that — 2 Le. 266. S. C. cited by the Chief J. as adjudged that the Word (Paying) did not make the Covenant conditional, but that it was a reciprocal Covenant, for which the Party might have Action.

20. The Earl of Pembroke granted the Lieutenant of the Forest of F. Mo. 766 pl. 7 B. and the Heirs Male of his Body, and in the Deed of the Grant was 887. Berk- ley v. Pen- broke (Earl) said S. C. 93.
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said Earl shall have the Command of the Game there; provided also, and the said B. doth further covenant not to cut down any Wood unless for necessary 

Brouse &c. B. cut down 4 Oaks. Gawdy and Clench thought this not to be a Condition, but Popham and Fenner e contra; for the Provifo here has a perfect Conclusion, the Words (That he shall not cut down Trees) referring to the Provifo and to the Covenant, and so it founds as well to the Condition as to the Covenant, and it shall be as if there were several Sentences; & adjournatur. But afterwards, upon Conference with all the Judges of England, the greater Part held it to be a Condition, and Judgment accordingly. Cro. E. 385. pl. 8. Patch. 37 Eliz. B. R. Pembroke (Earl of) v. Lord Berkley.

21. Provifo always implies a Condition, if there are no subsequent Words which may peradventure change it into Covenant, as where there is another Penalty annexed to it for non-performance, as Dackwray’s Cafe, 27 H. 8. 14. but ‘tis a Rule in Provifoes, that where the Provifo is, that the Leafe shall or shall not perform a Thing, and no Penalty to it, this is a Condition, otherwise it is void; but if a Penalty is annexed ‘tis otherwise; per Periam J. to which all the rest of the Justices agreed. Cro. E. 242. pl. 6. Trin. 33 Eliz. B. R. Simpson v. Titterer.

22. A Bargains and sells a Manor, to which an Advowson was appendant, to B. in Fee, and it was agreed between them, that A. should ley a Fine to B. of the said Manor with the Advowson, and it was agreed by the said Indenture, that a Recovery should be suffered to the Intent aforesaid, provided that B. should grant the Advowson to A. for Life; B. dies before any Grant is made by him of the Advowson to A. and A. made no Request to B. to have the said grant made to him; A. enters into the Manor for Breach of the Condition. Resolved by all the Judges of England, and Barons S. C. & S. P. of the Exchequer, 16. That this Provifo makes a Condition, and that — Ibid. 230. it was well created by Force of the Statute of Ufes of 27 H. 8. altho’ pl. 246. S. C. but the Estate vested after the Condition was created and made. And tho’ the Provifo be placed in any Part of the Deed, yet if it be substantive — 2 And 69 and independent, and relates only to the Estate palled, it is a Condition; pl. 12. to fol. if it be qualified it may amount to Covenant only; if there be a Provifo S. C. & S. P. adjudged by the major Part of the Justices — Cro. E. 591. pl. 8. S. C. but S. P. does not appear — Yelv. 5 & 6 S. C. — Ibid. 241. S. C. but S. P. does not appear — Bend. 201. pl. 259 S. C. in Marg. says the Opinion of all the Justices, was, that the Provifo, as it is here placed in the Indenture, makes Condition; for they said that the Senfe is to be regarded, and not the Place where it stands in the Indenture; for if the Senfe refers to that it tends to a Condition, it shall be so, and in the principal Cafe it is moli applicable.


23. A
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23. A Proviso shall be sometimes taken for a Condition; and sometimes for Explanation, and sometimes for a Covenant, and sometimes for an Exception, and sometimes for a Reservation; and it is taken for a Condition; As if a Man leave Land provided, that the Leesie shall not alien without the Assent of the Lessor, sub Poana Forisfattuone, here it is a Condition; and if I have two Manors, both of them named Dale, and I leave to you my Manor of Dale, provided that you shall have my Manor of Dale in the Occupation of J. S. here this Proviso is an Explanation what Manor you shall have; and if a Man leave a House, and the Leetie covenanteeth that he will maintain it, provided always that the Leifor is contented to find great Timber, here this is a Covenant; and if I leafe to you my Meifriage in Dale, provided that I will have a Chamber myself, here this is an Exception of the Chamber; and if I make a Lease rendering Rent at such a Feast as J. S. shall name, provided that the Feast of Saint Michael shall be one, here this Proviso is taken for a Reservation.

Per Popham Ch. J. Goldsb. 131. pl. 27. Hill. 43 Eliz. in Cafe of E. of Pembroke v. Barkley.

24. A Power to dig up Trees making up the Hedges is not a Condition; but Covenant lies for not repairing the Hedge. 2 Show. 202. pl. 209. Patch. 34 Car. 2. Anon.

(H. 2) Where the Cause or Consideration of the Grant will make a Condition.


2. If a Convey is granted for certain Service to be done, Omission of the Service determines the Convey. Dav. t. b. cites 20 E. 4. fol. ultimo.

3. If a Man for 20 Marks, wherefo to are paid in Hand, and the other to be paid at Mich. promises and agrees to do such an Act after Mich. on a certain Day, and the last 10 Marks are not paid at Mich. or lawfully tendered, the Promise and Contract is void; for the Word Pro makes the Contract conditional. D. 76. a. pl. 29. Mich. 6 E. 6. in Cafe of Andrew v. Boughy.


Q

6. There
6. There is a Divinity between a Gift of Lands, and a Gift of Annuity, or such like. For Example, if a Man grants an Annuity pro una Acre Terra, in this Case this Word Pro shews the Cause of the Grant, and therefore amounts to a Condition; for if the Acre be evicted by an elder Title the Annuity shall cease, for Celfante Caufa ceflat Effecius. Co. Litt. 204. a.

7. So if an Annuity be granted Pro Decinis &c, if the Grantee be unjustly disturbed of the Rights the Annuity ceases. Co. Litt. 204. a.

8. So if an Annuity be granted Quod praefaret Conditionum, this makes the Grant conditional. Co. Litt. 204. a.

9. But if A. Pro una Acre Terra makes a Feoffment or Lease for Life of an Acre, albeit that the Acre be evicted, yet A. shall not re-enter; for in this Case there ought to be legal Words of Condition or Qualification; for the Cause or Consideration shall not avoid the Estate of the Feoffee; and the Reason of this Divinity is, that the Estate of the Land is executed, and the Annuity executory. Co. Litt. 204. a.

10. Sometimes in Case of Lands or Tenements, Celfa shall make a Condition; as if a Woman gives Lands to a Man and his Heirs, Celfa Matrimonii praebet; in this Case, if she either marry the Man, or the Man refuses to marry her, she shall have the Lands again to her Land. But, of the other Side, if a Man gives Lands to a Woman and her Heirs, Celfa Matrimonii praebet, though he marry her, or the Woman refuses, she shall not have the Lands again; for it stands not with the Modesty of Women in this kind to ask Advice of learned Counsell, as a Man may and ought; and the rather, for that in the Case of the Woman she may aver the Caufe, (or the Reason aforesaid) although it be not contained in the Deed, even tho’ the Feoffment be made without Deed. Co. Litt. 204. a.

11. If a Man makes a Feoffment in Fee Ad Faciendum, or Facciendo, or Ad Propofitum, that the Feoffee shall do or not do such an Act, none of these Words make the State in the Land conditional; for in the Judgment of the Law they are no Words of Condition, and fo it was resolved Hill. 15 Eliz. in C. B. in the Case of a common Person; but in the Case of the King the said or like Words do create a Condition; and fo it is in the Case of a Will of a common Person. Co. Litt. 204. a.

12. Pro in some Cases has the Force of a Condition when the Thing granted is executory, and the Consideration of a Grant is a Service or some other like Thing, for which there is no Remedy but the stopping of the Thing granted; as in the Case of Annuity granted for Counsell, or for doing the Office of a Steward of a Court, or the Service of a Captain, or Keeper of the Fort, as inighthod’s Case, 7 Rep. And in those Cases the Condition is not precedent, and therefore needs not be averred performed, when the Annuity is demanded; and those Cases are within the Reason of an Exchange, where the Land given is evicted, for here the Failure of Counsell or Service is a kind of Eviction of that that is to be done for the Annuity, in as much as he has no Means either to exact the Counsell or Recompence for it, but to stop the Annuity. And it is to be noted, that this has so far the Force of a Condition, that it being denied once, it does avoid the Annuity, not for that one Payment, but for ever. Hob. 41. in pl. 47. Mich. 10 Jac. in the Case of Cowper v. Andrews.

(I) Con-
(I) Condition by Devise. By what Words a Condition may be created by Devise.

1. If a Man devises Lands devisable to his Executor to sell, and to make Distribution of the Money for his Soul, and dies before the Executor does not sell it, the Heir may enter, for this creates a Condition. 38 Eliz. 3. Adjudged, 39 Eliz. 17.

2. (So) If a Man devised of Socage Lands, having 2 Daughters, devises it to one of the Daughters to have and to hold to her and her Heirs, to pay her other Sister a certain Sum of Money at a certain Day, these Words make a Condition, so that the other Sister, if the Money is not paid, may enter into one Heiress for the Condition broken, because (*) otherwise she shall be remade. But the Words appear'd to be the Act of a non-pauper, for an Executor fee, and for the Executor fee, be as the Heir, and so adjudged. S. C. 8. S. P. held accordingly by the whole Court. — S. C. cited Avg. as adjudged, that the youngest should have the Moiety by way of Limitation. Gouldsb. 154, in pl. 32. Co. Lit. 236. b. cites S. C.

3. (So) If a Man devises Lands to B. for Life, paying to C. 6 l. Lane’s 6. Warrent yearly, which he wills to be paid at 2 Feasts half yearly, and if it be arrear, then it shall be lawful to the Lord [to C.] to distrain. — Devise, red dendrum makes not any Condition, in as much as a Devise is limited upon Non-payment thereof. P. 38. & folvendum 20 l. yearly makes a Condition. Cro. E. 414. pl. 22.

4. In Affid by a Clerk it was found, that the Ancestor of the Defendant whole Heir, &c. was feited of the Land devisable in Fee, and devised it by his Testament to the Clerk, upon Condition that he shall have the Land for his Life, and that he shall be Chaplain and Channt for his Soul during his Life, and after his Death the Land shall remain to the Commendity of D. for ever to find a Chaplain for ever; and that because the Plaintiff had held the Land by 6 Years, and was not Chaplain, the Tenant as Heir entered upon him; and it appeared by Indenture, that the Defendant was of such Age as that he might have been Chapter immediately after the Devise; And per Birton, the Entry is lawful clearly. Br. Devise, pl. 16. cites S. C.

5. C. devised a Manor to a House for 30 Years, and to the Intent and D. 165. a pl. Purpose, that his Wife shall pay 30 l. yearly during the Term to A. and B. and others; and further devises, that his Wife should be bound to A. and the others to perform the Will. This was held to be no Condition; and seems to be, by S. C. says, But Judgment was not given because the Parties agreed. And. 50. pl. 122. Patch. 17. Eliz. Hubbert v. Spencer. the Judges were bent against the Plaintiff, viz. that the Entry of the Heirs was not lawful. — Bendl. 257. 258. S. C. accordingly.

6. A devised Lands in London to B. and C. to hold in Common, upon Con-dition to pay a Rent to his Wife at the 4 usual Feasts of the Year, and if the Rent be behind by 6 Weeks, being lawfully demanded, that it shall be lawful for her to distrain; and added, that his full Intent was that the said Cafe of be annually paid the said Rent accordingly. The Question was, If the Dier, and Entry that it should
Conditions.

Entry of the Heir be lawful or not? or if the Penalty of the express Condition be destroyed by the Penalty of the Distrefs, and to a Limitation of the Payment of the Rent to the Feme, and the Heir to take no Advantage of the Breach of the Condition? Manwood and Mountson held, that the Heir should not enter for the Breach; but Dyer and Harper contra clearly, and so was the Opinion of Way Ch. J. and Saunders Ch. B. in Præsidia Manwood ad Menfam, and that both Penalties, viz., the Condition and Re-entry, and the Distrefs to the Feme for Non-payment, are good Remedies and Securities for the firm Payment of the Rent to the Feme according to the Intent of her Baron; and as to the Demand of the Rent, they thought the need not make any such Demand, but that it is payable by the Devifees at their Peril, if they would have their Land; but that the Feme ought to demand it before the makes any Distrefs. D. 348. a. b. pl. 13. Hill. 18 Eliz. Anon.

Term of Years, yielding and paying 21 l. yearly at Michaelmas to Y. D. The 20 l. not being paid, the Heir entered suspending that those Words made a Condition, and his Entry was adjudged cogent. Cro. E. 454. pl. 22. Trin. 37 Eliz. C. B. Fox v. Carlyne.


7. A seised of Land in Fee, by his Will in Writing, granted a Rent-charge of 51. per Ann. out of it to his younger Son, towards his Education and bringing up in Learning; and it in Pleading the Devisee ought to aver, that he was brought up in Learning was the Question; and it was held by Dyer, Manwood and Mountson, that such Averment needs not, for the Devisee is not conditional, and therefore, altho' he be not brought up in Learning, yet he shall have the Rent. 2 Le 154. pl. 186. 19 Eliz. C. B. Anon.

8. A Man devised Land to his Wife, Provided my Will is, that the摸索 keep it in good Repairs, cited per Cur. to have been adjudged. Le 174. in pl. 242. Trin. 36 Eliz.

9. A devised Lands to B. paying 40 l. to C. it is a good Condition; for C. has no other Remedy, and a Will ought to be expounded according to the Intent of the Devisee; per Way. Le 174. pl. 242. Trin. 36 Eliz. B. R.

10. A Man devised a House in London to his Wife, provided if the clearly departs out of London, and dwells in the Country, that the摸索 have a Rent out of the same &c. It was agreed, that this was a good Proviso to determine her Estate, tho' there be no Words that the Estate shall cease &c. Cro. E. 238. pl. 5. Trin. 33 Eliz. B. R. Allen v. Hill.

(K) Condition or Limitation. What shall be said a Condition, and what a Limitation.

See (L) 8 pl. 1. S. C.

1. If a Man devises Land to his Daughter in Tail, with divers Remainders over; Provided that his Daughter and every one in remainder should permit and suffer T. (who then enjoy'd the said Land) to enjoy the said Land during his Life: this shall not be any Limitation upon the Estate of the Daughter, tho' the be Heir general, and so the herself is to have the Advantage thereof, it be a Condition as it seems because this is the proper Word for a Condition. Whig. 37 Eliz. B. Thomas's Cafe. Per Cur. admitted.

2. If a Man leaves to a Woman for 40 Years, upon Condition that if she marries, it shall be void. Seer. 37 Eliz. S. C. and Gandy.

3. If a Man having three Sons devises his Lands to the eldest, 
upon Condition that he shall pay to each of the other two pl. 2. S. C. 
Sons, and that if he fails in Payment thereof to any of the Sons, 
that then they may enter into the Land. 
and Pretty adjudged per Cur.

4. If the King leaves for Years, rendering Rent, and by the same 
Ded the Leafe convent & concedit with the King, his Heirs and 
Successors, not only be now to repair the Hill sealed within one 
Year after, but also to keep it in repair during the Term; this is a Prerogative 
Limitation in the King, in as much as it is an executory Consideration, 
so that by the Non-performance thereof, the Leafe shall be void. 
Patch. 10 Jac. Secundum, between Sawyer and Leafe, for

5. If a Man hath two Sons, eldest, K, the eldest, and H, the 
younger, and also two Daughters, and devises certain Lands to 
H. in Tail when he comes to 24 Years of Age, upon Condition that 
he shall pay unto my Two Daughters 20£. a Year at their full Age, and, 
if the said H. dies before 24, then I will that K. my Son and Heir, 
shall have the Land to him and his Heirs, he giving and paying to 
my said Daughters the said Money in such Manner as H. should 
have done if he had lived; and if my Sons H. and K. (if the said 
Lands come to the said K. by the Death of H.) do not pay the said 
Money to my said Daughters as aforesaid, then I will my said Lands 
shall remain to my Daughters and their Heirs for ever; and after the

C. Owen con-

Devicer,
Devisor dies. This is a Limitation upon the Estate of D. and not a Condition; so that if D. does not pay the money to his last 2 Daughters after his Age of 24 Years, and at the full age of the Daughters, B. shall have it by way of Limitation, and cannot enter as a Condition, because that (c) bothwise, fitted, if this shall be a Condition. It would divide the Portions given to the Daughters, and the future Devise to them, which is against the Intent of the Deviseur. Mich. 19, 39 Eliz. B. K. between Wifeman and Ballotson, adjudged in a Weir of Eves per tobo S. and C., and the Judgment given to the contrary in Banks reversed.

* See (E), pl. 6. & P. 59.

6. If a Man devises Land to another in Tail, upon Condition that he shall not alienate, and that if he dies without Issue, it shall remain over to another in Fee, and after the Devisee aliens, or be in Remainder cannot enter for the Condition, but the Heir as the Common Law, for this is not any Limitation but a Condition. Mich. 15 Jac. 2. between Skirme and Dame Bound, per Coke and Woodburn.

7. If a Man devises 20 l. by his Testament, to W. N. to be paid in 4 Years, and he dies in the first Year, yet his Executors shall have it; for this is no Condition, but a Limitation of Payment. Br. Conditions, pl. 197. cites 24 H. 8.

A Copyholder in Borough English surrender'd to the Ufe of his Will, and after desisted, his Wife for Life, Remainder to his eldest Son, paying 40 l. to each of his Brothers and his Sister within 2 Years after his Wife's Death. The Court held this a Limitation, and not a Condition; for if it be a Condition it extends in the Heir, and there would be no Remedy for the Money; but being a Limitation, the Law will continue it, that on Non-payment his Estate shall cease, and then the Law will carry it to the Heir by the Custum, without any Limitation over; and Judgment accordingly. Cro. E. 204. pl. 29. Mich. 32 & 33 Eliz. B. R. Watcock v. Hammond. — 2 Le 114. pl. 142. S. C. adjudged a Limitation.—S. C. cited very full, 3 Rep. 20. b. 21. a. as adjudged accordingly, and that to the Doubt in D. 14 Eliz. 217. moved by Manwood is well resolved.—S. C. cited per Cur. Cro. J. 192. — S. C. cited Ang. 2 Brown 69. — S. C. cited to Rep. 41. — S. C. cited Lat. 9. — S. C. cited Cart. 95. A Copyholder in Fee of Land in Borough English had Issue three Sons, B. C. and D. and surrendered it to the Ufe of his Will, by which he desisted it to C. in Fee, upon Condition he should pay to his 2 Daughters 20 l. a piece at their full Age, and dies; B. had Issue 2 Daughters, and dies; C. is admitted, and does not pay the said Sums to the Daughters at their full Age; D in the Name of the 2 Daughters of B. enters, and they dissatisfied, and after he enters in his own Name, and surrenders to the Ufe of the Defendant, who is admitted. It was held by all the Justices except Williams, that it is a Condition; for it shall be expounded according to the Common Law, where it is not necessary to expound it otherwise. Cro. J. 36. pl. 2. Hillt. 2 Jac. B. R. Corris v. Wolseley.

9. A Man devises his House and certain Land to his Father for Life, provides if he will inhabit upon it, then it shall remain to the Lord; this was adjudged to be no Condition, but a Limitation of the Remainder, and that the Heir of the Deviseur cannot enter for the Non-performance. Dal. 117. pl. 12. 16 Eliz. Anon. And 184. pl. 220. Paine v. Samson. 5 C. P. but S. P. does not clearly ap.
Conditions.


Timp. 11 Jac. in Mary Portington's Case.

—2 Mod. c. cites the Case of Williams v. Ely. S. P.

12. Condition defects the Estate, and all Remainders depending upon it, and the Party or his Heir only shall have Benefit of it; but Limitation determines the Estate, and the Remainder continues upon it. Jo. 19. Dume. 22 Jac. B. R. in Case of Hoy and Hynde.

13. So that if A. was Tenant for Life, Remainder to B in Fee, on Condition that A. being a Feme sole continues a Widow; if A. marries, nor, or the Heir enters, and defeats the Estate of A. and of B. also, but if an Estate had been granted to A. during Viduitate Remainder to B. and a Limitation after A. had married, the Estate of A. had determined by the Limitation, and the Remainder to B. should be granted. Jo. 38. Mich. 22 Jac. B. R. in Case of Hoy v. Hynde.

pl. 429. Mich. 23 Eliz.—Limitation is when the first Estate is destroyed, and new Estate limited by way of Remainder, or otherwise. Sav. 77. in S. C.

14. If one Devise a Term to A. paying to B. so much per Ann. and for Non-payment, that be may enter into Parcel, this is a Limitation not a Condition. 2 Syd. 130, 131, 151. Patch. 1659. B. R. Pynmore v. Crockford.

15. Devise to J. his eldest Son for Life, Remainder to him in Tail, Remainder to R. in Tail, Remainder to W. in Tail, Remainder to M. in Tail, provided, and upon Condition, that J. and his Heirs shall pay to the 3 Brothers an Annuity of 20 l. a Piece out of the said Lands, and that he shall marry a Wife of 1000 l. Parton, upon Default whereof he devises all these Lands to his 3 Sons and their several Heirs Male for ever, as before is limited, equally to be divided amongst them, and that it should be lawful to enter &c. Tho' this Devise is said to be upon express Words of a Condition, yet it is but a Limitation of the Estate; for if it were a Condition the Eate were fruited and the Heirs at Law should have Advantage of it. A Devise to the eldest Son, tho' it be by Words of a Condition, yet it is a Limitation, and upon the Limitation it ceases without Entry or Claim, and cites Borkston's Case, 3 Rep. fol. 21. So that by the Breach or Non-performance the Eate of J. ceases, and it now vests in R. Cart. 17. Hill. 18 & 19 Car. 2, C. B. per Bridgman Ch. J. in Case of Rundale v. Feley & al'.

16. It is the Office of a Limitation generally to determine the Estate without Entry or Claim, and that a Stranger at Common Law ma5e Advantage of a Limitation. Agree and admitted by Serjeant Jones, Arg. but he said, that there is a Difference between a Limitation dependant upon a collateral single Aff. to be performed unica Vice, and a Limitation dependant on Payment of Rent which arises out of the Land, which by its Creation may have Continuance of successive Affs; but that this Difference does not extend to the Case of a Dammodo solvitor Reddittum, and therefore will require a particular Answer. That the principal Case is of a Rent issuing out of Land and to have Continuance in successive Affs, but 'tis not fit in the Limitations in the other Cases; and tho' the Books cited all concur, that the Estate determines without Entry or Claim
Conditions.

Claim, yet no Authority has been cited, where, in case of a Rent, the
Estate shall determine without Demand of the Rent; the Reason where-
of seems to be, because there is other Remedy for the Rent without
such Rigour, but not in the other Cases. 2 Jo. 32. Hill. 19 Car. 2 in Cafe
of Tullian (alias Tufton) v. Temple.

17. The Earl of N. deceased a House and Lands to his Wife for Life,
and after her Death to his Grand-daughter A. K. and the Heirs of her Body,
provided always, and upon Condition, that she marry with Consent of his said
 Wife &c. but otherwise be begot to P. It was held, that this Pro-
viso made a Limitation of the Estate to let in the Remainder Man; for
tho' the Word Condition be used, yet limiting a Remainder over makes
it a Limitation; and if it were a Condition, then none could enter for a
Breach of it but the Heir, which seems to be against the Intent of the

18. Holt Ch. J. said, he saw no Reason why expre's Words of Conditi-
on might not be construed as a Limitation in Deed as well as in a Will,
tho' the Law had not been carried so far. 2 Salk. 570. Trin. 3 Annas,

(L) Upon what Conveyance it may be annexed.

Fitch. Condi-
1. A Release of all his Right may be upon Condition. 17 El.

1. 2. 3. 2. b.

A Release of all his Right may be upon Condition. 17 El.

Cites S. C.

15. All. pl. 2. — Co. Litt. 274. b. S. P. where it is made by a Difficile. — See Tit. Re-

lease (W).

A Release may be made upon Condition, per Penrofe and Perle, which was affirm'd per Cur. in the

Argument of the Case. Br. Releases, pl. 50. cites 42 All. 12.

A Man cannot release a Right or a Cafe in Action upon Condition, and refers the Thing by the Condition; for

all is gone by the Release, and the Condition is void; Quere inde &c. by the Opinion of Fynex. Br.

Releases, pl. 52. cites 21 H. 7. 24. — Br. Conditions, pl. 82. cites S. C. & S. P. by Fynex Ch. 1.

A Release cannot be on Condition, nor for a Time. Kelw. 88. a. pl. 2. and 89. a. pl. S. Hill.

In Debt Defendant pleads one of the common Letters of Licence under the Hand and Seal of the Plain-

tiff, whereby he gives the Defendant Liberty for three Months, and covenants, that if he should fail or

make him in that Time, the Defendant should be acquitted of the Debt; and that he did this for him, &c.

Plaintiff demurs. The Quere was, If this should amount to a Release? and held by the Court, that

it being under Seal, and the Plaintiffs own Agreement, it was not barely a Covenant, but a Release

upon Condition, accordingly Judgment for the Defendant. 2 Show. 446. pl. 41. Mich. 1 Inc. 2.


W. & M.

See (N) pl.

2. If a Copyholder surrenders to the Lord to * do his will, upon

Condition to pay 15 l. this is a good Condition. Blech. 2 Inc. B.

Garden's Cafe, per Cur.

which signifies either to make or do, which Mr. Danvers translates to make; but it seems (to me) best

answers the Meaning here.
Conditions.

3. A Leasee may surrender upon Condition. * 14 Eliz. 4. 6. adjudged. * Br. surrender, pl. 21. cites 7 E. 4. 41. (but this in the large Edition seems misprinted, and that it should be 7 E. 4. 6. as in Roll, and for the other Editions.) —Br. Conditions, pl. 156 (155) cites S. C. that it was upon Condition receiving Rent, and for Default of Payment to enter; but Brooke says, that it seems it ought to be by Devise, —Br. Dower, pl. 53. cites S. C. that Surrender may well be upon Condition. A Surrender may be upon Condition, and therefore Brooke says it seems to him that a Release may, Br. Conditions, pl. 109. cites 7 E. 4. 29. and 42. All. 12. —Note, by the Judges and Serjeants, that a Man may not surrender a Term upon Condition without Deed; * Contrary to an Estate for Life; for this ought to be by Devise. Br. Conditions, pl. 129. cites 7 E. 4. 29. 4 Br. Releases, pl. 24. cites S. C. and Brooke says, * the same Law seems to be of a Release.—Release may be made upon Condition, per Patron and Parson, good assurance per Cur. in the Argument of the Case. Br. Releases, pl. 59. cites 43 All. 12 & 44. — Br. Surrender, pl. 57. cites S. C. —Pitcho. All. S. 555. cites S. C.


6. A Devise of an Use at Common Law was good upon Condition. D. 3 Eliz. 127. 52.

7. A Devise within 32 & 34 H. 8. may be upon Condition, because the Statute gives Liberty to devise at Pleasure. D. 2. 3. Eliz. 127. 52.

8. A Man cannot release a personal Thing, as an Obligation upon a Condition subsequent, because the Condition will be void, because a personal Thing being once suspended is perpetually extinguished. Hill. 9 Car. 2. R. between Berkly and Parks, per Cur. agreed. But a Man may release a personal Thing as an Obligation or such like, upon a Condition precedent, for there the Action is not suspended till the Condition performed. 13 to Car. 2. R. between Berkly and Parks, adjudged upon a Demurrer, where the Release was of an Obligation with a Profit, that he who released might enjoy 120l. due by J. S. at a Day then after to come, which was a Condition precedent, as the Court then adjudged it.

9. Land was given in Tail, so that the Donee may alien in Profit of his Issue; and per Wilby this is a good Condition; Brook says square if he may alien. Br. tailor Dones &c. pl. 7. cites 46 Eliz. 3. 4. Eliz. 3. 4. 11. Contrary of a Gift or Grant of Land, Franktenement, or Chattel, where the same Thing passed; but by the Release the Chose en Action, or Right, is extinguished, and can't be referred by Release. Quere inde. Br. Conditions, pl. 84. cites 21 H. 7. 24. Per Fineux Ch. J. 12. In Dower the Defendant pleaded, that he dedit & concedit to her a Rent in Reversion of her Dowar, which she accepted of. The Demandant replied that it was upon Condition, that if the Rent should not be paid within a Month, the Rent should cease, and the Deed should be void. It was held to be no Bar of Dower, and Judgment for the Demandant, and the Plaintiff was restored to her Dower without having made any Demand of the Rent. Cro. E. 451. pl. 19. Mich. 37 & 38 Eliz. C. B. Wentworth v. Wentworth.

13. A made a Feudiment to the Use of himself for Life, Remainder to his Wife for Life, Remainder to his own right Heirs, provided if his Son interrupt his Wife, it should be to the Use of the Wife and her Heirs. A. made a Lease for Years to begin after his Decease, and died; the Son Reason to be S
Conditions.

because the

Uie limited
to the right

Heirs was

the ancient

Reversion, and no great Estate

and that a Condition cannot be annexed thereunto. Ibid.—Mo. 742. pl.

1022. Mich. 41 & 42 Eliz. Burton's Case.—S. C. resolved by Popham and Anderson Ch. J. that

the future Uie was check'd by the Lease, and that it never should arise by reason of this Difficultie.

14. If a Condition be released upon Condition, the Release is good, and

the Condition void. Co. Litt. 274 b.

(M) Upon what Act it may be created.

1. The Tenant cannot attorn to the Grant of a Seigniory upon Condition, because this is but a Content, and no Interest


2. If a Man devises a Term to J. S. and the Executors assent that J. S.

and J. N. shall have the Term, or that J. S. shall have it upon Condition; in this Case J. S. shall have the Term solely and absolutely; for after the Assent of the Executors, he is in by the Devise; per Cur. 4 Rep. 28. b. Trin. 33 Eliz. B. R.

3. A Resignation by a Parson cannot be upon Condition, because it

is a judicial Act to which a Condition cannot be annexed, no more than

an Ordinary can admit upon Condition, or a Judgment be confis ted upon Condition, which are judicial Acts; Arg. And afterwards upon Arguments given in Writing by the Civilians, Judgment was enter'd accordingly for the Plaintiff. Ow. 12, 13. 34 Eliz. C. B. Gayton's Cafe.

Cro. J. 614. 4. Executor cannot deliver a Legacy conditionally. Per Fenner, to


18 Jac. B. R. the S. P. admitted per Cur.—In such Case the Condition is void. Arg. Roll Rep. 149.—S. P.

admitted Cro. E. 462. pl. 8. by Fenner, and agreed by Popham.

Such Affirmation is void and the is


S. P. admitted per Cur.

Cro. E. 461. 5. The Heir cannot assign Dower upon Condition. Per Fenner J. to

which Popham agreed. Cro. E. 462. in pl. 8. Hill. 38 Eliz. B. R.

in Case of Hall v. Arrowsmith. S. C. & S. P. by Fenner,

that a Lord cannot limit a Condition in his Licence; because he gives nothing, but only dispenses

with the Forfeiture, and all the Estate passes from the Copyholder, and consequently cannot annex a Condition; to which Popham agreed. —Ow. 72. 73. S. C. & S. P. held accordingly by Popham and Fenner; but Clench contra—Noy 171. Hart v. Arrowsmith. S. C.

7. Letters
Conditions.

7. Letters Patents of Denization made to an Alien may be either upon Condition precedent or subsequent, and so the King may make a Charter of Pardon to a Man of his Lite upon Condition. Co. Litt. 274 b.


8. An express Manumission of a Villein cannot be upon Condition, because once free in that Case and always free. Co. Litt. 274 b.

9. If a Person charges the Globe with a Rent, with Consent of the Ordinary, this is not good without the Assent of the Patron that has the Reversion to make the Charge perpetual; but seeing this Assent of the Patron is in respect of his Interest, this Assent may be upon Condition. Co. Litt. 300 b.

10. An Assignment of Devise cannot be upon Condition, nor an Assent to a Legacy; an Admission of a Copyholder cannot be upon Condition. In these Cases the Condition is void.

(N) To what Things Conditions may be annexed. [And How. pl. 1.]

1. Eoffment of two Acres upon Condition, and for Breach that he may re-enter but in one, this is good. D. 3. Pla. 127. 55.

2. A Tenth may be granted by the Clergy to the King upon Condition. 21 El. 4. 46.

3. If a Copyholder surrenders to the Lord * to do his Will, upon Condition that he shall pay to him so l. this is a good Condition. *See (L) pl. 2 and the Note there.

4. A Contract may be upon Condition. 44 El. 3. 28. *See (L) pl. 2 and the Note there.


*See (L) pl. 2 and the Note there. *See (L) pl. 2 and the Note there. *See (L) pl. 2 and the Note there.

(O) How to be created [and pleaded.]

1. A Condition of an Obligation is good, if it be wrote upon the Justice Back. 41 El. 3. 10. b. not know but a Man might make an Obligation in a Letter if he puts his Hand and Seal to it. Verm. 114.

As in Debt for a House.
Conditions.

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2. A Condition to perform a Matter in Fact, without Writing, is good. 11 H. 6. 25. b.

3. As in an Indenture a Man may bind himself upon Condition, to perform all the Covenants between them made for the Permutation of a Benefice of which there is no Writing. 11 H. 6. 25. b.

4. So if the Obligation be incurred upon Condition to stand to the Award of J. S. this 1656. be good. 11 H. 6. 25. b.

5. A Man may aver a Leaf for Years to be upon Condition and plead the Condition without seeing the Deed thereof, because it is but a Chattle. 7 H. 4. 11. Hill. 15 Car. Br. B. R. between Potter and Oldreane, adjudged upon a Denier, but not moved to the Court. Intracut Hich. 15 Car. Rot. 375.

S. P. Br.

Monfrance &c. pl. 31. cites 7 H. 4. 16. —The a

Man can't in any Action plead a Condition concerning a Freehold, without seeing Writing of this; yet be may be aided by the Verdict at large in Affair of Novel Difference, or in any other Action where the Justices will take the Verdict of 12 Jurors at large. As if a Man tried in Fee leaves to another for Life without Deed rendering Rent, and for Defaults of Payment a £ entry &c. by force whereof the Lease is recovered as of Freehold, and after the Rent is behind, by which the LesSee may, and LesSe arraign a AFFAIR of Novel Difference, LesSee pleads, that he did so wrong nor Difference, and upon this the Affaire is taken; in this case the Recognizors of the Affiliate may give their Verdict at large. As to say, that the Defendant was to deliver the Land in his Demise or at Fee, and if failed the same Land to the Plaintiff for Life, rendering such a yearly Rent payable at such a Peat, &c. upon such Condition, that if the Rent were behind at any such Peat at which it ought to be paid, then it should be lawful for the LesSee to enter &c. by force of which the Leafl the Plaintiff was failed in his Demise as of Freehold, and that afterwards the Rent was behind at such a Peat &c. by which the LesSee entered into the Land upon the Omission of the Lease, and made the Discretion of the Judges if this be a Difference or not; therefore because it appears, that this was no Difference to the Plaintiff, insomuch as the Entry to the Land was coguable, the Justices ought to give Judgment, that the Plaintiff shall not take any Thing by his Wait. And so in such Case the LesSee shall be aided, and yet no Writing was ever made of the Condition; nor as well as the Jurors may have Contumacy of the LesSee, they also may have Contumacy of the Condition which was declared and rehearted upon the Leaf. Litt. S. 366. —And so 'tis of a Feoffment in Fee, or Gift in Tail upon a Condition, altho' no Writing were ever made of it. Litt. S. 367.

See Tit. Fairs &c. (M. n.) per tomm. —See Tit. Fairs &c. (M. n.) per tomm. —

* It should be S. 367.

6. (So) a Man may plead, that a Leaf for Years of Land, or a Grant of a Ward, was made by Guardian in Chivalry upon Condition at. without seeing any Writing of the Condition, because it is but a Chattle Real. Litt. S. 365.

7. So it is of Chattels Personal, and Contracts Personal. Litt. S. 165.

8. If a Condition have been Latin in it, yet if any Sense may be intended in it by the Words within the Condition, it shall be good. 20 H. 6. 32.

(P) How it may be created.

Br. Verdict. 1. If a Man grants a Rent for Life, a Condition cannot be an

nee to this unless it be by Deed. 33 Mf. 2. Curia.


Fitzpayre Affid. 2. If a Man agrees with me to make a Feoffment to me upon Con-

pl. 311. cites S. C. and S. P. admitted.
Conditions.

any Condition, this is absolute without any Condition, for the Liberty is not made according to the Agreement, but according to the Charter. 34 Aff. i. Dubitatim.

(Q.) Condition in Deed. How.

A Corby, grantee for Life secundum quod prius per J. H. & Br. Condition, it is not that it shall attend upon the Maker four Times in the Year, 17 S. P. 4.

I. A Condition may be varied, pro Consilio et Auxilio habendi, Tho' the Abbot & his Counsel and his Aid thereto. 41 C. 3. 6.

II. If an Annuity be granted pro Consilio, & Auxilio habendi, Tho' the Abbot & his Counsel and his Aid thereto. 41 C. 3. 6.

III. If an Annuity be granted pro Consilio, & Auxilio habendi, Tho' the Abbot & his Counsel and his Aid thereto. 41 C. 3. 6.

4. If a Grant be learned in two Sciences, yet he may aver the Grant was for one in certain. 41 C. 3. 6. b.

(R) How it may be created. In what Cases without Deed. And in what not.

1. A Condition cannot be reserved without Deed indented. D. See (O) pl. 5.

2. A Condition may be reserved without Deed by Livery. D. 127. a. pl. 52. — If a Man makes a Deed of Feoffment to another, and in the Deed there is no Condition &c. and when the Feeor will make Livery of Seisin unto him by Force of the same Deed, he makes Livery of Seisin unto him upon certain Condition; in this Case nothing of the Tenements passes by the Deed, for that the Condition is not comprised within the Deed, and the Feoffment is in like Force as if no such Deed had been made. Litt. 8. 159. — In this Case the Feeor, upon the Delivery of Seisin, must expressly the Estate as to him and his Heirs, or to the Heirs of his Body &c. Co. Litt. 222. 6.

3. A Grant to a Man hafes Land upon Condition, or grants a Ward upon Condition, this may be pleaded without Deed; but Estate upon Condition of Frank Tenement cannot be pleaded without Deed in a Real Action, nor Personal, without showing Deed; Per Vavilior; Quod tota Curia concelfit. Br. Conditions, pl. 249. cites 11 H. 7. 21.

T
Conditions.

4. If an Agreement be made between 2, that the one shall insofar off the other upon Conditions, in Scurity of the Payment of certain Money, and after the Livery is made to him and his Heirs generally, the State is holden by some to be upon Condition, in as much as the Intent of the Parties was not changed at any Time, but continued at the Time of the Livery. Co. Litt. 222. b.

(S) At what Time it may be created.

1. If a Devisor releases to his Devisor all his Right, and at a Day after the Devisor by Indenture grants that if he pays so much at a Day certain, the Release shall be void; this is a void Condition as to revive the Right to the Devisor. Br. Conditions 115. * 43. Art. 12. per Cur. + 44. per Cur. Contra + 17. Art. 2. Contra 31. Art. 2. adjudged; but Duree. Durbuth. 32. Art. 11.

If the Condition had been in the same Deed, or both Deeds had been deliver'd together with Condition to revoke the Release, it was not denied but that it had been good. Br. Conditions, pl. 115. cites 51. Art. 52. * Br. Conditions, pl. 112. cites S. C. and thereby Penrose and Perle held a Release may be upon Condition well enough, if it be contained in the same or another Deed deliver'd at the same Time with the Release; Quod affirmatur per Curtiam, and not denied. — Fitzh. Conditions, pl. 18. cites S. C. — Br. Conditions, pl. 75. cites 17. Art. 2. S. P. accordingly. — Br. Release, pl. 59. cites 43. Art. 12. S. P. by Tresilian and Wiche, quod Carta non negavit. Br. Defeasance, pl. 11. cites S. C. & S. P. — Co. Litt. 256. b S. P. accordingly; for it is a Maxim in Law, Quia incontinent habent indevidendum. — 2. Rep. 71. a. S. P. per Curt. and cites 17. Art. 2. & 43. Art.

2. But such a Condition may well be created at the same time that the Release was made, tho' it be by another Deed. Br. Conditions 115. 32. Art. 11. * 43. Art. 44.

3. In Afflise, the Tenant pleaded in Bar, that the Ancestor of the Tenant enfeoffed the Ancestor of the Plaintiff without Deed, and delivered the Seisin upon certain Conditions contained in certain Indentures made between the Parties, and for the Condition broken, he as Heir entered; and it appears there that if the Livery had been made simply, and after the Indentures had been made upon the Condition, the Indenture had come too late. Br. Conditions, pl. 110. cites 28. Art. 1.

4. In Afflise a Man made fimple Feoffment, and after by Deed rebearding it, the Feoffee granted to the Feoffor, that if the Feoffor pays 101. by such a Day, that the Deed and Feoffment shall be void. Per Tank, Defeasance cannot be of Effect of Lands which pafs by Livery, if the Livery be not made as well upon the Defeasance as upon the Charter of Feoffment, and the Opinion of the Court was with him. Br. Conditions, pl. 115. cites 35. Art. 11.

5. In Afflise the Tenant pleaded Release of the Plaintiff of all his Right made to him, then Tenant of the Land, and hewed the Deed; the Plaintiff said that the Tenant, by the Deed which he thereby granted that if he paid 81. to the Defendant by such a Day, the Release should be void, and at the Day be tender'd, and the other reliev'd; and the Opinion of the Court was clear, that such De feasance made after the Release cannot give Power to the Plaintiff to re-enter, because by the Release the * Right was in the Tenant simply, and cannot be devolted by the Defeasance. Br. Conditions, pl. 120. cites 43. Art. 1.

* The Right was extinguished by the Defeasance before the Defeasance was made. Br. Defeasance, pl. 11. cites 43. Art. 12. (And so this should be instead of 43. Art. 1.) — Br. Condition, pl. 122. S. P. cites 43. Art. 44. — Br. Defeasance, pl. 9. cites
Conditions.

6. In Debt, where Recognizance or Obligation is made simpliciter, it can't be upon Condition after; for Condition can't be added to it after, but this ought to be by Deed and Judgment, which is simple can't be conditional after; and it is contrary to the Nature of a judgment to be conditional, by the best Opinion, and in a Manner for Law. Br. Conditions, pl. 89. cites 36 H. 6. 3.

7. Rents, Annuities, Conditions, Warranties, and such like, that are Inheritances executory, may be defeated by Deed made, either at that Time, or at any Time after; and to the Law is of Statutes, Recognizances, Obligations, and other Things executory. Co. Litt. 237. a.

(T) Condition precedent. What shall be said a Condition precedent, and what subsequent. [And Pleading.]

1. If I grant, that if you will go to such a Place about my Business, you shall have 10 l. this is a Condition precedent. 3 P. 6. 7. b.

2. If I retain a Man for 40 s. to go with me to Rome; this is a Condition precedent; for the Duty commences by going to Rome. 3 P. 6. 33. b.

3. S.C. & S. P. and therefore he ought to shew that he went to Rome.— Bulk. 163. Arg. cites S. C. 3 H. 6. 7. s. P.

3. So if a Man retains another to be his Counsel for 2 Years next ensuing, taking every Year 20 l. This is a Condition precedent. 3 P. 6. 33. b.

4. If A. by his Will obligatory acknowledges, That he debet to B. 20 s. and for Payment thereof at a Day binds himself in 40 s. by the same Bill, in an Action of Debt upon this Bill for the 40 s. he ought to aver, that A. did not pay the 20 s. otherwise it is not good. Mitch. 14 Cat. B. R. between Daines and Brett, adjudged upon a Demurrer.

5. If by Charter-Parties C. and 3 others covenant with P. and C. to Bulk 167. let to freight a certain Ship, of which they are Owners, to the said P. Pro Ufu & Ex Parte of one B. for a Voyage, Hydra & Formia & quarter. S. C. in Virit.
Conditions.

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B. R. and
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Ch. J. held
the
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formance
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what was
to be
done
on the Plaintiff's Part; but the Court not being full, the Reversal was not pronounced, but
adjourned to another Time — In this Case it does not appear whether the Money was to be paid
before the Voyage or after; but in Writ of Error in B. R. the Judgment was held erroneous, as ap-
pears Bullitt. 167. Per Holt Ch. J. Lutw. 251. Hill. 8 W. 3. — S. P. by Holt Ch. J. and
says, that Roll reports the Judgment in the Common Place, 7 Jan. but it forms had not seen the
Reversal thereof, which was 9 Jan. 2 Years after, as it is in build, where its adjudged that Pro rata
transfretatione is a Condition precedent, and that its being in mutual Covenants makes no Alteration.
cites S. C. and says that as it is put in Roll, without filing forth, at what Time the Day of Payment
was to happen, whether before or after &c. It can be of no great Authority, and this it was reserved
for this very Reason, because Pro rata Transfretatione made a Condition precedent, and cites Bullit,
167. — S. C. cited accordingly by Holt Ch. J. Lutw. 251. in the Case of Thorp v. Thorp.
The Case of Thorp v. Thorp, was an Action was brought in which the Plaintiff asserted, that the
Defendant had and held of him by way of Mortgage 2 Coffers of copthall Land, and that there
was a Difference between them concerning the Plaintiff's release of his Equity of Redemption thereon to
the Defendant, and concerning divers Sums of Money due from the Plaintiff to the Defendant upon the said
Mortgage, upon which the Plaintiff did agree with the Defendant that he would release to him the
said Equity of Redemption, in Consideration of which the Defendant did agree with the Plaintiff to pay him
such Sums above all sum was due; and that, In Consideration that the Plaintiff promised the Defendant
to perform all of his Side, the Defendant promised the Plaintiff to perform of his Side, and avered that
he did perform all on his the Plaintiff's Side, but that the Defendant paid 11. 7s. of the said 7l. and
no more. To this the Defendant pleaded in Bar, that long before the Promise, viz. 29 July 1691,
the Plaintiff did, by Indenture made between him and the Defendant, release to the Defendant all Man-
ners of Allotments, Suits, Demands, and all Sums of Money, and all Demands whatsoever, which ever he
had, or his, his Heirs, Executors, or Assigns ever had, for or by Reason of any Thing, Matter,
or Demand whatsoever. Upon Over of this Deed of Release, it did recite the said Mortgage, and re-
luded all Promises therein, and all his Estates, Rights, Titles and Interest in the said Caff, both in Law and
Equity, and for ever more, and set forth the foregoing Clause, and upon this the Plaintiff demurred, and Judgment was for the
affirmed.— S. C. cited 3 Mod. 295.

6. If A. by Indenture covenants with C. to serve him with 3 Eff.
Arg. Buil. quires in the War, and C. covenants for this to pay to A. 42 Marks,
[Fol. 415.
* S. C. cited here (*) each hath an equal Remedy, and therefore in Debt for the
42 Marks the Plaintiff may count generally or specially. 149 C. 3.
165; 3 b. Co. 7. [Foot 409. 10 b. Mod. 461.

Holt Ch. J. cites 48 B. 2. 3. as cited in Ughtred's Cafe, where the Diverfiy is taken, when there
are mutual Remedies, and when not. It is thus put in that Book: Sir R. P. covenants with Sir R. T.
to serve him with 3 Squares in the Wars of France; Sir R. T. covenants, in Consideration of those Services, to pay him so much Money; and there it is laid, Action will lie for the Money without any
Services performed. But the Cafe is 48 Ed. 3 is, that R. P. covenants with R. T. to serve him with
3 Squares in the Wars of France, and R. T. covenanted with him to pay him so much Money for the
Service; and if there was further agreed, that 20 Marks of the Money should be paid in England at a
Day certain, before they went for France, and the rest by quarterly Payments, which might likewise in-er
before the Service. And upon Action brought by Sir R. P. it was objected, that the Service was not
performed; but there was no Room for that Objection, the Money, by the Agreement, being
made payable at a Day certain, before the Service was to have been performed — S. C. cited by Holt Ch J.
Ld Raym. Rep. 665. — C. cited and denied by Holt Ch. J. 1 Salk. 1 pl. 3,

Ughtred's Cafe has allowed a Ground for a Variety of D. has upon this Question Per Holt Ch J. 12

There is no pl. 7. in Roll.

8. 31
Condition.

8. If by Articles of Agreement made between A. on the Behalf of B. and C. by which A covenants that B for the Consideration after the Deed executed, shall convey certain Lands to C. in Fee, and S. shall pay to B. 160l. &c. In this Case, though B. does not assure the Land to C. per C. is bound to pay the Money; for the Assurance of the Land is not a Condition precedent, but these are distinct and mutual Covenants. *Vide 15 Car. B. R. between Cotton and Thorpe. *Vide Dixon, adjudged upon a Demurrer. Intraut Car. Rot. 137.

9. If A. releases to B., an Obligation, in which B. is bound to him with a Profite that he, either A. might have and enjoy 120l. due by J. B. to A. at Lady-Day next ensuing, this is a Condition precedent, and not subsequent, because the 120l. was not due at the Time of the Release, but at a Day to come; and if it should be subsequent, the Condition would then be void, the Release being of a personal Thing. *Vide 10 Car. B. R. between Barkey and Parker. adjudged upon a Demurrer, per Curiam. Intraut P. 9 Car. Rot. 262.

10. If an Award be made by Arbitrators between A. and B., that S. C. cited by Holt Ch. 12 Mod. 464, and observes that Roll himself says the Court were divided; and says that Cro. C. 354 gives a quite contrary Report of the Case, and says that Jones and Berkley against Croke, this being moved in Arrest of Judgment; But Hill, 11 Car. B. R. between Hayes and Hayes, the same Case in Effet was adjudged upon a Demurrer, that is not any Condition precedent; but that B. is bound to perform his Part, though A. does not perform his Part. Intraut P. 11 Car. Rot. 1045. Contra P. 10 Car. B. R. Berkley held it a Condition precedent, contra Croke, and therefore Holt says that he rather believes Croke, who was one of the Judges, and tells you himself he was of a contrary Opinion.—S. P. by Holt, Lutw. 252, accordingly. —*Vide 8. P. by Holt accordingly. *Vide 9 Car. B. R. between Hayes and Hayes, Holt Ch. 12 Mod. 464, and Lutw. 252, and Ld Raym. Rep. 666. that the S. C. is reported Cro. C. 354, but that there is no Such Point in it.

11. If a Man by his last Will devises any Thing &c., and after he devises all the Residue of his Estates &c. to his Executor after his Debts paid, and Funeral Expences discharged, this is a good Condition precedent; so that the Executor cannot have it before they are paid and discharged. *Vide 10 Car. B. R. between Wilkinson and Morden, per Curiam, upon a special Verdict adjudged; But in a Writ of Error, as I have heard, this was a Doubt between the Judges, and they inclined to reverse it. *Vide 7 Car. B. R. between Briscoe and Baker, adjudged upon a special Verdict, where the Deed of Land was to a Woman, his Debts and Legacies left paid, and his Funeral Expences discharged.
Condition.

12. If A. Tenant for Life, and B. in Reversion in Fee, covenant to levy a Fine, and that it shall be to the Use of A. and his Heirs, if R. does not pay 10s. to A. the 10th of September after; and if he does pay, then to the Use of A. for Life, and after to the Use of R. in Fee. In this Case this Word (t) or. is a Condition subsequent, and not precedent, so that A. hath an Estate in Fee till R. pays the 10s. because there is a Day limited for Payment of the 10s. and the subsequent Words explain the Intent to be a subsequent Condition, still, and if he pays it, then it shall be to A. for Life, and after to the Use of R. in Fee, which shows the Intent to be, that A. shall have an Estate in Fee till the 10s. paid. Cr. 13 Car. 3. R. in a Writ of Error, upon a Judgment in Banco, between Spring and Caesar, (2) the last Halter of the Rolls, per termini Curtiam adjudged, and the Judgment given in Banco affirmed, where it was adjudged accordingly. Interrete Mic. 11 Car.

See Tit. Arbitrium (D. a) pl. 22, and the Notes there.

12 (bis) If the Conditions of an Obligation be to hand to the Award of J. S. Ita quod hat de & super Pretiales by Writing under the Hand and Seal of the Arbitrators, and published and ready to be delivered to the Parties before such a Day; all this is a Condition precedent; for if it be not in Writing under the Hand and Seal of the Arbitrators, and published before the Day, and also though it be made and published, yet if it be not ready to be delivered to the Parties before the Day, it is not a good Award. Mich. 16 Car. B. R. between Burbridge and Raymond, adjudged in a Writ of Error, and the Judgment given in Banco reversed, because he did not observe that it was made under the Seal of the Arbitrators, and published before the Day, Interrete Cr. 15 Car. Rot. 1657.

13. Mich. 15 Car. B. R. between Caps and Penny, per Curtiam, where he averred, that it was ready to be delivered to the Parties before the Day, for it might be that it made it but kept it secret, and for this Cause Judgment was arrested after a Decree for the Plaintiff.

14. Cr. 1649. between Conduit and Damper adjudged, where the Condition being to hand to the Award of J. S. Ita quod Arbitrium by Deed indented under the Hand and Seal of the said J. S. be ready to be delivered to each of the Parties before such a Day &c. and the Plaintiff in an Action upon the Obligation for Non-performance of the Award pleads in his Replication, that J. S. such a Day, which was before the Day aforesaid, before which it ought to be made by the Condition, accepto superfœ enere Arbitrii predicti per quodam Scrip- tum indimentum, quod idem quenque sub Manu & sigillo predicti J. S. lignatur, & utrique Partium predictarum deliberari paratum hic in Curia profert, cujus datum et eadem Die & Anno Arbitratus fuit &c. this is not good; because as this is alleged, it does not appear that the Award was made under the Hand and Seal of the Arbitrator, and ready to be delivered to the Parties before the Day, as it ought to appear, or otherwise it is not good; for the Word (16) disjoints the Sentence that it is to be inreceded, that when it was moved in Court, it was under the Hand and Seal of the Arbitrator, and ready then to be delivered to the Parties. Adjudged it is not good. Interrete.
**Condition.**

**Jurat Cur. Hil. 24 Car. Rot. 636.** And then the Record of Barbridge's Case before-mentioned was shewn to the Court, which was all one

with this, and judgment there given accordingly as here.

15. If A. leaves by Indemnity a Mortgage to B. in December, 22 Str. 1, Car. for 12 Years, and covenants with B. to repair it with all necessary Repairs before Midsummer following, and B. covenants held it a re

of his Part, quod ab & poll tale Tempus quale A. repairaret & emicirijirpul

dar prad' Meteausum quod tune predictus B. sufficiens repairaret Covenant,

praddum Belgamnun ad omnia Tempora durante dielo termino & In

an Action of Covenant by A. against B. for not repairing the De-

sligame after Midsummer, according to the Covenant of B. and — Leifie

declares, that although he hath performed all the Covenants of his Part

to be performed (without any particular Averment that he hath re-

paired before Midsummer according to the Covenant, with all neces-

sary Repairs) yet the Defendant hath not repaired it after the

said Pearl 96. This is a good Declaration; for the Covenant of

A. to repair it before Midsummer is not a Condition precedent, but

only the Time limited, and that between A. and B. Intercit, that

A. shall repair it before Midsummer, and B. after, during the

Term, for which each of them may have their Remedy by an Action

against A. and the ultimate Time limited for A. to repair is

Midsummer, and the Covenant of B. refers to the said extreme

date limited to A. and not to the Fact, Intercit, the Reparation;

for the (*) Words are Past tale Tempus pr. Patch. 16.19 between

Bragg and Nightingal. Jurat Cur. 24 Car. R. Rotellis 601. alleged, that a

Dove-  

House, Per.

cel of the Premisses at the Time of the Demise was in good and sufficient Repair, and that the De-

fendant voluntarily, during the Term, suffered it to stand uncovered for a Year, whereby it became very

ruinous and fell down. The whole Court (absente Lex) held, that though it was in good Repair at

the Time, yet that is not sufficient, nor shall the Covenant be construed to extend to such of the

Buildings only as then wanted Repair; for if any were in good Repair in the Beginning, and

happen afterwards to decay, the Plaintiff must first repair it before the Defendant is bound to do it.

C. 454. pl. 7. Mich. 60 Jac. B. R. Slater v. Stone. — And though one of the Out-houses

which the Covenant extended to, was in good Repair, and the Leifie pulled the same down, this

is not within the Covenant, unless the Leifie had repair'd it first; but his true Remedy would be by


17. Condition to refug a Living by such a Time for a certain Penion to be conveyed to the Parson, makes the conveying the Penion a Condition precedent. Arg. 10 Mod. 223. cites 14 H. 4. 19.

18. Noe per Cur. that where a Man makes 2 Executors, and that if the Plaint-

they refuss that then such and such &c. there the 2 lait are not Executors

but in default of the 2 first; for these Words imply a Condition. Br.

Conditions, pl. 10. cites 3 H. 6. 6.

furred the Decree to enjoy it 3 Years, that she shall have all his Goods as Executrix; but if she disturb him, then he make 2 of his Son his Executrix, and dies. A. on Executrix brings an Action of Debt within the

3 Years; adjudged, that she shall not be Executrix till the disturbed, and that the Plea of the Defendant that

she had made Disturbance was good without particularly alleging how the disturbed. Cre. E. 219.

pl. 7. Hill 3 Ellis. B. R. Jennings v. Gower. — Thom in Grant's Estates shall not be till the Condition precedent be performed, yet it is otherwise in a Will; For a Will shall be guided by the Intent of the Party, and in the present Case it shall not be construed as a Condition precedent, but as a Condition to

abridge her Power to be Executrix if she does not perform it; per Jutticiarios. Ibid. 59. — Leic. 229.

pl. 311. S. C. adjudged accordingly by all the Judges, tho' according to both the Reports, Anderson at

the first was of a contrary Opinion. — S. C. cited by the Name of Jennings v. Cawman. Win. 115
Condition

19. A Condition Precedent is traversable; per Cur. Noy 75. Hill 1

20. There is a Diversity where the Condition is precedent and where subsequent; for when it is precedent it is not in the Grantee till the Condition be performed, but when the Condition is subsequent the Thing is in the Grantee till the Condition be broken. Br. Condition, pl. 67. cites 14 H. 7.

21. As where I grant you, that if you will marry my Daughter that you shall have such a Leaf, or such Land for 20 Years, now you shall not have the Land or Leaf before you have married my Daughter; but if I lease to you my Land, or 20 Years upon Condition that you pay me 10l. by such a Day, now the Leaf is in the Grantee till the Condition be broken.

22. If A. covenants with B. to serve him for a Year, and B. covenants with A. to pay him 10l. there. A. shall maintain an Action for the 10l. before A. manifold any Service; but it B. had covenanted to pay 10l. for the said Service, there A. could not maintain an Action for the Money before the Service was performed. And there is great Reason for this Diversity; for when one promises, agrees, or covenants to do one Thing for another, there is no Reason he should be obliged to do it till that Thing for which he promised to do it be done; and the Word (For) is a Condition precedent in such Cafes. Per Holt Ch. J. 12 Mod. 460. cites 15. H. 7. 10. pl. 17. his Wages till the Year was expired; but if the Master had covenanted to pay it on a certain Day within the Year, in such Case an Action would lie before the Year was ended. 8 Mod. 41. Patch. 7 Geo. 1. cited per Cur. as a Case in the Time of the Ld. Ch. J. Holt.—See Tit. Apportionment (A)

23. Lands were leased to A. and M. his Wife for Life, Remainder to B. their Son for his Life, if ipse (B.) inhabitare vella, & residens effet intra praeeditam Granget & Firmam &e. This is not a precedent but only a subsequent Condition. Pl. C. 23. a. Patch. 4 E. 6. Colthrift v. Beulhun.

24. When an Interest or Estate should be reduced to a Certainty upon Condition precedent, and the Leffer or Granter, and the Leeree or Granatee die before the Contingent happens, the Leaf or Grant is void; as if a Leaf be made for so many Years as my Executors shall name, this is void, for it ought to be reduced to a Certainty in the Life of the Parties; and Note, a good Diversity between a Covenant or other Agreement which is perfect and certain, and that if it be to take Effect in Possession, upon a future Matter precedent, and a Covenant and Agreement, uncertain which is to be reduced to a Certainty by future Matter ex post Facto; for in one Case the Interest or Estate of the Lands is bound immediately, and in the other not. 1 Rep. 155. b. in the Reector of Chedington's Cafe, cites Pl. C. 273. b.[Patch. 6 Eliz.] Say and Fuller, and says that in the one Case the Interest and Estate in the Land is bound, but not in the other.

25. When a Man is to have one Thing for the Cave of another he must allege the Thing for which he is to have it; Arg. cites many Cafes. 3 Le. 39. pl. 63. Arg. Mich. 15 Eliz.

26. A. leased for Life upon Condition, that if the Leffer died without a Condition, then the Leaf to have Fee; the Leffer is attainted of Treason by the Person of 1 H. 7. and all his Lands forfeited to the Crown having the Right of Strangers.
27. A levied a Fine to B. and his Heirs upon Condition, that if he pay 10 l. to A's Son when he comes to the Age of 18 Years, then to the Use of B. and if not then to A. and his Heirs. The Son died before the Day, and the Opinion was, that B. should have it; cited per Finch Servant, Arg. Wrin. 119. to have been adjudged 18 Eliz. in C. B.

28. A makes Lease for Years to B. Provisto quod non iexidiit B. to alien his Term without Affent of A.—B. devised the Term to his Son, the Leffer affecting to it; As this Case is "tis no Breach of the Condition, for nothing paffed till A's Affent be obtained, for 'twas a Condition Precedent; and tho' the Devifee entered by the Content of the Executors, and had not A's Licence, yet 'tis not material. Cro. E. 69. pl. 2. Mich. 29 & 30 Eliz. B. R. Knight v. Mory.

29. The Lord of a Manor covenanted with his Copyholder to infrant. 2 Le. 211. pl. chief his Copyhold, and the Copyholder, in Consideration of the fame performed, 261. Trin. covenanted to pay 100 l. The whole Court held, that he is not obliged to Brocous's pay the Money before the Affurance made; but if the Words had been Cavi, S.C. in Consideration of the said Covenant to be performed, he must pay the Mo. the same Word. 

30. Tho' the Law is ftrife against Estates at Common Law which are to arise upon Conditions Precedent that never are performed, yet 'tis not so in Limitations of Uses where the Intent is to guide the Estate, no more than 'tis in Deviles. Arg. Mo. 519. cites it adjudged, 31 Eliz. in Lord Paget's Cafe.


32. A grants an Annuity to B. for Life, for maintaining a Cafe; In 7 Rep. 9. b. on the Annuity brought upon his Grant, the Plaintiff need not shew in his De- declaration that he has maintained the Cafe; for it is a Condition subfe- quent, (as where an Annuity is granted pro Conilio impendendo) and the Cafe is vested. Jenk. 260. pl. 59.

33. But where a Man retains a Servant by the Year, for a Salary, in Debt; Rep. 10. for this Salary the Plaintiff should declare, that he has done his Service, or tendered; for this is an Action which ought to aver a Consideration; but not where the Covenants are reciprocal, the one to serve the other to pay, for they have mutual Remedies. If the Condition be Precedent, the Performance of it ought to be shewed in the Declaration. Jenk. 260. pl. 59.

and it is in Nature of an A& Precedent, and says that it was the Opinion of the Court in 71. 6. 336.—S. P. accordingly by Hobart Ch. J. Hob. 41. & 106.—Poph. 198. Arg. S. P. cites it H. 7. b. Fykes.—See Tit. Apporition (A) per tot.

34. A devided a Houfe to B. and if B. die before C. then I will that C. shall have it upon such Composition as shall be thought fit by my Executors, allowing to my Executors such reasonable Rates as shall be thought meet by my Overseers. A died. B. died. Agreed that the Estate to C. is prece- dent and the Condition subsquent, and that the Overseers might make Agreement with C. at any Time. Cro. E. 795. pl. 42. Mich. 42 & 43 Eliz. C. B. Woodcock v. Woodcock.

35. De-
Condition.

35. Devise A. for Life, if B. within 2 Years after Deviseor's Death do not bind himself in 100 l. to pay 5 l. per Annu. to A. during his Life, and if B. binds himself then he devited it to B.—A dies within 2 Months, no Bond given by B. Agreed, that the Remainder to B. on this Condition Precedent is good, because the Condition is discharget by the Act of God. Mo. 758. pl. 1649. Trin. 2. Jac. Fotter v. Brown.

36. If a Condition Precedent be impossible, no Estate or Interest shall grow thereupon. Co. Litt. 256. a. b.

37. If the Condition be to increase an Estate, i. e. to have the Fee upon Payment of Money to the Lessee or his Heirs at a certain Day, and before the Day the Lessee is attainted of Treason or Felony, and also before the Day is executed. Now is the Condition become impossible by the Act and Offence of the Lesee; yet the Lessee than have Fee, because a Precedent Condition to increase an Estate must be performed, and if it become impossible, no Estate shall arise. Co. Litt. 219. a.

38. A. Makes a Lease to B. if C. lives for 21 Years, and C. is dead at the Time, &c. This Lease is void, for the Condition is Precedent. Jenk. 355. pl. 79.

39. A posti tic Agreement was, that one shall deliver a Cow to the other, and that the other shall give him so much Money; the Actio lies for either Side without Performance of his Promise. 12 Mod. 460. cited by Holt Ch. J. as Hob. 88. [pl. 117. Hill. 12. Jac. Nichols v. Rainbrow] and according to the Act the Cow is to be good Law.

40. The Executor of A. brought an Action of the Cafe against B. declaring, that in consideration that A. in his Life-time did promise to affire certain Lands to B. before Michaelmas next, B. promised to pay him so much Money for the Land; so that the Assurance was to be before Mich. and the Money was to be paid for the Land, and consequently after Mich For A, had Time to Mich. to make the Assurance; and because the Assurance was to have been made forth, and the Money by the Agreement to be paid for the Land, tho' there were mutual Promises, yet it was adjudged the Action would not lie for the Money, without making the Assurance first; cited by Holt Ch. J. in delivering the Opinion of that Court, 12 Mod. 462. as Jo. 318. [pl. 27. Mich. 5. Car. B. R. Ruffin v. Ward] and says, that this Cafe is as there reported is intricate, and requires Consideration to make this Contraction upon it; but upon Examination it is a full Authority in point.

41. The Husband devised his Lands to his Wife for Life, and made her Executrix, and devised further, that if it should appear that his Goods and Chattles were not sufficient to pay his Debts &c. that then she should sell all his Lands, or so much thereof, which together with his Goods &c. would satisfy his Debts &c. Adjudged this is a Precedent Condition to the Sale of the Lands, and therefore the Amount of the Debts &c. and the Value of the Goods ought to be set forth, and aver that they were not sufficient to satisfy the Debts, that thereby the Court may judge whether the Condition is performed or not. Jo. 527. pl. 9. Mich. 9. Car. B. R. Dike v. Ricks.

42. The Plaintiff conceived to raise Soldiers, and bring them to such a Port, and the Defendant conceived to send Shipping and Villists for them, to transport them; Plaintiff brought his Action for not providing Shipping &c. at the Time appointed; the Defendant pleaded, that the Plaintiff had not raised the Soldiers at that Time; Reel Ch. J. and Ask held, that these Words were mutual and distinct Covenants, but German and Nicholas


S. C. cited by Ellis J. and said he thought it a very hard Cafe, that the Plaintiff w. o never
Nicholas J. held it a Precedent Condition, but afterwards Nicholas sided any change of his Opinion, and so Judgment for the Plaintiff, Nisi. Sty. 1566, Hill. 1656. Ware v. Chappell.

Nicholas J. held it a Precedent Condition, but afterwards Nicholas sided any change of his Opinion, and so Judgment for the Plaintiff, Nisi. Sty. 1566, Hill. 1656. Ware v. Chappell.

Against the Defendant for not transporting them. — S. C. cited by Holt Ch. J. Law, 242; and said, that he did not think as Ellis J. did, that this was a Hard Case, but a plain Case. — S. C. cited per Holt Ch. J. 12 Mod. 546. In the Case of Thorp v. Thorp, and says, that this differs from that Case; for in that Case, the Bills are Acts to be done, the one is to be ready with Soldiers, and the other with Ships, and the Performance of the one does not depend on the other, nor is the doing of the one the Reward for doing of the other; but they are distinct Acts and each is to do his Part, and this is not a Hard Case, for they are mutual Acts not depending the one upon the other. — S. C. cited per Holt, Ed. Raym. Rep. 660, 667. accordingly.

43. A in Consideration that B. should forbear to protest a Bill of Exchange drawn upon A. promised he would pay the Money when he came next to London, Hice join'd and Verdict for the Plaintiff. It was moved in arrest of Judgment, that there is no Consideration for forth to ground the Promise upon; for B. does not think that A. came to London, but he swears, that A. died at Plymouth and came not to London; per Roll Ch. J. the coming to London is alleged to no Purpoze, for the Payment of the Money was a Duty, and the Monies to be paid were received beyond Sea, and so is a Duty and made a good Consideration; Judgment affirmed. Sty. 416. Hill 1654. Pinchard v. Powke.

44. A leave was made paying so much; (Paying) does not make Precedent Condition. Sid. 230. pl. 8. Patch 18 Car. 2. B. R. Allen v. Babington.

45. A Seized of Lands in Fee in 1643, conveyed them to Trustees, S. C. cited and their Heirs upon Trust, that if B. his eldest Son within 6 Months after A.'s Death, secured 500 l. to the Trustees for the Benefit of B.'s Children then the Trustees (after such Security first given) to convey to B. and his Heirs, and till the 6 Months the Trustees to stand seized to the Use of B.'s eldest Son, and for Default of such Security, the Trustees, at the Request of B.'s eldest Son, to convey to him. Afterwards, in 1656, B. being in Possession, and taken to be absolute Owner of the Lands, mortgaged the Land for 5000 l. Afterwards B. died without having given any Security, the Court decreed, that the Mortgagee should hold the Land for Security of the 5000 l. and Interest against the Trustees and the eldest Son of B. and all claiming under them, but charged with the 500 l. and upon a Bill of Review Lord Keeper Bridgman said, he saw no Caufe to reverse the Decree; but looked on the Condition Precedent to be in Nature of a Penalty, and would regard the Intent of the Trust, which was to secure 500 l. to the younger Children, which according to the Way the Trustees and B.'s eldest Son went, could not be; and so dismissed the Bill of Review. Chin. Cases 89. Trin. 19 Car. 2. Elton, Wallis & al' v. Crimes & Scot.

46. An Agreement in Writing between the Parties that A. should pay 500 l. to B. for all his Lands, in Witness &c. This Agreement was mutually executed, and afterwards B. brought Debt for the 500 l. without avowing Conveyance or Tender. Adjudg'd, that after the Day for the Conveyance was past the Action lay for the Money, because it was a mutual Agreement on which either Party has a mutual Remedy; but it is otherwise where the Proposition Pro makes it a Condition precedent, and the Court held it would have been otherwise in the last Case if it had been the Deed of one of the Parties. 6 Mod. 42. cited per Cur. as the Case of Pordage v. Cole.


47. Plaintiff
47. Plaintiff covenants not to use the Trade of a Taylor with any Custom-
ners in a Schedule mentioned, and Defendant covenants in Consideration of Performance thereof to pay 100 l. for Annum quarterly, this is in Na-
ture of a Negative Covenant, viz. not to use & c. and therefore it is Words In Consideration & c. shall amount to a Condition precedent, the Plaintiff shall never have the 100 l. per Annum during his Life, because such Negative Covenant cannot be said to be performed while there is a Possibility of breaking it, which may be done at any Time during his Life, and Death only can make it impossible, so that there are mutual Cov-

2 Keb. 674. pl. 43. S. C. adjudged accordingly.

49. In Covenant & c. the Plaintiff declared upon Articles of Agree-
ment, by which the Defendant covenanted to pay the Plaintiff so much Money, be making to him a sufficient Estate in such lands before Mich. & c. and though he (the Plaintiff) Semper a Tempore Confectionis Scripti paratus fuit ad performati uoque ad Diem Exhibitionis Bills all the Agreement on his Part, the Defendant had not paid the Money, it was held, that the Words (he making a good and sufficient Estate) are a Condition precedent, and therefore the Plaintiff should have averred the Performance of it particularly, and not by such general Words as, that he had performed all on his Part. Vent. 147. Trin. 23 Car. 2. B. R. Large v. Cheshire.

S. C. cited
Ld. Raym. Rep. 666. by Holt Ch. J.

50. Defendant covenanted to be accountable to the Plaintiff for all Ar-
rears of Rent, Tribes, & c. and assigns a Breach, that he hath not ac-
counted & c. tho' requested to do it. The Defendant confesses the Co-
Covenant to be accountable; but that in the same Indenture, Agriculture put & ulterioris Proviam, that the Plaintiff should allow and discharge all Moneys for Payments-Dinners & c. which the Plaintiff refused to do; and upon Demurrer to this Plea, it was inquired that Ulteriorus Proviam etf makes a Condition precedent; fed per Curiam, these are mutual Covenants, upon which each Party hath a distinct Remedy, for the Proviam & Agrae-
atum etf do not amount to a Condition, but is a Covenant; and in this Case the Defendant is bound to account upon Request, and Judg-
ment for the Plaintiff. 2 Mod. 53. Pach. 27 Car. 2. C. B. Smith v. Shelberry.

1 Salk. 172. pl. 1. S. C. cited by Holt and denied.— Freem Rep. 195. pl. 199. S. C. held that (Prolinte) made no Condition Precedent, but only specified the Consideration.
52. In Covenant upon a Charter-Party, the Plaintiff declared upon an Agreement, that his Ship should be ready on the 12th of August to sail to N. beyond sea, and that would load it with Figgis, and other Merchandize of the Defendant's, and bring them back to Topsham &c. and that the Defendant covenanted to pay 31. 15s. for every 2000 lbs brought, and attains the Breach in Non-payment of 121. 10s. due for the Freight of 30 tons; the Defendant pleads that the Ship was not ready to sail on the said 12th of August, whereby he lost the Profit of his Merchandise, and traversed that the Ship was ready &c. and upon Demurrer per Curiam the Plea is ill, for there are mutual Covenants, and each Party hath Remedy for Non-performance, and Judgment for the Plaintiff. 2 Jo. 216. Trin. 34 Car. 2. B. R. Shower v. Cadmore.

53. Copyholder of Lands of Borough English, surrendered to the Use of himself for Life, and after of A. his eldest Son, and his Heirs, if he lives to 21; but on Condition that if A. dies before 21, then to the Surrenderor and his Heirs, and dies. This is an Estate to A. expressly to be defeated by Condition subsequent, viz. A. dies before 21. 3 Lev. 132. Trin. 35 Car. 2. C. B. Edwards v. Hammond.

54. B. the Plaintiff leased a Mill to W. the Defendant, and covenanted to find Cogs, Round's, Brakes and Timber &c. for the Mill, during the Term, and W. covenanted to keep them in Repair; W. pleaded Performance; B. replied that W. suffer'd the Mill to be in Decay, and would in what; W. rejoind'd, that he demanded Timber of the Plaintiff to repair the same, but be refus'd to deliver any; and upon Demurrer to this Rejoinder the Court was divided, whether these were conditional or mutual Covenants. Lucw. 394. Hill. 2 & 3 Jac. 2. Browne v. Walker.

55. A. feiz'd in Fee settl'd Lands to the Use of himself for Life &c. 3 Lev. 211. Remainder to B. and the Heirs Male of his Body, Remainder to C. in 2. C. B. the Tail Male, Remainder to A. and his Heirs, with Power of Revocation &c. of the Estate of B. only, and to limit new UEs, and after by Deed the Carrth. 192. next Day, reciting that he had limited an Estate to B. and his Heirs &c. Male, he recov. the same, and limits it to B. and his Heirs Male, provided that he pays 1500L. to his Executors, and if he fail thereof, it shall be lawful for A. and B. &c. to enter and raife the same out of the Rents, the Point of Profits and Profits. A. dies. B. dies without Issue. W. R. claim'd the Estate as Heir to B. inftilling that the Limitation was of an Estate in Fee, but adjudged it was only Estate Tail, as the first Estate was. But in arguing this Case, it was urged, that this Provifo was a Condition previous, and so B. never feiz'd in Fee (supposing the Limitation to have been in Fee) because no Performance of the Condition found by the Verdict. But this was rejected; and it was held clearly that this was a Chattle Interstitial Trustees to raife 1500L. if B. did not pay it, and that such an Interest may be limited by way of UEs, as in Case of a Rent, and that upon Payment the Grantee may enter and receive the Profits; that this is not a Condition, as it was upon a Covenant at Common Law, but an Estate which shall arise to A. and B. upon such a Contingent. Skin. 324. Mich. 4 W. & M. in B.R. Gilmore v. Harris.

56. In Debt the Case was, that the Plaintiff, in Consideration of 100L. to be paid to him &c. by the Defendant, covenanted to assign &c. to the Defendant, on the 30th January next, to Shares in the Corporation of Linnen Manufacture; and the Defendant covenanted &c. that he would then accept them, and at the same Time pay the Plaintiff the said 100L. &c. under the Penalty of 2200L. It was inflin'd for the Defendant, that the Assignment ought to precede the Payment of the Money, because the Covenant to pay it was in Nature of a Condition, or Defeance, to fave the Forfeiture of the 2200L. and therefore shal be con-
Condition

57. Devise to the first Son of A. if he takes my Name, if not to B. A. dies without Issue. B. shall take; for the Refusal of A.'s Son is not a Condition precedent, but a precedent Estate attended with these Limitations. Per Troy Ch. J. and Judgment accordingly. 1 Salk. 230. pl. 5. Trin. 9 W. 3. C. B. Scattergood v. Edge.

58. Where the one Promise is the Consideration of the other, and where the Performance and not the Promise is, is to be gathered from the Words and Nature of the Agreement, and depends entirely thereupon; for if in case there were a positive Promise that one should release his Equity of Redemption, and on the other Side that the other would pay 1l. then the one might bring his Action without any Averment of Performance; but where the Agreement is, that the Plaintiff should release his Equity of Redemption, in Consideration whereof the Defendant was to pay him 1l. so that the Release is the Consideration, and therefore being executed, it is a Condition precedent, which must be averred. 12 Mod. 455. 460. Patch. 13 W. 3. by Holt Ch. J. in delivering the Opinion of the Court in Case of Thorp v. Thorp.

59. If there be a Day set for the Payment of Money, or doing the Thing which one promises, agrees, or covenants to do for another Thing, and that Day happens to occur before the Time, the Thing for which the Promise, Agreement or Covenant is made is to be performed by the Tenor of the Agreement there, tho' the Words be, that the Party shall pay the Money, or do the Thing for such a Thing, or in Consideration of such a Thing. After the Day is past the other shall have an Action for the Money, or other Thing, tho' the Thing for which the Promise, Agreement, or Covenant was made be not performed; for it would be repugnant there to make it a Condition precedent; and therefore they are in that Case left to mutual Remedies, on which, by the express Words of the Agreement, they have depended. Per Holt Ch. J. 12 Mod. 461. Patch. 13 W. 3. in Cafe of Thorp v. Thorp.

60. M. agrees to give A. so much for the Use of a Coach and Horses for a Year, and A. agreed further with M. to keep the Coach in Repair; it was averred the Coach and Horses were delivered to M. but nothing of the Repair; and Holt Ch. J. held upon this Evidence that repairing was not a Condition precedent, and therefore need not be averred. Per Holt
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Condition.

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Hole Ch. J. at GuildliaJ], and Judgment pro Querente.
12 Mod.
Atkinfon v. Morrice.
503 P.ilch. 13 W. 3.
6t. B.'it it the Agreement had been chat A. had agreed to gi've M. a
0)ach aad Horfes for a Tear^ and to repair the Coach, and that J or thatM.
p\m:fcd p) much Alcncj, then the Repairing had been a Condition precedent necelFary to be averred. Per Hole Ch. J. 12 Mod. 503. Palch.
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Condition that A.

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here an Jzvard conjilts cf divers Things, and one ot them is Ihid. 590.
63.
void, and it be exprelly faid, that upon Performance of tha.t void Thing, Trevor Ch,
the ctLcr Party ft:all do inch a Thing, there the doing of the void Thing
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is a Condition Precedent, and mult be averred before Action againll the Powcil
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other lor not doing his Part ; But "where there be fe\eral Things in an Part.vhthac
Award, and foine aregood and others not, and 'tis further fiid,//\-7r tipvn 'f P-^rtof the
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iuihces to make Averment of Performance of ivhat is laell awarded without it be'a Conmore ; per Powell J. 12. Mod. 5S8. Mich. 13 W. 3. in C. B. Lee v. dition Pi-eceflent, it muft
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before the other performs of his Side; But my Brother's Diverfity of evprefs Words of Reference 1
tliirik will rot hold, th.it is, that where the Words be exprefs that upon Peiformance of that Part
which is void, the other fhall do fuch a Thin^, there the void Thinp;, fjys he, is a Condition Precedent, and mud be done; but where feveral Thin{^.s are ordered and fome cfthem void, and that fupei*
Pcrformationem proem' iuch a Thing fhall be done there he fays it is enough to do that which is well
awarded, to he intirled to the Thing to be done of the other Side. 1 fay, that every illegal Part of an
Award is the fame Thing to many Piirpoles as if it were not in but yet if it appear, that the Arbitrators de(igned tliat fuch illegal Part fhou'd be Part of the Confideration in refpeft of which the other
was to perform, it mnlf be done, or elfe here is not that Advan.age for the other 6idc which was defigneJ
for ii; and lie has a Wrong done him by being forced to pay for a Confideration which he has not.
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64. Altho' Itaqiiodls held in Littleton, to make a Confideration fub- 3
fequenr^ yet that is ui cafe of FJiates executed, but it is otherwife in cafe
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ci Things Executory. As ii A. Uiall covenant to convey his Lands to
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dition Precedent to the Conveyance of the Lands, and he is not obliged that Littleto perlorm his Agreement unlefs the 10 1. be paid at the Time appoint- 'on's jbto
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65. Condition defcrihing the Gyiialijication of the Perfon that is to take is
in its Nature a Condition Precedent ; per Lord K. Cowper.
2 Vern.
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Feme

marries one Ingram having Lands of Inheritance ;
Articles are entred into, whereby the Infant Feme was during the Coverture to little and convey over thefe Lands, and then fie was to have a Rentcharge of i\^oi. per Ann. tor her Jointure, whereas before fhe had but 250/.
per Annum.
Ingram dies j llie marries one Wood.
and his "Wile
brings a Bill for to have the 450 1. per Ann. &c. but decreed per Harcourt Lord Keeper, that here was a Condition Precedent to her having
herjointure augmented which was to have been done during the Coverture i and a Court of Equity will not relieve in fuch a Cafe where Omillion of it was but a rrieer Neglefl in the Party.
In my Lady
TBCrtiC'jJ QTtlfC) where a Portion was given to a Lady, in Cafe fliC married
niy Lord Guilford, my Lord reluled upon a Tender, and the Lady
married to another by the Content and Direction of the Court of Ch;mterv' ; yet in this Cafe my Lord Somers refuted to aliilt the Lady, but
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the Fortune went over; But upon an Appeal in the Houfe of Lords
this Matter was in a Manner compromifed by the Lords, and the Lord
Keeper here dilurified the Plaintiff’s Bills for he should relieve her she
would have both the Land and the 450 l. per Ann. Mich. 9 Anna
Wood v. Ingram.

67. The Condition of a Bond was, whereas D. was indebted to T. in a
Bond of 3000 l. conditioned for Payment of 1500 l. and had recovered Judg-
mcnt. G. upon Consideration that T. the Plaintiff would forbear suing for
Execution upon D. pretend to pay the Money to T. upon Request, T. affir-
mong over to have the Judgment he had against D. The Defendant pleads
in Bar, that the Plaintiff had not aligned. Plaintiff replies, that he was
ready to align. Upon the firft Argument on Demurrer, Parker Ch. J.
and Powis were of Opinion for the Plaintiff, and that the single Ques-
tion was, Who was to do the firft Act ? and that the Obligor was to
do it; For though he is not bound to part with his Money unless the
Judgment be aligned to him cedem inianti, yet he must offer to him on
Condition the Obligee will align it. But Eyre J. e contra; for he held
it a Condition precedent; and also that if the Judgment was aligned
firft, the Bond might be put in Suit for the Money; but if the Bond
was paid firft, there lay no Remedy at Law for the Judgment; Ec
Adjonatur. 10 Mod. 153. Parc. 12 Ann. B. R. Afterwards the Cafe
was argued again. Ibid. 159. Mich. 12 Ann. & Ibi. 222. Parc. 13
Ann. and afterwards in the next Term Judgment was given for the

After Con-
deration, Parker Ch.
J deliver’d the Opinion
of the Court for
the Plaintiff,
and said, the
Question about
the Bar had
been, who
was to do
the firft Act,
whether the
Plaintiff
ought firft
to have al-
igned the
Judgment,
or the De-
fendant to
have paid
the Money,
and that the main Objection against the Plaintiff’s aligning firft was, that the Plaintiff would then have been obliged to have found out the Defendant, and have tender’d an Alignment the Day the Money was payable by the Condition, as in 3 C.ro. 143. Nov. 18. Hob. 60.77. and to it would have been in the Power of the Defendant to have render’d his own Bond ineffectual by keeping out of the Way; and that on the other Side it had been objected, that if the Defendant ought firft to have paid the Money, he would have been without Remedy at Law for the Judgment; but that the Court were of Opinion, that the Words (be aligning &c.) did not amount to a Condition precedent, for the Words themselves do not import it, and there were no other Words or Reason to make such a Contraction necessary. In all the Cases cited at the Bar of Conditions precedent, there is some Word of Priority, or one of the Acts is to be at a prior Time, or something that makes it necessary that one should precede the other, except the Case of Large v. Halfin, 1 Vest. 147; 2 Keb. Soc. which is of no Authority; for no Judgment is ever’d in that Case, nor any Rule for Judgment to be found, and that in this Cafe the Acts of the Parties ought not to have preceded, but accompanied one another; the Defendant ought to have tender’d the Money, but not absolutely, but sub Modo he should have counted it out, and told the Plaintiff here is your Money, they make me the Judgment, and then upon the Plaintiff’s delivering the Alignment, the Money would have been his, but not before, tho’ he also had counted it, and to the Alignment of the Judgment ought to have been a Circumstance of the Payment, and that this Construction of the Condition obviated all the Objections of both Sides, and that such a special Tender was not a new Thing; for upon a single Bill the Obligor ought to tender the Money upon the Terms of having an Acquittance, and such a Tender with an Acquittance is a good Plea, cites Pith. Abs. Tr. Verdict 15: So 1 H. 7, 8. 9 Debt was brought against the Executors of the Clerk of the Hamper, upon a Patent by the King to the Plaintiff, for a Sum of Money, and a Li-
berate to the Clerk to pay it, he receiving Letters of Acquittance; and the better Opinion there is, that the Plaintiff was not obliged to offer an Acquittance, but that the Clerk ought to have tender’d the Money, and demanded an Acquittance; so in this Case the Defendant, to save his Obligation, ought to have found out the Plaintiff, and tender’d the Money upon the Day upon the Terms of having an Alignment of the Judgment, and ought to have pleaded such special Tender with a Refusal and an Adlus parat as in the common Cafe of a general Tender, and since he had not done so, his Plica
ill. Judgment for the Plaintiff.


Verbis.

68. A on the Marriage of B. his Son with M. an Heirs, convays
Land to Trustees to the Use of B. and their Issue, that if M. when the
comes of Age shall not join to charge her Eftate with 6000 l. then the In-
feudtures to be absolutely void to all Intents and Purpofes; per Lord
Harcourt this is a Condition fubfquebent. Ch. Prec. 387. pl. 266. Parc.

Cowen’s
Rep 171
324, pl. 214.

69. A gave a Legacy of 6000 l. to L. the only Child of M. and died,
leaving M. his Hear at Law, but devised all his real Eftate to B. The Le-
gacy to L. was made payable at her Age of 21 or Marriage, which should
first
Condition.

85.

first happen, and to be in lieu and Satisfaction of all which the mighty claim out of his Real or Personal Estate, and upon Condition he should re- lease all Right and Title thereto unto his Executors and Trustees. It S.C. in an was initiated, that L. had no Right during her Mother's Life, that L. Action of might marry while an Infant, and so her Legacy become due, and the not capable of releasing, or might intermarry with an Infant, and so neither the nor her Husband capable of releasing, and yet the Legacy due; wherefore supposing it to be a Condition, it could be no more or less than a Condition subsistent, Quod Curia concedit. Wms's Rep. 783. 785. Hill. 1721. [Tim. 1722] in Canc. Acherley v. Wheeler and Vernon.

70. In all executory Agreements where the Plaintiff declares Pro Consideration, there the Word (Tru) makes it a Condition precedent, (that is) the Thing shall be done or rendered to be done before the Defendant shall be obliged to pay, and neither of the Parties can have an Action of Covenant without overruling the Performance. 8 Mod. 42. Pauch p. Geo. 1. in Case of Lock v. Wright.

71. A. in Consideration of 500l. which he is to have with his Wife in Money and Goods, and of the Marriage, made a Settlement, and gave her a Power to dispose of 200l. by Will, which he did about 13 Years after. On a Bill in Chancery by the Legatees, A. inquired, that this was a Condition precedent, and that he never received more than 300l. as a Marriage Portion with his Wife; but the Matter of the Rolls held otherwise, and that the Quantum of the Portion seemed rather a Computation, and was satisfied therewith, and decreed the 200l. to be raised. 2 Wms's Rep. (618.) Trin. 1731. North v. Anfell.

For more of Conditions Precedent see Tit. Devise, Remainder (W) per tot. Stocks, per tot. and other Proper Titles.

(T. 2) What shall be said a Condition precedent, and what subsistent, as to Marriages and Marriage Portions. And in what Cases forfeited.

1. A Leave for Years to Sir Edward Waldgrave and Lady, on Trust to raise 900l. for a Feme issue, in Case she did not marry contrary to good Liking of Sir Edward and Lady; if she did, then to go to such Person Lordship sons as Sir Edward and Lady, or Survivor should nominate, and for want may the Case of Nomination to Sir Edward and Lady, or Survivor of them; the mar- ries without their Consent, they die without any Nomination; Bill was pre- ferred by Sandall, who had a general Deed of Gift by Lady W. who Nomination, survived, of all her Goods and Chattels, against F. Coplestide, who had for the Gift Administration to the Feme and Lady W. to have the Benefit of this of all her Goods and Leave; which was decreed for Coplestide. Comyns's Rep. 739. 740. Chathers Pauch. could not a-
Condition.

But the Rule is, when the Property is to be divided by testament or otherwise, that the Parcels thus divided shall be equal, unless it is done for some reason of convenience, or in some other way, to prevent some great inequality.

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of the 20,000 l. Penalty for Refusal, and that the latter Clause was to the Use only to bring back that 20,000 l. into the personal Estate to be settled to J. S. and the the same Uses with the real, in cafe the Marriage should be after 16, and their
Soutphamton v. Cramner & c.

Intendment

Cafe the

Plaintiff should be married to his said Daughter after the Age of 16, and that they should have Issue

Male between them, that then the said Trustees and their Heirs should stand fealt of the Premises in

TrufT for the Plaintiff during his Life, and after his deceafe in Truft for his said Daughter for her Life,

and after in TrufT for such Issue to fall &c. The said Plaintiff was married to the said Daughter before

her Age of 14, but she lived till she was above the Age of 16, and then died without Issue; and the

Plaintiff preferred his Bill to have this TrufT executed to him for his Life, and the only Question was,

Whether he was invited to this Estate for Life? And it was held, that although she was married

before the Age of 16, yet in as much as she lived till after the Age of 16, she might properly enough

be laid to be married after the Age of 16; and so it was held in _L. EXXTUBS'S Cafe, and affirmed in

the House of Lords. They all held, that although there was no Issue of that Marriage, yet the Plain-

"tiff was intitled for his Life; for that should be taken reldanda lingula lingula, and the having of Issue

should be no Condition Precedent to his TrufT for Life, but should refer to that Limitation of the

TrufT to the Issue; for that a TrufT should be computed by the same Rule as a Will, or as Articles

of Agreement, which need not that precise Form of Words as Limitation of an Estate at Law; As an

Agreement to convey an Estate to J. S. for ever will carry the Fee simple. And _Trevor said, that if

it were the Limitation of an Use at Law, it would be sufficient to create an Estate for Life, the Intent

of the Party to plainly appearing as it does in this Cafe. This Case being afterwards heard in the

House of Lords, the Decree was reverted._—— Show. Parl. Cafe 18; Wood, alias, Garnemere v. the

Duke of Southampton, S. c. says the Court of Chancery decreed the Prots to J. S. for Life; but against this

Decree 'twas argued, that were a Condition _equivalent, confifting of several Branches, as this does, is

made Precedent to any Use or TrufT, the entire ContufT must be performed by all the Issue or TrufT

can never arise or take Place, and that the Performance of one Part only is not sufficient, and the De-

cree was reverted accordingly._—— S. C. cited by Lord Ch. Barom Comyns in his Lordship's (as I sup-


353.

4. A. by Marriage Settlement provided 2000 l. a-piece, and after, by _2 Vern. 452.

Will, directs the making up their Portions 3000 l. a-piece, and charges his _392.

Mich. 1703—

real and personal Eatre, _provided they marry with Consent of their Mother; S. C.

Per Lord Wright and Master of the Rolls, 'tis a Condition Subsequent.


5. A. by Will leaves his Grand-Daughter 200 l. provided she continued to have his Executors until 21, but if taken from them by her Father, who was

a Papist, before 21, or if she married against the Consent of his Executors, then he gave her but 10 l. and made B. and C. Executors. She was placed by the Executors with D. a Clergyman, and before she was 21, very good

D. and one of the Executors consented that she should make a Visit to her Father, when the Father, augmented to the Executors, married her to a Papist.

Decreed at the Rolls for Payment of the 200 l. to the Daughter, but on Appeal Ld. Cowper decreed her only the 10 l. He held that the

Continuance with D. by Direction of the Executors was well, and that this was a Marriage against their Consent, they not having Oppor-

tunity to declare their Dislike before Marriage, and declaring it upon

Notice after; and that the Condition describing the Qualifications of the Person who was to take, was in its Nature a Condition Precedent.


_2

of Harvey v. Alton, _S. C. cited Comyns's Rep. 755 by the Lord Ch. B.

6. J. having 4 Daughters, A. B. C. and D. in 1705. devised &c. _Several Parcels of his Estate severally to his 4 Daughters, & inter al


devised to Trufts his Lands in E. and F. in TrufT for A. until her Mar-

riage or Death, and in Cafe the marriages with the Consent of her Trustees,

then for her and her Heirs; but in case she should marry without their

Consent, then to her other Sisters equally between them &c. In 1759

A. marries W. R. with the Consent and Approbation of her Father, who

satters upon this Marriage Part of those Lands devised to her, and also 7 l.

Of the Party cannot be

compensated in Damages, then for her and her Heirs; but in case she should marry without their it is against

Confent, then to her other Sisters equally between them &c. In 1759

A. marries W. R. with the Consent and Approbation of her Father, who

satters upon this Marriage Part of those Lands devised to her, and also 7 l.

per
7. A Legacy was devised to A. to be paid at the Age of 21 or Marriage, which shall first happen, so as such Marriage be with Consent of B. and if not, then was devised the same to his other Daughters. A marries without Consent, and dies before 21, leaving Issue. Lord Chancellor said that this is not to be considered under the Notion of a Forfeiture; that it is merely a Legacy given, and 2 Days of Payment appointed with a Devise over; and the Perfon dies before the Legacy grew due, and so devised that A. dying before Marriage with Consent, or 21, an Account should be taken of her Part, and that there, and the Improvements of it, be paid to the surviving Sifters. Sel. Cales in Can. in Lad King's Time. 26. Trin. 11 Geo. Pigget v. Norris.

8. A devise a Legacy of 1000 l. to his Daughter, on Condition that he marry a Man who have the Name and Arms of Barlow, and if he marry one that should not bear such Name and Arms, then was devised the 1000 l. to J. S. The Daughter married one Bateman, but about 3 Weeks before the Marriage he called himself Barlow. On a Bill brought by J. S. for the 1000 l. as forfeited to him, the Matter of the Rolls was of Opinion that the Condition was complied with by the taking the Name of Barlow, and the it was infufed by the Plaintiff's Council, that the Defendant, when he had received the Legacy, would probably refume the Name of Bateman, and therefore pray'd that he might be devised to retain the Name of Barlow ever after, yet his Honour refused to make any such Decree. 3 Wms's Rep 65. pl. 16. Trin. 1730. Barlow v. Bateman.

9. A by Will devised his Lands C. and his Heirs in Truft to pay Debts, and then in Truft for B. his Grand-daughter, and the Heirs of her Body, Remainder to C. and his Heirs, upon Condition that he marry B. and gave C. his personal Estrate in Trutz for B. until the attain 21, and made C. Executor, and died. B. refused to marry C. and married J. R. and afterwards at her Age of 21, B. and J. R. made a Bargain and Sale to W. R. to make him Tenant to the Preceipe in order to suffer a common Recovery, in which B. and J. R. were vouch'd, and the Ufs were declared to the Iffue of the Marriage, Remainder to her own right Heirs. One Question was, whether the Condition annexed to the Defendant's Remainder be a Condition precedent or subsquent? and as to this, Lord Chancellor said he was inclined to think it is a Condition subsquent. There are no * technical Words to distinguish Conditions precedent and subsquent; but the fame Words may indifferently make either, according to the Intent of the Person who creates it. In this Caze the precedent Limitation was an Estrate Tail in Possession; and therefore why shall we not say, that as to this Remainder likewife it was the

* See (T) pl. 69.
the Teller's Intent to have it vest immediately in the Defendant. The Limitation is immediate, altho' the Condition upon which it depends is subsistent. Cases in Chanc. in Lord Talbot's Time, 166. Hill. 9 Geo. 


10. A by Settlement after Marriage created a Term of 1000 Years in a Tract by Mortgage or Sale to raise 2000l. for each of the Daughters Portions, provided they marry with their Mother's Consent, and if either die before Marriage with such Consent, her Portion to cease, and the Premises to be discharged; and if raised, till be paid to the Person to whom the Premises should belong; and afterwards by Will created another Tract to augment their Fortunes 2000l., a-piece more, but subject to the like Condition as in the Settlement, and gave the Rolls over and above were not the 2000l., a-piece to his Wife; and by a Codicil created another Tract-Term, for the better asaving of his Daughters Portions. A died, leaving 2 Daughters, J. and K. — J. after Age of 21, married R. S. and K. before 21 married W. R. and both without the Mother's Consent, united on their Husbands brought a Bill for their Portions. The Matter of the Rolls took Notice of the Clause, declaring that if any die before Marriage with such Consent, her Portion should cease, which was then to be re-announced, the Counsel to be subject to the Disposition of it; but he said that fully this was not a good Disposition within the Meaning of those Cases, that allow a Limitation over to be good; for this is not to take Place upon Marriage without Consent, but upon dying before Marriage to create such, and is no more than providing for Daughters dying unmarried; be taking it all along, that if they married they would do it with Consent; That here does not appear to be any Person in the Teller's View, to whom these Fortunes should go over, as in other Cases where those Limitations over are allowed; that tho' these Portions are charged upon Land, yet there being no Disposition between Conditions annexed to Money charged upon Land, and such as are to arise out of the personal Estate, and Portions by Will being due by the Ecclesiastical Law, notwithstanding such Condition as this annexed to them, Portions by Settlement (tho' under the like Conditions) are likewise due by the Law and Rules of this Court, and therefore thought the Plaintiffs, the Daughters, well intitled to their Portions; and so order'd the Husband of the one to make Proposals before the Matter as to settling his Wife's Fortune, and that the Fortune of the other should be paid to her, her Husband being dead. Sel. Chan. Cases in Lord Talbot's Time, 212. Mich. 10 Geo. 2. Harvey v. Alton. 

ner, and upon what Terms and Conditions he pleases; this he believed will be universally allowed, adly, That it is a fixed and settled Maxim of Law, that it an Estate in Land, or Interest out of the Land, is limited to commence upon a Condition precedent, nothing can vest or take Effect till the Condition performed. And this is so strong and so settled a Point, that it holds although the previous Act was at first impossible, or after becomes impossible by the Act of God, or other Accident, the Estate can never vest. Comyns's Rep. 744. in his Lordship's Argument. And his Lordship laid, that a third Reason which influenced him to this Opinion, is, that it is most agreeable to the Rules of Equity, to direct the Execution of the Trust according to the Intent of him who placed the Trust in him; it is said a Trust is confirmed favourably; and it is true, it is confirmed with as much Advantage as may be to make good and answer the Intent and Design of the Party; but it is confirmed distinctly with regard to the Execution of the Trust; and therefore it would be a strange Thing, when the Trust directs the Trustees to pay the Money at the Time of the Daughter's Marriage with her Mother's Consent, that the Court should direct them to pay the Money before that Time. 46th. But that it is an Agreement of no small Weight in his Opinion, that the Refraining in the present Case is not only lawful, but prudent and reasonable, and no Consequence more likely to ensue from it, than the Hindrance of an inconceivable or imprudent Marriage. Comyns's Rep. 748. The Lords Ch. J. Sir W. Lee and Sir J. Willes, who adfuited the Lin. Chan. Hardwicke upon this Appeal, being of the same Opinion, his Lordship was pleased to concur; and thereupon the Decree of his Honour, the Matter of the Rolls, was reversed. Comyns's Rep. 53:

11. When a Condition capellata, consisting of several Branchers, is S P by l.d made precedent to any Use or Trust, the intire Condition must be performed.
his Reports, formed, or else the Ufe or Trufτ can never rise or take Place. Show. 352. PaI<h Parl. Cafes. 85.

in Cafe of Harvey v. Aflon, fays it is a known Rule, and that the Cafe of Sir Cæfar Wood, alias Creamer, v Duke of Southampton, Parl. Cafes. 83; is an Authority exprefs in this Point; Sir H. Wood, on [in Confideration of] a Marriage of [to be had between] his Daughter with the Duke, made a Settlement on Trufτ to raife Maintenance for his Daughter till [15 Years of Age, and then of 150, l. Year till] Marriage, or Age of 21, and if his Daughter after her Age of 16 fould marry and have Illegitimate
by the Duke, they for Settlement on the Illegitimate, and after a better Provision for the Duke and his Wife, on Trufτ for the Duke and his Wife for their Lives, and after to their felf and other Sons in Tail Male. She married [the faid Duke] before the Age of 16, and after that Age died without Illegitimate; the Question was, whether the Duke should not have the Effece for his Life? and at ilft decreed for him, but that Decree was reverted in the Houfe of Lords; for it was faid the Words were plain and certain, that there muft not only be a Marriage, but Illegitimate; and it would be Violence to break the Condition into 2 Parts, which is but according to the plain and natural Sense of it. —The fame Determination was made afterwards in this Court between Sir Cæfar Wood and Sir D. Webb. Parl. Cafes 8; and affirmed in the Houfe of Lords. Ibid.

12. A Personal Legacy in Cafe of Limitation over, given on a Condition not to marry without Confeh, shall be loft if the Condition be broken ; Per Ld Ch B. Comyns, fays it is admitted. Comyns's Rep. 755. PaI<h. 13 Geo. 2.

(T. 3) Breach relieved. In what Cafes of Conditions precedent or subsequent.

1. TRUST created, by which the Wife was to have an Effece for Life, on Condition that the fettle her own Lands within 18 Months after the Husband's Deceaf; on her and her Husband's Children, elfe to be void. She fignified to one of the Trustees within the Time, her Willingnefs to do her Part, and doubted the Title to the Effece for Life, and in a Bill by her brought in this Court, declared her Willingnefs to make fuch Settlement, but not unless her Effece for Life was confirmed, which was decreed in the Manner propofed, and the Trustees to be indemnified. Fin. R. 67. Hill. 25 Car. 2. Wallv v. Shafsbury and Vernon.

2. A on Marriage of B. his Daughter with C. entred into Articles with C. to pay down 1500 l. and 2500 l. more within 6 Months after C. should fettle on B. 800 l. per Ann. Afterwards by another Indenture between A. B. and C. in Confideration of the faid Marriage to be had, and of 4000 l. mentioned to be paid, or fecur'd to be paid to C. C. fettle Lands of 446 l. per Ann. and A. paid C. 1500 l. and at the fame Time A. gave fecurity to pay the 2500 l. and at the fame Time C. by other Articles, covenanted within 3 Years to purchafe and fettle 334 l. per Ann. to make up the 800 l. per Ann. and in the fame Articles A. covenanted to pay C. or his Affigns 2500 l. within 6 Months next after fuch Purchafe and Settlement made, and Interfell for the fame half yearly in the mean Time, and if C. died before fuch Purchafe &c. then A. within 6 Months after C. 's Death, to pay to B. her Executors, &c. the 2500 l. and for Default of Payment of Interfell &c. to fuch Perfons as the fame fould become due to, the Trustees were to enter and fell the Lands charg'd. B. died within a Month, and no Purchafe made; Per Cur. here is no Pretence that the Articles were contrary to the Intenfion of the Parties, and fo this Covenant is in Nature of a Condition prece-
Condition.

91

precedent, and can't be discharged in Equity; and here is a Deed of
Tract, a Jointure-Deed, and Articles, all of the same Date, and shall be
intended to be executed at the same Time, and are all as one entire A-
greement, therefore the Recital in the Jointure Deed, that it was in
Confederation of Marriage, and of 4000 l. paid or secured, as the Parties
can't be understood as any positive Agreement, but must be expounded
by the Articles to which it does in a Manner refer in some Cases, and
upon special Circumstances a Court of Equity has expounded Deeds oth-
wise than the Letter thereof seems to import, yet this ought never to
be done so as to make a Deed, but only to avoid some Extremity. Fin.
R. 98. Hill. 25 Car. 2. Check v. Ld Lilte and Harvey.

3. Bill to have a Legacy of 1000 l. which was Money secured by a
Bond to be paid to the Trustor within 7 Years after his Marriage, and
after a Jointure of 600 l. should be settled on his Wife. The Defend-
ant pleads, that the Money was to be paid upon Condition, and that the
Party died before the Condition was performed. But the Plea was over-

4. Devise to A. in Tail Male, and for Default of such Issue, to B.
and his Heirs, on Condition to pay to C. D. and E. 500 l. to be divided
equally, and if B. shall refuse to pay, then the Lands to go to C. D.
F. C. and A. died without Issue; Defendants inferred that this was a Condition
precedent, but the Plaintiff was relieved on Payment of the 500 l.
and Interest since A.'s Death. Fin. R. 493. Hill. 31 Car. 2. Pitzcaine
v. Brace, Wheeler, & al.

5. F. on his Marriage of M. Daughter to Sir G. S. by marriage Ar-
ticles was to settle 2000 l. a Year, viz. 1200 l. a Year, of which he was
then settled, and to purchase and settle 800 l. per Ann. more; but 'twas
expressly agreed in the Articles that before Sir G. S. should make the Set-
tlement agreed to be made by him, which was 1000 l. per Ann. now, and
300 l. per Ann. at his Death, the Plaintiff the Husband should purchase
and settle 800 l. per Ann. part of the intended 2000 l. on the said M. for
Life &c. The Marriage was had; Sir G. S. died before any Settlement
of the 800 l. per Ann. but the 1200 l. per Ann. was settled, as agreed,
on his Marriage. The Wife died without Issue; F. brought his Bill for the
300 l. per Ann. Lord Chancellor said, it appeared that there was no
Design, Surprise, or unwary Wording the Articles, and that the Plaintiff
was to do the Precedent Act; that this Article was penned in a different
Manner from the other Articles, because the other Things therein men-
tioned had a Time prefixed for doing them; but there was no determinate
or fixed Time for settling this 800 l. per Ann. for that was to be after the
Purchase and Settlement of 800 l. per Ann. and 'twas uncertain when
Purchase would be, and it does not appear that the Parties came to a new Agree-
ment, or dispensed with the Performance of the Articles on the Part of
the Plaintiff, but 'twas a Condition precedent which can't be dispensed
with in Equity. If the Articles had been so penned that each Party
had depended on the mutual Covenants of each other, there might be
some Colour to relieve the Plaintiff, because in such Case the Father
might have recover'd Damages at Law, without averring the Per-
formance on his Part, but otherwise where a Covenant is penned by way
of Condition precedent to as no Action lies at Common Law, without
averring Performance. 'Tis true, if the Plaintiff had such a legal Advan-
tage by the penning this Covenant, perhaps this Court would not
have restrained him. Had the Wife been living, or left Issue, there might
have been some Ground for Relief, because the Equity of the Contract
had been still subsisting, but as it is, the whole Reason of the Contra-
tract is dissolved, and the Plaintiff suffers not any Loss, but only the Disap-
pointment of his reasonable Hopes and Expectancy. The Bill was dif-
milled.
Condition.

and Montgomery Ch. B.

recovered.

their Opinions against the Plaintiff; because what was to be done was in Nature of a Condition Precedent, and ought to have been wholly done before Defendant was obliged to do what was to be done on his Part—Skyn. 257. S. C. cited per Hutchins Commissary, as follows, viz. That upon the Marriage of a Daughter of Sir Geo. Sands, the late E. of Feverham was to have by Agreement 2000 l. per Ann.; when the premit Lord Feverham settled 2000 l. per Ann. for a Jointure; the Estate in Possession of the Lord Feverham was nothing but Holcrams, which is about 800 l. per Ann. but he had Penions in Ireland to commence in future, which being sold would amount to what would purchase 2000 l. per Ann. The Marriage took Effect, and afterwards the Lord Feverham was upon Treaty to sell his Penions, in Order to the paying-off and settling the 2000 l. per Ann. the then Lord Feverham hearing of it told him, that these Penions, not being in Possession, they would not sell for so much as when they came into Possession, and so advised him not to part with them yet; and he accordingly forebore, and then his Wife died, and the then Lord Feverham dies; and the present Lord Feverham prefers his Bill against Mr. Watson who married the other Sister, and was the Daughter and Heir of Sir Geo. Sands; And it was decreed in B. R. and afterwards affirmed in the House of Lords, that the Lord Feverham should have an Execution of the said Agreement, and that this was a differentiation in Sir Geo. Sands and the Agreement for the premit, which should not Prejudice the Lord Feverham.

Conditions subsequent must not be literally performed, where they are to affect an Estate, but Equity can only relieve against Conditions subsequent, where there can be a Compensation in Damages. Per Fin. C. Vem. R. 83. Mich. 1692. Popham v. Bamfield.

7. A devised Lands to B. and C in Trust for J. S. on Condition that the Father of J. S. should settle on J. S. 2 Thirds of the Estate settled by the Grandfather on the Father; the Estate settled by the Grandfather was 6000 l. per Ann. The Father devised all his Estate to J. S. but subject to Debts and Legacies, but in Effect made no Settlement otherwife (for tho' he made one, yet twas with Power of Revocation, and he actually did revoke it.) North K. decreed that if on Reference to a Matter, it should appear that after Debts &c. paid 2 Thirds remained, that twas a good Performance, and on rehearing said, the Difference was whether this Cafe lay in Compensation or not, for where a Recompence can be made, this Court will relieve against such a Condition, and declared if a Compensation was made by the Will, he would relieve against the Breach of the Condition; but if a sufficient Compensation was not made, he would then consider farther of it. Vem. 79. pl. 73. Mich. 1682. & 167. pl. 159. Paich. 1683. Popham v. Bamfield.

8. Devise, that if his Daughters should release to his Heir their Right to certain Lands, he gave them 2000 l. a-piece on Condition they should release &c. The Land to be released was not worth 500 l. One of the Daughters died before any Release given; Sergeant Maynard urg'd, that there was a Difference between a Condition in the giving a Portion, and a Portion given upon Condition; for that in the former Cafe the Portion never arises unless the Condition is performed; the surviving Daughters brought a Bill, which was dissolved by Lord C. Nottingham, but on a Review and a Demurrer North K. inclined to overrule the Demurrer, and said that in all Cases where the Matter lies in Compensation, be the Condition Precedent or Subsequent, there ought to be Relief; And by Agreement the signing and inrolling the Decree was
was set aside, and the Cause to be heard de jure. Vern. 222. pl. 221.

9. One having 3 Daughters, devises Land to his eldest, upon Condition that his, within 6 Months after his Death, pay certain Sums to her 2 other Sisters, and if she failed, then be devises the Land to his second Daughter on the like Condition &c. The Court may enlarge the Time for Payment, tho' the Premonies are devised; and in all Cases that lie in Compensation, the Court may dispense with the Time, tho' even in Case of a Condition Precedent. 2 Vern. 222. pl. 202. Patch. 1691. Woodman v. Blake.

10. If an Estate is to vest on the Intermarriage of A. and B. and the Condition becomes impossible by the Act of God, as in case A. had died within 3 Years limited for the Marriage, or soon after the Death of the Testator, Holt Ch. J. thought the Estate would never arise, and that there would be no Relief in that Case. 2 Vern. 345. Hill. 1697. in Case of Cary v. Bertie.

11. Where a Condition is precedent to the vesting of an Estate, Chan. 2 Vern. 339. cery cannot relieve in Case of Non-performance; otherwise in Case of a Chancellor's Forfeiture for which a Valuation can be made and Compensation given. S. C. & S. P. of Holt Ch. 1 Salk. 311. pl. 10. Hill. 9 W. 3. in Canc. Bertie v. Falkland.

85. Papham v. Bamfield, S. P. as to the Vesting per Finch C. who says it was so ruled in Lord Fau¬

by Holt Ch. 3. in Treason's Case here, tho' the Lords afterwards reverted that Decree.

12. A Seised in Fee having three Daughters, devised to Trustees to convey the eldest; if the shall pay 6,000 

for said Sums to her 2 Sisters in 6 Months, and if the shall not, then gives the like Premintion for the same time to the 2d, and if the shall not to the 3d; The Money must be paid punctually at the Time, and Equity will not enlarge it. MS. Tab. Febry 7th 1705, Milton v. Willisby.

13. I give and bequeath to E. V. 100 l. to be paid him within 6 Months after he shall have served his Apprenticeship; he run away from his Apprenticeship and died; The Question was, Whether the Legacy was to be paid to his Representative? decreed, that the serving Apprenticeship is not the Condition annexed to the Legacy, but only an Appointment when it shall be paid, and the rather, for if E. V. had died before Expiration of his Apprenticeship, his Representative would have been intituled to the Legacy. MS. Tab. July 26. 1712. Sidney v. Vaughan.

14. In a Marriage Settlement, a Power was lodged in Trustees to raise 3,000 l. for a Daughter, to be paid her at the Age of 21, or Day of Marriage, which should first happen, when C. and his Wife should die without Issue Male, and in the mean time an 100 l. per Ann. to be paid her for her Maintenance; Resolved, per Lord Ch. Cowper, upon the Authority of the Duke of Southampton's Cafe, that the Words, When C. and his Wife should die without Issue Male, amounted to a Condition Precedent; and that the Time of raising the Portion did not commence when one of them should be dead without Issue Male, and the other be Tenant in Tail after Possibility of Issue extinct, but when both of them should be dead without Issue Male. 10. Mod. 314. Patch. 1 Geo. 1. Champney v. Champney.

15. Equity will not relieve against the Break of a Condition Prece¬
dent where the Damages accrued are contingent, and cannot be estimated. MS. Tab. 1723. Sweer v. Anderson.

B B (U) What
(U) What shall be said a Condition against Law. [And Pleadings.]

1. If the Condition of an Obligation in which A. is bound to B., is, That whereas A. in a short Time is to be preferred, instituted, and induced, to the Church of D. if A. after his Admission, Institution, and Induction to it at all Times upon Request of B., his Executors or Administrators, reigns the said Rectory and Church to the Ordinary or Guardian of the Spiritualities for the Time being, by which B. his Heirs or Assigns, Patrons of the said Church, may present de novo to the said Church, discharged of all Charges and Incumbencies made or suffered by A. this is a good Condition of itself without Averment that it was for a Simoniacial Purpose, Mich. 14 Car. between Carey and Too adjudged upon a Demurrrce. Intratute Hill. 13 Car. Rot. 444. And another Action between the same Parties, adjudged the same Term, upon the like Condition. Intratute Hill. 13 Car. Rot. 438. 432.

2. If the Condition of such Obligation be, that he, after Institution and Induction into the said Church, shall at all Times after Ordinarily be resident, and serving the Cure of the said Benefice, without Absence by 90 Days in any one Year during the Time he shall be Patron of the said Church; this is a good Condition without any Averment taken to be for any Simoniacial Purpose. Mich. 14 Car. B. R. between Carey and Too, adjudged upon Demurrrce. Intratute Hill. 13 Car. Rot. 444.

3. If the Sheriff of a County makes B. his Under-Sheriff, and takes a Covenant from his Under-Sheriff, that he will not serve Executions without his special Warrant, this is a void Covenant, because it is against Law and Justice, in as much as when he is made Under-Sheriff, he is liable by the Law to execute all Processes, as well as the Sheriff is. Hobart's Reports 18. Tr. 12 Car. B. R. between Norton and Syns, per Curtain.

4. If W. be bound in a Bond, that if he recovers against P. certain Land at the Cots of F. N. that then be shall infall the said F. N. the Bond is void, and the Plaintiff shall not recover; Per Belk. Contrary it seems of a Condition impossible. Br. Obligation, pl. 11. cites 42 E. 3. 6.

5. A Man was bound to another that he should not use his Act in D. such a Field, by a certain Time. Hull said, if the Plaintiff had been present, he should go to Prison; the Cause seems to be, because the Bond is against Law. Br. Obligation, pl. 85. cites 2 H. 5. 5. and Fitch. Imprisonment 14.


8. A Bond was conditioned, that if the Obliger shall from henceforth, during the natural Lives of him and the said A account of wine, and maintain the said Alice as his lawful Wife, to all Constructions and Purposes &c. then this Obligation to be void, or else to stand in full Force.
Condition.

The Defendant pleaded, that before the said A. was espoused to him, she was married to one Hawke, who is still living, and therefore the Defendant could not use and maintain her as his lawful Wife; and upon Demurrer the whole Court held the Juietification good, because the Condition was against the Law of God, and fo the Obligation void; and that he is not stop'd by calling her his Wife in the Obligation to plead this special Matter. Mo. 477. pl. 683. Mich. 39 & 40 Eliz. Prat v. Phanner.

9. Condition was, that the Obligor should be always ready to give Evidence, and testify the Truth in any of the Queen's Courts, in all Things which should be demanded of him on the Part of the Obligee, upon reasonable Request, and his Charges born; and that he should not hurt or endanger, nor molest the Obligee in his Lands or Goods by reason of any thing whatsoever. Upon a Demurrer the Court held the Condition good, and not against Law; For as to the first Part, if he had not been obliged thereto, he is compellable by the Law; and the last Part shall be intended, that he shall not hurt &c. tortuously, but is not to restrain him from pursuing the Obligee for Felony, or upon any other just Cause. Wherefore it was adjudged for the Plaintiff without Argument. Cro. E. 705. Mich. 41 & 42 Eliz. B. R. Dobson v. Crew.

10. Bond to Sheriff to be a true Prisoner, or to pay for his eating and drinking, the Condition is wholly void. 10 Rep. 160. b. Mich. 18 Jac. in Beaufage's Cafe.

Bond for Diet &c. Hot. 146 Harris v. v. Lea.

11. If a Sheriff takes a Bond for a Point against the 23 H. 6, and also for a due Debt, the whole Bond is void. Hob. 14. pl. 25. Trin. 12 Jac. in Cafe of Norton v. Symmes.

12. Bond to Sheriff for Fees before he had done his Office is void for that very Reason. Adjudged. Lat. 20. Patch. 2 Car. Empson's Cafe.

13. Condition to pay Money, if Obligee will procure him to be Chief or a Church, is unlawful. Cro. C. 361. Patch. 11 Car. B. R. Mackallar v. Todderryick.

judged accordingly, and so a Judgment given in the Court of the Tower of London was reversed.

14. A Gift or Devise on Condition not to marry; yet the Donee shall have the full Benefit of the Gift &c. as if no such Condition was annexed thereto. But had it been not to marry any of such a Town, it would be good. Arg. 2. Show. 352. Patch. 36 Car. 2. B. R.

having married her, that promised not to marry without the Consent of Friends; ordered not to proceed. Toth 98 cites 32 Eliz. Pearcy v. Bondoff.

15. A Bond was conditioned not to buy Sheep's Feet of any but A. or Comb. 121. B. and not to buy above such a Quantity. This is plainly restrictive of Trade and void. Show. 2. Patch. 1 W. & M. Thompson v. Harvey.

that it tended to a Monopoly, and gave Judgment for the Defendant.

16. There is a Difference between Bonds void by Statute, and those which are void by Common Law, because of the Unlawfulness of the Condition; As a Bond not to prosecute a Felon, and in the latter Case an Averment that the Bond was given upon an unlawful Condition may be void, if it be consistent with the Condition. Show. 2. Patch. 1 W. & M. Powel J. Thompson v. Harvey.

17. Bond to enforce Marriage order'd to be deliver'd up, for that Marriage ought to be free. 2 Vern. 102. pl. 97. Trin. 1689. Key v. Bradthaw.

18. In
Condition.

18. In Debt on Bond by Administratrix of a Sheriff, it did not appear either in the Writ or Declaration that he was Sheriff; for the Words upon Vicecom, &c. were omitted; the Defendant pleaded the Statute that the Bond was taken Color Offici &c. The Plaintiff in her Replication set forth a Letter brought against W. R. and the Return, and the Arrest by her Intestate Adminic. &c. and the Bond given for Appearance &c. Upon Demurrer it was resolved that the Writ and Declaration were ill, because the Plaintiff's Intestate was not therein named Nuper Vicecom, &c. 1 Lutw. 619. Mich. 13 W. 3. C. B. Prince v. Compton.

19. A Bond conditioned to commit Maintenance is void. Arg. 11 Mod. 93. Mich. 5 Ann. B. R.

20. A Bond to save B. Harmless from an unlawful Act already done is not void, but is an Undertaking to bring him off; per Holt Ch. J. 11 Mod. 52. Prince v. Compton.

It is a good Condition to save me harmless from all the ill Things I have done, for that is no Encouragement for me to do any more ill Actions; but you are not to save me harmless from all the ill Actions which I shall do, for that is an Encouragement to me to do ill Things, which is against the Law; Per Holt Ch. J. Holt's Rep. 203. in Case of Hasket v. Tilly.

But where the Bond or Covenant, or Promise, is entered into upon a fair just and reasonable Consideration, and with no ill Intention, it is good, and the Difference is between those to enthr'd into and such as are upon no Consideration, or a vicious one, whether it be by Bond, Covenant or Promise, the former will be good but the Latter void; And tho' such Bonds, containing no Reason or Consideration, is void, primis facie, yet where the Condition assigns a just and fair Reason, the Bond is good until that Reason can be falsified; and therefore a Bond restraining Trade, all over England is void, because some Place may be found not to the Prejudice of the Obligee. 12 Mod. 150. adjudged, Michell v. Reynolds — As an Apprentice taken without Money may be bound to pay a reasonable Sum of Money in case he infringe above, or set up within Half a Mile of his Master. Wood's Inl. 51. cites Ann 1725 in Parliament, Cheesman v. Nainby. — M5. Tab. S. C. the Bond was not to exercise the Trade within half a Mile of the Plaintiff, and held good, the Consideration being recited in the Bond.

(10) What Condition shall be said against Law; and what shall be void. And e contra.

1. Condition of an Obligation to release and set over an Office for the War in Calais to whomsoever he pleases; the Obligation is void; but there the principal Case is to whom it shall please the Lieutenant; and it seems this is good: But Br. intends the Obligee. 15 C. 4. 15.

2. Condition to renounce an Administration is good. 15 C. 4. 30.

3. Condition to do a Thing which will be Maintenance is void, as to take 1. harmeless from such an Appeal of Robbery that B. hath against him; this is against Law. 18 C. 4. 29.

4. The
Condition.

4. The Condition of an Obligation was, that if the Obligee in an Action in the Name of C. recovers against R. at the Costs of the Obligee, C. should inteitl' him of the Land; and if he does not interefl' him, then the Obligee shall be bound by the Obligation in 20 l. This is a Condition against the Law; for it is Maintenance. *42 c. 3. cited S. C. & S. P. admitted.

5. A Tenth granted by the Clergy to the King, proviso that no Person (t) that is indicted in the Court of the King shall pay any Fine; and if he doth that he shall be discharged of the Tenth; and a good Provision. 21 c. 4. 46.

6. Leave to Life upon Condition that if the Lessee marries without Licence, he shall re-enter, is a good Condition. 43 c. 3. 6.

7. When a Condition is void by the Maxim of the Law, 'tis as fully void to every Intent as if it were made void by Statute. Doç. and Stud. 1. Cap. 24.

8. Bond for Appearance on Attachment out of Chancery is void, because the Defendant was not bailable on the Attachment. 3 Le. 208. pl. 269. Mich. 33 Eliz. C. B. Bland v. Riccardes.

9. Bond by a Baron with Condition to intereat' his Wife. The Condition is void and against Law, because it is contrary to a Maxim in Law, and yet the Bond is good. Co. Litt. 206. b.


11. The Baron entered into a Bond conditioned not to sell his Wife's Apparel, and in Debt brought thereupon it was objected that this was against Law, because it is contrary to the Liberty of the Baron; but Coke Ch. J. held it clearly good. Roll Rep. 334. pl. 43. Hill. 13 Jac. B. R. Smith v. Warton.

12. If a Baron binds himself to a Stranger to pay 20 l. a Year to his Wife, Co. Litt. this is good without Doubt; per Coke Ch. J. Roll Rep. 334. pl. 43. 206. b. S. P. Hill. 13 Jac. B. R. in Case of Smith v. Warton.

13. If in Case upon 23 H. 6. 13. or the Statute of Usury, the Condition of the Bond should recite some Matter that makes the Bond good, yet if in Truth the Contract were usurious, or the Condition not within the Statute, and that be pleaded, it will avoid the Bond, and the Easement too. Hard. 465. in pl. 3. Trin. 19 Car. 2. in Seace.

14. The House of Commons had voted one Wogan guilty of High Treason, and the Plaintiff being a Sergeant at Arms attending upon the House, was ordered to take him into Custody, who being taken into Custody by Virtue of that Warrant, the Defendant entered into this Bond to the Plaintiff, conditioned for the said Wogan's Appearance, who did not appear; and at Arms of the House of Commons for so long Time as he was in the House, and it is more than a Bond to a Sheriff to answer for an Escaped, and hereupon Debt being brought, the Chief Question upon a Demurrer was, whether this was a void Bond or not? And per Curiam it is void by the Common Law, for it was entered into for Ease and Favour of the Prisoner; and it is no more than a Bond to a Sheriff to answer for an Escape. And here Wogan was taken into Custody for Treason, for which he could not be bailed; otherwise if it were for an Offence bailable. Hard. 464, 465. pl. 3. Trin. 19 Car. 2. Norfolk's Cafe.

15. The Condition, and this appears upon the Record, it is void by the Common Law. 1 Lev. 269. Patch. 19 Car. 2.
15. A Bond condition'd to perform a Bye-Law has been ruled Naught, Per Hale Ch. J. obiter. Raym. 227. Mich. 25 Car. 2. B. R.
16. Bond to the Marshal to be a true Prisoner is good; but not to receive or take any thing of Advantage or Profit to himself; and that if he did, the Bond was void at Common Law. 2 Salk. 438. Mich. 9 W. 3. B. R. Anon.

If such Bond had been given to the second Wife as a Remembrance for the Injury done her, and thereupon had left A. it had been a good Bond.

17. A. having a Wife who lived separate from him, afterwards courted and married another Woman, who knew nothing of the former Wife's being alive; but it being discovered to the second Wife that the former was alive, A. in order to prevail with the second Wife to stay with him, some Years afterwards gave a Bond to a Trustee of the second Wife to leave her 1000L at his Death, and dies, not leaving Affets to pay his simple contract Debts; If this Bond had been given immediately on the Discovery, and they had parted thereupon, it had been good; but being given in Trust for the second Wife, after such Time as she knew the first Wife was living, and to induce her to continue with A. this was worse than a voluntary Bond. 3 Wms's Rep. 339. pl. 83. Mich. 1734. Lady Cox's Cafe.

18. Bonds and Contracts to procure Marriage are void. See Tit. Marriage (I) per Totum of Broceage Bonds for procuring Marriages.

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(Y) The Effect of a Condition against Law.

1. If a Feoffment be of Land upon Condition to kill J. S. this Condition is against Law and void, but the Feoffment is good, and not made void by it. Co. Litt. 206. b.

Br. Dette, 2. If the Condition be to do a Thing against Law, the Obligation on is void. 2 H. 4. 9. Co. Litt. 206. b.


Br. Conditions, pl. 34. cites S. C. — Br. Dette, pl. 51. cites S. C. — Firth. Obligation, pl. 13. cites S. C. and 2 E. 4. and 8 E. 4. — Br. Conditions, pl. 55. cites 19 H. 6. 67; 73; 76. where Markham says, that in such Cafe the Condition is void, but the Obligation single. But Brooke says, Quare inde ; For he says it seems that both are void.


4. So if it be to have harmles a Sheriff if he embezles a Writ that he hath against him. 2 H. 4. 9.


5. So if the Condition be to have harmles a Sheriff for the Delivery of Cattle taken in Witherman to one of the Parties, for the Sheriff ought to keep them till the. 2 H. 4. 9. Com. * Diberman, 64. b.

This is misprinted, and should be Live v. Man, alias, Manningham, where it is cited by Moyle J.

Bond
Condition.

6. If the Condition be for doing a Thing that is malum in se, this is void, and makes the Obligation void. Co. Litt. 266. b. Condition against Law for the doing of any Act that is Malum in se, and a Condition that concerns not any Thing that is Malum in se, but is therefore against Law, because it is repugnant to the State, or against some Maxim or Rule in Law; when therefore it is said, that if the Condition of the Bond be against Law, that the Bond itself is void, the common Opinion is to be understood, of Condition against Law for the doing of any Act that is Malum in se; and yet therein also the Law distinguishes; as if a Man be bound upon Condition that he shall kill J. S. the State is absolute, and the Condition void. Co. Litt. 266. b.—S. P. by Holt Ch. J. Comb. 246. Pass. 6 W. & M. in B. R. in Cafe of Carpenter v. Beer.

7. When some Covenants in an Indenture are void by the Common Law, and others good, an Obligation made for Performance of all the Covenants, and a bond in force for such as are good, but not for the other; But if any of the Covenants are void, Statute-Law the Obligation shall be void; for all strict Law; the other Covenants, according to Cokehill's Cafe, and Twidman's Cafe, in 3 Rep. of Coke. Mos. 856, 857. pl. 1175 Mich. 11 Jac. resolved, in Cafe of Norton v. Symms, and having made that void which is against Law, lets the rest stand, as in 14 H. 8. Fol. *15—Grotli. 213. pl. 262. S. C. seipsum; But C. & Ch. J. seem'd clear of Opinion that the Bond was void, and void he conceived that it had been adjudged before in B. R. in the same Norton's Cafe v. Chamberlain—Bowd. 64. S. C. & S. P. — Mod. 53. pl. 55. Twidman said he had heard Lord Hobart say, that the Statute is like a Tyrant in such Cases, where he comes he makes all void, but the Common Law is like a pampering Father, makes void only that Part where the Fault is, and preserves the rest.

* This terms misprinted, for 25. 27. Br. Fraits. pl. 57. cites S. C.

8. All the Infancies of Conditions against Law, in a legal Sense, are reducible under one of these Heads; 1st. Either * to do Malum in se, or Malum prohibitum. 2dly, To * omit the doing of something that is a Duty. 3dly, To * encourage such Crimes and Offences. And such Conditions as these the Law will always, and without any Regard to Circumstances, defeat, being concerned to remove all Temptations and Inducements to those Crimes, and therefore, as in 1st Inst. 256. a || Feoffment shall be absolute for an unlawful Condition, but a Bond void; Obligation, And, consequently, where a Way may be found out to perform the Condition without a Breach of the Law it shall be good; per Parker Ch. J. in 34 D. 118. delivering the Opinion of the Court. Wms's Rep. 189, 190. Hill. 1711. 134. S. C. & P. cites || Co. Litt. 256.


9. Where Part of the Condition of a Bond is lawful and the rest against Law, it is good for what is lawful, and void for the rest; otherwise if the Condition be entire. MS. Tab. December 4th. 1721. Yale v. the King.

For more of Conditions against Law, See Tit. Action (T), Officer and Offices (O. 3), Sheriff (T), Simony, Trade, Ultery, and other Proper Titles.

(Y. 2) Against
(Y. 2) Against Law &c. Void. And Pleadings.

1. Brought Debt upon a Bond which was indorsed upon Condition to pay a less Sum; the Defendant pleaded the Statute of 13 Eliz. That all Covenants, Contrats and Bonds, made for the enjoying of Leases made of spiritual Livings, by Parsons &c. were void, and averred that the Bond was made for enjoying of such a Lease; but because the Condition expressed in the Bond was for Payment of Money, the Justices held it clear for Law that the Bond was good, and out of the Statute; and so it was adjudged. Godb. 29. pl. 38. 27 Eliz. C. B. Macrowe's Cafe.

2. Where the Condition of an Obligation shall be said against the Law, and therefore the Obligation void, the same ought to be intended where the Condition is expressly against the Law in Express Words, and in Terms of Insinuation, and not for Matter out of the Condition; agreed per tot. Cur. Le 73. pl. 99. Mich. 29 & 30 Eliz. Brook v. King.

3. As in Debe on a Bond the Defendant pleaded, that the Bond was indorsed with such Condition, viz. That if the said Defendant shall procure one J. S. to make reasonable recompense to the Plaintiff for certain Beasts which he wrongfully took from the Plaintiff, then &c. and he said in Fatte, That the said J. S. had stolen the said Beasts from the Plaintiff, and thereof he was indicted, &c. and to the Condition being against the Law, the Obligation was void, upon which the Plaintiff did demur in Law. Le. 73. pl. 99. Mich. 29 & 30 Eliz. Brook v. King.

S. C. cited 1

Vent. 199 in Cafe of Ma-

4. Bond conditioned not to give Evidence against a Felon is void; but the Defendant will plead the special Matter. Le. 203. pl. 281. Hill.

31 Eliz. C. B. Jones's Cafe.

Which was an Action of Debt upon a Bond of 20 l. the Defendant demanded Oyer of the Condition, which was, that the Oblige should not himself bring any Evidence at the Assizes to prove the 2 Cows now in question, between one Owen Mason the younger and the said Watkins, to be the Cows of the said Watkins, or of Robert Gillo; and that the said Gillo shall set forth a Bill of Ignoramus, that then the Bond should be void. The Defendant pleaded quod ipsa de debito præd. Virtute Scripta Obligat præjudici avera non debet; because that one of the said Cows was the Cow of the said Watkins, and the other of the said Gillo; and before the Bond, Owen Mason junior in the said Condition mentioned, being the Plaintiff's Son, told the said Cows and was imprisoned thereupon; and the Defendant Watkins was bound by Recognizance to prosecute him at the Assizes for the said Felony; and there the said Mason junior was indicted and convicted, and the Defendant did give Evidence that one of the Cows was his, pro sua liaentia, and that the Defendant did not give any Evidence by himself, or any one else, to prove the 2 Cows to be the Cows of the Defendant, or the Cows of the said Gillo, &c. for Paratus of versifica

30. 'This to the Plaintiff demurred, and upon the first Opening Judgment was given for the Defendant; for the Condition is against Law, viz. to shiff off Evidence of Felony, and that makes the Bond void, and the Court recommended it to Serpant Powlet, who was a Judge in Wales where the Plaintiff lived, to see to have him prosecuted for taking such a Bond.

Sire Ch. 7.

7. In Debt on Bond, Defendant pleaded, that 'twas given for compounding Felony, but this being a Matter dehors Judgment was given for the Plaintiff.


This Bond by the Common Lawe be as well pleadable as Matter which by Statute Law is declared to make a Devil void which is allowed to be pleaded in Bar, the nothing of it appear in the Condition 1 ibid. 75 but Judgment was given as above.—The Statutes of Simony, Usury, and Seriff's Bonds give Averments in such Cases, but no Statute gives Averment in Cafe of Maintenance. Jenk. 108. pl. 9. So a Plea, that the Bond was for Maintenance as upon buying of Debt due to Oblige. Jeck 108. pl. 9. 57 H. 6. 15.
(7.) What Condition shall be said repugnant. Repug. See Tit. Verperury.

1. A Gift in Tail, or in Fee, upon Condition that the Feme Firth. Con. shall not be endowed, or that the Baron shall not be Tenant by the Curtesy, is repugnant. * Co. 10. 38. b. 22 C. 3. 19. b. cites S. C. & S. P. by Wilbye, and agreed by Shanks.—But if Land be given by A. to Baron and his Heirs, rendering a Rent for his Life, and afterwards his Heirs to render certain Rent, and that if the Rent be Arrear that A. may enter if after the Baron’s Death the Rent be arrear, the Prime shall not have her Dower; Per tot. & bar. Firth. Condition, pl. 12. cites S. C. but says that afterwards, Trin. 34 E. 3. it was awarded that the recover, but that Execution ceased till the Age of the Heir; and per tot. Cur. if the Heir be of full Age, and the Feme had been endowed, yet if afterwards the Heir dies, and his Heir be within Age, the Rent of the Feme shall cease for the Time, and cites 5 E. 3. accordingly. — 6 Rep. 41. a. Mich. 3 Jac. in Midliday’s Case, S. P. — 2 Brownl. 67. S. P. — Co. Litt. 224. a. S. P. — D. 543. b. pl. 38. S. P. — Jenk. 245. in pl. 26. S. P. — * 10 Rep. 38. b. 39. a. S. P.

2. So upon Condition that he shall not make a *Lease within 32 H. * Co. Litt. 8. or levy a Fine within 4 H. 7. or that he shall not suffer a common Recovery, or that he shall not make any Conclusion to suffer a Recovery, is repugnant. * Co. 10. 38 b.

The Statute gives him Power to make such Leases which may be restrained by Condition; for this Power is not incident to his Estate, but given him collaterally by the Act, according to the Rule of Quilabet and the common law. The House of Lords, in the case of the lease, and the Baron may now by the Act. And a Dower to A. and the Heirs Male of his Body, proviso, that if be does attempt to alien, then immediately his Estate shall cease, and B. shall enter. The Court held the Condition void; for a Man cannot be restrained from an Attempt to alien; for non confat what shall be judged an Attempt, and how can it be tried? And when the express Words are so, there shall not be made another Sort of Condition than the Will imports; and if a Judgment was affirmed. Vent 521, 522. Mich. 29 Car. 2. R. Pierce v. Win. Pollexf. 415. S. C. argued. — 3 Keb. 787. pl. 41. S. C. adjourned. — 10 Rep. 39. a. S. P. — 6 Rep. 41. a. in Midliday’s Case. S. P. relev’d. — Co. Litt. 224. a. S. P.

3. So upon Condition that he shall be punished in Waife, or that Co. Litt. Tenant after Possibility shall, or that a collateral Warranty shall not * Co. 10. 39. S. P. bind, is void. Co. 10. 39.

4. But a Condition that he shall not alien in Fee, in Tail, or for the Rea. of another, is good. Co. 10. 39. Mich. 3 Jac. B. R. Misd. in that he may’s Café, releved. *33 All. 18 Curia.

he sets contrary to the Intent of the Donor, for which the Statute of Waife. 2. Cap. 1. was made, whereby Estates Tail are ordained. 10 Rep. 29. a. in Porrington’s Café. Trin. 9 Jac. cites Litt. 562. But says that common Recovery is not contrary to the same Act, nor to the Intent of the Donor within the Parview thereof; but Littleton’s Meaning is, that Tenant in Tail may be restrained from making a Discontinuance in Fee, or in Tail, or for another’s Life. * Br. Conditions, pl. 116. cites 35 All. 19. S. P. — Firth. Condition, pl. 16. cites S. C. [There is no pl. 181

5. So to restrain a Fine by the Common Law. Co. 10. 42. Br. Conditions, pl. 239. cites 10 H. 7. 11. S. P. because it is contrary to the Estate.

6. A Gift in Tail, upon Condition that the Dower may alien for Co. Litt. the Profit of the Issue, is a good Condition. 46 G. 3. 4. b. 224. S. P.

7. A Condition upon a Feoffment in Fee, that his Daughters shall * Co. 10. 34. b. not inherit, is not good. Da. 1. 34. b.

simple to exclude the Heir Female upon Failure of Heir Male, and therefore such Provision on such Feoffment is void. Dav. 54. b.
8. It is a good Condition of a Statute, that he ali nea null re-rc a burden, nor do o ther Thing sic lay foro turner in bilky, without his Consent. 46 E. 3. 32. b.

9. [8o] If a Man leaves a Mill for Years, upon Condition that he shall not leave it to any except to one or the Heirs of the Lesser, or to a Miller. 38 C. 3. 33. b. admitted.

10. If A. being left in Fee of Land, leaves it to B. for 99 Years, if he so long lives, the Remainder to C. for 99 Years, if he so long lives; and after A. demises it to C. and D. for 99 Years, if 3 others or any of them so long live, to begin after the Determination of the first Estate, upon Condition that if C. and D. both (*) die either before the Beginning of the Term, or before the End of the Term, then it shall be lawful to the Lessor to re-enter; this is a good Condition, for this is not repugnant to the Estate, nor to the Limitation; but this is a collateral contingent Thing, that shall give Cause of re-enter. Hill. 15 Car. B. R. between Pate and Old-verse, per Cur. adjudged upon Verrill. Intent. Mich. 15 Car. Litt. 375.

11. If a Man aliens in Fee upon Condition, that if the Feoffor or his Heirs make any Affiages, that the Feoffee or his Heirs may enter, this is a void Condition; for it is repugnant to the Estate; Per Greene. Br Conditions, pl. 116. cites 33 All. 11.

12. A. makes a Feoffment of Land to B. with Warranty, promise that the Warranty shall be void, this is a void Proviso; But if the Proviso leaves any Benefit of this Warranty to the Feoffor, as it be that he shall not watch the Feoffee, it is a good Proviso, because he leaves him a Right to rebut him. Jenk. 96. pl. 86.

13. A Leafe may be restrain'd by Condition not to alien, but not if the Leafe be to him and his Affiages; Per Hobart Ch. J. Arg. Hob. 170. cites 21 H. 6. 33.

14. If Land be given in Tail, the Remainder over to the Right Heirs of the Tenant in Tail, upon Condition that if he or his Heirs alien in Fee, the Donor or his Heirs may enter. This was held a good Condition by all the Justices, notwithstanding the Fee simple in the Reversion; and a Diversity was taken between a Fee simple in Possession and Fee simple depending upon another Estate. Mich. 11 H. 7. 6 b. pl. 25. says, that it was so held by all the Justices in C. B. Trin. 8 H. 7.

15. A Man may make a Condition of any Thing which is prohibited by the Law. Br. Conditions, pl. 239. cites 10 H. 7. 11. per Opinionem Curiae.

Whatsoever is prohibited by the Intent of any Act of Parliament may be prohibited by Condition. Co. Litt. 224 a.

16. As to make a Feoffment, Proviso that the Feoffee shall not do Felony. Br. Conditions, pl. 339. cites 10 H. 7. 11.

17. * Or.
Condition.

17: Or fland not alien within Ages, nor to | Mortmain. Ibid.

* This is good to re- 

Ostien Alienations during his Minority, but not after his full Age. Co Litt. 222 a, | Co. 

Litt. 223 b. S P. because such Alienation is prohibited by Law; and regularly whatsoever is pro- | lid.

hibited by Law, may be prohibited by Condition, be it Malum Prohibitum, or Malum in te.

18. And a Man may infest another and his Feoff upon Condition that they shall not infest any by Deed; for this is Discontinuance. Br. Con- | 8.

ditions, pl 336. cites 10 H. 7 11.

19. And where Land is given in Tail, the Remainder in Fee upon Con- | 7.

dition, that if the Duke or his Heirs alien in Fee that the Duke or his Heirs may enter. Ibid. Brooke- | 4.

tays, it seems that the Remainder in Fee was to the same Tenant in Tail. Ibid.

20. If Land be given to A. and his Heirs so long as 7. S. has Heirs of | 11.

his Body, the Duke has Fee and may alien it; notwithstanding there be a Condition that he shall not alien. 2 And. 138. Arg. cites 13 H. 7. 11 H. 

21. If the King grants Land in Fee upon Condition that the Grantee shall not alien to any, it is a good Condition; for it shall be taken more 

beneficial for the King, and most strong against the Grantee. Br. Con- | 4.

ditions, pl 52. cites 21 H. 7. 8.

22. But if a common Person makes a Feoffment upon Condition that the | 4.

Feoffee shall not alien, it is a void Condition. Br. Conditions, pl 52. | 2.
cites 21 H. 7. 8.

23. A Lease for Years was made to A. and his Assigns, provided that he | 170.

should not assign the Term. The Provizo was void. But if the Grant had 

not been to him and his Assigns the Provizo had been good; Per Hobart. | 25.

S. C. in Rob. or to his Assigns, he should not assign the Term. The Provizo was void. But if the Grant had 

not been to him and his Assigns the Provizo had been good; Per Hobart. | 25.


24. A Condition annex’d to an Estate Tail, that the Duke shall not marry, is void; for without Marriage he cannot have an Heir of his Body; but it is otherwise of a Fee pa’d upon such Condition, for the collateral Heir may inherit. Jenk. 243. in pl 26.

25. Lease of Lands to A. for 20 Years, proviso not to occupy the fame | 177.
The two first Years, is void and contrary, and repugnant to the Estate. Arg. Quod nullius concedit, per Curiam. Le. 132. pl 176. Trin. 27 E- | 15.

Eliz. in Seacce obiter.

20. A.
Conditioii.

26. A. feized of Lands, devised the fame to his euiled Son, and the
Heirs Male of his Body, the Remainder to his second Son, and the
Heirs Male of his Body, and fo to the third Son, the Remainder to his
Daughter in Tail general, with Remainder over, Province, that if any
of the Devifees, or their Ihie, fhall go about to alien, difcontinue,
and incumber the Preffilies, that then, and from the Time that they
fhall go about to alien, difcontinue, &c. their Estate fhall cease as
it they were naturally dead; and from thenceforth it fhall be lawful
for him in the next Remainder to enter, and hold for the Life of him
who fhall fo alien &c. and prefently after his Death the Land fhall go
to his Ihie &c. The Devifor diec, the euiled Son, and all the other
but the second Son, levy a Fine; the second Son claims the faid Land
by the Devife. It was refolved in this Cafe, by all the Julícies, that
the Provifo of cealing of the Estates upon an Attempt to alien, or upon
an Alienation, was repugnant, and that the Remainder limited to the
fekond Son upon fuch Attempt was void in Law; and the fame was
agreed by all the Jullícies in England on a Conference with them; and
Judgment accordingly against the fekond Son who brought the Action.

27. C. feized of Lands, conventrated for natural Affection to fhall feized
to the Use of himfelf for Life, and att to the Use of R. and the Heirs
Male of his Body, the Remainder to A. and the Heirs Male of his Body;
provided if R. or any Heir Male of his Body, fhall intend or go about any
Ali to ent off the Estate Tail, then it fhall be lawful for him that is next
to enter. C. died. R.uffered a common Recovery. A. enter'd. Re-
folved the Provifo was repugnant to the Eftate Tail, and that the Ceffor
of the Eftate Tail, as if the Party had been dead, was impoffible, and
then the going about it is such afecret Thing that an Ihie cannot be upon it.

28. Sir W. M. the Father, in Consideration of Love and Affection,
conventional to fhall feized of Lands to the Use of himfelf for Life, without
Impeachment of Waist, the Remainder to A. his Son, and the Heirs Male
of his Body, the Remainder to H. and the Heirs Male of his Body. Pro-
vided if any of the faid Parties fhall go about, refolve, determine, or devife
do any Aid, or fhall confer to any Aid whereby the Estates of them in
Remainder fhall be alined, difcontinued, barred &c. then his Remainder
fhall cease as if he were naturally dead, and not otherwise. Sir W. died,
A. entered anduffered a common Recovery. Kingfmal and Anderfon
held that the Provifo was repugnant and not initiable, but Walmley
and Warburton e contra. Mo. 632. pl. 863. Pack. 43 Eliz. C. B.
Mildmay v. Mildmay.

* Goldb. 259.

29. Feoffment on Condition that Fcoffte * fhall take the Profits of the
Land. The Condition is repugnant and againft Law, and the Eftate is
absolute. But a Bond with fuch Condition is good. Co. 266. b.

30. If Fcoffe in Fee is bound in a Bond that he nor his Heirs fhall alien,
this is good; for he may alien non inborn, thus, if it he will forfeit his
Bond which he himfelf hath made. Co. Litt. 285. b.

An elder

Brother vo-

fetically

feed Lord

to it in

Broke r and it Heirs of his Eftate, with Remainder to a younger Brother in Tail, and made each of them
Condition.

31. If a Man be seised of a Seigniory Rent, Aliencation, Common, or any other Inheritance that lies in Grant, and by his Deed grants the same to a Man and his Heirs, upon Condition that he shall not alien, this Condition is void.

Co. Litt. 223. a.

32. If a Feoffment in Fee be made upon Condition that the Feoffee shall not infest j. 8. or any of his Heirs or Issues &c. this is good; for he does not retrain the Feoffee of all his Power, and in this Cafe if the good. Arg. Feoffee shall j. N. of Intent and Purpose, that he shall infest j. 8; 5 Le. 232. some hold that this is a breach of the Condition; for Quando aliquid probetur fieri, ex directo prohibitur &c per Obliquum. Co. Litt. 223. b.

33. If a Feoffment be made upon Condition that the Feoffee shall not alien in Mortmain, this is good, because such Alienation is prohibited by Law, and regularly whatsoever is prohibited by Law may be prohibited by Condition, be it Mala Interim prohibitorum or Malum in f.e. Co. Litt. 223. b.

34. If a Man make a Feoffment to a Baron and Voece upon Condition that they shall not alien. To some Intent, this is good, and to some Intent it is void; for to retrain an Alienation by Feoffment, or by Deed, it is good, because such Alienation is tortious and voidable; but to retrain their Alienation by Fene is repugnant and void, because it is lawful and voidable. Co. Litt. 223. a.

35. It is said that if a Man infest an Infant in Fee upon Condition that he shall not alien, this is good to retrain Alienations during his Minority, but not after his full Age. Co. Litt. 224. a.

36. If a Man makes a Gift in Tail to A. the Remainder to B. upon Condition that shall not alien, as to the Estate Tail. the Condition is good, for such Alienation is prohibited by the Statute W. 2. Cap. 1. But as to the Fee simple, some say it is repugnant and void, and therefore some are of Opinion that this is a good Condition, and shall defeat the Alienation for the Estate Tail only, and leave the Fee simple in the Allience; let that the Condition did in Law extend only, to the Remainder. Co. Litt. 224. a.

37. Tenant in Tail in the same Deed, in which he creates the Intail, covenants not to dock the Intail, or suffer a Recovery. Chancery will not decree a specifick Execution for the Covenanters knew he had a Power to bar, and therefore accept of a Covenant by which to have Damages. Per Cowper C. 2 Vern. 635. pl. 563. Hill. 1708. Collins v. Plummer.
**Condition.**

(A. a) **Repugnant to the Grant.**

1. A Tenth granted by the Clergy, Proviso that no Parson that is a (Fifteenth) but in the Year Book it is a (Tenth).

It seems that this should be 7 H. 6. 45. b. (pl. 21 per June) Perk. S. 531. S. P. — A Feme made a Leave of Mills in Kent, with an Exception, that the should have the Profits for her Life, and it was greatly debated, whether this Exception was good or not, because the Profits of the Mills are all the Bench, and in Effect the Mills themselves, and at left the Exception was adjudged good in Law, and that the Feme should have the Profits; cites by Maywood as a Case which happened in Kent. P. C. 524 b. — See 5 Le. 111. S. P. in a Quention put by Maywood Ch. B.

*Note, by all the Justices in the Exchequer Chamber, except June, 7 H. 6. 43. b.*

2. *If a Man for himself and his Heirs warrants Lands to another and his Heirs against all Men, Proviso tamen, that the Warranty shall be void, this Proviso is altogether repugnant to the Grant, and therefore the Grant is good and the Proviso void. Contra 7 H. 6. 43. b. by all the Justices prater June and Hamb.*

3. If a Man for himself and his Heirs warrants Lands to another and his Heirs against all Men, Proviso tamen, that the Warranty shall be void, this Proviso is altogether repugnant to the Grant, and therefore the Grant is good and the Proviso void. Contra 7 H. 6. 43. b.

4. *So it seems in the Case aforesaid, if the Proviso had been, that he to whom the Warranty was made, nor his Heirs, should not have in Value by Force of the Warranty, that the Proviso is not good; yet he may rebute, if the Proviso be good, and to the Warranty not wholly defeaced; But it seems it is not a good Proviso, because then the Words (against all Heirs) be wholly defeaced; for the other Words will give a Restraint without them. Contra 7 H. 6. 43. b. by all the Justices prater June and Hamb.*

5. *If the Condition be that the Feofor shall not do Waffe, it is not good, for no Right or Interrest remains in the Feofor. Br. Condition, pl. 53. cites 21 H. 6. 33. Per Yelverton.*

6. *But Leave for Years, upon Condition not to grant over, the same is good, because the Reversion remains in the Lessor. Ibid.*

7. *If a Feofiment be made upon this Condition, that the Feofor shall not alien the Land to any, this Condition is not good. But contra that he shall not alien to W.S. Br. Condition, pl. 135. cites 8 H. 7. 10.*

Condition.

9. So if Condition be, that he nor his Heirs shall not alien in Fee, common Renor in Tail, nor for Term of another’s Life, but only for their own Lives &c. such Condition is good; for such Alienation and Discontinuance of the Intail, is contrary to the Intent of the Donor, for which the Statute of Wills, 2. Cap. 1. was made. Lit. S. 362.

10. Two Feoffees granted Caesarium Parci of A. to W. N. capiendo feudo quod f. S nuper parciarius capti proviso quod Scriptum non extendat ad onerandum one of the Grantors, and this Proviso was held void; for this restrains all the Effect of the Grant against him. Br. Conditions, pl. 238. cites 10 H. 7. 8.

11. Leafe for 2 Years, proviso he shall not occupy it for one Year, is repugnant and void. Cro. E. 107. pl. 1. Arg. cites 21 H. 7.

12. Lands were given in Tail, upon Condition if the Donee or his Le. 292. pl. Heirs discontinue the Land, the Donor shall re-enter; the Donee hath iftue 40. Anon. Provifo the Sons discontinue the Land to another [to the other] and it was held by the Court to be a Breach of the Condition. Cro. E. 35. pl. 2. ters levied Mich. 26 & 27 Eliz. Croker v. Trevithin.

13. A Gift in Tail is made of a Walk in a Forest, Proviso and the Donee covenanted that he should not fell any Trees there, being Timber Trees. This Proviso is a Condition, altho’ a Covenant is also added to this Purpose: By all the Judges of England. Note, this was a Walk in a Forest, but in a Gift in Tail of Land out of the Forest, provided that he shall not fell any Timber Trees growing upon the said Land, the Proviso is void; for the Law gives him Power to commit Waffe if he will, as well as the Tenant in Fee. Jenk. 266. pl. 73.

14. A Man before the Statute of Quia emptores Terrarum, might have made a Feoffment, and added farther, that if he or his Heirs did alien without Licence, that he should pay a Fine, then this had been good, and so ‘tis said, that then the Lord might have restrained the Alienation of his Tenant by Condition, because the Lord had a Possibility of Reverter. Co. Litt. 223. a.

15. If A. be feized of Blackacre in Fee, and B. infoffes him of Whiteacre, upon Condition that A. shall not alien Blackacre, the Condition is good, for the Condition is annexed to other Land, and ouls not the Feelee of his Power to alien the Land whereas the Feoffment is made, and so no Repugnancy to the State palled by the Feoffment, and so’tis of Gifts or Sales of Chattles real or personal. Co. Litt. 223. a.

16. If a Man be polledied of a Leafe for Years, or of a Hufe, or of any other Chattles real or personal, and give or fell his whole Interfeat or Property therein, upon Condition that the Vendee shall not alien the same, the Condition is void, because his whole Interfeit and Property is out of him, so as he has no Possibility of a Reverter, and ’tis against Trade and Traffick, and bargaining and contracting between Man and Man, and likewise it should oult him of all Power given to him. Co. Litt. 223. a.

17. If a Man make a Gift in Tail, upon Condition that he shall make a Leafe for his own Life, albeit the State be lawful, yet the Condition is good, because the Reversion is in the Donor; As if a Man make a Leafe for Life or Years upon Condition that they shan’t grant over their Estate,
**Condition.**

Estate, or let the Land to others, this is good, and yet the Grant or Leave should be lawful. Co. Litt. 223. b.

18. If one grant a Rent-charge with a Proviso, that neither the said Grant, nor any thing therein contained, shall charge his Person with a Writ of Annoyance, by such Proviso the Land only is charged; and tho' there be 2 Negatives in such Proviso, yet they shall not make an Affirmative against the manifest Intent of the Party. Hawk. Co. Litt. 219.

19. But a Proviso that would take away the whole Effect of such a grant, as if one grant a Rent out of Land in which he has nothing, provided that it shall not charge his Person, is void. Hawk. Co. Litt. 219.

20. So is a Proviso that is repugnant to the express Words of the Grant; As where one grants a Rent-charge out of Land, provided that it shall not charge the Land, and where a Proviso is good at first, and afterwards it happens that the Grantees, or his Executors, can have no other Remedy but that which was restrained, they shall have it notwithstanding, such Restraint. As if A. grant a Rent to B. for Life, with a Proviso that it shall not charge his Person, yet B.'s Executors shall have an Action of Dece for the Arrears during B.'s Life. Hawk. Co. Litt. 219, 220. But if B. says, that he supposes it was put in the Book as at Common Law, for the Executors of such Tenant for Life may at this Day drain it by 52 H. 8. cap. 37.

Lease for 2 Years, Provisto, that Ledge shall not take the Profits is repugnant and void. Arg. Cro. E. 107 pl. 1. cites 6 R. 2. Quid Juris chnist, 22.

21. If Land is given to A. and B. provided that B. shall not take any of the Profits, this Proviso is void and repugnant; per Yelverton J. Obi- ter. Bull. 42. Mich. 8 Jac.

22. A Condition annexed to an Estate given is a divided Clause from the Grant, and therefore cannot frustrate the Grant precedent, neither in any thing expressed, nor in any thing implied, which is of its Nature incident and inseparable from the Thing granted; per Hobart Ch. J. Hob. 170. pl. 125. Hill. 12 Jac. in Cafe or Stukely v. Butler.

(B. a) Condition repugnant. [By Reason of the Intent.]

1. If the Condition be, that if the Obligee shall pay to A. 10 l. such a Day, then the Obligation, being 10 l. shall be void, otherwise not, though this was not the Intent of the Parties, yet the Condition is good; for if the Obligee does not pay 10 l. the Obligation is forfeited. 39 H. 6. 9. b.

2. So if the Condition be, that if the Obligor does not pay to the Obligee such a Day 10 l. then the Obligation, being 10 l. shall be void, this is a good Condition; and the Obligor, in an Action upon the Obligation may lay, that he did not pay the 10 l. and to avoid the Obligation; for though the Intent was not to, yet because the Words were so, he ought to adjudge according to the Words. 39 H. 6. 10. cited to be adjudged.

Br. Conditions, pl. 93. cites S. C.
---Br. Obligation, pl. 42. cites
S. C. ---

2 Mod. 58; Hill. 39 & 30 Car. 2. C. B. the Ch. J. said he doubted whether that Cafe was Law.
3. A made a Leafe to B, on Condition, that if A grants the Reversion then B shall have Fee. If A grants the Reversion by Fine B shall not have Fee; for the Condition is repugnant and void; Per Anderdon Ch. J. 1 Rep. 84. b. Patch. 42 Eliz. C. B. cites 6 R. 2. Quod Juris clamat Leafe was of a Term for Years, and like wise was, that if A died within the Term B should have Frankentemine, and Livery of Seign was made accordingly, and the Condition was held repugnant.---S. C. cited P. C. 56. a. that it was held, that notwithstanding the Condition preceded the Frantemente, that the Frankentemine is not cut out of the Leffe immediately. ---S. C. cited P. C. 407 s.--Co Litt. 578. b. 15. S. P. as of a Leafe for Life, and says, that when the Fine transfers the Fee to the Conleeue, it would be absurd and repugnant to reason, that the same Fine should work an Effeate in the Leafe; for one Allentment cannot vest an Effeate of one and the same Land in two severall Persons at one Time—Perk. S. 129. S. C. & S. P. but ibid. S. 752. says, if the Leffe had granted the Reversion to a Stranger by Deed, the Leffe in such Case should have Fee by the Condition, because the Reversion is not in the Grantee before Attornment, and yet the Feoffor has granted the Fine, and against this Grant he cannot plea Leazes by the Deed—2 Brownl. 222. Arg. cites Plington's Cafe as held that he shall not have Fee, because in the Time he had only a Right to a Term, and not a Term in Possession.----Man makes a Leafe for Years upon Condition, that if the Leffe ouls him within the Term he shall have Fee; In this Cafe, by the Performance of the Condition he shall have Fee, because it is the Aet and Tori of the Leffe itself, whereas it shall not take Advantage; And alo, that Eodem Inheritance, that the Leffe ouls him, Eodem Inheritance the Leffe has Fee, and the Title of the Leffe is by Force of the Condition, which is paramount the Oulter; Per Col. Ch. J. Sep. 75. a. and Eys, that with this accords 6 R. 2. Quod Juris clamat 20. And that Poeliftion at an Interest is sufficient to support the Increase of the Fee appears 12 E. 2. Tit. Voucher 261.---S. C. cited Co. Litt. 217 7.  

4. Condition of a Bond that the Oblige shall not sit the Obligation, is repugnant, but a Deviation by other Deed to such Effect is good.


5. A Bond was conditioned, that if J. B. the Oblige shall die without Issue, then if be, by his last Will, or otherwise in Writing, shall convey such Lands to W. B. the Oblige, then the Obligation to be void. It was objected that this Condition was repugnant and impossible, viz. that if he die without Issue, then by his last Will or otherwise he would convey &c. and that he cannot convey when he is dead; and of this Opinion was Dodeririige; but by the other 3 Judges, the Condition being made in Benefit of the Obliger [Obligee] shall be confirmed according to the Intention of the Parties, which was, that J. should make a Conveyance in his Will by Life, or otherwise, of Lands so as they should remain to W. and his Heirs, in Default of Heirs of the Body of J.  


6. A Bond was conditioned to pay 7 l. by 25. per Week, and if he fail of Payment at any of the Days, the Bond to be void, or otherwise to remain in full Force. The Defendant pleaded that he did not pay at one of the Days. The Court held that the Condition shall be taken distributely and not in full Force, if he pays the 7 l. the Obligation shall be void, but if he fails to pay the 25. a Week at any of the Days, it shall be in full Force; for the Obligation shall not be ineffectual if by any Means it can be made good.

7. The
7. The Condition of a Sheriff's Bond was, that if the Defendant appear &c. such a Day in B. R. &c. then the Condition to be void, when it should be, then this Obligation to be void, for if the Defendant had appeared, yet the Condition is still void; and if it be, then the Bond is single and without a Condition, whereas the Statute 23 H. 6. 10. expressly require that there shall be a Condition, therefore this Bond is against the Statute; but adjudged that these absurd Words at the End of the Condition shall not be regarded any more than if they had been omitted, and the Senec shall be taken as if the Words had been, Then this Obligation shall be void; and therefore the Addition of useless and impertinent Words shall not hurt the Bond and Condition, which were perfect before. 2 Sand. 78. Patch. 22 Car. 2. Maleverer v. Hawkesby.

8. Debt on a Bond was brought against the Heir of the Obligor, and the Declaration was right, as it the Bond had been without Mistake; the Defendant prayed Oyer of the Bond, and pleaded Non eft Factum, which was found for the Plaintiff. Selby, Serjeant for Defendant, moved in Arrest of Judgment, because he said it appeared that the Heir was not bound; the Bond run thus, Noverint Universi per Praedentem me Johannem Nokes tener & firmis Obligar Johanni Stiles in Cent' Libris legal' Monet' &c. Solvend' predicat Cent' Libras eadem Johannii Nokes, ad quam quidem soluition' oblige me Heredes &c. and to the Heirs being bound to that void Payment, the Bond must be void as to them; but tol. Cur. held the contrary, and said, that the Solvend' being to the Obligor himself was absurd, and therefore void, and to be rejected, and that the Obligation was to be considered without the Solvend', and then it runs thus, Noverint Universi per praedent' me Johannem Nokes tener & firmis Obligar Johanni Stiles in Cent' Libris ad quam quidem soluition' oblige me Heredes &c. which certainly binds the Heir; for the first Words, Tener' & firmis' Obligar' in Cent' Libris, imply a Solvend', for is the Obligor be not oblig'd to pay, the Word (obliged) would signify nothing at all; and it was agreed on both Sides, that the first Words were sufficient to bind the Obligor and his Executors, therefore Ad quam quidem Solution' &c. were adjudged to refer to the legal Solvend' implied in the first Words, and therefore good, and Judgment per Quer'. MS. Rep. Mich. 12 Anna. C. B.

For more of Conditions repugnant, See Tit. Grant (R. 14), (H. a. 10), Tit. Obligation (M) pl. 5. (R) &c. Tit. Referration (B. 2) and (T) per totum, and other proper Titles.

(C. a) What shall be said a Condition impossible.

1. If a Woman makes a Feoffment to a Man that is married to another, upon Condition that he shall marry her, this is a good Condition; for the Wife may die, then he may marry her. 40 Litt. cites & C. 17. 13. adjudged by Admissance; but Litt. cites & C. 17. 119. cites S.C. — Br. Condition, pl. 221. cites S. C & F. N. B. 205.— F. N. B. 205. (H) cites S. C.
(D. a) What shall be said a Condition impossible and void, and what not.

1. If the Condition be quod debet placere Cras; This is a good Condition; for tho' the Obligor is not certain thereof, yet he will take this upon himself, and run the hazard thereof, he may at his Peril, for this is not impossible of itself. 22 E. 4. 26.

2. So for the same Reason, if the Condition be, That the Pope shall be at Westminster To-morrow; this is a good Condition. 22 E. 4. 26.

3. If the Condition be, That the Obligor shall go from the Church of St. Peters in Westminster to the Church of St. Peters in Rome within 3 Hours, this is impossible and void. Co. Litt. 296. b.

4. If by the Condition a Thing is to be done within a Franchise, this is a good Condition, for it may be tried here. Contra 10 H. 6. 14. B. Curia.

Kings Writ does not run, the Conditions is void, because it cannot be tried, and this is where the Obligation is fixed at the Common Law. Br. Condition, pl. 196. cites to H. 6. 14—Br. Trial, pl. 144. cites 8. C. but Brooke says this is only the saying of the Court as to the Condition.

5. If by the Condition a Thing is to be done beyond Sea, this is a good Condition, for it may be tried here. Contra 21. E. 4. 6. 23. 6.

6. If the Condition be to have harmless the Obligee against a Stranger from an Obligation, in which the Obligee stood bound to the Obligor this is a good Condition; for tho' by no possibility the Stranger could have any thing to do with it, yet he saves him, per Colharmless against him, 'tis within the Condition, for it may be that he has some Fear of Damage by him. Contra 21. E. 4. 53. b. but Bland.

Debt by Obligation which is between the Obliger and Obligee, and so the Condition impossible and void; and then the Obligation is single. * This is misprinted; for it should be as in the Roll (13. b.) pl. 21.

7. If a Man pleads Deseasance in Debt upon an Obligation of a Thing to be done beyond Sea, which cannot be tried here, or in two Counties, as in London and Wilts, where the one cannot join with the other, so that
Condition.

Trial cannot be had, this is void, and the Obligation is single. Br. Defeatance, pl. 13, cites 22 E. 4. 2.

(E. a) Condition impossible. The Effect of a Condition impossible at the making thereof.

1. If the Condition of an Obligation of Feoffment be impossible at the making thereof, this is a void Condition; but the Obligation or Feoffment is not void, but single. 14 E. 4. 3. Co. Litt. 206. because the Condition is subsequent.

2. But if the Condition Precedent be impossible at the making thereof, or, there is void, because nothing pales before the Condition is performed. Co. Litt. 20. b. [226. a.]

3. As if a Man leaves for Life upon Condition, that if he goes from the Church of St. Peter's in Westminster, to the Church of St. Peter's in Rome, within three Hours, to have a Fee, which is impossible, yet because it is precedent no Fee can accrue. Co. Litt. 206. b.

4. Where a Man is bound to do one Thing or another, and the one is possible, and the other impossible, he ought to perform that which is possible. Br. Conditions, pl. 47. cites 21 E. 3. 29.

5. It is agreed that where a Man binds himself by Covenant to a Thing impossible the Covenant is void; but if it be to do a Thing within the Power of Man, then e contra. Br. Covenant, pl. 4. cites 40 E. 3. 5.

6. A is bound to B in an Obligation conditioned to stand in the Arbitrement of C, so that it be made before 15 Mich. and that the Obligee shall have Notice of it 14 Days before 15 Mich. to attend the said Arbitrement; and the 15 Mich. is 14 Days before the Date of the said Obligation, and so the Notice is impossible to be performed, this Obligation is good, and the Condition void; adjudged in the Exchequer Chamber. Jenk. 116. pl. 31.

7. Obligation with Condition impossible is as well void as where the Condition is against Law; Per Markham and Danby Ch. J. Br. Conditions, pl. 150. cites 8 E. 4. 12. 13.

8. There is no Diversity where the Thing or Condition is impossible at the Commencement, and when it is possible at the Commencement, and made impossible after; for an impossible Condition shall be void, and the Grant good. And where the Condition was possible, and became impossible after, there it is single also; As where an Annuity is granted by R. Prior of S. till the Plaintiff be promoted by R. this is a Condition; but if R. dies before Promotion, now the Grant is single, for the Tender of the Succeeder is not good; Contra if it had been granted by Name of Prior without Name of Baptism. Br. Conditions, pl. 69. cites 14 H. 7. 31. and 15 H. 7. 1.

9. Where
Condition.

9. Where a Deed has Covenants, partly possible, and partly impossible, it is good for the possible ones, and void for the other. Br. Faits, pl. 37. Caff of a joint Covenant, all is void; per Bradwell. Ibid.

10. A Bond was conditioned for sustaining and maintaining an House &c. in sufficient Repairs, and so to leave it at the End of the Term; at the Time of the Entry into the Bond, the Timber of Part thereof was so rotten, that it was impossible to sustain and maintain it in Repairs, yet the obligation is good, though the Condition was impossible; adjudg'd. Sav. Defendant pleaded; Dist. B.R. that the S.C. the Judgment is good, for the Time being, and consideration of the Bond is good. Contrary where a Man is charged by an Act in Law.


13. In Debt upon Bond, condition'd to pay Money on the 31st Day of September, whereas there are no so many Days in the Month; the Defendant pleaded Solvit ad Diem, and found for the Plaintiff; it was S. C. accorded in Arreft of Judgment, that the Condition was impossible; fed per Curiam, the Condition being impossible, the Money is due presently. Noy 85. Giggaham v. Purchafe. Ait. 175. Trin. 7 Car. 8. P. in Capt. of Goife v. Brown.

14. If a Man is bound to do a collateral Aff, and that Matter becomes impossible afterwards, it is void; but not so where the Condition is Part of the Duty contained in the Obligation. Arg. 2 Show. 143. pl. 119. Mich. 32 Car. 2.

15. A Bond to the Sheriff to appear at a Day certain, where there is no such Day, is a Condition impossible at the Time of making the Bond; and therefore the Obligation is Singe; and Judgment for the Plaintiff. But note, the Defendant did not plead the Statute 23 H. 6. for had he pleaded Obligation without Condition or Consideration impossible, which is all one, it had been void by the Statute. 3 Lev. 74. 75. Mich. 34 Car. 2. C. B. Graham v. Crawlaw.

16. If one binds himself in a Bond to go to a Place not in Being, or to do other impossible thing, the Obligation is Singe; and here the Case was, one laid a Wager that he would walk in such a Time to High-Park Corner, and the Place being Hyde-Park Corner, and no such Place as High-Park Corner, he lost his Wager. Per Car. 12 Mod. 418. Mich. 12 W. 3. Wall v. Grover.

17. Sci. Fa. against the Bail, reciting a Recognition taken in the Reign of the late King Win. wherein the Condition was, that the Defendant should render himself to the Prifon of the Marquifed Dominia Regne nunc. It was
was argued that the Condition is impossible, and consequently the Recognition single. Per Holt Ch. J. where the Condition is under-written or indorsed, there is only void, and the Obligation single; but where the Condition is Part of the Leen itself, and incorporated with it, there, if the Condition is impossible, the Obligation is void; and the Court inclining that it was ill, the Plaintiff for his own Expedition, pray'd that his Writ might be abated. 1 Salk. 172. pl. 4. Trin. 2 Ann. B. R. Pullerton v. Agnew.

(F. a) What Persons may perform it.

(T) pl. 12 S. C. but not S. P. (D. d) pl. 1. S. C. but that is upon the Point of Notice to the Heir — Jo. 337. pl. 15. S. C. accordingly to near the End of Vol. 120. Mich. & Hill. 22 Jac. Cowper v Edgar. S. C argued by the Serjeants, but no Judgment. — Payment of a small sums may be considered rather as a Ceremony than a valuable Consideration, per Parker C. and he laid, that he took this to be the Ground upon which the 2 Judges went, in the Case of Spring v Caesar, held the Payment of 101. to be a personal Act; for when the Sum comes to be considerable, as 100 & the Payment of it is never esteemed a personal Act. 10 Mod. 434. in Case of Marks v. Marks. — And he laid, that this appears throughout 7 Rep. in England's Case. — Chan. Prec. 436. S. C. but S. P. does not appear.

2. Feoffment in Fee upon Condition to be void if the Feoffor pays so much to the Feoffee, and the Feoffor dies before Payment, his Heir cannot pay it, because the Time of Payment is past; for the Condition being general, if the Feoffor pays &c. it is as much as to say, If the Feoffor during his Life pays &c. Litt. S. 337.

3. But when a Day of Payment is limited, and the Feoffor dies before the Day, his Heir may tender the Money, because the Time of Payment was not past by the Death of the Feoffor. Litt. S. 337.

And so may his Administrators, and if there be neither Executor nor Administrator, the Ordinary may do the same. Co. Litt. 209. a.

5. If a Man Mortgages his Land to W. upon Condition that if the Mortgagee & J. S. pay 20 Shillings at such a Day to the Mortgagee, that then he shall re-enter. The Mortgage dies before the Day. J. S. pays the Money to the Mortgagee. This is a good Performance of the Condition, and yet the Letter of the Condition is not performed. But if the Mortgagee had been alive at the Day, and he would not pay the Money, but refused to pay the same, and J. S. alone had tendered the Money, the Mortgagee might have rescued it. Co. Litt. 219. b.

6. But in the former Case, albeit the Mortgagor be dead, yet the Act of God shall not disable J. S. to pay the Money, for thereby the Mortga-
Condition.

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gce receives no Prejudice; and so it is in that Case, if he, S. had died before the Day, the Mortgagor might have paid it. Co. Litt. 219. b.

7. If A. insingeth D. his 2d Son upon Condition, that if he pay 500l. to D. then E. his 3d Son should have Fee. This is a Condition, the Right, of performing which, defends to the Heir of A. and he may take Advantage of it, or for the Limitation of the Fee over to E. is void by a Particular Maxium of the Common Law, which will not allow a Fee to be limited upon a Fee, or by another Maxim by which a Stranger cannot take Advantage of a Condition; per Parker C. 10 Mod. 423. Mich. 5 Geo.
in Case. in Case of Marks v. Marks. In Case of Marks v. Marks.

8. If a Lease is made to 2, with Condition to have Fee, and the one Brown dell dies, the Survivor may perform the Condition and have the Fee; but if Brown and Brown and Brawns be agreement by verality; per Coke Ch. 8 Rep. 75. b. 76. a. Trin. 7 Jac. in Lord 12 Att.

Stafford’s Case.

9. Devise of Lands to his Daughter and her Heirs, at her Age of 18, Hunt. 36. Blackburn’s Café, S. C. accordingly, and that his Wife shall take the Profits in the mean time, provided she keeps the Daughter of School &c. The Widow marries again and dies, the Daughter not being 18. Adjudged that this was a plain Term given to the Wife and her for her own Ufe, which accrues to the Husband, and the keeping and educating the Daughter is not of such a particular Privilege but that it may be performed effectually by another. Hob. 285. pl. 370. Trin. 17 Jac. Baldry v. Blackborne.

Judgment for the Plaintiff.—Brownl. 79. S. C. adjudged for the Plaintiff.

10. Devise of Lands to his Wife for Life, and after her Death to D. Tho’ it be his 3d Son and his Heirs, provided, that if C. the second Son so within 3 Months after my Wife’s Death pay to D. his Executors &c. 500l. then the Lands to come to C. and his Heirs. C. died, living the Wife. The C and his Heirs may pay the Money, and shall have the Estate conveyed to him.” Patch. 1718. Ch. Preoc. 456. Markes v. Markes.

(G. a) To whom it may be performed.

(Fol. 421.)

1. If a man makes a Feeolment in Fee upon Condition that if he pays 500l. to the Heirs, Executors, or Administrators of the Fee.

1. If a man makes a Feeolment in Fee upon Condition that if he pays 500l. to the Heirs, Executors, or Administrators of the Fees

fee, within a Year after his Death, that then it shall be lawful for him to recieve, and after the Feeolment makes a Feeolment to J. S. and dies, and the Feeor pays the Money to the Heir of the Feeolment, this is a good Performance of the Condition; for the Heir is within the express Words of the Condition. Mitch. 37, 38 Ch. B. R. between Goodale and Wilt residvd” Co. 5. 96. Same Case.

2. And in this Case if the Money had been paid to the Alligee, it had been no Performance of the Condition, because the Alligee is not named. Co. 5. Goodale 97.

Cro. E. 386. pl. 4. S. C. & S.P. adm.: but the Pay-

ment to the Heir being covenerous, was no Performance.—

Mo. 765. pl. 980. S. C. & S. P. adm.

—Gouldsb. 176. pl. 111. S. C. Fenner thought that no Payment ought to be made to the Heir;
I I O

Condition.

Heir; but Gawde and Clerc e contra.—Poph, 99, 100. S C. all agreed that not being the Feoffment made over by the Father, the Money might have been paid to the Heir to perform the Condition, if it had been truly paid and without Corvin; but by Popham and Clerc, if a Feoffment to be made to one, upon Condition of Payment of Money to the Feoffee, his Heirs or Affigns, and the Feoffee makes a Feoffment over, and dies, the Money ought to be paid to the Feoffor, who is the Affignee, and not to the Heir, for there (Heir) is not named but in respect of the Inheritance which might be in him, but here he is named as a mere Stranger to it.

A. gives to B. solvend' to such Person as he shall appoint; if B. appoints one, Payment to him is Payment to B.; but if B. appoints none, it shall be paid to him. 6 Mod. 22b.

Where the Feoffor has any Reversion remaining in him, the Payment must be to himself; but where he departs with his entire Fee, as Feoffment in Fee, Gift in Tail, or Life for Life, Remainder over in Fee there, Leific for Life, or Donee in Tail, is Affignee. 5 Rep. 97. a. Goddard's Reme.

3. Feoffment on Condition to pay to the Feoffee, his Executors, or Affigns, within three Years, and then Feoffor his Heirs &c. to re-enter. The Feoffee has 2 Sons, Infants, whom he makes Executors, and dies before the Day. J. S. is made Administrator during Minority; 'tis most sure for A. to pay the Money to the Executors, for the Administrator during Minority is but as Bailiff or Receiver to the Executors, and Payment to one of them is good. 3 Le. 103. pl. 151. Patch. 26 Eliz. C. B. Anon.

4. If a Man makes a Feoffment in Fee, by way of Mortgage, upon Condition to be void upon Payment of the Money by the Feoffee at a Day, if the Feoffee dies before the Day, the Money shall be paid to the Executors, and not to the Heirs of the Feoffee; because it shall be intended the Estate was made by Reason of the Loan of the Money, or some other Duty. Litt. S. 339.

5. But if the Condition be, that if the Feoffor pays &c. to the Feoffee, or his Heirs, if he dies before the Day, the Payment ought to be made to his Heir, and not to his Executors. Litt. S. 339.

6. Condition of an Obligation entered into by M. was to pay 10l. per Ann. after his Death to the Executors of the Obligee, for the Use of M's Children. The Obligee dies without making any Executor. The Court seem'd of Opinion that the Money shall be paid to his Administrators. Sed Adjournatur. Het. 115. 116. Trin. 4 Car. C. B. Manningham's Café.

( H. a ) [To whom to be performed]. Affigns. [Executors].


S P. for in this Café Designatorio unioni Personae eft. Excluso ubertis, & Expressum facit effaire taccion. And the Law shall never seek out a Person, when the Parties themselves have appointed one. Co. Litt. 210. 5.

2. If a Man be bound in 20l. upon Condition to pay 10l. to such Hob. 9. pl. Persons as the Obligee shall name by his Last Will, and after the D. 17. S. C. per
Obli-3. gee no Person by his Will, the Obligor is not bound to pay it to his Executors, because the Condition hath Reference to his nstance. Mich. 10. Art. B. per Curtum, & Tr. 12. Art. B. where any bet-ween Peere & Mead, per Curtum.

Condition. 117

4. If a Man be bound in 20l. upon Condition to pay 10l. to such Hob. 9. pl. Per-sons as the Obligee shall name by his Last Will, and after the D. 17. S. C. per
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Condition.

Heirs, or Assigns, the Mortgage should be void. The Mortgagee died, and
the Money was paid to his Executor; and it was adjudged to be no Per-
formance of the Condition; for the Executor was not named, and the
Money ought to be paid to the Heir who should have the Land, if the
Money were unpaid, and not the Executor. Brown. 64. Mich. 6 Jac.
Alston v. Walker.

9. Condition was to make the Obligee a Lessee for Life by such a Day, or
pay him 100 l. Obligee died before the Day; and adjudged, that his Exe-
cutor shall have the 100 l. per Treaty Ch. J. and the Ground of Lattig-
ter's Cafe was denied to be Universal. 1 Salk. 170. pl. 2. Mich. 9 W.
3. C. B. Anon.

(I. a) What Persons shall be bound by a Condition.

1. If an Estate be made to a Feme Covert, the shall be bound by
the Condition, because this does not charge her Person, but

* Br. Baron
and Feme,
pl. 75. cites
45 Ec. 3. 11.
[6. 13. a. pl.
† This is misprinted, and should be pl. 6. — It was agreed, that if Lands are given to a Feme sole
upon Condition, and it takes Baron, who breaks the Condition, the Feme shall be bound. No. 92
pl. 229. Trin. 9 Eliz.

And if the
Condition
be broke
during his Minority, the Land is lost for ever; Resolv'd. 8 Rep. 44. b. Hill. 47 Eliz. in Whitting-
han's Cafe. — S. C. cited Arg Hard. 11.

2. If an Estate be made to an Infant upon an express Condition; the
Infant shall be bound to perform it.

3. So if an Estate be made to another in Fee upon Condition, his
Heir, after his Death, though he be within Age, shall be bound by
the Condition. Tr. 13 Jac. B. R. between Slade and Thomson, ad-
judged and agreed.

CoL J. 174
pl. 5 S. C.
& S. P. seems
to be admis-
ted.

Roll Rep.

In Affifie it was founded, that A. infueud B. in Fee upon Condition, that if A. or his Heirs pay C. 100 l.
at such a Day, that they may re-enter A. died, his Heir within Age. The Day succeed'd during the No-
mal, and the Heir did not tender at the Day; and after they came to the Procedure, who at their Request de-
ferred the Day of Payment, at which Day he refused, [to accept the Money then tender'd] and the
Heir entered, and because the Heir was within Age at the Day of Payment, and that the Procedure de-
ferred the Day of Payment, therefore the Entry lawful by Award; but Brooke says, quod nota, for
minum! for it seems to be contra Legem. Br. Conditions, pl. 114. cites 51 Alb. 17; — S. C. cited
3 Buff. 59. Arg.

4. If an Office of Parker'ship be granted or descends to an Infant or Feme
Covert, if the Conditions in Law annexed to this Office which require
Skill and Confidence be not observed and fulfilled, the Office is lost
for ever, because as Littleton says, it is as strong as an express Condi-
tion; But if a Lease for Life be made to a Feme Covert, or an Infant, and
they by Charter of Feoffment alien in Fee, the Breach of this Condition
in Law, that is without Skill &c. is no absolute forfeiture of their
Estate. So of a Condition in Law given by Statute, which gives an En-
try only; As if an Infant or Feme Covert with her Husband aliens by
Charter of Feoffment in Mortmain, this is no Bar to the Infant, or
Feme Covert. But if a Recovery be had against an Infant or Feme Covert
in an Action of Walle, they are bound and bard for ever. Co. Litt.
233. b.

5. Whe-

1. **THREE insetsd by** Deed, and there were several **Covenants** in Br. Erfranget the Deed on the Part of the Feoffees, two only sealed the Deed, yet because the 3d entered and agreed to the Estate conveyed by the E. 3. 22—Deed, he was bound in Writ of Covenant by the Sealing of his Com-panions. Arg. 2 Roll R. 63. cites 38 E. 3. 8.

2. **Leafe to A. for his Life, the Remainder in Fee to B. upon Condition Br. Erfranget** &c. and if A. sells the Indenture, and dies, and B. enters into the Land by Force of his Remainder, he is tied to perform all the Conditions, 30 E. 3. 22. as the Tenant for Life ought to have done in his Life-time, and yet he and this in the Remainder never failed any Part of the Indenture, in as much Scott. of he entered and agreed to have the Lands by Force of the Indenture, he is bound to perform the Conditions within the same, if he will have the Land. Litt. S. 374.

3. If A. by Deed indented between him and B. Jets Lands to B. for Life, the Remainder to C. in Fee, referring a Rent; Tenant for Life dies, he in the Remainder enters into the Lands, he shall be bound to pay the Rent. Co. Litt. 231. a.

4. An Indenture of Leafe is ingrossed between A. of the one Part, and D. and R. of the other Part, which purports a Demife for Years by A. to D. and R.—A. seals and delivers the Indenture to D. and D. seals the Counterpart to A. bit R. did not seal and deliver it; and by the same Indenture it was mentioned that D. and R. did grant to be bound to the Plaintiff in 20 l. in case that certain Conditions comprized in the Indenture were not performed; and for this 20 l. A. brought an Action against D. only, and showed the Indenture; the Defendant pleaded that 'tis proved by the Indenture, that the Demife was made to D. and R. which R. is in full Life, and not named in the Writ; Judgment of the Writ; the Plaintiff reply'd, that R. did never seal &c. and to his Writ good against D. sole. The Plaintiff's Counfel took a Diversify between a Rent refered, which is Parcel of the Leafe, and the Land charged therewith, and a Sum in Grofs, as here the 20 l. is; for as to the Kent they agreed that by the Agreement of R. to the Leafe, he was bound to pay it, but for the 20 l. that is a Sum in Grofs, and collateral to the Leafe, and not annexed to the Land, and grows due only by the Deed, and therefore R. said he was not chargeable therewith, for that he had not sealed and deliver'd the Deed, but in as much as he agreed to the Leafe, which was made by Indenture, he was chargeable by the Indenture for the same Sum in Grofs, and for that R. was not named in the Writ, it was adjudged that the Writ did abate. Co. Litt. 231. a.
(K. a) Who may perform it.

1. If 2 are indeft'd to re-infeft, if one relieves to re-infeft, the other cannot perform the Condition by a Feoffment of the whole. Contra 49 Eliz. 416. b.

2. If the Condition of an Obligation be to pay a dafs Sum; if my Servant by my Command, tenders it to the Obligee, this is sufficient. 2 D. 6. 3. b.

3. Debt upon Obligation with Condition that if the Feoffes of J. C. or J. C. by such a Day grant 40 s. per Annu. to the Obligee, that the Obligation shall be void, and said that A. and B. his Feoffees granted &c. The Plaintiff said that A. B. and C. were his Feoffes, and C. did not grant. And by all the Justices the Condition is not performed; for there is no Divinity between these Words, his Feoffes, and all his Feoffes; Quod Nota. Br. Conditions, pl. 56. cites 21 H. 6. 10.

4. If Annuity be granted by J. Abbot of D. till the Grantee be promoted to a competent Benefice by the same Abbot, Tender of the Benefice by his Successe, is not good. Contra if it had been by (the) Abbot of D., and (J.) had been omitted. Br. Conditions, pl. 214. cites 15 H. 7. 1.

5. If it be dones that my eldist Son shall marry your Daughter by such a Day, and be does before the Day, the 2d Son who now is eldist cannot perform the Condition. Per Audley Chancellor. Br. Conditions, pl. 7. cites 27 H. 8. 14. 15.

6. If a Man infeft's 2 upon Condition that they infeft W. N. before Michaelmas, and one dies, and the other alone makes the Feoffment, this is good. Br. Jointenants, pl. 62. cites Match. 33 H. 8.

7. M. feifed in Fee made a Feoffment upon Condition, that if be or his Heirs pay 100 l. such a Day to re-enter; M. died, his Son and Heir within in Age the Mother of the Infant, without the Poverty of the Infant, and who was not Guardian in Socage, in the Name of the Infant, tender'd the Money at the Day; it was adjudged an insufficient Tender; otherwise if the Jury had found the Infant under 14, and that she had been his Guardian in Socage, or if he had been found of 14, and that he affented to the Tender, it would be sufficient. Mor. 222. pl. 361. Hill. 29 Eliz. Watkins v. Allweil.

8. A Stranger cannot tender the Money to be paid on a Mortgage; pl. 268. B.R. for it ought to be one who has Interet in the Land. Ow. 34. Trim. S. C held accordingly. 31 Eliz. Winter v. Loveday.

In this Case the Mortgagie covenanted that W. upon Re-payment of the Money at Michaelmas, in such a Church-Porch, should have back all his Evidences. At the Day of Payment C. a Stranger left to L. to know if he would receive the Money which W. ow'd him, at his House, who contested; whereupon C. came there, and the Money was told and deliver'd in Bags to L. but some Dispute aris'd between W. and L. about some Writings; C. said that if they would not agree between themselves, they should not have his Money; whereupon W. required C. that he might have the Money to carry to the said Church-Porch, which C. agreed to, and L. came thither to receive it, but W. would not pay it; by all which it appeared that it was not W.'s Money, and for that Reason the Court held that it was not a sufficient Tender.

9. If
9. If a man mortgage Land to W., upon Condition that if the Mort.-
gage and J. S. pay 200 l. at such a Day to the Mortgagee, that then he shall re-enter. The Mortgagee dies before the Day: J. S. pays the Money to the Mortgagee; this is a good Performance of the Condition; Day of Payment, and yet the Letter of the Condition is not performed. So if J. S. had died before the Day, the Mortgagee might have paid it. Co. Litt. 119 b.

10. If the Heir is an Idiot, of what age soever, any man may make the Tender for him in respect of his absolute Disability, and the Law in this Case is grounded upon Charity, and so in the like Cases. Co. Litt. 206 b.

11. If Feoffee on Condition to pay 100 l. to the Feoffor on such a Day, or 1 Rep. 96. otherwise the Feoffment to be void, makes a Feoffment over to J. S. before S. P. according the Day, in this Case either J. S. may tender the Money at the Day, cites S. C. & the Money shall not be paid to the Alligance of the Land without naming him in the Condition, because the Payment goes in De-
face of the Inheritance; but it may be paid by the Alligence in Prefervation of his Inheritance—

And if Feoffor die his Executors shall pay the Money or his Heirs; to Payment limited by the Feoffor,
at a Day certain, his Heirs or Executors shall pay.—S. C. cited by Jones J. Lat. 28.

12. Devise to A. and his Heirs for ever, on Condition that A. pay B. 100 l. within 6 Months after his Age of 21 Years, and for Default of Payment he gives the said Lands to B. and her Heirs, and if A. happen to die without Issue, B.'s 100 l. being first paid, then the Remainder of his Estate to be devolved among my Sons and Daughters; A. dies without Issue before 21 Years, it seems the Brothers and Sisters paying the 100 l. before the Time that A. would have been 21 had he lived, was a good Performance. Raym. 425. Hill. 32 & 33 Car. 2 B. R. Wilfon v. Dyfon.

(L. a) To whom it may be performed.

1. If the Condition of an Obligation be to pay 10 l. &c. it is a Debit upon a good Performance if he pays it to his Deputy. 42 E. 3.

2. Debt upon Obligation with Decease by Indenture, that if C. at the Cofs of the Plaintiff recovered 2 Acres of Land against J. and after en-
stitled to the Plaintiff, that then &e. and he said, that C. by Commandment of the Plaintiff enstitled W. and held a good Plea, quod mirum! because cites S. C. Contra T. * 12 H. 4. 23. of Things dehors it shall be performed strictly; accordingly. 1 i
Condition.

But Payment to the Plaintiff, and Payment to a Stranger is all one. Br. Conditions, pl. 24, cites 42 Eliz. 3. 23.

3. If I infeoff J. S. upon Condition, that be shall infeoff such as I shall name before Esjeter, and I name W. and after I name N. the Feoffees may infeoff which he pleases; per Littleden. Br. Conditions, pl. 154. cites 14 F. 4. 2.

4. Debt upon Obligation of 20 l. upon Condition to pay 10 l. the Defendant sued, that he paid 5 l. to the Plaintiff's Exeafor 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, and then a good Plea. Br. Conditions, pl. 181. cites 22 Eliz. 25.

5. A makes Feoffment on Condition, that if A. pay certain Money to Feofee, before such a Day, or to his Executors or Assigns, that then he may enter. Before the Day Feofee makes Feoff for his Executor, and by the same Testament gives all his Goods and Chattels to his Wife, and dies; this was thought no Release by 3 Justices against 1; and Dyer thought that Payment might be made to the Wife; Wotton thought, that it there should be any Payment it should be to the Heir who is not Assignee. Mo. 58, 59. pl. 166. Pach. 6 Eliz. Anon.

6. Debt upon Obligation, conditioned to pay Money to the Oblige and others the Parishioners of D. at such a Feall. Payment to the Oblige and 2 other of the Parishioners of the Parish is good; Dyer and Wall held that it is not requisite the Payment be made to all the Parishioners. Mo. 68. pl. 183. Trin. 6 Eliz. Anon.

7. In Debt the Condition was to pay 100 l. to C. and his Wife, and by all the Court, if he pleads Payment to C. alone, it suffices, for Payment to him alone sufficeth without naming the Wife. Goldsab. 73. pl. 16. (20) Mich. 29 and 30 Eliz. Mary v. Johnston.

8. A was bound to B. to the Use of C. to deliver a Chest to C. who refused to receive it upon the Tender at the Day; the Obligation was saved. Cro. E. 755. per Glanvill, cites it as the Case of Carnie v. Savery.

9. A was bound to B. to the Use of C. A Tender to C. is good. Cro. E. Pach. 1 Jac. 42 Eliz. C. B. Hughes v. Phillips.

10. If I bind myself to pay Money to 2. I cannot pay it but to one; because I cannot pay one and the same Sum to 2 several Persons at one and the same time; per Glin Ch. J. 2 Sid. 41 Hill. 1637. in Cafe of Abbot v. Eifhop.


1. In Affine the Case was, that a Man infeoff'd 2 upon Condition that they re-infeoff him and his Feme in Tail, the Remainder to the right Heirs of the Baron. The Feme took another Baron; the Feoffees infeoffed the second Baron and the Feme for the Life of the Feme, the Remainder to the right Heirs of the first Baron, by which, because the Exeafor was not made to the Feme in Tail, according to the Condition, and also the second Baron was infeoffed, which is contrary to the Condition, the Heir of the first Baron enter'd, and the Feme oufht him, and he araignd
Condition.

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etigned Allfe; and by Advice of all the Justices, it was awarded that the Condition was well performed; Quod Nota; and as to the Estate for Life, Littleton agrees to it in his Chaper of Estates. But Brook lays Albor! that the 2d Baron had Estate; for this is contrary to the Condition. Br. Conditions, pl. 32. cites 2 H. 4. 5.

2. But if the Condition had been that 7. 8. shall make a Gift to R. G. S. P. And his issue, and to the Heirs of their two bodies begotten, and the one the Estate dies without issue, [before any Estate made] he shall make Estate to the other for Life without Impeachment of Wall e; for he shall make it as near the Condition as he can. Br. Conditions, pl. 72. cit. 15 H. 7. 2. cording to the first limitation of the Tail, for though he cannot perform the Condition according to the Words, yet it shall be performed according to the Intent. Pl. C. 291 a. cited Trin. 7 Eliz. in the Case of Chapman v. Dalton S. P. and ought to be as near to the Intent of the Condition as it may be. Litt. S. 352.

This Estate to the Wife for Life ought to be made without Impeachment of Wall e, and yet if the Wife accepts of any Estate for Life without this Clause, without Impeachment of Wall e, it is good, because the Estate for Life is the subsistence of the Great, and the Privilege to be without Impeachment of Wall e is collateral, and only for the Benefit of the Wife, and the Omission of it only for the Benefit of the Heir. Co. Litt. 219 b. —The Omission of the Privilege being without Impeachment of Wall e shall not give the Heir of the Estate, for whole Benefit it was omitted, a Right which would defeat the Estate of the Wife. Hawk Co. Litt. 220. —Also if the Wife marries before Request made, and then they make Request, and the Estate is made to the Husband and Wife, during the Life of the Wife, this is a good Performance of the Condition, albeit the Estate be made to the Husband and Wife, where Littleton says it is to be made to the Wife, but it is in all one in subsistence, seeing that the Limitation is during the Life of the Wife. Co. Litt. 219 b. 220 a.

3. Here is to be observed a Diversity when the Feoffee dies, for then the Condition is broken, and when the Feoffee dies, for then the Estate is to be made as near the Condition as it may be. Co. Litt. 219 b.

4. And if the Husband and Wife have Issue and die before the Gift in Tail made to them &c. then the Feoffee ought to make an Estate to the Issue and to the Heirs of the Body of his Father and his Mother begotten, and for Default of such Issue &c. the Remainder to the right Heirs of the Husband &c. and the same Law is in other like Cases; and if such a Feoffee will not make such Estate when he is reasonably required by them which ought to have the Estate by Force of the Condition &c. then may the Feoffor or his Heirs enter. Litt. S. 353.

5. If a Feoffment be made upon Condition that the Feoffee shall re. The Reason intestate several Men, and their Heirs, and they all die before any Estate why the made, then ought the Feoffee to make Estate to the Heir of him who by the Habendum is to the Heirs of the Survivor, and if not to the Heirs of the Heir, it is because if the Habendum were made to the Heirs of the Heir, then some Perions by Possibility should be inheritable to the Land, which should not have inherited if the Estate had been made to the Survivor and his Heirs, and consequently the Condition be broken; for if it were to the Heirs of the Heir, then the Blood of the Mother &c. might by Possibility inherit, which never shall, if the Limitation be to the Heirs of the Survivor, &c. Co. Litt. 220 b.

(M. a) To whom the Condition shall be said to extend to be bound by it.

 Fol. 322

1. If a Man devises Lands to H. his Son, and the Heirs of his Body, dy, the Remainder to T. and the Heirs Male of his Body, upon pl. 1014. C. & S. P. Condition that he or they, or any of them shall not alien, discontinue, or this Condition shall extend only to restrain T. and the Heirs by the State Court.
2. If a Man leaves Lands for Years, upon Condition that the
Leihe or his Assign shall not alien the Term to any but to one of
his Brothers, and after the Leisene to one of his Brothers;
this Assign is not within the Condition, but he may alien to
whom he pleases. Digl. 12 Jit. 39. R. 1. 1. 2. R. be-
between Whitecock and Fox, per Coke.

3. Conditional Devise in Fee by Baron to his Wife, who takes other
Baron, and the second Baron breaks the Condition, yet it is no Forfeiture,
See No. 92. pl. 229. Trin. 10 Eliz. Anon.

4. A devise Land to his Mother for Life, and after her Death to B.
his Brother in Fee, P recognized that it his Wife (being eunuch) be delivered
of a Son, that then it shall remain to such Son in Fee, and dies. A Son
is born; and it was held that this PVoviso does not destroy the Mother's
Estate, but the Estate of B. only. D. 127. pl. 53. Marg. cites 23 Eliz.
C. B.

5. Lands were leaved on Condition, that Leflee, his Executor or Af-
signs should not alien without Leave of the Lessor. If Execution of such
Leafe be made by Reason of Judgment, or Recognition, one Justice held,
be that it may alien it over; but, per another Justice, the Execu-
tion itself is a Forfeiture, which the Reporter thinks hard. And. 124.
Trin. 25 Eliz. in the Case of Moor v. Ferrand.

6. A Lease for Years is made upon Condition, that Leflee, his Exec-
utors or Assigns, shall not alien without Allent of the Lessor. The Lea-
see dies intestate; the Ordinary grants Administration to J. S. who afligns
the Term without Licence; adjudged, that the Condition is broken,
for he is an Assignee in Law. Cro. E. 25. pl. 4. Patch. 26 Eliz. C. B.
More's Cafe.

7. A devise Part of his Lands to B. his eldest Son in Tail, and another
Part to C. his youngest Son in Tail, provided that if any of his Children
again or demise any of the Lands to them devised, before they come to the Age
of 30 Years, then the other shall enter. A died. B. demised his Part be-
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same for Years before his Age of 30 Years, whereupon B. re-entered on the
Leflee. The Question was, whether by the Entry of C. the Land is
absolutely discharged of that first Limitation, so as B. the eldest Son
cannot enter upon C. the youngest for this Alienation by him? Quære.

Mo. 271. pl. 424. Hill. 30 Eliz. C. B. Spittle v. Davis.

2 Le. 38.
pl. 51. S. C.
and the D.
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here is a
Limitation,
and not a
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and the
Entry of the
client held
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124 Condition.

Mule of his Son, and not D. and his heirs. Co. 3. Lord Chenev.
6 or related.

Cro. J. 398.
pl. 4. S. C.
and all the
Court were
of that Op-
inion.

Ball Rep.
68. pl. 12.

Hitchcock v. Fox. S. C. administrator.—Ibid. 379 pl. 10. Trin. 12 Jit. R. R. S. C. and Coke Ch. 1. thought that the Assigns to one of the Brothers pursuant to the Condition has discharged all the
Condition, and the Estate is therefore without any Condition.—2 Build. 296. Fox v. White-
coe. S. C. & S. P. per Coke Ch. J. and Judgment for the Plaintiff accordingly.

3. Conditional Devise in Fee by Baron to his Wife, who takes other
Baron, and the second Baron breaks the Condition, yet it is no Forfeiture,
See No. 92. pl. 229. Trin. 10 Eliz. Anon.

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Condition.

any Limitation therein contained.—Ow. 8. Spittle’s Cafe. S. C. held accordingly per tot. Cur. and
Judgment accordingly.—Ibid. 53. S. C. in totidem Verbis.

8. The Husband gave Lands to his Wife during the Minority of his Son, 3 Le. 68
upon Condition that she should do no Waste. The Husband died, and the
Widow married again, and died, and this 2d Husband committed Waste.
It was held by the whole Court to be no Breach of the Condition.
Judgment was enter’d accordingly.

—Let 20. cites S. C. and that it was therein adjudged, that a Condition to avoid an Estate shall be
taken strictly.

9. A being sold (being a Manor and Lands in Fee, made a CoF'fec't to D. &c. to the use of himself in Tail Male, Remainder to E. in Tail, provided that E. or any in whom the Inheritance in Tail of all the Premises shall happen to be, shall pay to the Daughter of A. 200 l. Paying in Posses-
on of Parts of the Lands never attorn’d. Popham and Anderson Ch. J. agreed that the Remainder-man in Tail is not bound by this Condition, for that was, that he who should have the Inheritance in Tail of all the Premises should pay &c. whereas that which was in the Possession of P. did not pass for Want of Attornement, because a Condition is to be taken strictly. Poph. 102. Hill. 38 Est. Slaning’s Cafe.

10. A in Tail, the Reversion in Fee to the Queen, lets the Land for
21 Years by Indenture, and covenanted that the Lease should enjoy it a
against all Persons without Interruption of any besides the Queen, her Heirs
and Successors, being Kings or Queens of England. The Queen granted
by the Reversion to B. and then A. died without Issue. W. entered and
ousted the Leafe, which brought Covenant, and adjudged that he did lie
for none are excepted but the Queen, her Heirs and Successors, and not
Woodroffe v. Greenwood.

11. A made Leafe for 21 Years to B. and covenanted that the Leafe a Roll Rep.
should enjoy it during the Term, without the Let of Disburmense of his, his
Heirs, or Assigns, or any other Person, by or thro’ his Meaus, Title, or Proc.
currence, and in Covenant the Plaintiff set forth, that before the said
Leafe was made to him, Ld P. granted the Lands to A. and to M. the
Defendant his Wife, and to the Heirs of A. and aver’d that it was by
fine lev’d by the Means and Procurrence of A. and that A. was dead,
and M. turn’d him out of Possession, it was objected, that the Wife deriv
ed no Title from her Husband, the Covenantor, but from the Lord B. and
that this Covenant extends only to Titles derived under A. and after his E
state created; but adjudged that in regard there was an Avermment, that
tho’ the Wife claims by a Title derived from Ld P. the Consor, yet
the is in an and claims by Means of A. her Baron, the Lessor, and it was S.
by his Procurrence that the Fine was lev’d, and if that had not been
lev’d, she would have had no Estate, and consequently is within the
Covenant, tho’ the claims by Title derived from another. Cro. J. 657.

12. A leaves Land to J. S. upon Condition, that if he paid him 31. per
Ann. for 5 Years next ensuing, then the Leafe to be void; and afterwards
gives a Bond with Condition to perform all Covenants &c. and Conditions
in the said Indenture of Leafe. Debt being brought upon the Bond, the
Defendant pleaded Conditions performed. The Plaintiff affges a
Breach, that he had not paid the 31. per Ann. according to the Condition
in the Leafe. The Defendant denies, and the Question was, Whe-
ther or no the Condition of the Bond was broken by not paying the $1, and it was argued for the Defendant that it was not; because the Defendant had not covenanted to pay $1, but had it at his Election, either to pay the Money, or else let the Land (or that the Leaf should find good) but H Ala. seemed to incline that the Bond was forfeited; for if the Word Conditions should not relate to that Clause of paying the $1, it would be void; and he said, suppose the Condition of the Bond had been only to perform all Conditions in the Leaf, certainly it must have related to that; and now, when it is for Performance of all Covenants and Conditions, it will be as effectual; for the Word Covenants shall relate to the Covenants in the Leaf, and Conditions to this Condition. Sed adjournatur. Freem Rep. 356. pl. 498. Hill. 1674. Anon.

(N. a) To what Things it shall be said to extend.


Hob. 259, pl. 244, S. C. says, that Judgment was given for the Plaintiff, contrary to the Opinion of Hutton, who thought the Condition was to be understood only, by the Words, of Damage directly growing by the Release, and not by any collateral Act done by this Promise; but the reason that moved the Judges was, that this Condition carried a forcible and apparent Intent of saving harmfull of some Damage, which might arise, not upon the Release above, but upon some external and collateral Thing besides the Release, and yet by the Means and Occasion of the Release, for the Words are (to save harmfull &c. from all Persons that might trouble him concerning the said Release).

3. The
Condition.

3. The Condition of an Obligation was, That the Obligor should make Appropriation of the Church of Dale such a Day to such a House, at his Costs and Charges discharged of Incumbrances; there, altho' there was a Pension granted thereout to another, it was held that the Obligee was not bounden to discharge it of that Pension. Arg. 3. Le. 44. pl. 64. in Cafe of Mountfield v. Catesby, cites 3 H. 7. 4.

4. If a Man leaves his Land for 20 Years, upon Condition that the Lessee shall take the Dutches, and does not pay so often, there if he makes them once he is excused for ever. Br. Conditions, pl. 6. cites 27 H. 8. 6.

5. If a Man makes a Feoffment of his Lands with Warranty, and conditions, that it is discharged of all Rents, then it shall not extend to Rent-Diversions, which are incident to the Lands of Common Right. Arg. 3. Le. 44. pl. 64. Mich. 15 Eliz. C. B. in Cafe of Mountford v. Catesby.

6. It was said, that if one makes a Lessee for Years, rendering for the first 2 Years 10 l. and afterwards 30 l. every Year, with Condition, if the Rent of 30 l. or any Payment of it be behind, that the Lesser enter, the Lessee enters for not Payment of the 10 l., that his Entry is lawful, for the 10 l. was Parcel of the Rent, for it was but one Rent. 4. Le. 8. pl. 34. Hill. 27 Eliz. Holland v. Hopkins.

7. If Lands are given to A. for Life on Condition, Remainder to B. in manner aforesaid; these Words (in Manner aforesaid) shall refer to the $P$ according to the Life limited to A. and not to the Condition, nor to any other collateral Matter; per Fenner. 2 Le. 69. pl. 92. Trim. 27 Eliz. in C. in ro- tidem Verbis.

8. If aliqua Lis, vel Controversia orintur Impofterum, by Reason of any Clause, Article or other Agreement in the fald Indenture contained, that then before any Suit &c. the Parties should choose four indifferent Persons for the ending thereof &c. This extends not to the submitting the Break of every Covenant &c. but only where Disputes arise upon the Construction of any Covenant &c. Le. 37. Trim. 28 Eliz. B. R. Parmort v. Griffin.

9. A. being Tenant in Tail of certain Lands, exchanged the same with B. — B. entered, and being seised in Fee of other Lands, devised several Parcels thereof to others, and amongst the Rest a particular Estate to his Heir, proviso, that he doth not re-enter nor claim any other of his Lands in the De- finition of his Will, and if he do, that then the Estate in the Lands de- vided to him to ceale. A. dies; his Issie enters into the Lands in Tail, and waives the Lands taken in Exchange, and before any other Entry, the Heir of B. enters upon the Land given in Exchange; and the Opinion of the whole Court was, that it was no Break of the Condition, because that was not the Land of the Devizor at the Time of the Devise, therefore it was out of the Condition. Godb. 99. 100. pl. 115. Mich. 29 and 29 Eliz. C. B. Barber v. Toppesfield.

10. Where the Provizo is Parcel of one Sentence, which contains a Cov- enant, or abridge the Covenant, there it shall not amount to a Condition but to an Exception; as Grant of a Rent-Charge Provizo that he shall not charge the Perfon; So a Lease without Impediment of Waife, Provizo that the Lessee shall not do voluntary Waife, the fame abrides the Liberty. Arg. 2 Le. 128. Mich. 29 Eliz. B. R. Scott v. Scott.

11. A Lease is made of Lands for Years Provizo, that Lessee shall not put his Cattle on the Land from Michaelmas to St. Andrew’s Tide; per Dyer Conditions are falsi Juris, and conceived that the Conditions should be restrained to the first Year, and should extend no further. Per Manwood, if I am bound that I will not go to London between Easter and Michaelmas, it shall not extend only to the first Years after the Date of the Obligation, but for my whole Life. 4 Le. 100. pl. 205. in Time of Qu. Eliz.
12. The Condition of an Obligation was, that if the Obligor paid so much, then the Obligation to be void; or otherwise it should be lawful for the Oblige quietly to enjoy such Lands. The Defendant pleaded, that the Plaintiff had quietly enjoyed. The Plaintiff demurred, intending that the Condition depended only on the Payment or Nonpayment, and that what concerned the Land was idle. The Court said, that Conditions ought to be taken according to the Intent of the Parties, if it can appear what that is; but as the Words (then to be void) are placed there, it can refer only to what precedes and not to the Land, which follows; and it was said, that the Rule of Grammar holds in our Law, viz. that the Words in the Beginning or End of a Thing refer to all, but that those in the Middle refer only to the Middle; but they said, that the Intent of the Parties doubtless was, that the Oblige should have either the Money or the Land, and therefore the Court would advise, and recommended an Agreement. Sid. 312. pl. 26. Mich. 18 Car. 2. B. R. Ferrers v. Newton.

Rev. to the Oblige of all Demands on his own Account, did not release the Bond. — S. C. cited 

13. A. and B. brought Debt upon a Bond, the Defendant pleaded the Release of B. but upon Oyer it was of all Actions &c. which be had &c. against the Defendant upon his own Account; the Plaintiff replied, that this Bond was not taken upon his own Account; upon which Ruffe was taken and found for the Plaintiff; it was moved in Arrest, that this was a frivolous Issue, for the Release of one Oblige discharged the Bond; but the Court feriatim delivered their Opinions for the Plaintiff; for B. who gave the Release, might take the Bond (and it the Truth was that the Bond was made to him and A.) as a Security for a Debt with which he was inrolled for another. Vent. 35. Trin. 21 Car. 2. B. R. Noko’s Cafe.

14. In the Condition of a Bond it was recited, that a Sheriff had constituted Defendant Bailiff of a Hundred in his County, if therefore the Defendant shall only execute all Warrants to him directed, that then &c. it was adjudged, that the Words (all Warrants) shall be intended only all Warrants directed to Defendant as Bailiff of the said Hundred, and not other Warrants; Per Twilden J. 2 Saund. 414. Pach. 24 Car. 2. in the Cafe of Lord Arlington v. Merrick, as the Cafe of Horton v. Day.

—All to. Pach. 22 Car. B. R. the S. C. resolved, that though the Words of the Condition were general to make Returns of all Warrants directed to him, yet it was to be understood of each only as were to be executed within the Hundred of which he was made Bailiff.

15. A. leased three Houses to B. for 41 Years, rending Rent, and B. covenanted to pull them down, and in the same Place to build three new substantial Houses, and during the said Term well and sufficiently to repair the Plaintiff, the same, and to yield up the same sufficiently repaired at the End of the Term. B. instead of building three Houses only, built five, and permitted one of them at the End of the Term to fall down. A. assigned a Breach in not repairing one House built on the Premises; the Defendant pleaded, that he pulled down three Houses, and built three more on the Ground where they stood according to his Covenant, which were kept in Repair during the Term, and left in Repair at the End thereof, and concluded to the Country. The whole Court held, that
(O. a) When a Thing is limited to be done, by whom collateral Things which conduce to the Performance thereof shall be done. By whom they shall be done.

1. Where a Man is bound to do a Thing, he ought to do all which depends thereupon in the Performance of the Thing. 11 H. 4. 25. b.

2. (As) if the Condition be to levy a Fine to the Obligee, and it is not determined at whose Costs it shall be done, it shall be at the Costs of him that ought to levy the Fine, for this depends upon the other. Br. Coffs, pl. 9. cites S. C.

11 H. 4. 15. b. Cite.

3. (And) upon such a Condition, the Obligee ought to sue out a Writ of Covenant in the Name of the Obligee, and the Obligee is not bound to do it. 11 H. 4. 25. b.

4. If the Condition be to levy a Fine upon Warning, a Warning by the Sheriff upon a Writ of Covenant is not sufficient, (for perhaps he cannot know by this, whether it be to levy a Fine or other Action) but it ought to be upon Warning by the Obligee himself. 11 H. infra (Y. c) pl. 2. cites 29 E. 3. 44.

b. contra.

5. Debt on Bond to pay Money, if A shall be then living, and shall be S. C. report for the 20th of May, by the Form and Course of Law, perfect, levy, and acknowledge a Fine and a Recovery before his Majesty's Justices of C. B. (E) pl. 9. considered by Roll at Parols of and in certain Houses and Tenements, with the Appurtenances, which that the said B. lately had and purchased of A. Defendant pleads that A. is living, and did not levy &c. and the Question on Demurrer was, if B. shall levy or A. should levy the Fine? and held that B. should levy it. Brownl. 76. 4. 18.

next Antecedent, viz. A. though the Words (if A. be then living) come in in a Parenthesis.
Condition.

6. If a man covenants to convey lands, it ought to be done at the Charge of him that covenants to do it, except the contrary be agreed. Sic dictum fuit. Sty. 280. Trin. 1671.

(P. a) Condition for Assurance. How it shall be performed.

1. **If a man covenant to make such Assurance of the Manor of D., as the Counsel of the other shall devise, and the Counsel devise that he shall be obliged in a certain Obligation, that the other shall occupy the Manor peaceably &c. he is not bound to perform it, for this is no Assurance within the Intent of the Covenant. Hill. 37 E. 5. B. R. per Curtiam.**

S. P. by Popham, Cro. 1671, 371. in Case of Thornborough v. Monpefon, S. C. — Lutw. 679. Arg cites S. C. — Accord: in Consideration of a Sum of Money paid to the Defendant, he promised to afford conveyed lands to the Plaintiff in such manner as D. deemed advisable, who covenanted that the Defendant should make a Surrender at the next Court. And should enter into a Bond of 40 l. to the Plaintiff, for the enjoying the land against all Per suis, which he had not done; and adjourned perrot. Car. that the breach in not entering into the bond was ill, because it was out of the Assumpsit, and therefore the Defendant is not bound to perform it. Cro. J. 115, pl. 1. Patch 4 Jac. B. R. Stanyronde v. Lockock. — Nay 124. Staunton v. Leycock, S. C. 97, that the Obligation is not Part of the Assurance, and was out of the Reference to D. (But the Report seems not very clear.)

2. **But if a man be obliged to do such Acts for the Assurance of the Manor of B., as the Counsel of the other shall devise, and the Counsel devise that he shall make an Obligation or Statute that the other shall enjoy, he ought to perform it, otherwise he hath broke his Covenant. Hill. 37 E. 5. B. R. per Popham.**

— Condition of a Bond, that if the Defendant do before Michaelmas make, acknowledge, and suffer all and every such Acts and Things, whatsoever they be, for the good affording and the true making of the Manor of D. to J. S. and his Heirs, that he then &c. Here if the Plaintiff requires a Fine, a Feoffment, a Burgage and Sale, he ought to do all; for he is to make all and every Act whatsoever for the Assurance of the Manor of D. but he is not bound to make any Obligation or Recognition for the enjoying the Manor, for this is but a collateral Security, and not any Assurance, and if the Plaintiff require the Defendant to convey the Manor to the Plaintiff, the Defendant at his Peril ought to do this by any kind of Assurance, and if upon this the Defendant make a Covenant of the Manor, yet if after this the Plaintiff requires a Fine, the Defendant must acknowledge a Fine and to pay every several Requête he ought to make several Assurances. Ye. v. 144, 45. Hill. 1 Jac. B. R. Pudsey v. Newland. — Mo 682. pl. 973. S. C. adjudged that general Request is sufficient, and the Obligee at his Peril must do what is sufficient for the Assurance. — Brown L. S. C. but seems only a Translation of Ye. v.


Cro. E. 770. pl. 11. Hill. 57 E. 5. B. R. Thornborough v. Monpefon, seems to be S. C. It was moved, that this was not within the Covenant, because the Devise was, that he should bind him and his Heirs, whereas there is no Word in the Covenant that the Heir should be bound; but the Court gave not any Answer thereon, and it was ended by Arbitrement.
4. If A. covenants to make such Assurance for the Payment of 100l to B. as his Counsel shall advise, and his Counsel advises that A. shall make an Obligation of 100l. for the Payment of 100l. he ought to perform it. Dial. 37 Eliz. 25. R. Per Popham.

5. But if the Covenant in this Case had been to make such reasonable Assurance as the Counsel of the Covenant should advise, it had been otherwise; for it is not reasonable to make an Obligation of 100l. for the Payment of 100l. Dial. 37 Eliz. 25. R. Per Popham.

6. If A. covenants with B. to make such reasonable Assurance to B. in Fee of such Lands, referring to A. and his Heirs to him, as the Counsel of B. shall advise, and after it tenders to A. a Devise-Poll, by which A. infeals B. of the Land in Fee, referring the said Rent to A. in Fee; This is not such reasonable Assurance to lend A. to lend, for this is a Rent-Sack, and the Devise appertains to the Feoffee, and then A. without the Devise cannot have any Interest for the Rent. Rich. 11 Car. 2. R. between Gippes and Aisne, per Curtiam.

7. But if B. by Indenture grants and sells Lands without Livery or Involuntary to B. in Fee, referring 20s. Rent per Annum, as the Counsel of B. shall advise, and after the Counsel advises a Fee-simple by Devise-Poll, referring the said Rent in Fee; This is a good Assurance within the Covenant, so that A. is bound to say leave, for there the Reference does not depend only upon the Devise-Poll, but upon the Indenture which directs the Title of the Fee-simplicity, by which A. may recover the said Rent-Sack without having the Fee-simplicity. Rich. 11 Car. 2. R. between Gippes and Aisne, per Curtiam; upon a Devise, but ordered the parties to make a new Fee-simplicity by Indenture, rendering the Rent. Dial. 10 Car. Rot. 1387. But after the parties could not agree, and so this Judgment was given against the Plaintiff, solicitor, against their Opinion before, because the Devise tendered was a Devise-Poll, the which should be after the Execution thereof in the Possession of the Plaintiff, and (*) then the Defendant could not without the Devise have his Rent, not being able to prove the Fee-simplicity.

8. If the Condition of an Obligation be to make the Oblige or his Assigns as good a Lease as Counsel could advise, and after the Oblige comes to the Obliger, and appoints him to make a Lease to J. S. he ought to make it accordingly, though no Counsel advised it, but the Oblige himself, for by the Words it is not necessary to have the Advice of Counsel, but only that the Lease should be as good as Counsel could advise. Patch. 14 Edw. 4. and Ch. Bridg. 59. S. C. but nothing said by the Counsel as to this Point. —5 Bult. 168. S. C.

9. If the Condition be to affure certain Lands to such Persons as the Oblige shall name, and after he affires it to the Obliger himself; This is a good Performance of the Condition, tho' it be not alleged that the Obliger named himself, for this Acceptance is a Nomination of himself. Rich. 13 Edw. 4. between Foysgro and Wild, per Curtiam.
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10. If the Condition be to make such Assurance in the Law of certain Lands to the Obligee, as by the Counsel of the Obligee upon Request made shall be advised, and after J. S. was of Counsel with the Obligee, and gave his Advice to the Obligee, that the Obligor should make a certain Assurance, and the Obligee gave Notice to the Obligor of the said Advice, and required him to perform it, be obliged to perform it, or otherwise the Condition is broke; for it is more convenient that the Counselor would give the Advice to the Obligor than to the Obligee, for the Obligor does not know whether he be of his Counsel in this Matter, for he may be of his Counsel in one Thing and not in another. Co. 5. *Higginbottom's Cafe. 19 b. adjudged. Sec. 22, 23. 7. 21.

11. If the Condition be to make such Assurance as to the Obligee as the Obligee shall devise, and after the Obligee devies an Indenture &c. and renders it to him, and he requires Time to shew it to his Counsel to be advised thereupon, which is denied to him, then if he does not shew it presently the Condition is broke, because the Condition is peremptory, *Criter, to be performed presently. D. 16 & 17. 338 S. 39. between *Wotton and Cooke; Co. 2. 1. Manners. 3. Adjudged.

12. If a Man assumes to be obliged in an Obligation to J. S. and an Obligation is tendered, in which he, his Heirs and Executors are bound, he ought to shew it, because this is the common Course to make Obligations in such Manner, though the Heir or Executor was not named in the Promise. *Bisch. 12. *Lac. B. R. per Coke and Dodderidge.

13. If a Man be bound to make a Conveyance of certain Lands, if a Warranty or Covenant be put in the Deed, he is not bound to seal it. *Bisch. 12. *Lac. B. R. per Coke.
14. If a man affirms to become bound with J. S. and J. D. to B. in Roll Rep., a certain sum, and B. tenders an obligation in which they should be obliged jointly and severally, he is not bound to fall this, for by the Afinipst a joint obligation is intended. *Dick. 12 Jac. V. R.* between Malcot and Deane adjudged.

15. So if a man affirms to become bound with J. S. and J. D. to B. per hujusmodi Scriptum, and payable at such a time as two strangers should agree between them, and the strangers agree, that the obligation should be joint and several, yet he is not bound to fall it; for by the promise, a joint obligation is intended, and the words *huju-
modi* gives no power to alter that which the law made joint, but only refers to the sum and time. *Dick. 12 Jac. V. R. between Malcot and Deane adjudged.* It seems that this exposition is most clear.

Before, but to that only which was uncertain, and that was the sum and the time.—But still the Reporter makes a doubt of this reason, and says, that *huju-
modi* imports rather the manner of the obligation, as whether it should be joint and several, than the sum or the time.—*2 Bull. 257.*

16. If a man covenant for further assurance to levy a fine of all his lands in D. and at the time of the covenant he is seized only of two (or 4) in D. and after two other houses are delivered to him, and the *covenanters* render him a fine of four houses to be levied by him, he is not bound to levy it; for this will comprehend the other two houses, of which he is not bound to levy a fine; and though the use of these two houses which are not within the covenant shall be to the component, yet he is not bound to levy a fine of them; for perhaps he has to tenant in tail of them, and this will throw the *affir-
ance* 12 Jac. V. R. between Wilson and Welch, adjudged.

A. sold to B. 3 yard land, and covenanted for further assurance. A. tendered a note of a fine. Two merchants &c. were comprized more than were sold, or intended to be allured, and exception was taken that the fine being tendered of more than he ought to levy, he is not bound to levy any fine at all; but the whole court to the contrary; for though the fine be levied of more than it ought to be it is not material; for of the residue it is the use of the成分or himself. *Cro. J. 251.* 4. *Mach. 8 Jac. B. R. Bond-
ney v. Curtis*—*Build. 90 S. C. the court held it good, and that it was done according to the usual form.*—*Mo Slo. p. 1096 S. C. but S. P. does not appear.—2 Build. 518, 519. Arg. cites S. C. as of a fine tendered of a house and 20 acres of land, and that defendant refused, and said, that he was fell of the house and 10 acres, and also of other 10 acres, which he did not fell, and that these 10 acres also were contained in the note of the fine, the which he never intended to pay, and therefore refused to acknowledge the fine; but resolved that the plea was not good. S. C. cited Roll Rep. 117. as of a bargain and sale of all his lands in D. and a covenant for further assurance to levy a fine of them, and the fine tendered contained a house and a certain number of acres; and defendant pleaded, that at the time of the bargain he was sold of a house and 4 acres, which he sold, and this fine contained the (and more) being to many in number, but adjudged no good far. If the covenant is to levy a fine of 10 acres, and the fine contains more, it is not good; but otherwise where it is to levy a fine of all his lands in D. Cole and Doderidge said, the case of *Boulton v. Curtis,* differed from this of *Wilson v. Walsh,* for it is hard to put the certainty of acres; because by the measure of one man it may be more than by the measure of another, whereas here 4 houses may be well known from 2.

17. If the condition of an obligation be, that if he makes a good, perfect and absolute assurance in fee to the oblige in certain copy-
hold lands, then so. If he after surrenders it upon Condition of Pay-
ment of money, and the surrender is presented accordingly, this is not any Performance of the condition, because the assurance ought to be absolute without a condition. *Patch. 8 Jac. B. be-
tween Risborough and Grey per Curiam.*

18. So if a covenant be with a Purchaser to make further assurance, if he make an assurance upon condition, this is not any Per-
formance of the covenant. *Patch. 8 Jac. B. per Curiam.*
19. If A. in Consideration that B at the Request of A. would surrender a Copyhold Tenement, Parcel of the Manor of D. to A. in due Form of Law, according to the Custison of the Manor, to the Use of A. and his Heirs, affirms to B. to pay him 20 l. In an Action upon the Case by B. against A. for the 20 l. if he alters the Performance of the Consideration, that he after, at the Request of A. surrendered by a Straw to the J. S. (a customary Tenant of the said Manor) the said Tenement into the Hands of the Lord of the said Manor, according to the Custison of the said Manor, to the Use of A. and his Heirs, yet the Defendant A. had not paid the 20 l. This is not a good Performance of the Consideration which is a Condition precedent, for he is bound to make an essential Surrender to the Use of A. and his Heirs at his own Costs, and he hath made a Surrender here into the Hands of a Tenant of the Manor, which is a good Beginning of a Surrender, yet it is not a complete Surrender till it is presented in Court, and he hath taken upon him to make a perfect Surrender, and therefore he ought to procure the Tenant to present it at the Court according to the Custison, and to procure a Court to perfect it, which does not appear to be done. C. 1651. between Shaw and Belbo, adjudged per Custison this being moved in arrears of Judgment quod queruntur null causas per Bellam. Inactius hill. 1650. Rer. 1652. For if a Man be bound to make a Testament to me upon Request, if I request him to make a Deed of Feoffment with a Letter of Attorney to B. to make Livery to me, and he does it accordingly, this is a good Beginning; yet if Livery is not made, this is a Forfeiture of the Consideration.

Cro. E. 7. 7 in pl. 4 Arg. cites S. P. as adjudged in An. drews's Case.

20. If a Man bargain and sells 100 Acres of Wood, this shall be measured according to the Usage of the Country, viz. according to 20 Feet to the Rod, and not according to the Statute. For Consetudo Locis est Observanda. 6 Rep. 67. a. per Cur. cites 47 E. 3. 18. a.

Fifth Detie, pl. St. cites S. C. Perk. S. 775 [but it should be 762.] S. P. and cites S. C.

21. If a Man be obliged to make to another a sure, sufficient and lawful Esate, in certain Land, by the Advice of J. D. here he makes an Esate according to the Advice of J. D. be it sufficient or not, lawful or not lawful, yet he is excused of the Obligation. 5 Rep. 23. b. cites 7 E. 4. 13. b.

22. Debt; a Man was bound in 1600 l. to make such Estate by a Day which the Counsel of the Plaintiff should advise, and he said that the Counsel did not give Advice, and a good plea; And so he pleaded that no Advice was given, and because he pleaded in the Negative, he need not shew the Names of the Plaintiff's Counselors; but if the Plaintiff replies, that the Counsel did give Advice, he shall shew their Names. Br. Pleadings. pl. 78. cites 6 H. 7. 4.

23. In an Action of Covenant brought, one of the Covenants in the Indenture was, that the Defendant ought to make and fulfill for the Assurance of the Plaintiff, all things that should be devised by the Counsel of the Plaintiff, if he were required, and the Defendant taking Proclamation, for Plant said that he was not required; to which the Plaintiff replied, that J. S. was of his Counsel, who devised a Release, which he required the Defendant to feal, but he refused to do the same; to which the Defendant rejoined Sye ne refusa P.P. and by all the Court held
Condition.

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a Departure, and that the Defendant ought to have pleaded at first Non
Requisitius just; and the Plaintiff in his Replication needed not to have
spoken of any Refusal, in as much as the Defendant had pleaded in the
Negative Quod non futer requitus. Heath's Max. 48. 49. cites 28 H.
8. D. 31. [b. pl. 217.]

24. A Man by Deed indented, bargained and sold Land unto another
in Fee, and conveyed by the same Deed to make to him a good and suffi-
cient Estate in the said Land before Christmas next: and afterwards,
before Christmas, the Bargainer acknowledged the Deed, and the same is in-
rolled; It was the Opinion of all the Justices of C. B. that by that Act
the Covenant aforesaid was not performed, for the Bargainer in Per-
formance of the time ought to have levied a Fine, made a Feoffment,
or done other such Acts. 3 Le. 1. 2. pl. 2. 6 E. 6. in C. B. Anon.

25. A. was bound in a Bond B. for Performance of Covenants; After-
wards B. gave Bond to A. conditioned to release A's Bond to B. as the
Counsel of A. should advise. A's Counsel advised that B. feel a Releas-
e of all Demands to A. and to one W. who was a Stranger to the Covenant,
and aver'd that there was no other Matter between them, but said no-
thing of W. The Court held clearly that the Request was unreasonable,
and that B. was not bound to feel the Deed. D. 218. a. pl. 3.

26. The Condition of a Bond was, that whereas the Obligee had an
Estate for Life &c. by a Lease made by A.B. if the Obliger and his
Heirs do at all Times ratify, confirm and allow the said Leafe, and suffer
the Obliger to enjoy the Premises &c. that then &c. In an Action of Debt
brought on this Bond, the Defendant pleaded, that at all Times after the
making the Bond, he has ratified, confirmed and allow'd the said
Leafe &c. The better Opinion was that the Plea was ill, for he ought
to have pleaded a Confirmation in Deed in Writing, and to the Party
called the Action, and waiv'd the Demurrer. D. 229. b. pl. 51.
Trin. 6 Eliz. Anon.

27. An Indenture of Covenant between A. and B. in which A. co-
vened, in Consideration of a Marriage to be between his Son and the
Sister of B. that he, at the Coff's of his Son, by his sufficient Deed, would
before Mich. after Land to his Son, and B. did covenant if A. performed
it, that then he would make a general Release to him. A. before the Day the Per-
formance was to be made of the Covenant, because his Son did not tender the Coff's and
Charges, yet if the Covenant be not made, B. is not bound to make a Re-

28. A. covenanted with B. to make such Assurance as B's Counsel
should advise. B. must give Notice of the Assurance, and must flie
it him, and permit him to read it, and to go to his own Counsel to con-
sider, and A. is to have convenient Time after the Assurance thown to him

29. The Condition of an Obligation was, to perform Covenants in a
Pair of Indentures, and the Covenant wherein the Breach was offered was,
that if R. W. Brother of the Plaintiff should say, Make Assurance of
such a Manor to the Defendant as the Counsel learned of the said Defendant
should advise, then if the Defendant pays into the Court 50 l. the Obliga-
tion to be void; The Defendant by Advice of Counsel demanded a Release
with
with Warrant &c. And by Periam and Windham, the same is not any
Affirmance, but a Means to recover in Value; Anderson contrary, that
it was a collateral Warrant &c. 2 Lc. 130. pl. 172. Patch. 27 Eliz.

30. J. S. the Bargainee covenanted, on Payment of 100l. at a certain
Day and Place, to stand seized of the Land to the Use of A. the Bargainer,
and his Heirs, and also to make such Affirmance for Security of the Land as
should be devised by the Counsel of A. and entered into Recognition to per-
form the Covenants. A. paid the Money before the Day, and at another
Place, and after the Day tender'd a Deed to be sealed by J. S. containing
the Receipt of the Money, and also a Release of all his Right in the Land,
which J. S. refused to seal; The Court doubted if by the Refusal the
Recognition was forfeited, because the Acquitance for the Money is
not Affirmance of the Land, and so not bound to seal the Deed, com-
prehending this Matter as not being pertinent to the Affirmance of the
Land; but the Court held that the Acceptance of the Money at another
Place and before the Day, was sufficient to excuse the Recognition,
as well as the Covenant on which the Recognition depended. Mo.

31. Debt upon Obligation, the Condition was to make such Affirmance
as by the Counsel of the Plaintiff should be devised; the Plaintiff himself
cannot such an Affirmance to be drawn, and put Wax to it, and required
the Defendant to execute it, and he refused; It was the Opinion of the whole
Court that it was no Breach of the Condition. Cro. E. 297. pl.

32. K. on 22 Jan. 38 Eliz. promised to make such Affirmance to B. of
all his Lands in Y. as should appoint. S. the same Day appointed that
K. should make a Bargain and Sale of all his Lands in Y. On the 14th
Sept. 39 Eliz. K. tender'd to B. a Bargain and Sale of all his Lands in Y.
and whether B. was bound to execute it was the Doubt. Gawdy and
Fenner held that he was not bound, because he might have other Lands
in Y. 14 Sept. 39 Eliz. which he had not at the Time of the Agreement,
but Popham e contra, & adjournavit. Cro. E. 66s. pl. S. Patch. 41 Eliz.

33. It was held by Popham and Fenner, that if one be bound to
make such Affirmance of all his Land, as another will devise and require, if
it be to be done at the Coifs of the Devisor, he may devise one Affirmance of
one Part, and another of another Part of the Land; but if it be at
the Coifs of him who is to make the Affirmance, the other can devise but a
joint Affirmance for the whole Land, unless it be necessary. Mo. 572.

34. If
If a Man be bound to make a Feoffment in Fee to the Obligee, and he makes a Lease and Release to him and to his Heirs, the Condition is well performed, because this in Law amounts to a Feoffment. Co. Lit. 287. a.

35. Condition was, that Husband and Wife being Levies for Life of Land, should levy a Fine to a Stranger at the Costs of the Stranger, and also that they should levy a Fine of other Lands, which they also held for their Lives, to a Stranger, and at their Charge. Obligor pleads that Husband and Wife offer’d to levy the Fine, if the Stranger, to whom the Fine was to be, would bear the Charges; Obligee demurs; it was held that the levying the 2d Fine has no Reference to the 1st, because they are two distinct Sentences, and the Words (and also) make them fo, and Judgment pro Quo. Brownl. 94. Patch. 4 Jac. Hollingworth v. Huntley.

36. A Man covenanted to make further Assurance upon Request, be it by Fine &c. The Plaintiff delivered to him a Note of a Fine, and required the Defendant to acknowledge the same before the Judges of Assize, and he did not acknowledge it; the Defendant demurred, because no Writ of Covenant was first brought or depending; but adjudged that the Covenant was broken, because the Acknowledgement of the Note for a Fine is an Act preparatory for levying a Fine, upon which a Writ of Covenant may afterwards be filed out, and so it is an Act for further Assurance, though a Writ of Covenant be not pending. No. 810. pl. 1596. Hill 6 Jac. B. R. Balden v. Curtis.

37. Debt on Bond for Performance of Covenants in a Deed in which 'twas covenanted, that Vendor should make further Assurance at the Assize. Coffs and Charges in the Law of the Purchasor. Breach alleged, that a Note of a Fine was devised and ingratiol’d in Parliament, and delivered to Vendor to acknowledge the Fine as the Assize, which he refused to do and demurred to the Breach, because he did not offer Coffs to the Vendor, and the Court held it to be idle. Brownl. 76. Patch. 11 Jac. Pulton v. Dunlop.

38. The Plaintiff offered to make such Assurance of certain Land as the Plaintiff should desire, and the Plaintiff devi’d Assurance with Covenant for the Enjoyment of it, 'twas resolved by Dodderidge and Haughton J. (Mountague Ch. J. being absent) without any Scruple, that this was no Assurance, for the Covenant is collateral, and cannot be called an Assurance; but Haughton J. said, that Assurance with Special Warranty may be under the Name of Assurance, though it be collateral. 2 Roll R. 191. Trin. 15 Jac. B. R. Coles v. Kirner.

39. J. covenants with G. to make a Jointure to his Wife within one Year 2 Roll Rep. after Marriage, of Lands in England of the clear yearly Value of 500 l. 573. S. C. to as A. and B. (two Counsellors at Law) should devise and advise, J. said, that L. must give Notice to A. and B. what Lands he intends to settle, and where the what Estate therein he is feited. The whole Court held the Plea not good. Godd. 339. pl. 433. Trin. 21. Jac. Gorge v. Lane. He then he need not shew his Evidence to the Counsel, nor of what Estate he is to be feited, and he thought it would be the same where the Land is not named, but that it is insufficient to give Notice of the Land, and not to shew his Evidence in Evidence; and Dodderidge J. agreed to the first, viz. where the Land is named, but not to the second; and Haughton J. said nothing.—But if a Man is bound to make such Assurance of Land as J. S. shall advise, he is not bound to shew his Evidence, but he ought to shew the Party where the Land is, and where it lies, and the Obliger must shew the Estate at his Peril; and then J. S. may advise conditionally, viz., if he has a Fee such an Assurance, how it will fit such an Assurance, and it a Remainder over then to devise a Recovery; per Ley Ch. J. Godd. 359 in S. C.

40. But.
40. But if the Covenant be to make a Jointure &c. as the Counsel of the Covenanters shall devise, he must give notice to the Covenanters what Lands he is determined to lettle, and he must inform his Counsel, per Doderidge. Godh. 330. Trin. 21 Jac. in Caze of George v. Lane.

Another Exception was, that there was not any Writ of Covenant pending; but by Doderidge the Ded. Poteltatem may be sued before the Writ of Covenant, ibid. — It ought to have been pleaded, that a Writ of Covenant was shown, and that the Tender of the Note of the Fine is not sufficient, but the Breach of that Covenant ought to be laid after the Ded. Potelt. sued by the Plaintiff. Agreed by Crooke and Yelverton only in Court, and upon their Advice the Action was discontinued without Costs. Hert. 125. Trin. 4 Car. G. B. Newton v. Sutton.

42. A. covenantant to convey Land to J. S. in Fee; in Action brought for Non-performance the Defendant pleaded, that J. S. did not perform the Manner of Conveyance he would have &c. and upon Demurrer it was adjudged for the Plaintiff. Lat. 126. Patch. 2 Car. Lucas v. Warren.

43. In Debt upon an Obligation to perform Covenants in an Indenture, there was a Covenant that the Defendant ought to do such an Act, Thing or Things, as the Plaintiff or his Counsel learned should devise, for the better Assurance of certain Lands by himself to the Plaintiff, and said that a Counselor advised him to have a Fine, and upon the Declaration there was a Demurrer; And upon the Opening the Cafe, Crooke and Yelverton being only present, agreed that it ought to have been pleaded, that a Writ of Covenant was given, and the Tender of the Note of the Fine is not sufficient, but the Breach of the Covenant ought to be laid after the Dedimus Poteltatem sued by the Plaintiff; and upon their Advice the Action was discontinued without Costs. Hert. 105. Trin. 4 Car. C. B. Newton v. Sutton.

44. If a Man be bound to another to make such Assurance of Lands as the Oblige shall devise, it is not sufficient for him to devise a Fine, and to take out a Dedimus &c. upon it, and require his Conunance in that, for this is but a special Way of taking the Conunance; but if there were a Proviso, that he should not go above 5 Miles from his House, then if his House be above five Miles from Weitminister, he is bound to make his Conunance upon the Dedimus, and that he said has been the Difference; per Roll Ch. J. and to he said it had been ruled. All. 69. Trin. 24 Car. B. R.

45. A promises B. that within such a Time after Marriage of his Son to the Daughter of B. A. and his Son should be bound per Scriptum suum debita 'furia forma fiende'; the Breed is laid that they did not give Security per Scriptum suum Obligatorium, and adjudged good in B. R. and affirmed in Error. Sel. 143. Mich. 24 Car. Tracy v. Poole.

46. Assumption in Consideration the Plaintiff hath promised to pay the Defendant 100l. for the Reversion of a Manor, the Defendant promised to seal two Instruments for the Assurance of it with Warranty &c. according to Draughts between them before agreed; & lieth the Defendant tendered
Condition.

tendered him, 11th March, two Instruments in Writing secundum Traha-
tiones prael, and the 3d March requested him to seal them, yet he hath
not sealed them, nor conveyed the Reversion of the Manor; After Ver-
dict for the Plaintiff upon Non Auffumptit it was moved in arrest of Judg-
ment, 11th. That he ought to show the Instruments to the Court that they
may judge of them. 2dly, He does not think, that he tendered him Wox,
Per. Ink &c. as he ought. 3dly, the Request is not well made being
at another Time, not when the Tender was. But Judgment was given by
all the Court for the Plaintiff; for, to the 11, the Instruments were
agreed before, and therefore need not thew them to the Court; to the
2d, There need not be any Tender, for the Defendant hath taken up-
on him to make it, To the 3d, The Request after the Tender is the better,
for so he hath Time to read and consider them; and Windham J. said, where Conveyances are before agreed, and to be sealed accord-
ing to such Agreement, so that there is no need of Counsel, the Defend-
ant is to do it at his Peril; And where one is to grant a Reversion he
hath Time to do it any time during his Life, if it tamdiu continue a Reversion, if he be not halted by Request; here is a Request, and the
Conveyances being agreed, there needs no Tender. Lev. 44. Mich.

47. But if one be to seal a Conveyance generally, there the Counsel
of the Purchator is intended to draw them, and then the Purchator must
render them; per Windham J. Quære, for non fuit negatum ab aliquo.

48. If I am bound to levy a Fine I may do it either in Court or by Con-
wifion, but I must go and know of the Person to whom I am bound how be
will have it, and he must direct me. Mod. 62. pl. 4. Trin. 22 Car. 2.
B. R. in Case of Turner v. Benny.

Vent. 148. per Car. obiter, Trin. 25 Car. 2. B. R.

49. An Action of Covenant for further Assurance, the Covenant being
to make such Conveyance &c. as Counsel should advise; they allege
for Brench that they tendered such a Conveyance as was advised by Counsel,
viz. a Lease and Release, and let it forth with all the usual Conveyances;
& Kinder's Levins moved, that Defendant is not obliged to seal any Conveyance
with Conveyances nor with a Warranty; besides, that which they have
tendered has a Warranty not only against the Covenantor, but one W.
Twifden said, he knew it hath been held, that if a Man be bound to
make such reasonable Assurance, as Counsel shall advise, usual Conveyances &c. but not
may be put in; for the Covenantor shall be so understood, but there must
be no Warranty in it, though some have held, that there may be a
Warranty against himself, but I question whether that will hold; But
Twifden on the other Side said, that the Objection as to the Warranty
was fatal, and he would not make any Defence. Mod. 67. pl. 15. Mich.
22 Car. 2. B. R. Laffields v. Catterton.

den J. inclined according to late Books, that reasonable Covenants might be inserted, and therefore he
would advise; and Judgment was given one another Point.—See pl. 38.

50. A covenant had to convey all his Lands in B. and a Conveyance ten-
Raym. 190. Raym. 190. Raym. 191. S. C.
dred was of all his Lands in the Lordship of B. and Exception was taken
191. S. C. and the
thereunto; but Twifden J. said he thought they should intend them to be Covenanted
for both. Mod. 67. pl. 15. Mich. 22 Car. 2. B. R. Laffields v. Catterton. The Plaintiff
acknowledged, that it cannot be good, and thereupon Judgment was stayed.—Sid. 457. pl. 3. S. C. and because
it appearad by the Record, that the Conveyance tendered comprized more Land than he had covenanted to convey;
Judgment for that Reason was given for the Defendant.

51. Where
51. Where A. is bound to convey Land to B. but the Kind of Conveyance is not specified, and the same is to be done by a Day certain, and no Conveyance is made till the last Hour of the last Day, and then A. sealed and deliver'd a Deed of Feoffment, and was ready on the Land to deliver Seal to B. but not having given Notice to B. that he would execute this Charter of Feoffment by Livery, and B. not being there to take, this was not a Performance of the Condition; for the Charter of Feoffment might have been executed by Involuntary. Vent. 147. Trin. 23 Car. 2. B. R. Large v. Cheshire.

52. But Hale Ch. J. laid the Time when was not necessary in this Case to be in the Notice, because the Charter was sealed and delivered upon the extremest Day limited by the Agreement, and to the Defendant knew it must be on that Day; and so for the Place, because it is a Local Thing, and must be done upon the Land. Vent. 147. Trin. 23 Car. 2. B. R. In Cafe of Large v. Cheshire.

53. Debt upon an Obligation, upon Condition that the Defendant shall well and sufficiently execute, to the Satisfaction of the Plaintiff's Counsel, a Release within 7 Days. The Defendant pleads that the Plaintiff did not tender any Release; The Plaintiff demurs. Hale Ch. J. said that if Advice had been necessary, then the Plaintiff must have done the first Act, but now it is at the Peril of the Defendant, that the Release be to the Satisfaction of the Plaintiff's Counsel, and Judgment was given for the Plaintiff. Raym. 232. Mich. 25 Car. 2. B. R. Baker v. Bultrode.

(to make) but only (to seal and execute &c.) But pr Cur. the Word (execute) or the Word (fell) comprehends the Making —— 3 Keb 277. pl. 12. Baker v. Buteford. S. C. adjudge accordingly.

54. A. covenanted to make such Assignment to B. according to an Agreement made between them, as Counsel should direct and advise. It was objected that the Plaintiff's Counsel should give the Advice, because he was the Peron interested. But it was answered that the Defendant likewise had an Interest, for it is an Advantage to him to make an Assignment, so that his Covenant might be fixed; that 'tis true it had been otherwise if the Covenant had been to make such a Conveyance as Counsel should advise; for then the Covenantee may choose whether he will have a Feoffment, Release, or Confirmation, and then his Counsel should advise what Sort of Conveyance is proper; but here it is to make an Assignment, and also such as the Parties had agreed upon. Sed Adjournat. 3 Mod. 191. Patch. 4 Jac. 2. B. R. Heyward v. Suppiae.

55. An Action of Covenant was brought upon an Indenture of Feoffment made by the Defendant's Wife before Marriage of Lands lying in Milton in the Parish of Marham, whereby Defendant's Wife covenanted to make such further reasonable Acts for affording the Premises, as by the Plaintiff or his Counsel should be advised, devis'd or required, and affixes a Breach that Plaintiff tender'd a Note of a Fine to Defendants before 2 Commissioners appointed for that Purpo se of Lands in the Parish of Marham, and in their Presence did require Defendants to acknowledge the Fine, and then avers that it was a reasonable Act for the further affording the Premises, and that Defendants refused to acknowledge it. To this the Defendants pleaded, that they had always been ready and willing to acknowledge &c. but that Defendant (the Baron) was seized in Fee in Right of his Wife of other Lands in the Parish of Marham, no Part whereof was contained in the Deed, and because thee Lands not contained in the Deed were contained in the Note of the Fine, therefore they refused to acknowledge it. To this Plea Defendant demurred; and for the Plaintiff it was inferred, that 'tho' there are more Acres contained in the Note of the Fine than in the Deed, yet by the
the Covenant for further Assurance, Defendants were bound to acknowledge it; that it is usual to put in more than the Number of Acres mentioned in the Deed, because as the precise Quantity cannot be known, if the Party did not put in enough he would lose so much, and it can be no Prejudice to Defendants, for no more would pass than was contained in the Deed, and unless they levy the Fine, the Feme will have her Dower of it, tho' the Plaintiff has actually paid a Consideration for it; For the Defendants it is said, that if the Fine proposed would be of any Prejudice to Defendants, it is a sufficient Excuse for their refusing to acknowledge it. Now the Deed mentions Lands lying in Horton, in the Parish of Marham, whereas the Note of the Feme tender'd is of Lands in the Parish of Marsham; and it is set forth in the Plea, and likewise admitted by the Demurrer, that Defendants have other Lands in the Parish of Marham, which would have been comprehended in this Fine, which Prima Facie would entitle to the Use of the Co-nussee, at least it would alter the Nature of the Wife's ESTATE; for if she was settled in Tail, that would be thereby cut off, and the Husband might declare the Uses, as he thought fit, and she might lose her Dower. The Court were of Opinion for the Defendants; for tho' a Man is not obliged in a Fine to set out the Parcels exactly agreeing to the Deed, and it is usual to put in rather more, left in Case of a Mistake he may lose Part of the Land, yet here the Covenant is to levy a Fine of Lands in a Vill, but the Note tender'd is of Lands in the Parish generally; Now as Defendants have other Lands in the Parish, and as Plaintiffs might have tender'd one not so extensive (for a Fine may be levied of Lands lying in a Vill) it seems a good Excuse, and Judgment for Defendants, unless Caufe before the End of the Term. Fetch. 12 Geo. 2. C. B. Danby v. Gregg & Ux'.

(P. a. 2) As Counsel or Vendee &c. shall advise &c. Pleadings.

1. F a Man be bound to make sure, sufficient, and lawful Estate, as Finch Dett, shall be devised by J. N. there it suffices to make it as J. N. devises, be it sufficient and sure or not. Br. Conditions, pl. 147. cites 7 E 4. 13.

2. A Man was bound in 100 l. to make such ESTATE by such a Day, as the Counsel of the Oblige shall devise, and in Debts upon the Obligation the Defendant pleaded Quod Consilium non dedit adosamentum, and need not name the Counselors, because D. pleaded in the Negative; but if the Plaintiff replies, Quod Consilium dedit adosamentum, he shall say their Names; for he pleads in the Affirmative. Br. Conditions, pl. 133. cites 6 H. 7. 4.

3. And it is a good Plea, that no Counsel was given. Ibid.

4. Where a Man is bound to make such ESTATE as the Counsel of J. N. See the Year will devise, and he has 4 of his Counsel, but he requires the Advice of 2 of them only, who give their Advice, the other may say, Quod Consilium non dedit adosamentum; for these 2 were all his Counsel in this Matter; Per Townend and Vavilor. Br. Conditions, pl. 248. cites 11 H. 7. 29.

Consilium dedit adosamentum. —— Br. Conditions, pl. 153; cites 6 H. 7. 4. per Brian, S.P.
Condition.

5. But per Brian, if it shall be by the Advice of the Justices of C. B. there the Advise shall be by all; Note a Diversity. Br. Conditions, pl. 248. cites 11 H. 7. 23.

6. Note per Cur, where a Man was bound to make such Estate as should be devised by the Counsel of the other Party, and said he made Estate for Life of ro l. Land, as was devised by the Counsel of the Plaintiff; and by the Court it is no Plea; for he shall show what Estate the Counsel devised, and that he has made it accordingly, and shall shew where the Land lies; Quod Non; for otherwise the Title is not perfect. Br. Conditions, pl. 1. cites 25 H. 8. 1. 2.

7. Bond was conditioned to make such Assistance as D. should devise. D devised two Things to be done. Exception was taken that the Plaintiff alleged a Request of one of them only; fed non allocator; for the Plaintiff may allege Breach in the one though the other be performed, and it is in his Election which he will demand; and Judgment accordingly. Cro. J. 194. pl. 20. Mich. 5 Jac. B. R. Staineroide v. Locomk.

(Q. a) How, and in what Manner it shall be performed; and in what not. In respect of the Words. [Where the Substance is performed.]

1. D. 8. 9 Eliz. 235. 4. The Condition of an Obligation was, That he should deliver his Lease for Years to enjoy the Land during the Term, and that without Trouble of him or any other Person. A Stranger enters by an elder Title; Per Cur. the Condition is not broke, because this Word (fuller) is a fullive, and all the rest is to be referred thereon, but if any Procurement, or Occasion of Disturbance be by the Lessor, his Executors or Assigns, then he hath forfeited his Obligation. 2 C. 4. 2. b. per Litt. and agreed per Stl. I am obliged that I shall demile to my Son after my Decease, Land to the Value of 20 l. my Son is outlaw’d of Felony in my Life-time, and after I die, I have not forfeited my Obligation, (*) and this Case was agreed per Cur. to Jac. my Reports Gray and Gray, where the principal Point was in an Action upon the Case; the Plaintiff declared, in Consideration that his Teltator Vellot permitted his Land to descend to his Son, the Defendant allowed to pay him 20 l. and he alleges that he did permit it to descend, not averting that it had descended, yet good per Cur. See such Case of a Covenant. D. 7 Eliz. 242. 43.

2. If the Condition be performed in Substance it is good, although it differs in Words; as where it is to deliver the Testament of the Teltator, if he pleads that he hath delivered Literas Testamentarias, yet it is good. * 7 C. 4. 3.

S. P. For where the Defendant in Debt by Executors demands Oyer of the Testament, the Entry upon the Continuance is quod quesum profer Literas Testamentarias. Br. Conditions, pl. 158 cites 17 E. 4. 3; per Littleton & Brian. — So upon Obligation to deliver Deed of Testament, it suffices that he deliver quantum Cantum § &c. this is one and the same Substance. [* Roll forms misprinted 7 instead of 17. ]

3. So
Condition.

3. So if the Condition is to deliver Letters Patents, and he takes them, and delivers an Exemplification. 17 C. 4. 3.

4. So if a Condition be to make a Feoffment, a Lease for Years and Release is a good Performance. 17 C. 4. 3.

5. If the Condition be to grant the Reversion of Tenant for Life or Years, and he enters upon the Lease, and makes a Feoffment, and the Lease re-enters, the Condition is performed, for the Effect is performed. 21 C. 4. 39. b. an Opinion contra, and they laid it was all one with the principal Case there, which 's afterwards ruled per Cur. as it is here; and to this is a good Authority that it is performed.

6. If the Condition be to give Licence to the Obligee to carry Treasures that he hath bought of him, or other Things, if he gives him Licence, yet although a Stranger who hath Right thereby disturbs him, the Condition is performed; for it extends but to the Person of the Obligee by the Words. 18 C. 4. 20. b.

7. But otherwise it has been, if the Words had been, that he should have Licence or. for this extends to all Strangers. 18 C. 4. 20. b.

8. If two Covenants to give Licence to J. &c. and he and Strangers are bound, the Condition being to perform, or cause the Covenants to be performed, the Strangers ought to procure the Licence otherwise it is broke, although he gives Licence. 18 C. 4. 18. b.

9. A Condition ought to be performed in Substance; As if the Condition be to withdraw such a Suit, a Discontinuance thereof is not a Performance, because it differs in Substance; for a Retraction is a Bar in another Action, and not a Discontinuance. 20 C. 4.

10. In Debt it was covenanted that A. recover certain Land, and in-footh thereof B. and shall inroll the Deed, and then B. shall pay to him 40 Marks, and if he fails, that A. shall pay to B. 40l. B. brought Debt, and A. pleaded that he had inrolled of him the Land, and after released to him, Judgment &c. And because he did not deny but that he did not recover the Land, nor inroll the Deed, Judgment; per Knivet, this is no Matter when you have accepted a Feoffment and Release, by which anwer; Quod Natura; Quae of his Opinion. Br. Conditions, pl. 76. cites 39 E. 3. 5.

11. If the Defendant be bound to make Recognizance of 20l. by a Day, and he pays the 20l. at the Day, and does not make the Recognizance, it suffices; per Culpeper, which the Court denied. Br. Conditions, pl. 41. cites 12 H. 4. 23.
12. And per Hank, if a Man be bound to infeoff another of the Manor of D. and he infeoffs him of the Manor of S. which is of greater Value, the Condition is not performed. Ibid.

13. Debt upon Obligation, the Condition was that if J. F. &c. came dili & quia fuerint Peofita deti J. F. ad sium Ufiam de Maniero de B. releafe tamen jus sium T. F. Paulo diti J. F. &c. and deliver the Releafe to the Plaintiff to the Use of the said T. F. circa tale fejus, quod tuque &c. and he said that at the Time Contemnious Obligations, there were not any Peosites, but J. F. was sole ipse, which J. F. has releasfed before the Day, and delivered it to the Plaintiff to the Use of the said T. F. Judgment; and did not answer if there were any Peosites in Time passed, but in the present Time; and by the said Opinion, this Word (suerint) in this Case shall be taken for the present Time, and so the Plea good; But per Prior and divers others, it shall be taken for the Prior Tenure, therefore quare, because it is not adjudged. He may have Peosites who were dilled before, who ought to release. Br. Conditions, pl. 17. cites 35 H. 6. 11. 15.

14. But it was agreed that Dedi & concefi in Deed of Feoffment is taken for the present Tenure. Ibid.

15. And it was agreed that if a Man gives all the Pikes in such a Pond, or all his Goods in quia fuerint, this shall be taken for the Present Tenure, and for such Pikes or Goods as he then had; But the Cafes are not alike, per Prior and others. Ibid.

16. If a Man be bound to suffer J. N. to recover in Formedon brought; there if J. N. be nonfued, and brings other Formedon, the Obligor is not bound to suffer it there; for Formedon brought is the Formedon which was pending at the Time of the Obligation made. Br. Conditions, pl. 223. cites 21 E. 4. 32. 33.

17. In Debt, P. B. was bound to make Exate of 40 l. Land per Annu. to a certain Person, to the Intent that if R. Son of the said P. B. died, living P. the Father, that then the Peofite inoff the Feme of the said R. and after P. died, and R. and his Feme survived; and per Davel, Brian, and Fineux, the Condition is well performed, because the Intent is observed, viz. that the Feme of R. should be indefat'd if R. died in the Life of P. his Father, and now R. did not die in the Life of P., but survived him, and therefore the Bond is faved; Quare inde; for contra Rede & Vavifer. Br. Conditions, pl. 156. cites 9 H. 7. 17.

18. Debt upon Bond conditioned, that if J. M. should die before Christmas 1532, without Iffue Male of her Body by R. B. begotten, he then living, then the Bond to be void; the Defendant pleaded in Bar, that after the said Bond, and before the said Feas, J. M. did die without Iffue Male of her Body then living; the Plaintiff replied that J. M. had Iffue H. and that before Christmas &c. he died, the said H. then living, who likewise died before Christmas; and upon a Demurrer it was adjudged that the Plea in Bar was good, and the Replication ill, the Quelition being, Whether the Words (then living) should relate to the Death of J. or to Chrifmas? And. 1. pl. 1. Patclh. 26 & 27 H. 8. Bold v. Molineux.

19. If a Man leaves Land upon Condition that the Leffe shall make the Ditches, and does not pay how often, there if he takes them once he has performed his Condition and Covenant; quod nota. Br. Expolition, pl. 2. cites 27 H. 8. 6. per Firzh.

20. Condition to pay 15 l. at Michaelmas, and 15 l. at Lady-Day, and so from thenceforth yearly during the Life of R. H. or until the Defendant shall lawfully advance one L. H. to some Benefice &c. The Bishop preferred L. H. before Michaelmas next after the making of the Bond, yet held, that the two first Payments ought to be made notwithstanding. 2 And. 65.

22. L. Bargains and sells a Manor, and covenants to acquit, or otherwise save it harmless from all former Bargains, Sales, Incumbrances &c. made by any Perfon, except the Eftate of M. and such Eftates as he has made which will determine by her Death. M. after grants Part of the Manor for three Lives by Copy of Court-Roll; M. dies. The Court held, that this Grant by Copy made after the Bargain and Sale cannot be called a former Incumbrance; and though it does not determine by the Death of M. according to the Intent of the Exception, it is not within the Intent of the Words (former Grant) and the Exception is added only to qualify the Covenant, and therefore shall not be expounded so as to extend it further than the Words; but a Grant by Copy is an Incumbrance. Sav. 74. pl. 154. Mich. 26 & 27 Eliz. Lovel v. Luttrell.

23. Fee-finite to the Use of B. in Tail, provided, that if the said B. do go about to avoid any Eftate or Demise by Copy made, or to be made of the Premises, or any Part thereof, that then his Eftate shall cease. B. entered and levied a Fine Sur Conuance of Droit Come ceo &c. of the Land; per Cur. tis no Offence against the Provifo, for the Words (made or to be made) do not extend to Estates made or limited by the said Fee-finite, but only to Estates before made and to be made afterwards. Le. 257. pl. 288. Mich. 32 & 33 Eliz. C. B. Bradflock's Cafe.

24. A. enfefts B. upon Condition, that B. shall make an Eftate in Frank-Marriage to C. with M. Daughter of A.; in this Cafe B. cannot make an Eftate in Frank-Marriage, because the Eftate must move from the Feoffee, and the Daughter is not of his Blood, but yet he must make an Eftate to them for their Lives, for this is as near the Condition as he can; fos' tis if the Condition be to make to A. (which is a meer Layman) an Eftate in Frank-Marriage, yet must he make an Eftate to him for his Life. Co. Lit. 219. b.

25. A Diversity is to be understood between Conditions that are to create or to destroy an Eftate, for a Condition that is to create an Eftate is to be performed by Construction of Law as near the Condition as may be, and according to the Intent and Meaning of the Condition, though the Letter and Words of the Condition cannot be performed; but otherwife 'tis of a Condition that destroys an Eftate, for that is to be taken strictify, unlefs it be in some certain Cafes. Co. Lit. 219. b.

26. Debt on Bond with Condition to give and grant to A. his Heirs and Assigns. Defendant pleads he has been ready to give and grant, adjudged ill; for he must plead that he did it; otherwise had it been, if the Words had been, as Counsel would devise. Brownl. 75. Trin. 11. Jac. Chapman v. Pelcod.


28. Leafe

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65. pl. 47. Mich. 2 and 3 P. & M. Countess of Warwick v. the Bishop 1541 at Lady-Day; and Defendant pleaded, that L. H. was presented to a Benefice before the first Feata of St. Mich. and adjudged no Fee, for the first 151. to be paid notwithstanding; because the Limitation (until he be advanced) goes only to the subsequent Payments.—Noy 64, 65. S. C. adjudged accordingly; for the two first Featas are absolute.
28. Leafe by Baron and Feme and another Feme ; Leafe covenants by the same Indenture to find sufficient Man's and Wife's Men to the Baron and Feme, and to the other Feme, or to their Servants, at their coming to London, at his Houfe at Southwark ; Baron and Feme die. The other Feme takes Husband. Per Cur. he is not bound to find Sufferance for the Husband, but only for the Wife or for her Servants, and not for both at one and the same time, because the Covenant was in the Disjunctive; but it was doubted if he shall find them Virtuals for one Meal only at their coming, or for all the Time of their staying there. Hec. 53. Mich. 3 Car. C. B. Grange & Ux. v. Dixon.

29. In Debt upon Bond the Defendant prayed Oyer of the Condition, which was 59l. upon the Birth of his first Child by his Wife, or any other Woman, and averred that he had no Child by his Wife; The Plaintiff replied, that he had a Child by another Woman. Upon Demurrer the Court held, that it must be intended of a Child by another Wife, and not otherwise; and Judgment for the Defendant. Comb. 37. Mich. 2 Jac. 2. B. R. Crefweil v. Trott.

30. A Condition to pay Money when able is to pay it presently; for the Law supposes every Man ought to pay what he is able to pay. Comb. 445. Anon. at the Sittings before Holt Ch. J. 21 June 1697.

31. Condition is to be construed from the Intent of the Parties. 1 Salk. 171. pl. 3. per Holt Ch. J. Fitch. 13 W. 3. B. R.

32. In Debt upon Obligation the Defendant, upon Oyer of the Obligation and Condition, which was for Payment of such a Sum on or before such a Day, pleaded Payment at a Day before the Day mentioned in the Condition, The Plaintiff traversed the Payment, and concluded to the Country, to which the Defendant demurred. It was said for Defendant, that the Traverfe was immaterial, for if Illue had been joined upon it, and found for the Plaintiff, it would not have determined the Right of the Caffe, and the Cafe of Holden and Brockett, Cro. J. 434. was cited; but per rot. Cur. the Traverfe is good, because the Payment pleaded is according to the Condition, which gives the Defendant a Power to defeat the Obligation by Payment on any Day before the Day expressed, and Judgment was pro Quer. MS. Rep. Trin. 12 Anne, C. B. Furnes v. Killum.

(R. a) How it shall be performed. The Intent ought to be performed.

Note, that it was enacted by Parliament, that if J. N. does not come before the Justices of B. R. within one Quarter of a Year, that he shall be condemned in 40l., and be appear'd before the King himself, and therefore was condemn'd; for he ought to have appear'd before the Justices sitting...
2. If A. and B. submit themselves to the Award of J. S. of all Actions etc., A. hath an Action depending against B. of which there is a Continuation de Termino Pathe tue ad Terminum Trinitatis, and the Submission and Award are (*) made between Pache and Octab. * Fod. 427.

Trinitatis, and the Award 18., that he shall retract his said Suit, and after 9. at Trinity Term does not further pursue his Action, but if he fails it to be discontinued, this is a good Discontinuance of the Award; for the Intent of the Arbitrator was not that he should make a legal Retract, but that he should not prosecute the Suit further. 21 Ed. 4. 38. adjudged.

Plac was adjudg'd not good; for now but Discontinuance is not a Retract; because upon a Retract the Party shall be bind'd, whereas in the other Case he may continue his Suit de Novo, and afterwards the Judgment was affirmed. — Cro. I. 526. pl. 12. Hill. 16. B. R. Gray v. Gray. It was agreed that the Award being that he should not prosecute in such an Action in the same Term that the Entry of Continuance from Term to Term is not any Breach.

3. If the Condition of an Obligation be to stand to the Award of J. S. who awards that he shall pay 25 l. to the Obligee, and he pays it in 4. S.C. ad to the Wife of the Obligee, and the accepts it, yet this is not any Performance without alleging more. Hill. 32. Eliz. B. R. between the Plaintiff. Fraud and Betray adjudged.

4. If a Lessor covenants with his Lessor for Years, that it shall be Cro. E. 544. lawful for the Lessor peaceably &c. to enjoy the Land, and after the pl. 15. Co. Lessor enters tortiously upon the Lessor, and ousts him, yet this is a Breach of the Covenant; for the Intent was, that he should enjoy the Land without the Intervention of the Lessor. D. 35. B. R. Core's Case. Without adjudged.

(U. a) pl. 11. S. C.

5. If a Man leases a House and Land, upon Condition that the Cro. E. 428. Lessor shall not Parcel out the Land, nor any Part thereof, from the pl. 57. Mich. House, and after the Lessor leaves the House and Part of the Land to A. Eliz. C. B. and after leaves the Rest of the Land to C. this is a Breach of the Condition; For by the Word (Parcelling) is intended a Division or Separation of the Land from the House, and if the first Grant be not a Foreclosure, the second 15. Hill. 41. Eliz. B. R. between Curtiss and Maggs adjudged in a Writ of Error.

was broken, and that it is all one where the House is divided from the Land, and where the Land is divided from the House, and it is a Breach both within the Intent and the Words; but Owen obfertes the rental, and afterwards it was adjudged for the Plaintiff. — 2 And 42. pl. 38. S. C. in C. B. held accordingly. — Ibid. 80. pl. 34. S. C & S. P. held accordingly. — No. 425. pl. 394. S. C. in C. B. and S. P. held by all the Justices accordingly.

6. If a Man makes a Fee Simple in fee to B. of all his Lands, and Cro E 833. after bargains and sells the same Lands to him for further Assurance, T. Hodges, then Assurance of all such Lands that he hath bargained and sold to him, as the Counsel of the Feodar shall devise, and binds him to perform the Covenants, and after the Counsel devises, that he shall carriage a common Recovery, he is bound to perform it; for though he covenant'd to make an Assurance of all Lands that he hath bargained and sold, and he hath not bargained and sold any Land, for the Bargain and Sale was void, being made after the Feodant, and as no Bargain ensuing in first Exposition of Law; yet it is a Bargain
Condition.

and Sale in Appellate to which the 'Covenant shall have Reference. P. 43 Eliz. B. R. between Hodges and Lane adjudged.

make further Assurance of all his Lands. The Breach alleged was in not making further Assurance of that's Lands, but by the Performance prior he had not any Lands there at the Time of the Bargain and Sale, and consequently the Breach is not well alleged, and so held all the Court. But if one in-foths another of his Lands (Generally) and afterwards bargain and sells them by Name, and covenants to make further Assurance, he must make Assurance accordingly, wherefore they were of Opinion to reverse the Judgment, but the Matter was referred to compromise.

7. If a Leesee of an House covenants not to leave the Shop, Yard, or other Thing belonging to the House, to one who sells Coals, nor that he himself will sell Coals there, and after he leaves all the House to one who sells Coals, he had broke the Condition. 9 8 9. B. R. between Chinley and Bonner Plaintiffs, and Langly Defendant, adjudged, for he had broke the Intent.

8. If a Lease be made on Condition that if the Leesee be disposed to sell the Term, the Leesor should have the first Offer or Advancement, he being there as much as another will give. If the Leesee, being disposed to sell the Term, a Stranger offers him 100 l. for it, he need not tell the Leesor how much he is offer'd, but ask him generally if he will give so much for it as another wills, and if he says No, he need say no more to him, but if he says Yes, then be ought to show certainly what the other will give more &c. Per Shelley. D. 13. b. 14. a. pl. 65. 63. Trin. 25. H. 3. Anon.

9. And if the Leesor, when he is ask'd the Question, answers that he will take Time to consider of it, the Leesor is not obliged to wait so long; for it may be another will give him 100 l. immediately, and it is not reasonable to deter the Sale, but the Leesor must say Yes or No prefently, and so the Condition is then determined &c. Per Shelley and Fitzherbert. D. 14. a. pl. 68. Trin. 23. H. 8. Anon.

10. In every Condition a reasonable Intention shall be construed, though the Words found to a contrary Meaning; as if I grant to B. an Annuitie till B. has purchased 5 s. Rent, and B. purchoffe 5 s. Rent jointly with J. S. this is no Performance; for my Intent was that B. should purchase to his own Profit and Advancement only. D. 15. pl. 79. Trin. 23. H. 8.


The Defendant covenanted to cause a Statute to be cancelled upon Payment of 50 l. before such a Day. Afterwards, before the Day, he took out Execution, but at the Day appointed he tender'd the Statute to be cancelled. Reolved that this was a Breach, for after Execution he cannot deliver up the Statute to be cancelled in the same Title as it was at the Time of the Covenant; for as Twidlen J. fuld, this would be to keep the Kernel and deliver the Shell. Sid. 57. pl. 7. Mich. 12. Car. 3. Robinson v. Atmore. Raym. 21. Robinson v. Atmore. S. C. adjudged for the Plaintiff, nis &c.—Keb. 102. pl. 193. S. C. admoduar.F. Sibd 118. pl. 34. and Judgment nis.—Gouldsb. 177. in pl. 111. S. P. cited Arg. to have been adjudged accordingly.

12. An Obligation was conditioned to deliver the Plaintiff an Obligation, in which he was bound to the Defendant before such a Day. The Defendant gays the Plaintiff upon that Obligation, and receives, and afterwards and before the Day he delivers the Obligation to him. Wray and the other Justices held this to be no Performance, for the Intent was that he should have the Obligation for his Discharge, which is not by the Delivery of it at the Day, for it is transferred in rem judicatam; and notwithstanding the Delivery of the Bond, yet he may have Bene-


13. If a Man covenants that his Son, then within Age, &c. infras Annos nubiles before such a Day shall marry the Daughter of J. S. and he does marry her accordingly, and after at the Age of Consent he disages to

S. C. cited per Car.
Raym. 454
Pach. 14
Car 2. B. R.
S. P. Br.
Mortmaine.

Le 52. pl. 67. Leigh v. Hamer.
S. P. and
Condition.

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the Marriage, yet is the Covenant perform'd; for it is a Marriage, seems to be
and such a one as the Covenantee would have, until the Disagreement. S. C.
Ow. 25. 29 Eliz. Fenner's Case.
14. If A. is bound to B. that J. S. (who in Truth is an Infant) shal
left a true before such a Day, which is done accordingly, and afterwards
the same is recovered by Error, yet the Condition is performed notwithstanding.
Arg. Le. 54. at the End of pl. 67. Patch. 29 Eliz. C. B.
15. A Bond was condition'd to plead an iffable Plea in 7 Days. An
iffable Plea was pleaded and drawn in Paper, but not entered of Record,
and therefore the Court (ableste Anderson) held the Obligation forfeit-
16. A makes a Feoffment in Fee to B. upon Condition, that if A.
within a Year after the Death of B. shall pay 100 l. to the Heirs or Execu-
tors of B. that A. may recede; B. makes a Feoffment of this Land to C.
and B. makes his Testament, and makes his Wife and his Heir his Execu-
tors, and dies; A. within a Year after the Death of B. by Agreement
with the Heir of B. at a Time and Place limited for the Payment, pays
the 100 l. to him; and by the said Agreement, A. is immediately to have
back 30 l. of this 100 l. and all is done accordingly; the Entry of A.
upon C. is not congeable; so adjudged and affirmed in Error; for this Feoff-
ment, the said colourable Pay-
ment had been sufficient
to defeat the
Estate; for the
Heir of
B. might
prejudice
himself, and one Executor may prejudice the other; for they represent one Person; but an Executor
S. C. adjug'd and affirmed in Error. — Poph. 69. pl. 2. S. C. — Goulds 175. pl. 111. S. C. ad-
jug'd. — Co. Litt. 299. b. S. C. & S. P. — S. C. cited by Hobart Ch. J. God-
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17. The Defendant leased Lands to the Plaintiff for 6 Years, and co-
venanted that he should enjoy it during the Term, quietly and without Inter-
ruption, and discharged from Tithes and other Duties, and if the Tithes
were demanded and recovered against him during the Term, he should retain
in his Hands so much of the Rent as the Tithes amount to, and showed
that 42 Eliz. the Parson fixed him for Tithes there growing 29 Eliz. All the Court held that the Suit, though after the Determination of the
Term, was a Breach of the Covenant, for he did not enjoy it discharged
within the Intent of the Covenant; but because it was not alleged that
the Suit was lawful, or that the Tithes were due, for he was not bound to
discharge him but from illegal Suits, and so the Breach was not well affi-
18. Debts on a Bond condition'd, that the Wife shd. make a Will &c.
The Defendant pleaded that his Wife did not make a Will; the Jury
found that she made a Will, and that she was a Feme covert at the Time
of making it; adjug'd that though it is not properly a Will, the being a
Feme covert, yet it is a Will within the Intent of the Condition, and
the Will was of the Intent and Term, and were bound to repay 50 l. of her Portion. The Wife has Issue, and two or three Childrem at the End of two Years, the Baron shall not repay; for the having Issue was Performance of the Condition. Sid. 102. pl. 8. Wind-
ham J. cited it as the Case of Brer v. Pildredge.
19. A. was bound to pay at Mich in Gray's-Inn Hall, to B. 50 l.
(not saying 50 l. in Money.) A. at Mich. when the Gentlemen were at
Supper, came and tendered 50 l. Weight of Stone; but adjudged no Ten-
der; cited by Twiffield as a Case in which he remembered. Sid. 151. in
pl. 19. Trin. 15 Car. 2. B. R.

Q q

21. De-
21. Defendant covenanted, that the Plaintiff should have the 7th Part of all Grains made in the Defendant's Brewhouse for 7 Years, and the Plaintiff assigns a Breach, that the Defendant did put divers Quantities of Hops into the Mall, by reason whereof the Grains were spoiled; adjudged for the Plaintiff; because in all Contracts the Intentation of the Parties is to be considered, and it was the Intent of the Parties here, that the Plaintiff should have the Grains for the Use of his Cattle, which they will not eat when the Hops are put into them. Raym. 464. Pach. 34. Car. 2. B. R. Griffith v. Goodhand.

22. Debt upon Bond conditioned, that the Husband should leave his Wife 80 l. at his Death, to she might peaceably enjoy it to her own Use. The Husband died. The Defendant who was Administrator to the Husband pleaded, that he made his Wife Executrix, and left Goods and Chattels to the Value of 100 l. and devises, that she should pay herself. This Plea was adjudged ill, because he might owe Debts of a higher Nature, as on Judgments, or Statutes, so that she could not pay herself, and perhaps his Estate was so litigious, that it is better for her to renounce the Executorship, (as he had actually done) and sue the Administrator. 3 Lev. 218. Trin. 1. Jac. 2. C. B. Thomason v. Wood.

(R. a. 2) Where it must be effectual.

1. F A. is bound to acknowledge a Statute, and he doth acknowledge the same, but keeps it in his own Hands, this is no Performance; per Fenner J. Goldsb. 156. cites 20 E. 3. Accomp. S. P. by B. Roberts J. Goldsb. 52. pl. 11.

2. Note, it was held, that where a Man is bound in Recognizance to keep the Peace and to appear Mené Parche, and he appears, but his Appearance is not of Record, he has not performed the Condition. Br. Conditions, pl. 94. cites 38 H. 6. 17. 3. Se if a Man is bound in an Obligation, upon Arrest by the Sheriff, to appear such a Day before the Justices of Banco; there if he appears, and his Appearance is not entred of Record, he has forfeited his Obligation, quod nota. Ibid. 4. If a Man be bound to demise or relinquisito his Som 10 l. Land per annum, and the Son is outlawed of Felony in the Life of the Father, and the Father dies feised of the 10 l. Land; the Bond is not forfeited, for this shall defend, though the Lord may take the Escheat. Br. Conditions, pl. 140. cites 2 E. 4. 2. per Atkerton and Littleton.

5. In Debt, where a Man is bound to appear at a certain Day upon Writ, he ought to appear, and to have Special Entry of his Appearance, though the Writ be not returned; and it is a good Plea that the Bailiff to whom he is bound kept him in Prison till the Day of his Appearance was paid. Br. Conditions, pl. 75. cites 9. E. 4. 23. 6. Where
6. Where a Man is bound to appear in Bank upon Capias such a Day, he ought to appear at the Day, and have his Appearance recorded, though the Sherif does not return the Writ; and yet he has not Day in Court. Br. Conditions, pl. 162. cites 18 E. 4. 17. S. P. And if

7. Condition of a Bond was, that the Obligor shall Licence the Obligee for 7 Years to carry Wood &c. If the Obligor gives Licence, and afterwards revokes it, or disturbs the Obligee, the Obligation is forfeited. 8 Rep. 93. a. cites 21 E. 4. 55. a. per Choke and 18 E. 4. 18. b. & 29. a. S. P. by

8. A gave Bond to B. to deliver up another Bond before Michaelmas, wherein B. was bound; afterwards A. sold B. on the Bond, and had Judgment and Execution before Michaelmas, and afterwards at Michaelmas A. delivered the Bond. Adjudged no Performance, for it ought to be delivered in such Plight as it was at the making the second Bond. Mo. 709. in pl. 989. cites Mich 21 & 22 Eliz. B. R. Brown v. Randal.

9. Debt by B. against S. upon Bond, conditioned, that S. the Obligor should procure the next Avoidance of the Archdeaconry of &c. so as B. the Obligee might present. S. did procure a Grant of the next Avoidance, but before it happened, the present Archdeacon was made a Bishop, so that now the Queen had a Right to present; Resolved, that the Condition was not performed, and Judgment for the Plaintiff. 4 Leon. 61. pl. 155 Hill. 29 Eliz. C. B. Bingham v. Squire.

10. If A. is bound to present B. and he presents him by Simon, yet the Bond is forfeited; per Hobart. Noy 25. in Cafe of Winchcomb v. Fulleton. S. P. by Hobart Ch. J.

11. King H. 8. granted Lands to A. and his Heirs, provided that he and they, perpetuis futuris Temporibus inventur & subvenient duos Capellanos in Ecclesia Parochialis de W. ad Orandum pro Animabus H. 8. his Heirs and Successors, & ad celebranda divina Servitut, & Curam Animarum Parochianorum; A. conveyed the Lands to B. and his Heirs upon the same Conditions, who appointed two Chaplains, one of whom was never resident there and did not perform his Duty. Adjudged by all the Barons, that this was a Breach of the Condition. See Lit. Rep. 94 to 97, and 105 to 112 &c. the Arguments of the Counsel, and 129 to 139 the Arguments of the Barons. Trin. & Mich. 4 Car. in the Exchequer. The King v. Brockham. S. P. by Hobart Ch. J.

12. An Award to enter into a Bond another, it is not enough for the Party to bring a Bond written, and to say, I will seal and deliver to you this Bond; but he must write the Writing with a Seal clapped upon it, and say, I deliver you this as my Act and Deed; and if he omits the doing of any one thing that is essentially necessary to the executing the Deed, he has not performed the Award; per Holt Ch. J. 12 Mod 533. Trin. 13 W. 3. in Cafe of Lancashire v. Killingworth.

(S. a) What
Condition.

(S. a) What shall be said a Performance, and what a Forfeiture.

1. If the Condition of a Feoffment be to infest J. S. if he infests J. S. and two others, this is no good Performance, but the Condition is broke. 21 Hil. 28.

2. If the Condition be, that whereas B. hath bound himself Apprentice to the Obligee [Obligor] for seven Years, if the Obligee retain, keep, and employ the said Apprentice in his own House and Service, in the Art of Surgery, during the Term, the Obligation shall be void; and after the Obligee [Obligor] sends the Apprentice in a Voyage to the East-Indies, in the Company of other's expert Surgeons, the better to learn the said Art, this is a Breach of the Condition; doth by the Condition he is not restrained from sending his Apprentice into other Places about his Cures, yet he ought (as) always to be of his Household, going and returning, and in his Service, and not put over to any other; for the putting an Apprentice to another, is a great Tract for his Diet, Health, and Safety; and generally a Man cannot compel his Apprentice to go out of the Realm, if it be not expressly agreed, or the Nature of the Apprenticeship imports it, as if he be bound Apprentice to a Merchant-Adventurer, or Sailor, Habers's Reports 131. between Covent and Woodbury adjudged.

3. If a Man be left in Fee of Lands, leaves it for Years, and the Leetee covenants to render the Possession to the Leetor, his Heirs, and Assigns, at the End of the Term upon Request; and after the Leetor assigns over the Reversion to two, and one of them, at the End of the Term, comes to the Leetor, and demands the Deliverance of the Possession, though the other never demanded the Possession, yet by this Demand, by one only, he is bound to render the Possession, otherwise he hath forfeited his Covenant; for the Demand of one Joint-tenant is sufficient for both, patch. 16 Dec. 2. R. between Lingdon and Payn adjudged.

4. If A. be bound to inestit me, it is no Fiat that he is inestit J. S. by my Command, for I have no Action to recover it from him; but if it he be bound to pay me 10 l. Payment to J. S. by my Command is a good Fiat, because I may have Debt or Accomp against him; per Wangling, to which Billing agreed. Br. Conditions, pl. 92. cites 36 H. 6. 8.

5 Annuity granted quaestus the Grantee should be friendly and obliging to the Grantor, there if the Grantee labours to put the Grantor out of Service, this is Forfeiture of the Annuity. Br. Conditions, pl. 145 cites 7 E. 4. 16.

6. Condition of a Recognition taken before the Mayor of London was, to deliver Quiet Possession at the End of a Term to the Mayor of the Ufe.
Use of J. S. &c. The Key was delivered to the Mayor, the House empty and the Doors locked; but within an Hour after a Perfom claiming Right to the House, and whom the Obligor was supposed to favour, entered the House at a Shop Door by a Key he had kept a long Time; whether this was a Performance dubitator. See D. 219. pl. 9. Mich. 3 & 4 Eliz. Parry v. Smith.

7. A fided of Lands in Fee, his Issue two Sons, and devised to his Le. 298. pl. 8. youngest Son certain Lands in Tail, Remainder to his first Son on Condition not to alien or discontinue, but for Jointure to his Wife or Wives, that the and only for Life or Lives of such Wife or Wives. DeVise leaves a Condition Fine to a Stranger, and by Deed declares the Use to himself and his was broken Wife and to the Heirs Male of his own Body, Remainder to the Heirs of his Father, and avered that this Fine was for Jointure of his Wife; and adjudged that the levying the Fine is a Breach of the Condition. Mo. the DeVise 212. pl. 353. Mich. 27 & 28 Eliz. Rudhall v. Milward.

8. It a Covenant be to make an Estate to A. and it is made to B. to the Obligation Use of A. Periam J. said he doubted if it was good or not. Godb. 95. in pl. 106. Mich. 28 & 29 Eliz. C. B.

9. Debt on Bond with Condition to give and grant to A. his Heirs and Assigns, defendant pleads he has been ready to give and grant; adjudged ill, far he must plead that he did it; otherwise had it been if the Words had been as Counsel should devise. Brownl. 75. Trin. 11. Jac. Chapman v. Pefcot.

10. A Man makes a Feoffment of Lands in five Counties, with a Condition of Re-assurance. A Re-assurance is made of Lands in four Counties; it is a Breach of the Condition but only for the Lands in one County, and a good Performance for the other; resolved by Hobart Ch. J. Coke Ch. J. and Lord C. Egerton. Mo. 823. pl. 112. 14 Jac. in Canc. the King v. Howard.

11. Condition that a Conveyance shall be to A. B. and C. to the Use of D. and the Heirs Male of his Body, the Remainder to the Heirs Male of E. The limiting the Remainder to E. and the Heirs Male of his Body is no Performance, for they agree not to the Words of the Condition. Het. 177. Trin. 7 Car. C. B. Stone v. Tildersley.

12. Debt for Obligation, the Condition whereof was, to lease and 5 Pa. 155, bequeath unto the Oblige, the third Part of his Estate &c. the Obliger of whom Joins him with two others as Executors; The Obliger dies inteilace. B. Pitt. The Administrator of the Obliger brings an Action on that Bond; the Question was, Whether that were a Performance of the Condition. Galfr. 2 Show. 69. pl. 54. Trin. 31 Car. 2. B. R. Impe v. Pitt. S. C. it was infufed, that, as expresses, Devise is neceffary to answer to the Condition, and Legacies may be given by the Will; and if not the Defendant ought not to show it. The Court inclined for the Plaintiff; led advice vult.

R. 13. Two
13. Two Men and their Wives join in a Grant of their Wives Lands
being Partecners, and covenant, that they and their Wives have good Right
to convey the Lands and to make further Alluence; it was assigned for
Breach that one of the Women was under Age and died, and that the Right
of the Lands descended to her Son an Infant, and to the Estate of a Mo-
tery devoluted out of the Plaintiff. This was held a Breach and Judg-
ment for the Plaintiff, nisi. 2 Jo. 195. Panch. 34 Car. 2. B. R. Nash
v. Atton.

(T. a) What shall be said a Performance.

Where a
Leaf is
made upon
Condition
that if
Waffe be
done he
may re-en-
ter, there
if the House
falls by
Tempelt,
he cannot
re-enter; but it be uncover'd by Tempelt, and stands, there if the Tenant has sufficient Time to
repair it, and does not, the Leefe may re-enter, but not immediately upon the Tempelt, for it is no
Waffe till the Tenant suffers it so that the Timber be rooted; per Fust; and then it is Waffe.
Be Conditions, pl. 499 cites 12 H. 4, 6. If he suffers it to continue unrepair'd, so that at last the
House is call down by a Tempelt, it is Waffe. Mo. 62. pl. 173. Trin. 6 Elin. Anon. See Tit. Waffe, pl. 44. and the Notes there.

If a Man
leaves Land
for Years,
on Con-
dition that
the Leefe
shall not cut
Trees; if the Leefe makes Leave for 2 Years, and the 2d Leefe cuts the Trees, this is no

3. If a Man makes a Fovncist in Fee, referring Rent, upon Condition that if the Rent be behind, and no Ditrets to be found upon the Premisses, to re-enter. If the Rent be behind, and no Ditrets but a Cupboard in a House lock'd, so that the Fovncist cannot come at it, this is a Feresttice; for when the Place is open to the Ditrets, it is one as if there had been no Ditrets there. Pich. 31, 32 Elin. B. R. per Wray, upon a special Verdict.

4. If a Man is to carry a Load of Timber to a Wharf to be laid down where the Owner shall appoint, if the Carrier gives Notice when he will carry it, and requires the Owner to appoint a Place, which he does not, the Carrier may unload the Timber in any convenient Place at the Wharf, and return. 2 Lev. 196. Trin. 29 Car. 2. B R. Viru v. Bird.

5. Where upon Payment and Receipt of Money a Man is to do fo or so, it was held that a Tender is as much as an actual Payment. Per Holt Ch. J. 6 Mod. 33. Mich. 2 Ann. B. R. in Case of Squire v. Grevel cites Sti. [451] London v. Craven, and said that the Authori-
ties have been fo ever since.

6. Devise of Lands to Truftees, to the Use of Plaintiff and his Heirs Male, in Case Plaintiff's Father settles 2 Thirds of the Estate which was setted
Condition.

1. If there be a Lease for Years, upon Condition not to devise it to a Stranger, but only to his Sons or Daughters, and he devises it to a Stranger, and dies, and his Executor never contented to the Devises, yet this is a FORFEITURE, because he hath done all that was in his Power to prevent it, and this is in the Power of an Executor to execute it. 

2. So if a Lease in Fee, upon Condition not to alienate it, and the Lessee assigns it to another, and the other assigns it to a Stranger, and dies, and his Executor never contented to the Devise, this is a FORFEITURE.

3. If there be a Grantee of a Reversion, upon Condition not to grant it over to J. and he grants the Reversion to J. by his Death, though the Lessee never attorns, yet this is a FORFEITURE, because he hath done his Endeavour to prevent it, and put in the Power of a Stranger to prevent it. 

*(See V. 4.)
4. If the Lessee for Years covenants not to alien it, by which it may come to J. S. and obliges himself to perform Covenants, and after he alien it to J. D. this breaks the Condition, in as much as by this Deed it may come to J. S. Ed. 13 to B. between Canin and Richardson, per Curtin.

5. If the Condition of an Obligation be, that he shall not be aiding and abetting E. in any Action to be prosecuted against L. the Obligor (Oblige) and after the Obligor joins in a Writ of Error with E. and another against L. upon a judgment in Trespass against them, which is apparently erroneous; this is not and Breach of the Condition, for this is not properly an Action, but a Suit to discharge himself of a tortious Judgment, in which they ought all to join. P. 17 La. B. between Lane & Tanson, duplicatur.

6. If a Man leases for Years, and covenants with the Lessee, that he shall enjoy it without any lawful Interruption by the Lessee, or any claiming under him, and also covenants that the Land shall remain and continue to the Lessee and his Affigns, of the clear yearly Value of 20 s. over all Reprizes during the Term, and after the Lessee enters upon the Lessee, and enters it himself tortiously, and takes the Profits for several Years, so that it does not continue to the Lessee of any Value, for (because) the Lessee took Profits, he hath broke his Covenant; for though the Lessee may have an Action for the Interruption upon another Covenant, yet by the Special Words he hath covenanted, that the Land shall continue to the Lessee of such a Value, and to the Lessee may his Action upon one Covenant or the other; and it shall not be intended, that the Covenant was made to the Intent to warrant the Land to be of this Value generally, and not to the Lessee, when it is expressly covenanted, that it shall continue to the Lessee of this Value. Cases 11 Car. B. R. between Cave and Brooksby, adjudged upon Denuntior per totam Curtiam, except Brantingham, who doubted thereof; but there the first Covenant did not appear in the pleading, for this was not pleaded; but the Court, in suppos, delivered their Opinion as if it had been pleaded. Inns. P. 11 Car. Rot. 265.

7. If A. leases Lands to B. for Years by Indenture, and covenants that B. shall enjoy the Land peaceably and quietly to his own use, according to the Intent of the Indenture, without any lawful Impediment, Suit, Disturbance, Election, Controversion, Solicitation, Charge, Incumbrance, or Denial of the Land A. and after A. enters upon B. and disturbs him in the taking of the Profits, without any lawful Title, but as a Trespassor, this is not any Breach of the Covenant, because it is expressly limited that he shall enjoy it without any lawful Disturbance; and to a Disturbance by Tort is out of the Covenant. Picth. 11 Car. B. R. between Davie and Scawhever, per Curtiam, adjudged upon a Denuntior, in an Action of Debt upon an Obligation, (*) the Condition thereof was for the Performance of the Covenants of an Indenture. Inns. P. 11 Car. B. R. Rot. 437.

8. If the Condition of an Obligation be to save the Oblige harm- less of and concerning the Will of J. S. and of all Legacies given by the same Will, and after he is sued in Chancery as Administrator, and thereby constrained to pay a Legacy due by the same Will; this is a Breach.
Condition.

Mr. of Pleading.—Brown, 117. S. C. but is only a Translation of Yelv.—2 Bull. 13. S. C. adjoined against the Plaintiff on the Point of Pleading.

9. If the Parson assumes to the Parishioner, in Consideration at that he shall be discharged of the Tithes of the Lands, and agrees in the Ecclesiastical Court for his Tithes; This Suit, tho' he does not there compel him to pay the Tithes, is a Breach of the Agreement. 39. 10. B. R. between Brown and Kinman.

10. If Lefsee for Beasts aligns it to J. S. and after aligns it to J. D. and covenants with J. D. that he is possessed of the Term, and that J. D. shall enjoy it, and shall be freed harmless of all Incumbrances done by him: the first Allignment is not any Break of the Covenant before Entry made by J. S. nor any Disturbance of the Possession of J. S. 9. 39. B. between Lamme and Sir Lewis Fryham per Curiam.

11. If the Lessor covenants with his Lefsee for Beasts, that it shall be lawful for the Lefsee peaceably &c. to enjoy the Land, and after the Covenant enters tortiously upon the Lefsee, and ousts him; This is a Breach of the Covenant, for the Intent was, that he should enjoy it without the Interruption of the Lessor. D. 39 Eliz. B. R. rust's Case, Core's Case adjudged. So it would have been, tho' the Word (Peaceably) had not been within the Covenant. Hob. 49. * 20 P. 7. 12. 6 C. 3. 4.

—See (R. a) pl. 4. S. C.

12. [So] if the Lessor covenants with his Lefsee, that he shall have and enjoy the Land quietly and peaceably without Excision and Interruption of any Person, and after a Stranger enters by Tor, yet this is a Breach of the Condition, because the Covenant is, That he shall not be interrupted in his Possession. D. 16 El. 328. 8. S. C. cited Hob. 53. and seems to be approved. — S. C. cited Godn 42. — S. C. cited by Vaughan Ch. J. Vaughan 120. and says this Case is not expressly denied in Essex and Tidale's Case, Hob. 35. — S. C. cited 2 Vent. 62. and said, that it seems to go upon the Words of Abusive Interruptions aliquis, and cited Cro. J. 425. pl. 19. Tash 15. Jac. B. R. Brooking of Cham, where the Promiss was to enjoy without the Interruption of any Person, and yet held that a Title ought to be set forth. —When a Man covenants, that his Lefsee shall enjoy his Terms against all Men, he does neither expressly covenant for his Enjoyment against tortious Acts, nor does the Law to Interpret his Covenant; so where the Lessor covenanced that Lefsee should enjoy against his Alligants, he does not covenant expressly against the tortious Acts, nor ought the Law to interpret, that he does any more in the other Case; per Vaughan Ch. J. Vaughan 123. Tash 21 Car. 2. C. B. in Case of Hay's v. Bickerstaff.

13. So if the Covenant be, that the Lessor shall have harmless the Co. E. 24. Leefe, concerning the Premises and Profits thereof to be received, 213. pl. 4. against J. S. Parson of D. If J. S. after ejects the Lefsee without Maps, S. C. Title, the Covenant is broke. Hobart's Reports 49. cites D. 30 in B. R. for El. Foster's Case adjudged.

If the Covenant is to have them harmless against a Person certain, he ought to defend him against the Entry of that Person, be it by Droit or Tor, for he is damned if he be disturbed, though by Wrong, 12 E. 4. 18. But if the Covenant had been to have him harmless against all Persons, there it shall be taken for a lawful Entry or Excision; and the Words (to have harmless) amounts to more than a Warrant, for that is for lawful Titles; But here is to be intended, that J. S. had good Title, for it is alleged that he is Parson, and this is of the Rectory, and that he entered and let it, by which it shall be intended he had interest, and it was adjudged for the Plaintiff. —On 100. S. C. adjudged for the Plaintiff. —Le. 213. pl. 4 B. R. S. C. adjudged for the Plaintiff. —Hob. 53. in pl. 39 cites S. C. as adjudged that the Covenant was broke for two Reasons; one was because it was to have harmless for the Receipt of the Sf Profits,
Condition.

Proviso, and the other because it was against a Person certain; both which old import that they should receive no harm by that Person touching the Proviso.—S. C. cited Vaugh. 127, 128. by Vaughan Ch. J.

Nov. 23, 15. 14. [So] if the Lessor covenants with his Lessee, that he should have, occupy, and enjoy the Land demised, and after a Stranger enters by Torre, and ejects him, this is not any Breach of the Covenant, for the Law will not construe this Covenant to extend to torridious Acts, without an express Covenant. Dobarts Reports, Title 4. 35, 36. adjudged.

Me. 837 pl. 172 S. C. In C. R. adjudged against the Plaintiff, because it was a bait in Equity, and not at Common Law.—Brownl. 23. S. C adjudged for the Defendant.—Raym. 351. S. C. cited by Raymond J. Arg. and says, that by the Record itself in Winch's Entries, 116. It appears that Judgment was given for the Plaintiff, and Winch was one of the Judges that gave the Judgment, for this was 11 Jan. and he was made Judge 30 Jan. and so he should know better than any of those who report the Case, none of which then attended the Court of C. B. but Brownlow; and this Judgment is entered not in his, but in Weller's Office.

2 Brownl. 277. Mich. 7 Jac. C. B. Miller v. Francis. S. C. adjudged. — Latt. 297, 59. 51st. 421. 15. [So] if the Lessor covenants with his Lessee for Years, that he quietly and peaceably shall enjoy the Land, without the Impediment and Disturbance of the Lessee &c. and after the Lessor exhibited a Bill in Chancery against the Lessee, supposing this Lessee was made in Trust for certain Purposes, but there it is decreed against the Lessee; this is not any Breach of the Covenant, because the Chancery hath nothing to do with title with the Politikon, but only with the Person, and this Suit hands with the Covenant, lessee, the Trust. &c. 12 Jan. between Sully and State adjudged.

16. If a Man devises Lands upon Condition, that if he does not permit the Executors of F. to take the Goods that then were in the House, the Estate should be void &c. A Denial by Porol is not any Breach of the Provou; but it ought to be an Act done, as the shutting the Door against the Executors, or laying his Hands upon them to resist them, or such like Acts, so that by reason of any such Act he did not (2d) permit them to take or carry the same Goods according to the Provou. Co. 8. Francis 91. resolved. 11 W. 3. C. B. all the Court were of Opinion, that the principal Case of Francis is good Law, but it was cited there on the Point of Notice.

17. If A. and B. are Executors of C. who was a Freeman of London, and A. upon the Marriage of C. the Daughter of C. covenants with P. who is to marry with C. that it should be lawful for the aforesaid F. from Time to Time after the Marriage aforesaid, to fee and inquire into all such Accounts as should concern the Estate of C. the Teltator, by which he may see what Money became due to be paid to C. In this Case, if B. the other Executor hath any Accounts which concern the said Estate of the Teltator, and F. requires A
Condition.

A. and B. to fee and search the said Accounts, and B. refuses to permit him to do it, but A. says he does not deny to do it, yet B. hath broke the Covenant, for by this Covenant he hath undertaken for B. and all other Strangers, who have any such Accounts, that they will permit F. to see and search for the Cattle abroad, by Force of the Words of the Covenant, that it should be lawful for the aforesaid F. Dilh. 8 Car. B. R. between Roberts and Willances adjudged per Curiam, upon Decimus. Finianus Dic. 8 Car. Rex. 492.

18. Presentation to his Son and Heir apparent is no Alienation within the Condition. Arg. 2. Le. 52. in pl. 116. cites 46 E. 3.

19. If a Person makes a Lease for Yeares, and then resigns, it is a Breach of Covenant. Hob. 35. pl. 39. in Case of Tisdale v. Elles cites 12 H. 4 3.

20. Debt against Executors upon Obligation with Condition that if the Tenant of the Defendants did his Endeavour to collect 10l. Rent for the Plaintiff of his Manor of D. and to render Account of it next Whitsunday, and of this make Grieve to the Plaintiff, that then &c. and said that the Tenant did his Endeavour to collect the Rent, and that the Tenant did four Days before Whitsunday &c. and the Plaintiff said that he did not do his Endeavour; and so fee that this suffices for all, for if he cannot receive it, he cannot render Account thereof, nor pay the Arrears. Br. Conditions. pl. 92. cites 38 H. 6 2 3.

21. Condition of a Lease was, that if he alien to any Person during And that he his Life, the Lessor may enter ; Lessee devises it to another, this does not take Effect in his Life, but has an Inception in his Life. Per. Dod. cites, who Roll R. 214. cites D. 45. b. 31 H. 8. [pl. 3. Parry v. Herbert, and it seems to Brook and Hales, Matter of the Rolls, that it was a Per- vices, yet it was held a Breach, because he did what he could to have devised the Land. Le. 67. pl. 100. Hill. 19 Eliz. C. B. Anon.—4 Le. 5. pl. 20. Parry v. Herbert. S. c. in toto and Verba.

22. Condition that he, his Executors, or Assigns, shall not alien without Consent of Lessor. B. died intestate, his Administrator alien'd without Leave; Per Periam J. the Administrator is not within the Penalty, for he is not in merely by the Party, but by the Ordinary; and Per Mead and Periam J. if a Lease for Years upon such a Condition be extended upon a Recognizance, 'tis not an Alienation against the Condition; But it Feme Lessor for Years upon such a Condition takes Husband, and dies, the Husband is within the Danger of the Condition, for he is Assignee. It is an A. nose, the King grant to a Subject Bona & Caralla felonum, and Lessee for Years on such a Condition is out of lawd, upon which the Patentee enters; And. 125. pl. 172. Smallpiece v. Evans S. C. held ac- cordingly by 3 Juries, but the other e contra.


24. Leafe for 60 Years, and so from 60 to 60 without Rent, amounts ; Le. 182. to an Alienation. 2 Le. 82. pl. 116. Mich. 29 Eliz. B. R. Large's C.

in conditional Estates among Subjects extends not to a Leafe for 21 Years or a Life; for the Term granted is ordinary and reasonable as some think. Jenk. 175. pl 97.

25. A.
25. A. was bound not to alien such a Manor. Alienation of one Acre of such Part of it, is a Breach. Arg. 2 Le. 83. pl. 110. Mich. 29 Eliz. 2 Larg's Cate.

S. C. 25. By entering into a Statute to the Value of the Land may be construed to Alienation within the Intent of a Will, Per t. Cur. 2 Le. 83. pl. 119. Mich. 29 Eliz. B. R. in Larg's Cate.


26. A Leaf was made for Years, upon Condition not to devote [device] to devise, the Land, or alien the Term, and by his Will be devised it, the Faiddevice, Fenner and Clench, that the Condition was broken; for this Device the Term is disposed by his Gift, which is an Alienation, and is as strong as any other Alienation. But Popham delivered no Opinion. Cro. E. 330. pl. 6. Trin. 36 Eliz. B. R. Barry v. Stanton.

D. 352 a. N. pl. 7. Mich. 4 & 5 P. & C. M. Anon. S. P. and 5 Justices held, that the Restraint was not determined by the Lease, being granted by the Leallele's Executors to one of his Sons, and so he could not grant it over without Licence; but Stamford and Catlin held that he might, for that the Restraint was determined. S. C. cited 4 Rep. 120 B. by the Reporter, who seems to approve of the Opinion of Stamford and Catlin in Law.

29. Le allele for Years upon Condition that if he devise the Premises, or any Part thereof, for more than one Year, then the Le allele &c. might enter; he did not lease it, but was devised it to his Son: this was held a Breach of the Condition. Gouldsb. 184. pl. 142. Hill. 43 Eliz. and says that the Case of 31 H. 8. 45. rules the Law in this Case; for a Device is taken for a Breach of the Condition, and cites 27 H. 8. 10. but the Reporter adds a Quære if he might not have suffered it to come to his Son as Executor.

S. P. held accordingly by Daniel and Walmi- lev, but Warburton e contra. Cro. J. 61. 62. pl. 7. S. C.
Condition.

exprefs Condition, that the Tenant in Tail should not make an Eftate during his own Life, it would be a void Condition; But Warburton J. e contra. No. 772. pl. 1647. Trin. 2 Jac. C. B. Lovice v. Goddard.

31. A makes Leafle for Years to B. Leafle gives Bond not to alien the said Term, and in the Leafle is a Condition not to affign the Leafle without Consent of Leflor; the Letlof gives him Licence by Deed, and upon this the Leafle aliens; the Bond is forfeited. Jenk. 120. pl. 47.

32. A Manor was granted on Condition not to alien any Part by which it should not immediately revert; a Grant of a Copyhold was not within it; per Coke Ch. J. Roll R. 293. in pl. 4. Trin. 13 Jac. B. R. cites D. 17. El.

33. joint-tenants upon Condition not to alien, and one reliefs to the other, 'tis no Breach of the Condition; per Hitcham Serjeant. Win.

34. Committing Treafon is no Breach of a Condition not to alien; per But per Ho-Jones J. Jo. 20. Hill 20 Jac. cites 7 El. D. 243. Lord Arundel’s Cafe.

Trefon is an Alienation as well as Feefment. Jo. 80. Pach. 1 Car. in Cam. Scacc.

35. Condition that if A. obferve, fulfil and accomplish the left Will of B. and fhall content and pay all Bequests and Legacies according to the Inteunt and true Meaning of the said left Will. B. was feigned of Lands in Capite, and defeved them by his left Will to C. in Fee, and gives diverse Legacies, and makes D. his Executors, and dies. A. (who was heir at Law) enters into the third Part of the Land. Per three Justices this was no Forfeiture, but Per two Justices it was a Forfeiture; but they made a general Certificate to Chancery, that by the Opinion of the major Part it was no Forfeiture, and fo it was decreed. Jo. 265. Trin. 8 Car. Egerton v. Egerton.

36. It was faid, that if Leafle for Years covenants with the Leffor not to affign over his Term without the Leffor’s Consent in Writing, and afterwards without fuch Consent devifes the Term to J. S. this is not a Breach of the Covenant; for a Devife is not a Leafle. Sty. 483. Trin. 1655. in Cafe of Fox v. Swann.

37. Bond Conditioned to perform Covcnants, whereof one was to repay Money, if the Defendant or others fhould fee or trouble, charge or vex the Plaintiff as Administrator; adjudged, that a Suit in Equity is a Suit within the Condition, and that whether the Suit be for the fame Money or not, fo it be againft him as Administrator. 2 Keb. 288. pl. 63. Mich. 19 Car. 2 B. R. Allton v. Martyn.

38. Debt on Bond to pay fuch Costs as fhould be fhated by two Arbitrators by them choien. Defendant pleads, that none were fhated. Plaintiff replies, that Defendant brought not in his Bill. Defendant demurred; For though if the Defendant were the Caufe that no Award was made, it was as much a Forfeiture of his Bond as not to perform it would be; yet here there was a Precedent Act of the Plaintiff’s necceffary vis. to chufe an Arbitrator, which he ought to have fhewn before any Fault could be affigned in the Defendant in not bringing in of his Bill, and to this the Court did incline; fed adjournatur. Venit. 71. Pach. 22 Car. B. R. Baldway v. Outton.

T t (U a. 2)
1. A Breach, and covenant, that he had done no Act to impeach &c., and that he
the Leisfe may enjoy it during the Term. Cefty one Vie died within the 21 Years.

2. A Person leaved his Residue for 3 Years, and covenanted, that he should enjoy and have it during the said Term without Expulsion, or any Thing done or to be done by the Leisfe, and gave Bond to perform the said Covenant; Afterwards, for not reading the Articles, he was deprived of the Suit by the Statute of 13 Eliz. The Patron presented another, who was being indicated as the Leisfe. It was the opinion of all the Justices, that this Matter is not any Cause of Action, for the Leisfe was not ouuted by any Act done by the Leisfe, but rather for Nonfeasance, and fo out of the Compacts of the Covenant; As if a Man be bound that he shall not do any Waste, permissive Waste is not within the Danger of it. 4 Le. 38, 39. pl. 154. 18 Eliz. C. B. Anon.

3. Condition that B. shall enjoy a Lease of 5 Bl. Acre immediately after his Death, the Land being fown; the Executors of A. take the Corn. It was held that it is no Forfeiture, because by Law the Corn belongs to them. 4 Le. 1. pl. 1. 1. Hill. 20 Eliz. Launton's Cafe.

4. The Leisfe covenanted, that the Leisfe should enjoy without any lawful Eviction. Afterwards, upon a Suit in Chancery by a Stranger against the Leisfe for the Land demised, the Chancellor made a Decree against the Leisfe, and that the Stranger should have the Land; Lord Dyer held, that the Decree was not any Eviction, for although in Conscience it be right, that the said Stranger have the Possession, yet that is not by reason of any Right in the Stranger, paramount the Title of the Leisfe. 3 Le. 71. pl. 109. Hill. 20 Eliz. C. B. Anon.


5. B. For quiet Enjoyment. See (U. a) pl. 6. & c.
5. B. granted the next Avoidance to T. and gave Bond to T. that he should enjoy the said Premietiment without any Disuurbance or Claim of the said B.—S. released to B. his Interefs in the said Advoceof. The Church became void. B. offered to join with T. in presenting to the Avoidance. It was held, that the Obligation was forfeited, although that B. had a puisne Title to it after the Obligation was entered into. 4 Le. 18. pl. 62. Mich. 26 Eliz. C. B. Blue’s Case.

6. Condition to permit the Plaintiff quietly to take, reap, and carry away Corn. Coming on the Land with Staves, and forbidding him to reap was adjudged a Breach. And. 137. pl. 135. Mich. 26 & 27 Eliz. Burt v. liggs.


7. B. sold Lands to P. and covenanted that B. and his Heirs should quietly enjoy the Lands without any Interruption; afterwards some Controversies arising concerning the Title, they submitted to the Award of Sir W. C. who awarded that P. and his Heirs should quietly enjoy the Lands in term amply Modi, as the same were conveyed to him, and the Truth was, that at the Time of the Executing the said Conveyance, the Vendor stood bound to M. in a Recognizance of 600 l. who after the Conveyance filed out an Elegit, and took the Moines of the Lands in Execution; and in an Action of Debt brought by the Plaintiff, for Non-performance of this Award, it was argued that the Lands passed with the Charge, and when B. covenanted that P. should quietly enjoy, that Covenant is a collateral Security, and the Award that he should enjoy in term amply Modi as the Lands were convey’d to him, give him no new Title, for they are not Words of Assurance, for the Assurance consists in the Legal Words of passing an Estate, viz. Dedi, Concei, &c. and in the Limitation of the Estate, and not in the Words of the Covenant. And it does not appear that there was any Interruption of the Vendor, because the Execution by Elegit was illegal; for it appears that M. sued it by Elegit 4 Years after the Judgment in the Sci. Fa. whereas he should have brought a new Sci. Fa. and the Sheriff should return, that the Cognizor, after the Recognizance had infested the Vendor, and upon that Return the Cognizee should have a Sci. Fa. against the Feoffor. And the Court was clear of Opinion against the Plaintiff. 1 Leon. 29. pl. 34. Palfch. 27 Eliz. B. R. Allington v. Bates.

8. Debt on a Bond, conditioned to suffer the Plaintiff’s Tenants to enjoy such a Common; The Defendant pleaded Conditions performed, the Plaintiff replied that he did not suffer A. B. his Tenant to enjoy &c. oblique bos, that he had performed the Condition. The Court held this Traverse ill, for ’tis no more than he had pleaded before (viz.) that he did not suffer the Tenants to enjoy. Goldeh. 62. pl. 21. Trin. 29 Eliz. Gawen v. White.

9. K. leased Lands to H. for Years. H. by will devised the Use and Occupation of the said Land to his Wife so long as she continues a Widow, and if she die or marries that his Son shall have it; H. dies. K. by Feoffment conveys the Land to the Wife, and covenants, that from thence it shall be clearly exonerated de omnibus prvdiosis Bargainis, Titulis jndicialibus, &c. aliis Oneribus quinquennial. The Wife marries and the Son enters. This is a Breach, and the whole Court agreed, that the Land at the Time of the Feoffment was not discharged of all former Rights, Titles and Charges, and therefore Judgment was given for the Plaintiff. Le. 92. pl. 120. Mich. 29 & 30 Eliz. Hamington v. Rider.

and that it was the Intent, that she should hold the Land discharged, which now upon the Matter she does not; but by the Marriage the Land becomes charged with the Lease,—Ow. 6. Hamington’s Case, S. C. and adjudged, that no Act which the Wife can do in purchasing the Inheritance by which the
10. Debt upon Obligation by F. against G. the Condition was, that if the Obligee may enjoy certain Tithe's demised to him by the Defendant during his Term, against all Perfons, paying yearly the Rent of 3l. that then &c. to which the Defendant said, that the Plaintiff did not pay the said Rent &c. Beaumont Serjeant moved that the Plea is not good, but he ought to say that the Plaintiff enjoyed the Tithes until such a Feast, at which Time such Rent was due, which Rent he did not pay, for which &c. Quod Curia conceit. 4 Le 94. pl. 193. Mich. 33 Eliz. C. B. Foles v. Griffin.

11. In Debt on Bond conditioned to perform Covenants in a Leaf, whereof one was, that Lefsee should enjoy such Lands let to him quietly and without Interruption, and thaws that the Defendant, 20 March, 30 Eliz. had disturbed him; the Defendant said that in the Indenture was a Proviso, that if he pay 10l. 31 March, 30 Eliz. then the Indenture and all therein contained should be void, and said he paid the 10l. at the Day. It was adjudged for the Plaintiff; for by the Covenant broken before the Condition performed the Obligation was forfeited, and it is not material that the Covenants became void before the Action brought. Cro. E. 244. pl. 2. Mich. 33 and 34 Eliz. B. R. Hill v. Pilkington.

12. But Wray said, if the Proviso had been that upon the Payment of the 10l. as well the Obligation as the Indenture should be void, it had peradventure been otherwise; for then the Bond was void before the Action brought. Cro. E. 244. pl. 2. Mich. 33 & 34 Eliz. B. R. Hill v. Pilkington.

13. A made a Leafe to B. of Land for Years, and the Lefsee gave Bond to pay M. N. 20l. for 17 Years, if M. N. should so long live, and if be slain or may occupy or enjoy the same, and then the Lefsee surrender'd the Leafe, and refused to make any further Payment of the Annuity. A being dead, his Executor brought Bond on the Debt, and Judgment was for the Plaintiff; for this Payment is a Thing collateral. Ow 104. Trin. 33 Eliz. Ford v. Holborrow.

The Term is extinct, shall bar the Possibility which the Son had to come upon her Marriage; and that this Possibility of the Son to have the Residue of the Term, which at the Time of the Feoffment was but dormant, shall be accounted a former Charge and before the Covenant, because it was before the Covenant, and shall awake and have Relation before the Marriage. — Gouldsb. pl. 17. S. C. and the whole Court agreed, that it was an Incumbrance and not discharged, and therefore gave Judgment for the Plaintiff. — Mo. 249. pl. 391. Mich. 29. Eliz. Anon. but seems to be S. C. only states it, that the Wife after her Purchase sold it again, and that she then covenanted that the Land was discharged of all former Incumbrances, and gave Bond for Performance of Covenants, and died, and the Son claimed the Term; and it was adjudged in Debt on the Bond, that the Possibility in the Son was a Forfeiture of the Wife's Bond, because it was an Incumbrance. — 10 Rep. 52. a. b. S. C. cited by the Ch. J. as adjudged. — S. C. cited 2 Sid. 167.
Condition.

165.

Covenants, grants, &c. which extend as well to covenants in law as to covenants in deed; and further, that the said express covenant qualifies the generality of the covenant in law, and restrains it by the mutual consent of both parties that it shall not extend further than the express covenant, and that it was lately adjudged in the same court in Hamond's case.


15. Lesfor covenantet that Lesfor for years might or should, peaceably, quietly and lawfully enjoy the premises, without interruption of him or any other person. In deed on bond for performance of covenants the plaintiff for breach alleged the entry of a stranger who had no right, and the opinion of coke and the court was clearly for the plaintiff. D. 328 a. Marg. pl. 8. cites Trin. 4 Jac. C. B.

16. Deed was brought upon an obligation to perform the covenants contained in an indenture; the covenant was for quiet enjoyment without let, trouble, interruption, &c. The plaintiff alleged his breach, that he forbade his tenant to pay his rent; this was held by the court to be no breach, unless there were some other act, and the defendant pleaded, that after the time the plaintiff saith he forbade the tenant to pay the rent to the plaintiff. Brownl. St. Trin. 9 Jac. Witchcot and Linefey v. Nine.

17. If Lesfor for years rendering rent, with a condition of re-entry for non-payment of the rent, leaves part for a less term under a less rent, and covenants that his lessee shall enjoy without imprisonment of him, or of any other occasioned by his impediment, means, procurement, or consent, and after be negleets to pay his rent, upon which the first Lesfor enters &c. This is a breach, adjudged per toct. Cur. clearly. 1 Bull. 182, 183. Paech. 10 Jac. Stephenson v. Powel.

18. Deed upon an obligation, condition'd that where the plaintiff had a lease for years from his lesfor of certain land, that the lessee should enjoy his land during the lease without eviction; the breach was alleged in the replication in a recovery of this land by A. by verdict, and upon a good title. The lessee was, that the recovery was by cousin, and it is found for the plaintiff; he had judgment, which was reversed in the exchequer chamber; for A. might recover this land by verdict without cousin, under a title derived from the plaintiff himself [after the obligation made] therefore the plaintiff ought to shew that A. had an other title to [before] the said lease made to the plaintiff. Jenk. 340. Paech. 95. Jacob. Stephenson v. Powel.

19. Covenant; P. the husband of the defendant was possessed of a lease of a farm called N. for such a term, and covenanted that the plaintiff
and his Wife should enjoy it during the Term, without the Interruption of P. or his Wife, and alleges the Breach that such a Day P. entered and outfled him. It was resolved in this Case, that although the Covenant is, that the Plaintiff and his Wife shall enjoy it; and the Expulsion is of the Plaintiff only, yet it is good enough, and a Breach of the Covenant, because the Husband hath the sole Profits and Possession. Cro. J. 383. pl. 11. Mich. 13 B. R. Penning v. Platt.

20. If one be bound that he shall not continue such a Suit, if he continues it by Attorney it is a Breach of the Condition, but if the Attorney enters the Controversy without his Prevaling, it is no Breach; Per Doderidge and Haughton J. Cro. J. 325. Hill. 16 B. R. in Cafe of Gray v. Gray.

21. A granted to H. the Presentation to the Church of D. and gave Bond, that if from Time to Time he shall make good the said Grant from all Incumbrances made or to be made by him and his Heirs, then &c. The Grantor died, the Church is voided, and the Heir of the Grantor presented, and whether this was a Breach of the Condition was the Question? and Hobart Ch. J. and Winch being only present, thought this tortious Presentation to be no Breach of the Condition, but this extends only to lawful Disturbance by the Heir; and by the Pleading here it appears, that though the Heir presented, yet he had no Right to present, because his Father had granted that before, and then the Presentation of the Heir is as of a mere Stranger. And those general Words will not extend to a tortious Disturbance by the Heir; but Hobart said, that the Words shall have such a Construction as if it had been laid, that he shall enjoy the same from any Aet or Acts made by him or his Heirs, and in this Case there ought to be a lawful Eviction to make a Breach of the Condition; but otherwise, if the Condition had been, that he shall peaceably enjoy from any Aet or Acts made by him, or his Heirs, in that Case a tortious Disturbance would have been a Breach of the Condition, but it was adjourned till another Time. Win. 25. Mich. 19 Jac. C. B. Hunt v. Allen.

22. Condition of a Bond recited, that Copyhold Lands were to be surrendered to the Use of H. and G. and their Heirs, by A. S. at her full Age; and that G. should pay to H. 33 l. such a Day, and if he did not, then the Surrender should be to the Use of H. and his Heirs; if therefore A. S. at her full Age, should surrender to the Use of H. and his Heirs, and that H. and his Heirs may enjoy the same, then the Bond to be void; the Defendant pleaded, that G. did not pay the 33 l. and that A. S. came to Age such a Day, and after in full Court did surrender. The Plaintiff replied, that after the Surrender G. entered and expelled him. Resolved that the Replication was not good, because he did not shew that the Expulsion was by Title, for otherwise the Bond does not extend to it. Cro. C. 5. pl. 1. Patch. 1 Car. C. B. Hamond v. Dod.

23. Debt on Bond conditioned, that whereas the Defendant was about to marry such a Widow, who was possessed of several Goods of her first Husband, and his Children, that he would not meddle with them, but that she and her Children should enjoy them without Disturbance &c. from him &c. The Defendant pleaded Performance generally. Plaintiff alleged a Breach, that the first Husband was possessed of such Sheep and Goods, and that the Wife had them before her second Marriage, but that afterwards the Defendant took and detained them. Alter Verdict it was moved, that the Plaintiff did not shew that the Husband did any Act, or made Disturbance, and so the Breach not well alleged, and of that Opinion were Hide and Jones; but Whitlock and Crook e contra; for by the Allegation and the Verdict for the Plaintiff the Court will intend it an unjust Taking and Detaining, contrary to the Agreement; and Hide be-
Condition.

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ing afterwards of the same Opinion, Judgment was given (ab latente Jones) for the Plaintiff. Cro. C. 284. pl. 9. Mich. 6 Car. B. R. Crowle v. Dawson.

24 In Consideration of 130 L. paid, the Defendant 7 Martii Anno 9. Car. 1634. sold the Plaintiff all the Flowers growing on such Lands, to be taken before Mich. 1635, and promised that he should quietly carry them away without Disturbance; and though he had suffered him to carry away 50 Lots, be disturbed him from taking 1000 Load growing on the same Land; After Judgment for the Plaintiff it was alledged for Error, that the Plaintiff did not set forth any certain Time of the Disturbance, whether it was before Michaelmas 1635; but resolved per toto Cur. that this being after Verdict is no Error, for it shall be intended to be before that Time, otherwise no Damages would be given; besides 'tis not material to set forth the Time of the Disturbance, because 'tis collateral to the Promise; and so the Judgment was affirmed. Cro. C. 497. pl. 1. Patch. 28


25 Where a Man covenants that he has Power to grant, and that the Greene shall quietly enjoy from any claiming under him, these are two distinct Covenants, and the first is general, and not qualified by the second; Per Hale Ch. J. to which Wyld agreed; for one goes to the Title, and the other to the Potfeffion. Cro. Mod. 101. pl. 6. Mich. 25 Car. 2. B. R. in Case of Norman v. Forster.

26 Assimilat in Consideration the Plaintiff promised to pay the Defendant so much yearly for 5 Years, for such a Thing, he promised to Griggs. S. C. save him harmless concerning the Possession of it, but that such a one had evicted him, and the Defendant had not saved him harmless. After Verdict for the Plaintiff it was moved that it is not known that he was evicted by Title, and all such Covenants extend only against lawful Tithes Possession, and Eviction: but per Cur. this Agreement was only quoad the Possession, and Judgment for the Plaintiff. 2 Lev. 194. Patch. 29 Car. 2. B. R. Gregory v. Major.

27. Covenant &c. upon Articles of Agreement, wherein the Defendant covenanted in Behalf of M. (a Stranger) that the Plaintiff should quietly enjoy for a Year a Tenement called the Saltmarsh, except one Chop, Paved of the Premises, to one K. K. The Breach alleged was, that K. brought Trespass against the Plaintiff, and recovered Damages and Costs &c. The Defendant pleaded, that he did not break this Covenant; After a Verdict for the Plaintiff, it was infulted that it did not appear that K. sued upon a Title, and it was resolved by Powel and Ventris (ab latente the Ch. Justice and Rokey doubting) that the Declaration was ill for that Reason; for the Articles amounted to a Lease, tho' by a Stranger, because he acted in behalf of the Owner of the Land, and it shall be taken that he had Authority to demife, and it appears he intended it a Demife, for the Part excepted is mentioned to be a Diminifici praedicta; But if it were a collateral Covenant by a Stranger, it would be hard to extend it to a tortious Entry. This is no Covenant exprest against K. being only mentioned for the Part excepted and to have been Tenant of the Premises, and so the principal Judgment was stay'd. Vent. 61. 2 W. & M. in C. B. Rathleigh v. Williams.

5 Le\textsuperscript{v.} 325. B. Williams. Hill. 5 W. & M. in C. B. the S. C. says the Objec\textsuperscript{t}ion was not allow'd, because the Title of K. could not be supposed to be under the Declaration being that K. had Title of the Premises, and so the principal Judgment was stay'd. Vent. 61. 2 W. & M. in C. B. Rathleigh v. Williams.

28. Con-
28. Condition that A. or his Heirs, or Affluers, shall recover to B. such
Land in Fee. A. devises to C. (an Infant) in Tail, Remainder to D. the
Condition is broken; contra if the Land had descended to C. being an In-
fant, because this had been an Act in Law. Ld. Raym. Rep. 112.
Mich. 8 W. 3 Hubert v. Watts & Ux. 6 Mod. 150.

29. In Covenant for quiet Enjoyment, the Plaintiff assiged a Breach
that the Lessee entered upon him, and ousted him out of the Premises. The
Defendant pleads, that he entered to discharge for Rent in arrear, abnjon
his that he ousted him de Premissis. Plaintiff demur'd, because if he
had ousted him of any Part, he had good Cause of Action, and there-
fore should have traversed that he ousted him of the Premises, or of any
Part thereof. But per Cur. the Plea is well enough; for if the Plaintiff
will join Issue on the Matter of the Traverse, and prove the Ouster of any
Part, the Issue will be for him, and they took a Diversity between pleading
the General Issue as in Debt, for there you must plead Non debet nec ali-
quam inde Parcellam, and pleading a Special Issue as this is. 2 Salk. 629.

30. In the assigning a Breach of Condition for quiet Enjoyment a par-
ticular Aei must be known by which the Plaintiff is interrupted, otherwise

(X. a) Condition to perform Covenants. [To what it
shall extend.]

Mo. 553 pl. 1. I F a Man leaves a Manor by Indenture, except certain Parcel of
Land, and in the Indenture there are several Covenants to
be performed of the Part of the Lessee, and after the Lessee for fur-
ther Security binds himself in an Obligation to perform all the Coven-
ants, Articles, and Agreements contained within a Pair of Indentures,
and names the said Indentures, and after the Lessee enters the Land ex-
cepted, yet this is not any Breach of the Condition, for this Land
excepted is not feas'd, and so as it had not been named, and there-
fore it cannot be intended an Agreement to be performed on the Part
of the Lessee within the Intent of the Indenture. Pach. 41 Eliz.
B. R. between Dame Ruffell and Gilkell adjudged.

424. S. C. adjudg'd no
Breach. But
by Popham
it is other-
wise where
a Way, or
Common, or
Eavors, and
Profit Appre-
nder is
fay'd or ex-
cepted out
The Thing
demifled.— Cro. 657. pl. 1. S. C. held accordingly by Popham and Fenner, but Cavendy e contra;
and Popham upon its being moved at another Time said, that he had conferr'd with the other Justices, and
the greater Part of them agreed, that this Exception is not within the Intent of the Condition, and
the Bond not forfeited by this Disturbance; wherefore it was adjudg'd for the Defendant. And Popham
and Fenner held, that an Exception of a Thing De-bours, which Lessee had not before, as a Way, Com-
mon &c. is that an Agreement of the Lessee's that he shall have the Profit, and in such Case a Distur-
bance will forfeit the Obligation, for there the Lessee has an Interests in the Thing excepted.
S. C. cited. 12. Rep. 30 b. 51 a. as adjudg'd that the Word (Premisms) should not extend to the Thing
excepted, but is all one in Effect as (Pres dimis).— S. C. cited accordingly by Cole Ch. J. Roll
102.— S. C. cited Hob. 274.— S. C. cited Show. 588. in Case of Buth v. Coles.— 1 Salk. 196.
pl. 1 cited S. C. and the Case there was, viz. By Indenture H. leased a House excepting two Rooms, and
free Passage to them. The Lessee assign'd, and the Affluence disclosed the Lessee in the Passage thereon, and for
this Disturbance the Lesser brought Covenant; Et per Cur. the Action lies. The Diversity is this; if the
Disturbance had been in the Chamber, it is plain then no Action of Covenant would have lain,
because it was excepted; so not demif'd; after where the Lessee agrees to let the Lessee have a
Thing out of the demifled Premisses, as a Way, Common, or other Profit Apprinder; in such Case
Covenant lies for the Disturbance. Ghes 3 Cro. 657. and Bl. 552. And this Covenant goes with the
Tenement, and binds the Affluence. Judgment pro Quo.— Show. 588. Buth v. Coles, S. C. ad-
judged for the Plaintiff.— Catho. 252 S. C. relieved per tert. Cur. that this Exception amounted to
a Reservation, it being a Thing newly creat'd, and not in Esse before, viz. a Way or Passage. Now upon
Condition.

upon a Recession an Action of Covenant will lie, as where Rent is referred Covenant will lie upon the Words of Recession, without any except Words of Covenant, and the Plaintiff had Judgment.

2. If a Lessee for Years, rendering Rent, payable at Michaelmas, and at the Annunciation, upon Condition, that if he does not pay it upon the said Feasts, or within 14 Days after, that it shall be lawful for him to re-enter; and the Lessee binds himself, upon Condition to perform the Covenants and Agreements of this Lease; and then the Lessee does not pay the Rent at the Feasts, but [pays it] after, and within the 14 Days, yet the Condition is forfeited; for the Condition in the Lease is not Part of the Recession. 

Mich. 13 Jac. 25. between Middition and Rucheoffs, per Curiam.

3. A by Deed-Poll reciting, that whereas he was possessed of certain Lands for a certain Term by good and lawful Conveyance, affirms the same to J. S. with divers Covenants, Articles and Agreements to be performed on the Part of A. The Question was, if the Words (whereas he was &c.) be an Article or Agreement within the Meaning of the Condition of a Bond given to perform &c. Gawdy held that it was, and Clench said that against this Recital he cannot say that he has not any Thing in the Term. And at length it was clearly resolved, that if A. had not such Interest by a good and lawful Conveyance, the Obligation is forfeited.

1 Le. pl. 146. 122. Trin. 30. Eliz. B. R. Seven or Clerk.

4. In Debt on Bond to perform Covenants, Payments &c. the Defendant said, that he for 110l. had enforced the Plaintiff, with a Proviso that if the Defendant paid such Sums at such a Day the Feoffment to be void, and that he might re-enter, with Covenants to save harmless from Incumbrances, and make further Assignments; and that he had performed all Covenants &c. on his Part. The Plaintiff affixed a Bond, that he did not pay such Sums at such a Day according to the Proviso; Refolved, that in as much as there is not any Covenant to pay that Sum, it is a Proviso in Advantage of the Feoffor, that if he paid the Money he should have his Land again, and it is in his Election to pay the Money or lose the Land; and to the Consideration of the Bond does not extend thereunto, but only to perform other Covenants, As to save harmless &c. It was resolved by against the Plaintiff.

Crom. 281. pl. 1. Trin. 9. Jac. B. R. Brifcooe v. compulsory to the Defendant, and not otherwise; and the Neglect of the Payment assign'd for Bond being in its own Nature voluntary, either to be paid by the Defendant or not, to which the Condition of the Obligation cannot by any reasonable Construction extend, Judgment was given against the Plaintiff, quod nona. Yelverton was of Counsel with the Plaintiff. — Brownl. 115. S. C. in totidem Verbis. — Bull. 146. Brifcooe v. Knight, S. C. held accordingly per tot. Cor. and Judgment against the Plaintiff. — S. C. cited 2 Lev. 126. Mich. 26 Cor. 1. B. R. where the Case was, that in a Bond for Performance of all Covenants and Conditions in an Indenture of Mortgage was a Proviso, that if the Mortgage paid the Money at the Day the Mortgage should be void, Bond was assign'd for Non-Payment at the Day. It was moved that this was no Forfeiture of the Bond, but of the Estate only, and that this Condition was for the Mortgagor's Benefit to have his Estate again on Payment of the Money, but not to compel him to pay it; And of this Opinion was Hale, but Twelvet was contrary, and he cited one Edinburgh's Cafe. Hill. 22 Cor. 1. B. R. to be so adjudged, and at another Day brought the Record of the Cafe into Court, whereupon Hale mutata Opinione, gave Judgment for the Plaintiff. — Lev. 116. Mich. 26 Cor. 1. B. R. Twelvet v. Chandler, S. C. the Defendant pleaded Performance; the Plaintiff assign'd Bond in Nonpayment; the Defendant rejoined, that by the Nonpayment he was to lose his Land, and the Court held this a Departure, and the Money is due by the Bond, though the Land is to be forfeited, and Judgment for the Plaintiff. — Ibid. 94. pl. 90. S. C. Twelvet J. cited Hill. 22 Cor. 1. of a Lease to be void on Nonpayment, and adjudged for the Defendant, because the Land was to be lost by the Nonpayment, Adjudicat a Bond, and conceived Judgment ought to be for the Defendant, which the Court agreed — Ibid. 454. pl. 23. Patch. 29 Cor. 2. B. R. the S. C. adjudged for the Defendant Nihil; And per Cor. if it were a Condition in the Deed specially recited in the Bond, though thereby the Mortgage is forfeited, the Bond is so too upon Non-payment; but being generally to perform all Covenants, Conditions &c. according to Brifcooe's Cafe and Br. Conditions 195 it binds only to such as compulsory, and not to such as are at the Party's Election to do or not. — Ibid. 402. pl. 53. S. C. adjudged for the Defendant unless the Plaintiff discontinue.
5. In Debt upon an Obligation with Condition to perform Covenants in an Indenture of Lease, the Defendant pleads, that after and before the Original purchase, the Indenture was by the Affent of the Plaintiff, and the Defendant cancelled and avoided, and to demands Judgment if Action, and items by Coke clearly, that the Plea is not good without Averment that no Covenant was broken before the cancelling of the Indenture. 2 Brownl. 157. Pa.fch. to Jac. C. B. Anon.

6. If an Obligation be for Performance of Covenants in a Grant which is void, the Covenant and Obligation are both void; and Judgment accordingly. Lev. 45. Mich. 13 Car. 2. E. R. Caponhurit v. Caponhurit.

7. Condition of a Bond was for Performance of Covenants in a Lease of a Dwelling-house to an alien Artificer. The Court held the Bond void, for when a Bond is to perform Covenants, if the Lease becomes void by any Means, as by Release, Surrender &c. the Bond is void also; And it would be absurd, that when the Statute 32 H. 8. cap. 16. makes the Lease void, and to destroys the Contract, that yet the Bond to intorce Payment of the Rent should remain good; and Judgment for the Defendant. Sidd. 308, 309. pl. 19. Mich. 18 Car. 2. E. R. Jevons v. Harridge.

8. The Defendant in Consideration of 400 l. lent him by the Plaintiff, granted his Lands to him for 99 Years, if G. so long live, provided if he pay 60 l. per Annum quarterly during the Life of G. or 400 l. within two Years after his Death, then the Indenture to be void with a Clause of Recovery for Nonpayment, and gave a Bond for Performance of Covenants, Payments &c. In Debtor on this Bond the Breach alleged was, that 30 l. for half a Year was not paid at such a Time during the Life of G. Upon Demurrer the Court inclined, that this Action would not lie on this Bond in which there was a Proviso, but no express Covenant to pay the Money, and therefore no Breach can be alleged. 2 Mod. 36, 37. Pa.fch. 27 Car. 2. C. B. Suffield v. Baskervill.

(Y. a) [Where] the Condition is to save harmless &c.

1. In an Action of Debt brought by A. against B. in which C. and D. are bail for B. if the Plaintiff hath Judgment against B. and the Bail, and after C. one of the Bail, gives Security to A. for all the Money due to him; and in Consideration thereof, A. promises C. that he may take Execution against D. the other Bail, and that he will not release him without the Affent of C. upon which C. procures D. to be taken in Execution, and after A. relieves him out of Execution, and thereupon D. is bound to A. in an Action, of which the Condition is to save A. harmless of all Actions and Damages which may arise upon the Release of D. out of Execution, then being in Execution at the Suit of A. from all Persons that may resemble him concerning the said Release, and after C. brings an Action against A. for the Breach of his Promise, (*) and recovers his Damages. This is a Breach of the Condition, for the Condition is not to be inexcusable by the Words of the Damages only, which direct arise upon the Release, but to any collateral Act done, as to the said Promise. Hobart's Reports, Cal. 353. between Helen and Wilkinson.
Condition.

that might trouble him concerning the said Release; and no other Person could make or trouble him for the Release of his own Debt only, wherein no Man could have to do but by Means Dehors.

2. If a Man be bound to keep me without Damage against all Men, the Br. Cond.
Condition is void, and e contra if it was against a Man certain. Br. tion, pl. 221. cites S. C. for it
is in a Manner impossible.

3. In Covenant, the Defendant had leas'd to the Plaintiff the Manor of D. for 20 Years, and granted by the Indenture that he would acquit him of all Charges arising out of the said Manor during the Term, and after by Parliament the tenth Part of the Value of the Land was granted to the King, and not the tenth Part of the Issues of the Land; for then per emnes the Leesor shall discharge the Leesee; and by all except Brian the Land is charged by Reason that he may distrain in the Land for the tenth Part of the Value, and may distrain for his Debt, contra of a common Perfon; but Brian e contra, and that the Land is not charged, and there is a great Diversity between those Words, Issues of the Land, and Value of the Land; for by the Issues of the Land, if a Man be bound to render them he shall pay the same Issues; contra where he is bound to pay only the Value. Br° Covenant, pl. 30. cites 17 E. 4. 6.

4. A. and B. were bound to J. S. in 151. and J. N. was bound to the said A. and B. upon Condition to acquit them against the said J. S. and after J. N. released to A. and B. the said 151. by the Labour of the said J. N. this is a good Performance of the Condition; per Townend and Catesby, &c. non negatur. Br° Conditions, pl. 237. cites 1 H. 7. 30.

5. The Defendant fold Lands, and covenanted to face the Vendee harmless upon Request. It was said Arg. that if the Land was afterwards extended, before any Request made, that this was no Breach of the Covenant, because it was by the Negligence of the Plaintiff himself. Mo. 189. pl. 338. Trin. 27 Eliz. B. R. Anon.

6. A. made a Lease to B. for Life, and covenanted for himself and his Heirs that he would face the Leesee harmless from any claiming, by, from, or under him; A. died, and his Wife recovered in Dover, and the Leesee thereupon brought Covenant against the Heir, and adjudged for B. because the Wife claim'd under her Husband, who was the Covenantor; but if she had been the Mother of A. the Leesee, it had been otherwise, because her Claim would not be from or under A. Godb. 233. pl. 425. Trin. 21 Jac. B. R. Anon.

(Z. a) How the Condition ought to be performed, when it is to keep him without Damage.

1. If it be to make him harmless from J. S. if J. S. after stays to him, Br° Condition.
that if he goes to his House he will beat him, by which Denace he does not go to his House about his Business, the Obligation is forfeited. 18 E. 4. 29.

S. C. cited 5 Rep. 22. a. as held by Brian and Littleton.—S. C. cited Arg. 5 Bull. 234; and Doderidge J. said, that the Matter is well debated in that Case.—S. C. cited 2 Bull. 93. and 105. (115.)

S. C. cited Cro. J. 170. in pl. 5. — The Case in Br° Conditions, pl. 165. is, viz. In Debt a Man is bound to face N. harmless from an Obligation in which he is bound to IV. S. and after IV. S. brought Debt against N. by which N. brought Debt against his Obliger, because he is not faced harmless, and the Defendant pleaded Quod nov. demorseatum est; and the Plaintiff said, that W. S brought the Action against him, by reason whereof he durst not go about his Business. by which he was darnified; and per Choke
Condition.

...
To save harmless. At what Time the Suit may be.

1. A. was bound as Surety with B. for Payment of 20L. at Mich., and had a Counter-Bond from B. to save him harmless. B. paid not the Money at the Day. A. brought Action on the Counter-Bond. The Court agreed that by the Non-payment at the Day, which has put A. the Plaintiff in Danger of being arrested is a Damnification to him, and consequently a present Breach of the Condition, and Forfeiture of the Counter-Bond; and Judgment for the Plaintiff. 3 Bail. 233. Mich.


2. If one give a Warrant of Attorney to confede a Judgment for paying Bail harmless, tho' the Debt be not paid, he cannot sue Execution before Damnification. Per Cur. 6 Mod. 77. Mich. 2 Ann. B. R. Anon.

3. If one pretending Title to Land gives Security to the Tenants to save them harmless on paying him the Rent, and after another recover in Ejectment against them, they have not yet a Remedy on the Security till Recovery of the said Profits, which is from the Time of the A

 Execution brought, and without an actual Entry there can be no Recovery of the Profits. Per Cur. 6 Mod. 222. Mich. 3 Ann. B. R. Anon.

(Z. a. 2) To save harmless. At what Time the Suit may be.

(Z. a. 3)
(Z. a. 3) To save harmless. To what such Condition extends.

1. Debt upon Obligation, the Condition was that if the Defendant kept the Plaintiff without Damage against J. B. of 10 l. in which the Plaintiff is bound to the Defendant by Obligation; and per Collowe, Choke and Brian, the Condition is void; for J. B. has nothing to do with the Debt by Obligation which is between the Plaintiff and the Defendant, and to the Condition impossible, and so void, and then the Obligation is single. Br. Conditions, pl. 175. cites 21 E. 4. * 54.

2. Debt upon Obligation indorsed, with Condition that the Defendant shall discharge the Plaintiff of all Efcapes of all Felons in the Prison of D. and said that there were only 2 there at the Time &c. viz. J. N. and W. S. and that the Plaintiff was not dammified &c. and the other said that he was dammified &c. Quere, for peradventure he shall be charged of all Felons delivered there after. Br. Conditions, pl. 87. cites 21 H. 7. 30.

3. Debt upon an Obligation, the Condition was, that if the Defendant swear and defend an Oxfangle of Land to the Plaintiff against J. S. and all others, that then &c. It was resolved per toz. Cor. that the Word (defend) shall be taken, and shall not imply any other Senfe but a Defence against lawful Titles, and not against Trepassors. And per Parm J. it would be the fame if it had been Defend, without the Warrant. Mo. 175. pl. 309. Mich. 26 & 27 Eliz. Grocock v. White.

4. The Condition of a Bond was to save the Obligee harmless concerning his buying certain Goods at such a Price. This extends not to the Price, but to the Title. Allen 95. Mich. 24 Car. B. R. Smallman v. Hutchinson.


6. Obligation with Condition to save the Parish of S. harmless from J. G. his Wife and Children. Joseph, the Son of J. G. born at the Time of the Obligation entered into, had a Wife and Children, whom he could not maintain, and the Parish, by Order of the Justices, was to allow 5s. per Week to Joseph for the Maintenance of him and his Family; In an Action brought upon this Bond, the Condition was held to be broken, for they did not extend to Grand-children of J. G. becoming chargeable, yet their Father Joseph, who is by Nature bound to maintain them, being unable to do it, he is in that Respect impotent, and become chargeable to the Parish, and he is within the express Words of the Condition, and held in this Case that all the Children of J. G. though born after the Obligation entered into, would be within the Words of the Condition.


7. Debt upon Bond condition'd to save the Plaintiff harmless against all Efcapes which he had alreadyสาธารณ as Warden of the Fleet; the Court took a Diversity between a Bond to save him harmless against all future Efcapes, for that would be void, and a Bond to save him harmless against past Efcapes; for tho' it was unlawful to fuller them, yet one may contract to indemnify one against a Penalty already incurred against Law. 6 Med. 225. Mich. 3 Ann. B. R. Fox v. Tilly.
5. 

DEBT upon an Obligation to keep the Plaintiff without Damage, the Defendant said, that he had performed; Judgment is Aff'ed; and the Plaintiff said, that he did not keep him without Damage, pritn, & non aliocutur without occupying how he is indemified; and so he did; quod nota. Br. Conditions, pl. 36. cites 7 H. 4. 11.

6. Debt upon Obligation indemified, that if the Defendant acquitted and saved the Plaintiff from Damage on an Obligation of 10 l. against 7. N. to enable the Plaintiff was bound in the 10 l. that then &c. and said that such a Day and Year 7. N. rendered the Obligation of 10 l. to the Plaintiff at the Request of the Defendant in lieu of Acquittance. Per Prift, you ought to say that the Plaintiff was not indemified against J. N. before the Delivery of the Obligation; for it may be that it was fued by the Oblige, by which Lacon said ut supra abhie bec, that he was indemified by the said Obligation before the Delivery of it; and good. Br. Conditions, pl. 93. cites 38 H. 6. 13.

7. And it is said 38 H. 8. that * Non Damnificatus eft is a good Plea; S. P. and per for this in the Negative, and therefore good without occupying How. But Keble, there is a Diversify, where a Plea he pleads that he has kept him without Damage in the Affirmative, he shall shew how; Note a Diversify. Ibid.

8. Debt upon Obligation, upon Condition that if the Defendant warrants and defends such Land to the Plaintiff for Life, whereof he has infeoffed him, that then &c. and said that he has warranted and defended; Per Danby this cannot be without impeading the Plaintiff, by which he bids him say, that he was never impeaded, and if he had been &c. you would have warranted him, which Littleton agreed. And after Danby and Needham said, that if he had been ousted by a Stranger without being impeaded, the Obligation had been forfeited, Kantine hujus Verbi (defendant); Quod Nata. Br. Conditions, pl. 141. cites 2 E. 4. 15.

9. In Debt, a Man is bound to sawe N. harmsles from an Obligation in which he is bound to W. S. and after W. S. brought Debt against N. by which N. brought Debt against his Obligor, because he is not laved harmsles;
Condition.

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and the Defendant pkadt'd Qnod noii Damnijicatus efi^ and it is admitted a good Plea, and the Plauitijf' Jhall J/c^i' by Replication Hois: he is
Br. Conditions, pi. 165. cites 18 £. 4, 27.
damnified ; Quod Nota.
with Condition that the Deiendant ihall
Obligation,
8. Debt upon
all Suits -duhich y^. S. has againji
Damage/ro;;/
without
Plainciif
keep the
him^ and the Defendant faid Quod querens non eft da7nnijicnttis by i\\q
faid Suits; Per Brian and Choke J. the Dekndantought to Ihew that he
has faved the Plaintiff without Damage, or has been nonfuiced &c. or
has difcontinncd them &c. in the Geiieralty, and the Plaintiff Hull
ihew certain in w hat A6lion he is grieved ^ (^od non negatur i Quod
9. If A. be bound to B. to difchargc and favc him harmlefs^ if A.
pleads that he has difcharged him^ ht fhall Jhciz' certainly ho-zv; hut if he
was bound only to fave him harmlcfs^ then the Plea is good genera'jly.
hoc videtur dicere non DamnificaPer Catesby i Quod non negatur,
tus eft.
Br. Conditions, pi. 185. cites 22 E. 4. 43.
10. Condition was, that the Obligee fliould peaceably enjoy &c. andthe Defendant /)/tWcY/, That the Plaintiff' did peaceably continue his Poflelisi

&

Day, at which Time the Lord dijirainedjor Rent j and
Heath's
a good Plea.
Condition
was, to grant Warrant and fave harmthe
where
But
11.
lefs againft Lord and King, and to have and peaceably enjoy, the DePaci/ice Gavifus fait ; where laid by
iendant pleaded, ^iiod habuit
divers, that the Plea is iJL. and but argumentuive, that is, he h.ith peaceably enjoyed the Land ; Ergo, he hath warranted the Land, and iaved
the Plaintiff harmlefs, lor he might be impleaded in a Praecipe and the
other not warranted, and yet hold it peaccabJy, or might be diltrained
lor Iffues loft &;c. and therefore ought to have ple.aded exprelsly quod
tion fuit daninijicattts per Regem nee per aliqiiem aluim j or that the Plaintiff was impleaded, and he did warrant &c. ^i^re inde, lor Bald rt'in
Heath's Max. 47. cites 30 H. 8. D. 43.
e contra.
12. The Condition of an Obligation was, to warrant, de£'nd, or fave
harmlefs, as. well the Perfon of the Obligee as the Premiffes againft one
C. where the Defendant alleged in his Bar a former Leafe, by reafon
whereof neqtie le Obligee^ nee les Prcmijjes po[fjnt nee potuerutit ejfe Damnijicaf per prtedidv.m C. The Defendant replied the Ipecial Matter in Law,
without concluding £? ijj'mt damnificatus ; it was holden the Defendant's Bar was ill, and that he ought to have pleaded Non Juit Damnifaat\ or the fpecial Matter, and conclude l[/int non damnificatus and
the Plaintiff's Replication, for want of a proper Conclulion, is ill alfo.
^//rr' »o»
13. And in the like Cafe, the Defendant pleaded
Damnifcaf fuit per A. and the Plaintiff in his Replication Ihew'd a
ipecial Damage, and Concluded i'.V /j///;^ dariinificat\ and the Defendant by his Rejoinder ^Xtxd^d ISlid tiel Record J^iod Nota. Heath's
Max. 48. cites 3 El. D. 186.
The Defend14. Debt upon Bond to fave the Plaintiff' hannlefs &c.
ant pleaded in Bar, that he had faved h'lm hariulefs generally.
The Plea
was held ill ; for he fhould have pleaded Non damnificatus, becaufe he
may fave the Plaintiff harmlefs in fome 'Things., and yet he may be damniJieci in fome other Things., in which the Defendant was bound to fave him
Style x6. Paich. 23 Car. B. R. V\7och
harmlefs; and Judgment Niji.
feffion until

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V.

EH'ey.

15. Bond to fave harmlefs from Bonds, or to fatisfy all Damages
within a Month, Detcndant pleaded he had paid him iuch a Sum lor ail
his Charges within a Month, adjudg'd that Defendant ought to y/ea/
how the Plaintiff v\ as molelled, and that he had fatistied iu much, or
that he was not moleltcd.
C;o. E. 393. pi 18. Palch. 37 Eliz. C. B.

Hutchinfon

v.

Lew

foj.
16.

Debt


Condition.

16. Debt on Bond to have harmfus from Payment of Rent due to a Stranger at such a Peof, 'tis no Plea to lay that no Rent was due, but ought to plead Non fati damnifiqueias. Saviil 91. in pl. 167. Hill. 30 Eliz.

17. Debt upon a Bond, the Condition was to secure him harmless against J. S. in an Action for 53 l. for which he was Bailed for him. The Defendant plead he had paid J. S. 20 l. in Satisfaction of the 53 l., and so he kept him harmless; but for that the Plaintiff might be dammified before the Payment, to which he does not answer, the Plea was held ill, and the Plaintiff had Judgment; Cites 38 H. 6. 15. Cro. E. 156 pl. 42.

18. In Debt on Bond condition'd that whereas the Plaintiff was bound in 200 l. for the Defendant for Payment of 100 l. to A. B. if therefore the Defendant shall save and keep harmless the Plaintiff from all Suits, Quarrels and Demands touching &c. the said Bond &c. that then &c. The Plaintiff declared that at the Day be went to the Place, and finding no body there to pay the Money, he paid it himself &c. The Defendant pleaded Non fati damnifiqueias. The Plaintiff replied, and shew'd the said Matter. Adjudg'd for the Plaintiff; for the Payment of the 100 l. is Damage, and he not paid it greater Damage would ensue; and it is not necessary that the Plaintiff be arrested or did &c. 5 Rep. 24. a. Mich. 42 & 43 Eliz. B. R. Broughton's Cafe, alias Broughton v. Pretty.

19. Debt upon Bond for Performance of Covenants brought by the High-Sheriff against the Under-Sheriff; one Covenant was, that the Under-Sheriff shall keep all Prisoners committed to him until they be delivered by Law, and also to save the Plaintiff harmless of all Suits made by them. The Defendant pleaded Performance of all Covenants. The Court held the Plea ill, because one Part is in the Affirmative, and the other in the Negative, and therefore he ought to have pleaded Non fati dannificateas. Gouldsb. 157. pl 38. Hill. 43 Eliz. Payton's Cafe.

20. Obligation with Condition, reciting that whereas A. the Plaintiff, at the Request of the Above-bound B. the Defendant, binds bound together with the said B. unto one J. S. in an Obligation for Payment of 10 l. on the 15th May (which May was before the Date of the said Obligation whereof the Action is brought) if the said B. do take and keep harmless the said A. of and from the said Obligation, that then &c. B. pleaded Payment foundem Formem & Effectum Conditionis postfuit. Upon Demurrer the Plaintiff had Judgment; for B. should have pleaded Non Damnificateas. Gouldsb. 159. pl. 90. Hill. 45 Eliz. Allen v. Abraham.

21. Case &c. for that in Consideration the Plaintiff would discharge the Defendant; then under an Arreit, the Defendant promised to pay so much &c. and alleged Quod Exsorivit eam from the said Arreit, but did not shew how, but upon this being aliigned for Error, the Court held it well enough; for it need not be pleaded, as a Discharge from a Bond or Rent must, because they cannot be discharged but by Deed, and it ought to be an absolute Discharge; but Discharge of an Arreit may be by Compolation for a Time, either with the Party or the Sheriff &c. and so need not be shewn, and so Judgment was reversed. Cro. E. 913 pl. 2. Hill. 45 Eliz. B. R. King v. Hobbs.

22. Covenant for that the Teitator fold to the Plaintiff 20 Ton of Copperas, and agreed with the Plaintiff that if he failed of Payment of 5 c. and such a Sum as such a Day, that then he might quietly have and enjoy the same; but because it was that he could not have and enjoy the said 20 Ton of Copperas; but he should enjoy it with the same Disbursement, it was held illnatured, and adjudged for the Defendant. Cro. E. 914 pl. 4. Hill. 45 Eliz. B. R. Ch武士 of any, and because the Plaintiff did not shew that he was Legitimo Modo dissimulatus, according to the very Words of the Covenant, it was held
 Condition.

held till, for tho' the Plaintiff in Covenant not fixew specially the Title by which he is disturbed, because by Premption he may not know it, yet is alleging the Breach he ought to pursue the Words of the Covenant. — Nor. 50. Chandl'w v. Waterhouse and Prebyre, S. C. adjudge against the Plaintiff. — Vaugh. 121. S. C. cited by Vaughan Ch. J. as resolved by the whole Court.

23. Debt upon Bond, conditioned to save harmless from all Obligations which he had entered into for him. Defendant pleaded Quod exoneravit & indepenem confessavit from all the Obligations. Exception was taken, because he did not swear from what Obligations; fed non allocutur; because there might be many, and so to avoid Prolinity; but because he did not plead Quo Modo be discharged him. It was held to be ill; Et adjournatur. Cro. E. 916. pl. 6. Hill. 45 Eliz. B. R. Braban v. Bacon.

24. Debt on a Bond (receiving a Sale of an Adowment to the Plaintiff) conditioned to acquit, discharge, and save the Plaintiff harmless from all Bargains, Incumbrances, Statutes, Charges &c. The Defendant pleaded, that he saved harmless the Plaintiff and the Adowment from &c. as in the Condition. Adjudged an ill Plea, because he did not show how he discharged him, for he ought to have it particularly. Cro. j. 165. pl. 1. Trin. 6 Jac. B. R. Allington v. Yearnkar.

25. Affirmat in Consideration the Plaintiff, at the Reqwest of the Defendant, was bound with him in a Recognizance for his Appearance at the next Assizes, he the said Defendant promised to save him harmless &c. The Defendant pleaded, that he brought a Certiorari directed to the Judges of the Order of Delivery, and to March 6th the Writ was delivered to them, who allowed it, but adjudged no good Plea; for he ought to have appeared, and to have had his Appearance recorded, otherwise his Promise is broke; besides, he did not allege that he had delivered the Writ at the next Assizes, and then the Purchasing is not material; besides, no Place is alleged where he delivered the Writ, and that is illisible, and where the Assizes were held for the County of Suffolk is not known, and therefore adjudge'd for the Plaintiff. Cro. j. 251. pl. 2. Trin. 9 Jac. B. R. Rolle v. Pye.

26. In Debt on a Counter-Bond the Defendant pleaded Non Dannificatus; The Plaintiff replied, that the Money was not paid, and that a Capias was taken out against him for the same, and to he was dannified, Adjudged to be a clear Breach, and Judgment for the Plaintiff. 2 Bulk. 115. Trin. 6 Jac. B. R. Reeve v. Harris.

27. In Debt on Bond conditioned to save the Plaintiff harmless for being his Bail, the Defendant pleaded Quod libere & absulute exoneravit a prestato Ballato. Adjudged that he ought to have been, and for want thereof the Plea was held not good, and Judgment for the Plaintiff. 2 Bulk. 270. Mich. 12 Jac. B. R. Codner v. Dalber.

28. In Covenant brought to discharge the Plaintiff of a single Bill, in which he was bound for the Debt of the Defendant; he alleges for Breach Non-payment, and a Suit, and Recovery at Law for the Money which remained in Force. The Defendant pleaded that he paid the Money at the Day, and thereof gave the Plaintiff Notice before the purchasing his Writ. The Plaintiff demurs; the Court held the Plea naught, and Judgment for the Plaintiff. Brownl. 24. Hill. 13 Jac. Rident v. Took.

29. The Defendant led to the Plaintiff an House for 2 Years, in Consideration whereof the Plaintiff promised to pay for the Lease 26 l. and
and the Defendant thereupon promis’d to discharge and save him harmless of all Charges and Incumbrances. The Breach was alleged that one M. E. distrained his Beasts in the said Chafe for 20l. for which the said Chafe at the Time of the Diff’rens was lawfully charged, and was liable to and impounded &c. till he was forced to pay the said Money. But because he did not shew that there was any Charge before due, nor by whom granted, and it might be charged by the Plaintiff himself after the Lease made, and to be in no express Charge upon this Promiss, it was held to be ill per toto. Car. and adjudg’d for the Defendant. Cro. J. 444. pl. 21. Mich. 15 Jac. B. R. Leigh v. Gotyer.

30. The Defendant, 1 Car. promis’d the Plaintiff that he should enjoy such Lands in Possession, and that he would save him harmless concerning any Arfon and Suit against him for them, and shewed he was off’d of the Possession by M. 1 July, 3 Car. and that a good Recovery was had against him in an Ejection Barme. 2 Car. and Damages and Cosfs to 7 l. by reason whereof he feared to be arrested, and that he gave Defendant Notice thereon, and requested him &c. The Court was of Opinion because the Defendant failed in Part of the Breach of the Affirmpt, viz. in not saving harmless, but suffered the Judgment to remain in force, by reason whereof the Plaintiff was in Danger of being arrested, that therefore the Plea was ill, and Judgment was for the Plaintiff. Cro. C. 349, 350. pl. 13. Hill. 9 Car. B. R. Peck v. Ambler.

31. Debt upon Bond, reciting whereas the Plaintiff and one H. were sued in another Bond to perform Covenants in an Indenture, and if the said H. should perform the said Covenants, and also if the Defendant should save the Plaintiff harmless of that Bond, then &c. The Defendant, upon Oyer of the Condition, pleaded, that H. had performed the Covenants, and saved the Plaintiff harmless of that Bond. Upon a general Demurrer this Plea was adjudg’d ill, because he did not set forth the Covenants in the Indenture, and some of them might be in the Negative, and also because he did not set forth how he had saved the Plaintiff harmless. All. 72. Hill. 23 Car. Ellis v. Box.

32. Covenant, for that the Defendant, the Leffer, covenant’d to save the Leffee harmless against all Suits, Evisons, and Expulsions. The Defendant pleaded that J. S. off’d him by an Habere Fisciis Possissionem; Upon Demurrer this Plea was ruled to be ill, because he had pleaded an Expulsion by an Execution without pleading any Judgment, whereas he should have set forth the Ejficiency and the Proceedings, and he ought to have shewn that J. S. had a legal Title before the Leafe in Ejficiency made; and perhaps the Recovery might be by a Leafe made by the Plaintiff himself. Lev. 83. Mich. 14 Car. 2. B. R. Nicholas v. Pullin.

33. In Debt on Bond, conditioned to save a Parisfo harmless from the Sd. 444. Charge of a Balthard Child, the Defendant pleaded Non damniisatio; adjug’d for the Plaintiff. The Defendant reply’d that the Parisfo laid out 35. for keeping the Child. The Defendant reply’d that he tender’d the Money, and the Plaintiff paid it de Injuria sua proria. Twilid. J. said that the Rejoinder is a De- 83. S. C. jur’d by the Court, and that they should have pleaded thus, viz. that Non sit damniisatio till such a Time, and then you offer’d to take Care of the Child, and tender’d &c. Judgment for the Plaintiff Sill &c. Med. 43. pl. 97. 612. pl. 57.

34. W. promis’d B. the Plaintiff to save him harmless concerning Goods bought by him of W. Breach alleged was, that J. S. brought an Affion of Sweer for the said Goods, and declared that he was posses’d of those Goods before W. sold them to B. at de Bous was prors &c. and recovered them. After Verdict Exception was taken, because it was not alleged that B. gave
gave W. the Defendant Notice of this Suit; fed non allocatur; for Notice is not alleged in any of the Precedents. And per Windham, where a

Thing lies particularly and solely in the Notice of the Party that is to take Advantage, there he shall allege Notice, but here he may have Notice from the Party, or may have Notice from him that recovered the Goods. Freem. Rep. 130. pl. 152. Mich. 1673. C. B. Bloxam v. Warner.

35. A second Objection was, that it was not alleged that the Recovery was by an Eigne Title, the Court said that did appear in the Record, and so it was well enough; for it is alleged, that f. 3. who recovered them lays a Property in him if the 12th of April before the Sale, and so it must necessarily be Eigne to the Plaintiff's Title, and so Judgment was given for the Plaintiff. Freem. Rep. 131. pl. 152. Mich. 1673. C. B. Bloxam v. Warner.

36. In Debt upon a Bond conditioned to save the Obligee harmless from another Bond, the Defendant pleaded Non Damnificatus. The Plaintiff replies, that the Money was not paid at the Day, and be decent observ- Sim, and could not attend his Benefice for Fear of an Arrest. The Defendant rejoins, that he tendered the Money at the Day, altho‘ he be that the Plaintiff decent observis, to which it was demurred, and Judgment was given for the Plaintiff; for the Money not being paid at the Day, the Counter-Bond is forfeited, and the Traverse in this Case is naught. Vent. 261. Trin. 26 Car. 2. B. R. Ann.

37. In Covenant &c. to save the Plaintiff harmless as to the Occupa- tion of certain Closets &c. the Breach alleged was, that the Defendant non indemnum conservavit ipsum de & concernente Occupationem quorundam Clauforum, for that T. S. commenced a Suit against him &c. concernente Occupationem Clauforum pravdicti’, but did not yet hath that T. S. bad any Title, fed per Curiam, this being after Verdict, and the Plaintiff setting forth in his Declaration, that T. S. recovered, the Court were all of Opinion that Judgment should be given for the Plaintiff. 2 Mod. 213. Pach, 29. Car. 2. B. R. Major v. Grigg.

Lev. 194. Gregory v. Mayor S. C, the Court held, that this Agree- ment was only as to the Possession, and not as to the Title, and gave Judgment for the Plaintiff.— 5 Keb. 744. pl. 12. Gregory v. Mayo, S. C, adjudged for the Plain- tiff N.f. — ibid. 735. pl. 34. S. C. & S. F, held accordingly by Wild and Jones.

38. Bond was conditioned to save harmless T. S. and the mortgaged Pre- mises, and to pay the Interest for the principal Sum; the Defendant pleads, that T. S. non fact damnificatus, for that he (the Defendant) had paid the Principal and Interest due at such a Day. Upon a Demurrer this Plea was adjudged ill, because non damnificatus goes to the Person of T. S. and not to the Premises. 2 Mod. 305. Pach, 30 Car. 2. B. R. Shaxton v. Shaxton.

39. Debt upon Bond conditioned to save the Plaintiff harmless from a Bond in which he was bound for the Defendant, being a Collider of the Reets of the New-River-Water Company, that he should pay the Money collected within 20 Days after he should be required; The Defendant pleaded Non damnificatus; the Plaintiff replied, that the Defendant had received 1300l. and that he had not paid it according to the Condition, whereupon he was threatened to be arrested, and so was compelled to agree with the Company and pay them 250l. And upon Demurrer to this Replication it was objected, that the Breach was not well signified, because it did not appear that the Defendant had received the 1300l. twenty Days before the Action brought. The whole Court held the Exception good, and Judgment for the Defendant; but afterwards the Plaintiff had leave to amend his Replication. Latw. 470. Hill. 3 & 4 Jac. 2. Ball v. Richards.

40. Debt upon Bond, conditioned to accquit, discharge, and save harmless the Parish from any Baffard Child, the Defendant pleaded Non Damnificatus generally; and upon a Demurrer it was objected, that the De-
Condition.

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Defendant ought to **prove** how he acquitted and discharged the Parliam, and not answer the Damnumcatus only; but it was answered, that the Plea been that he had kept harmless and discharged the Parliam it had not been good, without showing How &c. because it is in the Affirmative, but here it was in the Negative, viz. that the Parliam was not damnumcated, and they should have shown a Breach; for though in Strictures this Plea does not answer the Condition of the Bond, yet it does not appear upon the whole Record that the Plaintiff was damnumcated, and consequently he has no Cause of Action; and the Court gave Judgment for the Defendant. 3 Mod. 252. Mich. 4 Jac. 2. B. R. Mather v. Mills.

41. In Debt upon a Bond, conditioned to free and keep the Plaintiff harmless or, and from all Costs and Damages which may arise by Reason of such a Law-Suit &c. The Defendant pleaded **Non damnumcatus** generally, and upon Demurrer the Court held the Plea good, because the Condition was to free him harmless from some thing which was uncertain at the Time of the making thereof, viz. from the Costs and Charges of the Suit, that no Costs might be recovered against him; but if it had been to free him harmless from a particular and certain Thing, there such a negative Plea generally would not have done without showing how he had indemnified the other. 5 Mod. 243. Mich. 8 W. 3. Harris v. Pett. if he has done it; but if it be to free him harmless generally a Non Damnumcatus generally will do; and if it be to free harmless in several Particulars against all Persons it is general; Per Holt Ch. J. 12 Mod. 406. Trin. 12 W. 3. Anon.

42. Bond to free Harmless against several particular Things, and after *The Caffe in general; here to a general Declaration Non Damnumcatus is a good Plea, and then the Plaintiff should **prove** a Breach, though perhaps it is better to answer to the particular Things, and then to say *quoad the Reft Non Damnumcatus*; Per Holt Ch. J. 11 Mod 79. pl 11. Patch. 5. pl. 24. Per Annae B. R. Anon. cites *Cro. E. 253.* that the Plaintiff should have **affigned** a particular Breach before he had demurred. The Plaintiff should have made a particular Breach of Condition at Law; but if the Defendant, that if the Discharge is to a particular Thing, he must shew How &c. but otherwise when it is to a Multiplicity of Things; then a general Pleading is good, and cites 5 E 4 8.

(Z. a. 5) To save harmless. Equity.

1. *The hoof* the Surety is not troubled or molested for the Debtor, yet so *is a Breach of Condition at Law;* the Court of Chancery will decree the Principal to discharge the Debtor. Vern. R. 190. Mich. 1683. in the Caffe of E. Ranelagh v. Hays.

2. The Plaintiff **affigned** several Shares of the Excise in Ireland to the Defendant, who thereupon conenuntated to free him harmless, and to stand in his Place touching the Payments to the King &c. the Plaintiff being *judged by the King,* brought his Bill to have the Agreement performed in Specie; it was infilled, that the Plaintiff might recover Damages at Law, and that this was no specifick Covenant, but only a general and personal Covenant for Indemnity, and it founds only in Damages which cannot be ascertained in Chancery; But Lord North decreed that the Defendant should
Condition.

charged in
the Bill
here, or
proved that
the Rent
was behind,
but only
that he was sued &c. and objected, that for every petty Breach this would subject the Defendant to Commitment.

3. A Diversity was taken, viz. where the Counter-Bond or Covenant is given to save harmless from a penal Bond before the Condition broken, there if the penal Sum be not paid at the Day, and to the Condition not preferred, the Party by this is liable to the Penalty and so damned, and the Counter-Bond forfeited; But if the Counter-Bond be given after the Condition broken, or to save harmless from a single Bond or Bill without a Penalty, there the Counter-Bond cannot be freed without a special Damnification; Per Holt Ch. J. 1 Salk 197. pl. 2. Mich. 5. W. & M. in B. R. Griffith v. Harrison.

(A. b) Conditions. [What a Breach.] In respect of the Words.

1. If the Condition be, that if he recovers 20 Acres of Land, the Oblige shall have a Molecy; if he recovers but 10 Acres, he is not bound to pay any Part. 21 Ed. 4. 52. b.

This seems to have been a Case in Cam. Suec. or at one of the Sergeant's Inns, and was held by Brooke Ch. Baron, Saunders, Whiddon, and Dyer, that it was not a Breach; but Morgan and Boulds e contra; and was the Case of the Earl of Huntington v. Lord Clinton.

* D. 139. a. pl. 32. Hill 5 & 4 P. & M.

3. If the Condition be, that the Feoffee shall give other Lands in Recompense thereof, and the Feoffee intests him of other Lands of a defeasible Title, which are after evicted; yet the Condition is performed; for once a Recompense, and perpetually. D. 34. 4. Br. 139.

4. If the Condition be, that if the Conoulee of a Statute holds such Lands in Peace without Damage or Loss for want of Warranty, then &c. if the Conoulee be implicated, and vouches the Conoulor, who renders it, by which the Land is left, and the Conoulor hath nothing to render in Value, the Condition is broke; for to render in Value is of common Right upon a Warranty, and the Judgment to recover in Value is not sufficient, for he is indemnified without the Value. 46 Ed. 3. 28. b. such Case. 5. If the Condition be to acquit another, though he acknowledges the Acquittance, yet if he do not acquit him in Deed, the Condition is broke. 46 Ed. 3. 28. b.

6. If the Condition be to stand to an Award De Particione faciendo, and they award a Partition, and that he shall levy a Fine to make it certain; he ought to levy a Fine, because this depends upon the Partition, and inores it. 11 D. 4. 25. b.
7. If the Condition be not to alien the Land, and he gives the Land to his Heir apparent, without taking of any Thing for it, the Condition is broke. * 46 Ed. 3. 33. This seems to be misprinted; for I do not find any such Point there.

8. If the Condition be not to do any Thing which shall turn him into Villeny, if he acknowledges a Statute, whether the Condition is broke ; * Dubitatio * 46 Ed. 3. 32. b. (Sicare, the Intire of the Word Villeny.)

9. If the Condition be not to make any Debate or Disturbance about the Administration of the Goods of B. against the Obligee; if he admitts the Goods, and cautions himself to be unmouved for them, the Condition is broke. 47 Ed. 3. 23. b.

10. If the Condition be to suffer an Affiance to pass, which the Obligee hath against another; though he gives 20s. to a Juror to pass against him, yet if the Affiance pass for him, the Condition is not broke. 10 H. 6. 19.

11. But otherwise it had been if the Condition had been to suffer the Affiance to pass without Impediment or bad Endeavours. 10 H. 6. 19.

12. If the Condition be, that the Lessee may come to the House sealed at a certain Time, and that the Lessee do not omit him during the Term; if the Lessee shuts and locks the Doors, yet this is no Affiance, for he might have entered notwithstanding. 3 H. 4. 8. b. adjudged.

be in the House 4 Days in the Year, and that the slandering the Doors and Windows is no Breach; and Breake is, that the Law seems to be the time of such a Condition. Br. Deut. pl. 56. cites & C.—Pitsh. Deut. pl. 109. cites S. C. adjudged by all the Justices.

13. If a Man leases for Years, and covenants, that the Lessee shall enjoy the Land peaceably, without the Trouble or Molestation of any, and there was a Rent-lick at the same Time issuing out of the Land, which was due to the Queen, and after the Queen by her Prerogative distrain'd in the Land; yet this is not any Breach of the Condition, for the Land is not charg'd or incumbered with the Rent-Shek, Lessee, as to the Possession, and then when the Queen distrains for it by her Prerogative, this is of Common Right, and none is bound to discharge Things of Common Right. Dibb. 43, 44 Eliz. 23. B. between Heels and House, per Curtani.

14. So a Fortorti if the Rente had been issuing out of other Land. Third per Dopham.

15. Leases to Baron and Feme for Years, with a Proviso that if the Fos-sissen comes into the Hands of any other than the Baron and Feme, and of their Issue, that then upon the Tender of 100 l. by the Leslors, he may re- Baron dies; Feme takes another Baron; Leslor tenders the 100 l. Whether the Marriage is a Breach, dubitabant. Mo. 21. pl. 71. Hill. 2 Eliz. Anon.

16. A. by Indenture leased an House to B. for 40 Years, and B. by the same Indenure, covenants that he will sufficiently repair it during the Term, and that A. his Heirs and Assigns may enter every Year to see if the Repairs are done; and if it is repaired, upon View of the Leslor, according to the Agreement, then the Leslee shall hold for 40 Years more after the first Term ended &c. It was agreed by all but Raifa, that though the Leslor does not view &c. yet if it is kept in Repair the Leslre shall hold the other 40 Years, the Reparations being in Facto performed, because the View is a Thing voluntary in the Leslor, and for his Benefit, and the not doing thereof shall not prejudice the Leslee; and Judgment for the Plain
plaintiff by the other 3 justices. mo. 27. pl. 88. trin. 3 eliz. skern's cafe.
17. if a man be bound to make a feuement of his land there, although he charge the land, yet he shall not forfeit his bond; but if it were to make a feuement of his land discharged &c. it is otherwise; but yet he shall not be bound to discharge it of such things with which it is charged by the law. arg. 5. le. 44. pl. 64. mich. 15 eliz. c. b. in cafe of mountford v. carbury.
18. the bishop of rochester made a lease of a manor for years, wherein were divers copyholders, proved that the lease shall not灭绝, nor, or put out any copyholder paying his duties and services sub pana foris-fatare; the breach was aligned that the defendant entered upon a copyholder, in a cow-house, parcel of the premises, and beat him, etc. molestation; it was the opinion of the court, that the condition was not broken, for that the moleitation ought to be intended such as should be an expulsion, or molestation concerning his copyhold-tenement; and adjudged accordingly. cro. e. 421. pl. 16. mich. 37 & 38 eliz. b. r. penn v. glover.

19. a leafed lands for years, rending 55s. rent at the 4 feasts, viz. mich. &c. proof of the rent being behind by the space of a year after the day of payment, it being lawfully demanded, and no distress to be found there per totam temporum praedictioni, to re-enter; it was found that the rent was behind for a year, and that there was a demand, but there was not any distress the last day of the year upon the premises, and that the lessee entered. adjudged that the condition was not broken if there was a distress at any time of the year, and a condition shall be taken favourably for the lessee. cro. e. 764. pl. 2. trin. 42 eliz. b. r. grig v. moyles.
20. the condition of a bond to have the obligee harmless concerning his buying of certain goods at such a price, extends not to the price but the title, as was clearly agreed upon evidence between them. all. 95. mich. 24 car. b. r. smallman v. hutchinson.

21. lease for 9 years, was dated 1 june, 16 car. 2. in which there was a covenant to save the plaintiff harmless from all evils arising during the term, and in covenant the breach alleged was an evil at 26th of june following; the defendant pleaded that this lease was primo delictu at the 16 of june 17 car. 2. which was after the breach alleged, and that the plaintiff was not ejected after the delivery of the deed. upon demurrer the court held that those words (during the term) shall be construed during the term in computation of time, and not only from the time of the delivery of the deed when it commenced in interest, and judgment for the plaintiff. sid. 374. pl. 14. trin. 20 car. 2. b. r. lewis v. hilliard.

(b. b) how to be performed when it is pro consilio impendendo [ &c.]

* br. annuity. 1. if an annuity be granted to a man of the law, pro consilio impendendo, the grantee is not bound to travel, nor do any thing, but counsel where he may be found. 41 ed. 6. 6. 24. 21 ed. 3. 7. b. adjudged.
† br. annuity. 19. cites s. c. & s. p. — br. extinguishment. pl. 64. cites s. c. 45. cites s. c. & s. p. adjudged. br. annuity, pl. 19. cites s. c. & s. p. — br. conditions, pl. 45. cites s. c. & s. p. adjudged.
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2. Also the Grantor ought to disclose his Case to the Grantee, when he is excused of his Counsel. 41 Ed. 3. 6 b.
3. If the Grantor cannot consult him, yet if he does as much as he can, he is excused. 41 Ed. 3. 6 b.
4. So if an Annuity be granted pro Consilio & Aurilio to a Physician, the Grantee is not bound to travel for him; but to give him advice and help where he may be found; also he ought to certify him what Malady it is. 41 Ed. 3. 6 b. 29. (R. Quere this; for a Malady is febric, which cannot be known but by the Physician, and a sick Man cannot travel to the Physician, but perhaps if he lends his Urine to the Patient, he may know his Disease; but he may be helped much by Inscription and telling his Fault; (see Nuttall.)

Cites 41 Ed. 3. 19, and seems to admit that the Physician ought to go to the Patient.

5. So if an Annuity be granted to a Man of the Law, pro Consilio & Service his impenitenda, he is not bound to go with him, nor to counsel him in other Place than where he is found. 8 H. 6. 24.

His Case to him, and he may give his Counsel, where he is, without going to him; though otherwise it is in Case of a Physician, for the Patient cannot go to him. Br. Annuity, pl. 7. cites 41 Ed. 3. 6 b. 19.

Br. Annuity, pl. 19. cites S. C. —— See (s. c) pl. 20.

6. So he is not bound to go with him, though the other will bear his Charges. 8 H. 6. 24.

7. If an Annuity be granted pro Consilio impensato & impendendo to a Counsellor, he is not bound by this to put his Hand to a Bill in the Star-Chamber. Batch, 16 Jac. br. between Munge and Hammond adjudged per Curiam.

And held no Plea; for setting his Hand to every Bill may be inconvenient to him.

8. But when an Annuity is granted pro Consilio impendendo, and the * Grantee in the same Deed binds himself by such Words, pro qua quidem Concessione, that he will go with him to any Place within the County; there he ought to go with him, because he hath specially bound himself to do so. * 8 H. 6. 24. 32 Ed. 5. Annuity, 30. cites S. C. & 9 E. 4. S. P. that this is a Condition, and for Non-seeance the Annuity is extinct, per Strange —— Br. Annuity, pl. 18. cites S. C. & S. P. by Strange. But Brooke lays, Quare inde, for it is a Grant, and not a Condition.

9. If the Grantee of such Annuity refuses to give his Counsel * Dav. 1. upon Demand, the Annuity is determined, * Da. 12. 1. b. 6 H. 6. 24. 16 Ed. 3. Annuity 22. 5 Ed. 2. Annuity 44.

Litt. 244. a S. P. —— Because he has no Remedy for the Counsel, nor any Estate therein, Arg. Roll Rep. 122. Hill. 12 Jac. 8. R. Br. Annuity, pl. 18. cites S. C & S. P. —— Br. Extinguishment, pl. 52. cites S. P. —— In the Quarto Edition, and the smaller Folio Edition, it is pl. 56. and in those two Editions are two Pieces marked (56) and those last mentioned Editions cite 41 Ed. 3. 6.

— Co Litt. 244 a S. P. —— So if Annuity be granted, Quod preterit Consilium, this makes the Grant conditional. Ibid.

10. If the Grantee of an Annuity pro Consilio impendens & impendendo retires after to give Counsel; This does not determine the Annuity, because this was granted as well for the Services paid as those to come. Temp. Ed. 1. adjudged.

B b b 11. If
11. If a Dean and Chapter grants to another the Office of Chief Cook, with 5 l. for the Exercise thereof, provided that he exercises the Office in the great Kitchen of the Church; and after the Dean requires him to exercise it in his own Kitchen, and he refuses, yet the Annuity is not determined. Hill, 37 Eliz. 2. between Salisbury, Dean of Norwich, and Chapman, adjudged.

1. In Replevin E. avowed for a Rent-Charge granted to him by a Stranger, who was seised of a Manor whereof the Land where is Parson, &c. pro consulio impenendo. It was pleaded in Bar, that E. the Defendant was attainted of Treason, and committed to the Tower, and that the Grantee had Occasion for to have his Counsel, and could not have Access to him &c. and upon Dehunn all the Court held that the Avowant shall have Return; for by the Attainder the Rent was not forfeited, because it was incident to the Cause for which it was given, nor can be granted over, and tho’ E. is in Prison, yet he may give Counsel as well as before, and no Default is attihnded in him. D. 1. b. 2. a. Mich. 6 H. 8. Oliver v. Empson.

II. If Annuity be granted to a Counselor or Physician for their Lives, pro Consilio suo impenendo to the Grantee, and the Grantee dies, this does not determine the Annuity, but the Grantee shall hold it for his Life, and yet it was granted and was executory for the Counsel, but by the Act of God the Grantee is discharged of giving Counsel; for no Counsel can be given to the Grantee when he is dead; per omnes Baron. Pl. C. 439. b. Trin. 15 Eliz. Trin. 15 Eliz. in Sir Tho. Wroth’s Cafe.

III. An Annuity was granted to an Attorney pro Consilio impenso &c. impenendo, and afterwards there being a Difference between the Grantee and a Stranger, the Attorney gave Counsel to the Adversary, but not to the Grantee, be not requiring any of him in that Matter. The Court held that his Annuity was not determined hereby. Dyer 369. b. pl. 53. Patch. 22 Eliz. Plomer’s Cafe.

IV. Annuity granted ProExercitio Officii seneschalli; Refus’d to hold a Court is a Forfeiture. D. 377. a. pl. 28. Trin. 23 Eliz. Anon.

But if a Tenant in Common grants Annuity to hold Courts, and he summons it without his Companion, and the Grantee refuses, this is no Forfeiture, because it is a void Summons. D. 377. a. pl. 28. Marg. cites 27 Eliz. Burnetson’s Cafe.

V. If A. pro Consilio impenso &c. makes a Feoffment or Lease for Life, albeit he denies Counsel, yet A. shall not re-enter; for in this Case there ought to be legal Words of Condition or Qualification; for the Cause or Consideration shall not avoid the Estate of the Feoffee, and the Reason of this Divinity is for that the Estate of the Land is executed, and the Annuity is executory. Co. Litt. 204. a.

[B. b. 2] Till he be promoted to a Benefice.

12. If an Annuity be granted till the Grantee be promoted and preferred to a Benefice of 30 l. a Year by the Grantor, and after the Grantor presents him, but the Grantee is found insufficient, the Annuity shall cease. Patch. 1 Ja. 2. 2. dubitatur.

13. [So] If an Annuity be granted till the Grantee be promoted to a Benefice by the Grantor, if he presents a Benefice to him which is litigious, yet the Annuity is determined, for perhaps he has a good Title thereto, though it be litigious. 17 Eliz. 3. 11. dubitatur.

14. But if the Church be full of another at the Time of the Presentation, the Annuity is not determined, though he accepts the

Pre-
Presentation, for the Presentation and Acceptance is void. 26 E. 3. 69. D.

15. If an Annuity of 20. l. per Annum be granted till he be promoted to a Benefice, the Benefice ought to be of the Value of 100 Marks a Year. 16 E. 2. Annuity, 47. But thereupon.

16. If an Annuity be granted to another till be be promoted to a competent Benefice; if the Grantor after enders to him the Presentation to a Vicaridge, which is worth 100 Marks per Annum, which he refuses, the Annuity is determined. 3 Hen. 6. Annuity, 2. adjudged. 31 E. 3. Annuity 23.

17. The Benefice ought to be of as much yearly Value as the Annuity is, otherwise it is not determined. 3 E. 3. Annuity 40. Temp. Ed. 1. Annuity 50.

18. The Value of the Benefice shall be reckoned according to the Demerit of the Party to be promoted. 31 Ed. 3. Annuity 28.

19. If the Grantor presents the Grantee to an Ecclesiastic (that is, the Custody of the Holy-water,) this does not determine the Annuity, for he is removable at the Will of the Paritioners. 3 E. 3. Annuity 40. adjudged.

20. If an Annuity be granted till promoted 22. by the Grantor or his Heirs, it is a good Performance of the Condition that he was promoted by the Mother of the Grantor at the Request of the Grantor, in Discharge of the Annuity. 33 E. 1. Annuity 51. adjudged.

21. If an Annuity be granted to an Intant till he be promoted to a Benefice, if the Grantor, tenders him a Benefice, though he cannot take it for the Nonability of his Person, yet the Annuity is determined. 3 Ed. 3. Annuity 49.

Auction brought the Defendant pleaded, that the Plaintiff had taken Wife, and so cannot receive a Benefice; and adjudge'd a good Plea. Br. Annuity, pl. 16. cites 7 H. 4. 16.

In Annuity upon a Grant, till the Grantee was promoted to a competent Benefice, and he refused; The Plaintiff said, that it was a Benefice with Cure, and that none may take by the Law of Holy Churches before the Age of 24, and he was only 22 at the Time of the Presentation; and the other said that he was 24, and so to live. Brooke says it seems to be ill Pleading, for he shall not answer the Refusal; for if he refuses where the Ordinary was ready to have suffered him to have this Presbyteriate, he has extinguished the Annuity, as it seems. Br. Conditions, pl. 54. cites 19 H. 6. 54.

22. If the Grantee resigns a Prebend to the Grantee, and the Bishop at the Request of the Grantor renders the Prebend to the Grantee; if he refuses it the Annuity is determined. 16 E. 2. Annuity 47.

23. If the Annuity be granted quodcumque de Beneficio fìbi providit quasi duxerit acceptand? the Grantee is not bound to accept any Benefice of any Action, but at his Pleasure, because of the said Wards; and by this Refusal the Annuity shall not be determined. Temp. Ed. 1. Annuity 50. adjudged.

24. If an Annuity of 40. l. 401. a Year be granted till promoted to a Benefice, a Vicaridge of the Value of 5 l. per Annum is not sufficient within this Condition. 19 E. 2. Annuity 49.

25. But it ought to be of the Value of 10 Marks per Annum at the least, and this is sufficient. 19 E. 2. Annuity 49. But thereupon.

26. Annuity of 10 Marks was granted till the Grantee was advanced to a competent Benefice, and they were at issue upon the Value of the Benefice tender'd and refused, viz. that it is not worth 10 l. &c. and the others contro where the Annuity was of 10 Marks. And it was said that if he had accepted the Benefice, that it had extinguish'd the Annuity, of whatsoever Value the Benefice had been; Brooke says the Reason seems to be in as much as the Acceptance proves that the Grantee took it for Competent. Br. Annuity, pl. 30. cites 10 Alf. 4.
Condition.

27. If an Annuity be granted by J. Abbot of D. till the Grantee be permitted to a competent Benefice by the same Abbot, Teneur of the Benefice by his Successor is not good. Contra if it had been by the Abbot of D. and J. had been left out. Br Conditions, pl. 214. cites 15 H. 7. 1.

(B. b. 3) Pro Consilio impenso & impendendo.

Pleadings.

S. P. per Prior. Br. Count, pl. 47. cites 37 H. 6. 5.

Br. Count, pl. 57. cites S. C. —

Br. Dette, pl. 111. cites S. C. —

Br. Abbe, pl. 11. cites S. C. —

1. In Debt, the Plaintiff counted how he was retained of Counsell with the Defendant for 20 Years for 20l. per Annu., and that to much was Arrear &c. and per Cur. the Count is not good, for he ought to count that be counselled him, or was ready to counsel in Case the other had demanded it. Br. Count, pl. 5. cites 3 H. 6. 33.

2. In Annuity against a Prior upon a Grant of his Predecessor of 49s. per Annu. pro Consilio impenso & impendendo, he counted how he had counselled the Predecessor and his Covert after the Grant, such a Day, Year, and Place, as he ought, as it seems; for otherwise he cannot charge the Successor upon a Grant of the Predecessor without Covent-Seal, unless it were for something which should come to the Use of the House, nor count of Counsel before the Grant, by reason of this Word Impenso, and yet well; per Danby and Davers, but he need not count in what Matter he counselled him. But says Quære it shall have such Matter upon Grant made by another Man. Br. Annuity, 27. cites 38 H. 6. 22.

3. Debt upon Arrears of Annuity by J. B. against the Abbot of C. upon Demand of 40l. and counted that K. late Abbot, &c. by Deed &c. granted to him 40s. of Annuity out of the Monastery afofaid pro Consilio to the same Abbot and Convent impenso & impendendo, and that at the Time of making the Deed he was and yet is learned in the Law, and that he had given him Counsel to the said late Abbot and Covent at S. in his practising the Business of the House ad Proficuum of the said House; and that K. Abbot died, and J. now Defendant was elected and made Abbot &c. and for so much Arrear in the Life of the said Abbot he brought this Action; and held good per Cur. though he said that he counselled the Predecessor in managing the Business of the House ad Proficuum dictæ Domus, and did not say in what Business; for if the Defendant denies it the other shall shew it in his Replication, and shall shew there in What &c. Br. Annuity, pl. 28. cites 39 H. 6. 22.

4. And in such Action against Successor upon Deed of the Predecessor without Covent-Seal, he ought to count that he counselled the Predecessor to the Use of the House; for otherwise the Successor is not chargeable. Ibid.

5. Contra where the Action is against the same Abbot who granted; for Deed or Contract of the Abbot alone of a Thing which comes to the Use of the House shall bind the Successor, and it he who granted does not demand Counsel, yet the Action lies against him because he did not refuse; But contra against his Successor, for if no Counsel was given to the Use of the House, the Successor shall not be charged; Quod nota per Cur. Ibid.

6. Debt against Executors of Arrears of Annuity, and counted that the Testator, by the Deed which he showed forth, had granted to him 40s. per Annu. of Annuity, pro Consilio suo impenso & impendendo &c. payable &c. and if the Rent was arrear, that he may be disann in the Matter of B. and shewed that he was of Counsel &c. and counselled him fuch
such a Day and Place, and that 10l. was arrear. And it was agreed that the Plaintiff need not shew in what Thing he counted'd him, but this shall come of the [Part of] the Defendant it he finds Default in it; Per Choke, he need not shew that he counted'd him, but it suffices he was always ready to have counted'd him if he had required it; for he is not bound to offer Counted without Request, for he cannot know whether he needs Counsel, nor in what till it be shewn to him. Br. Annuity, pl. 23, cites 9 E. 4. 53.

7. And it was granted that the Plaintiff need not shew in what County the Manor is, for if he has levied by Disinfees, this shall come of the other Part to shew, by which the Defendant [said] that the Plaintiff had levied it upon Disinfees in the Manor charged, and no Plea, for he shall answer to the Debt, because the Manor is in the same County, by which he said that levied by Disinfees in the Manor, and so Nil debtor &c. And he shall have this Plea which is Matter in Fact without an Acquittance, though it be found upon Specialty, as in Debtor upon Obligation, and where 'tis exoneratory, as Annuity or Rent upon a Lease for Years, by which he had the Plea, but shall not lay Nothing owing to him against Specialty. Br. Annuity, pl. 23. cites 9 E. 4. 53, and cites the like Judgment, Mich. 6 E. 3.

8. An Annuity was granted for Life pro Consilio impenso &c. and Annuity was granted in a Writ of Annuity brought for the Aresarcs, the Defendant pleaded that before any Arrears incurred, he required the Plaintiff to do him Service, and be resided &c. The Plaintiff replied, that before any Refusal, the Defendant on such a Day and Place discharged him from his Service &c. of Ely, who The Court held that the Defendant's Plea was not good, because he ought to have shew'd for what Manner of Service the Plaintiff was retain'd to do, and the Annuity granted, and then shew'd specially what Service to the whole the Plaintiff required of him, and what be resided. Le. 209. pl. 292. Courts &c. for Life, C. B. Bagshaw v. Earl of Shrewsbury, with a Fee of 40s. per c. Manco de Mancio de D. and the Plaintiff shew'd that he kept the Courts, but did not let forth any Ingrossing of the Rolls, and that after the Bishop discharged and forbad him to keep any more Courts, the' he was ready to do it, and that for divers Years after the Bishop paid not the Annuity. If the Bishop did it seems he ought to tender his Service to every Successor, and it is impossi-ble that such Successor non exoneravit. D. 166. b. 147. a. pl. 26. Mich. 5 Mariz. Lucas v. the Bishop of Ely. Cases Trin. 20 H. 8. Lucas v. the Prior of Huntington.

9. In Action brought by a Counsel for an Annuity granted him pro Consilio impenso, he must aver that he was always ready to give him his Counsel. Jo. 204. 8 Car. in Itinere Windfor, cited by Mr Attorney as resolved in Mingay's Cafe.

(C. b) At what Time it is to be performed, where no Time is limited. Presently; within convenient Time.

1. WHEN the Act by the Condition of an Obligation to be done to the Debtor, is of its own Nature transitory, (as Payment of Money, Delivery of Charters, and the like) and no Time limited, it ought to be performed in convenient Time. Co. 6. Bo- 31. Co. Lit. 208. [A. b.]

The Cafe was, viz. Debtor upon Bond condition-ed to de-liver up a Bond to the Plaintiff, whereby he and the Defendant were bound to P. for Payment of 1l. and allow that the Defendant should acknowledge Satisfaction of a Judgment had on that Bond, and also should deliver true Notes of all Bills of Charges which concern the same &c. The Defendant pleaded, that there were no Bills of Charges for
2. If the Condition of an Obligation be to pay a Definitive Sum, and no Day of Payment limited, he ought to pay it presently, or he shall become liable to suit; within a convenient Time. * 20 C. 4. 1. b. 18. † 44 E. 3. 9. § 21 C. 4. 59. b. || 14 H. 8. 23. Contra § 10 D. 7. 15. Contra § 9 E. 4. 22 b.

If a Man be bound to another in a Bond, and no Day of Payment is limited, the Sum is due and payable immediately. Br. Obligation, pl. 12, cites 44 E. 3. 9 —5 S. per Perly, quod mutat nullius. Br. Obligation, pl. 28. cites 58 E. 5. 12. — S. P. But he is not bound to pay it without Request. Br. Obligation, pl. 54. — S. P. But if it be a Bond (not a Note), the Bond is as good a Bond as a Note, and the Obligor may in like manner sue the Obligee and recover it and pay it immediately, and in pleading he shall pay, that he has been all Times ready to pay, and yet it.

¶ If a Condition be to pay 10 l. Limited by the Day, the Obligor has Liberty during his Life to perform it; but if it be a single Obligation, and no Day of Payment expressed, it is payable immediately, and so is the Divisery; Per Finesse Quod nota: 10 H. 7. 14 a. pl. 11. — But Mol. 272 it was agreed per Cur. obiter, that if one be bound to pay Money on Condition or single Obligation, he ought to pay it in convenient Time without Request; but if upon an Obligation with Condition, he has Time during his Life. — Debt upon Obligation of 100 l. conditioned for the Payment of 10 l. and no Day limited for the Payment of the lesser Sum; Resolved it was payable presently, peria Request. Cro E. 798. pl. 48. Mich. 42 & 43 Eliz. B. B. Note v. Bacon.

¶ If a Condition be to pay 10 l. and not Limited by the Day, he may do it in the Absence of the Obligee, he must do it in convenient Time. 6 Rep. 30. b. 31. a. Mich. 5 Jac. C. B. in S. C.

3. If the Condition be to make a Retractix of a Cauter, he ought to make it within convenient Time. 20 C. 4. 8 b.

4. If the Condition be to perform the Award of J. S. who awards the Obligee to pay 10 l. without limiting any Time, he ought to pay it in convenient Time. 22 C. 4. 25

5. If the Condition be to acknowledge Satisfaction in such Court, he ought to do it within convenient Time. Co. Lit. 208 b. Co. 6. Bohle 30 b. adjourned.

6. So if the Condition be to deliver to the Plaintiff an Obligation of 20 l. in which the Plaintiff and B. stood bound to the Defendant, though no Time be limited for doing thereof, yet he ought to do it in convenient Time. Co. 6. Bohle 30 b. adjourned.

7. If A. dements to B. and C. certain Titles for 99 Years, if A. so long lives, and after B. assigns over by Indenture his Society to D. and B. also delivers to D. an Obligation, in which D. then stood bound to B. in 400 l. for the Payment of 200 l. to B. at a Time then past. And thereupon, in Consideration that B. at the Instance and Request of D. would deliver to D. the Counter-part of the said Indenture of Assignament, sealed with the Seal of D. D. affirmed, that if he should sell
Condition.

The text appears to be a legal document discussing conditions and obligations. It mentions terms like "Debt," "Interest," "Counterpart," and "Promissory Note." The document contains references to specific sections and cases, indicating it is a legal or historical text. Without further context, it's challenging to provide a precise transcription.
Condition.

... is not broke; for there is no Default in him. 26 Titt. 39.

13. If A. in Consideration of 50 l. given to him by B. affirms to procure the Wardship of the Body and Lands of C. to be granted by the King (to whom it belongs) to B. during the Minority of C. who was then at the Age of 13 Years, he ought to procure it in a convenient Time without any Request; because otherwise the Benefit of the Profits of the Land will be lost in the mean Time. 12 Car. B. R. between Vett and Hatherington, adjudged upon Denunciation; Per Curtat. Intratut 1c. 7. Car. Rot. 27.

14. If one covenants to assure Land to another and his Heirs, he ought to do it in convenient Time; By Anderson Ch. J. Arg. 2 And 73, 14, cites 16 Eliz.

15. If A. covenants to assure Land to J. S. during A.'s Life, A. shall not have Time during his Life for the altering of it; for then the Covenant would be to no Purpose; Per Anderson Ch. J. Arg. 2. And 74, cites 16 Eliz.

16. So if A. covenants to grant an Annuity to J. S. during his Life, or to affign his Leafe for Term of Years or Life &c. or to marry such a Woman, all these ought to be done in convenient Time; for in these Cases the Covenants are of no Effect if Liberty during Life shall be left to him, who by the Intent of the Deeds ought to perform the Things before; per Anderson Ch. J. Arg. who said the Reasons are apparent, and therefore not particularly mentioned here. 2 And 74, cites 16 Eliz.

17. A Bond was conditioned to permit the Obligee, or his Assigns, not only to thresh his Corn in the Obligor's Barns, but also to carry it away from Time to Time at all convenient Times hereafter, or to pay 8l. on Request that then &c. The Corn lay in the Barn 2 Years, and was much devour'd by Mice and Rats; the Obligor threw'd the Residue, and the Obligee brought his Action. Anderson took a Difference between the Words (at convenient Time) and (within convenient Time) that if he will come in the Night, or on the Sabbath-Day, this is not a convenient Time, but tho' he comes a long Time after, yet it may be (at) Time convenient, and the Words are not (within Time convenient) and Windham said if it had been (within) Time convenient, there would have been a Difference. Goldsb. 76. 77. pl. 8. Hill. 39 Eliz. The Earl of Kent's Cafe.

18. The Teller devolved an House to his Wife and his Heirs, upon Condition that the by Advice of Counsel in Convenient Time, should assure the same for Maintenance of a Free-school &c. She did not make Annuity in 6 Years after the Death of the Teller; Adjudg'd that the Condition was broken. 1 Rep. 25. b. Mich. 34 & 35 Eliz. in the Exchequer, in the Case of the Queen v. Porter (alias) Porter's Cafe.

19. Feoffment on Condition that if the Feoffor does not pay &c. that it shall be lawful for the Feoffor to re-enter. The Money ought to be paid to the Feoffor in Convenient Time; for it is not reasonable that the Feoffor shall have the Benefit of the Land, and not pay the Money; per Anderson Ch. J. 2 And. 73. Mich. 39 & 40 Eliz. Obiter.

20. But if Condition be that if the Feoffor pays &c. that he may re-enter, the Feoffor has Time to pay it during his Life, because the other has the Profit of the Land, and has no Lols by Non-payment. Per Anderson Ch. J. 2 And. 73. Mich. 39 & 40 Eliz. Obiter.

21. If one be intoll'd, on Condition to make a Grant of a collateral Thing, as Estates, Common, &c. he ought to do it upon Request, and at his Peril before the Time incurred in which the Grantee is to take any Benefit of the Grant as before the Time of taking the Common or Estates.
(D. b) At what Time it shall be performed where no Time is limited. Not before Request.

1. If Land be granted to the King upon Condition to grant to any Stranger, it seems he is not bound to do it before Request. (*)

2. If the Condition of an Obligation be to pay a certain Sum to a Stranger, without limiting any Time, it ought to be paid within a convenient Time without any Request. Micr. 14 Jac. B. R. the Bishop of Rochester adjudged, this Exception being made in arrest of Judgment.

3. If the Condition of an Obligation be to pay a certain Sum to the Oblige, without limiting any Time, he is not bound to pay it before Request.

4. If the Condition of a Feoffment be to infeoff a Stranger upon Request, he is not bound to infeoff him before Request. 19 H. 6. Congestable; till all the conditions be performed, but if the Feoffor is to make the Feoffment before his Death, the Feoffor is not bound to make it before Request. 38 Ann. 7. * 472. 3. 9. thos. pl. 31. cites S. C.

5. So it is if it be to infeoff the Feoffor upon Request. 19 H. 6. 34. b.

6. So if the Condition of a Feoffment be, that he shall re-infeoff, the Feoffor, he is not bound to do it before Request. 58 Ann. 7. * 472. 4. 9. thos. pl. 217. cites S. C.

7. So where the Condition extends to the Feoffee or his Heirs to re-infeoff the Feoffor, the Heir after the Death of the Feoffee is not bound to do it before Request. 38 Ann. 7.

8. If a Feoffment be upon Condition to give it to a Stranger in Tail, the Remainder to the right Heirs of the Feoffor, the Feoffor is not bound to do it before Request, because the Feoffor is to have an Estate by the Condition. 44 Ann. 7. * 472. 5. 9. b. etcra. S. P.

9. If M. in Consideration that T. will marry M. his Cousin before the Return of W. from London to Norwich, assumes and promises after his Return from London to Norwich afterfaid to pay to T. 10 l. and to find sufficient Security for the Payment of 40 l. more at the Death of W. and after T. marries with M. and M. returns from London to Norwich, he ought to pay the 10 l. and find the Security for the 40 l. within a convenient Time after his Return, at his Peril: and there needs no Request to be made by T. for he hath taken upon him to do it at his Peril. Micr. 31, 32 El. 5. between Peter and Carter adjudged M. 31, 32. El. 5. R.
Condition.

(E. b) At what Time it ought to be performed where no Time is limited. During the Lives of the Parties.

1. If a Man makes a Feoffment upon Condition to re-infeoff him, if he does not re-infeoff him during the Life of the Feoffor, the Condition is broke, if he had consented Time to re-infeoff him before his Death.* 18 Mo. 13, adjudged, Lord Clifford’s Case. Regularly, if the Feoffor or Grantee be upon Condition to re-infeoff or re-grant any Estate to the Feoffor or Grantee, without limiting any Time, the Feoffor or Grantee hath Time to do it during his Life, if he be not hindered by Request. Co. 2. + Lord Cromwell, 78. b. 79.

Co. Litt. 208. b. S. P.

2. But in the said Rule, if the Case be, that it appears by the Thing to be performed, or by any Accident, that the Feoffor cannot have all the Benefit intended him by the Condition, the Condition is broke without any Request and during the Life of the Feoffor or Grantee. Co. 2. Lord Cromwell, 79.

And 17. pl. 4. *Fod. 459.

3. As if A. conveys a Manor to which an Advowson is appendant to J. S. in fee, upon Condition that J. S. shall re-grant the Advowson to (c) A. for his Life, and if it happens not to be void in his Life, then one Turn to his Executors; though in this Case J. S. has all his Life to re-grant it, if he be not hindered by Request, and the Church does not become void in the mean Time, yet if the Church becomes void during his Life, before any Request, the Condition is broke, because the Feoffor cannot have all the Effect which was intended him by the Re-grant, which was to have all the Preeminences during his Life. Co. 2. Lord Cromwell, 78. b. 79. resolved.

4. [So] If A. infecct B. the first of May, upon Condition that he shall grant to B. an Annuity or Rent during his Life, payable yearly, at Mich. and the Annunciation; in this Case the Feoffor has not Time to do it during his Life, but he ought to do it before the first of the said Feasts, or otherwise A. shall not have all the Advantage of the Rent intended him by the Condition. Co. 2. Lord Cromwell, 79. Dice 8 p. 4. Dice 14 E. 3. Det. 138.

5. In some Cases, albeit the Condition be collateral, and is to be performed to the Obligee and no Time limited, yet in respect of the Nature of the Thing, the Obligee shall not have Time during his Life to perform it; as if the Condition of an Obligation be to grant an Annuity or yearly Rent to the Obligee during his Life, payable yearly at the Feast of Easter. This Annuity, or yearly Rent, must be granted before Easter, or else the Obligee shall not have it at that Feast during his Life. Et sic de similibus, and it was resolved in Andrews’s Case. Co. Litt. 208. b.

6. Where
6. Where a Man may do a Thing at any Time during his Life, if not haffen'd by Request, yet if any Thing cannot be performed in the Mean Time before the Performance, fo that it cannot be performed according to the Intent of the Condition, the Condition is broken. Arg. Rowl R. 374. cites * 3 Debts 158.

7. Where a Man is bound to inteff a Stranger, and no Time is limit. S. P. 6 Rep. ed, he has all his Life to do it. Quere inde. Br. Conditions, pl. 136. 31. a. but agreed e contra, and though the Concurrence of the Obligor and Feeffor is requisite, yet he ought to do it in convenient Time, for in such Cafe the Obligor has taken upon him to do it to the Stranger, and may perform it without the Concurrence of the Obligor. But when the Obligor himself is Party, and the Act cannot be done without his Concurrence, there is reason that the Obligor shall have Time during his Life, if the Obligor does not haffen it by his Request, because in such Cafe the Obligor does not take upon himself for the Obligee, who is a Party to the Deed, as he does in the other Cafe for the Stranger.

8. Feoffment on Condition that if Feoffor pays &c. that he shall re-enter. The Feoffor has Time during his Life to pay it; because the Feoffor has the Profit of the Land, and has no Loss by the Non-payment; Per Anderson Ch. J. Arg. 2. And. 72. Mich. 39 & 40 Eliz.

11. When the Obligor, Feeffor, or Feeffee is to do a sole Act or La bour, as to go to Reno, Jerusalen, &c. in such the like Cafes, the Obligor, Feeffor, or Feeffee has Time during his Life, and cannot be haffen'd by Request. And to it is if a Stranger to the Obligation of Feeffment were to do such an Act, he has Time to do it any Time during his Life. Co. Litt. 208 b. 209 a.

12. If a Feeffment be made upon such Condition, that the Feeffee shall give the Land to the Feeffor and his Wife to Have and to Hold &c. to them and the Heirs of their two Bodies &c. albeit the Peme be a Stranger, yet the Feeffee is not bound to make it within convenient Time, because the Feeffor, who is privy to the Condition, is to take jointly with her. Litt. S. 352. and Co. Litt. 219 a. b.
14. If a Man make a Feoffment in Fee upon Condition that the Lessee shall make a Gift in Tail to the Feoffor, the Remainder to a Stranger in fee, there the Feoffee has Time during his Life, because the Feoffor, who is Party, and privy to the Condition, is to take the first Estate; but if the Condition of a Feoffment were to make a Gift in Tail to a Stranger, the Remainder to the Feoffor in Fee, there the Feoffee ought to do it in convenient Time; for that the Stranger is not privy to the Condition, and he ought to have the Profits presently. Co. Litt. 219 b.

15. Where one is to grant a Reversion, he has Time during his Life to do it if it continues so long a Reversion, unless he be hinder'd by Request; per Windham J. Lev. 44. Mich. 13 Car. 2. B. R.

(F. b) At what Time the Condition shall be performed when no Time is limited.

To the Obligor. Feoffor.

Br. Conditions, pl. 67. cites 14 H. S. 17 per Brooke. S. P. as to re-infeoffing the Feoffor and his Heirs, he has Time during his Life, if Request be not made in the mean time; but if Request be made he ought to infeoff upon Request, and if the Feoffee dies before, the Condition is broke, but not if the Feoffor dies, because he may infeoff his Heir. Mo. 472 pl 679. Mich. 59 & 40 Eliz. agreed.

(G. b) [At what Time it must be performed.] To a Stranger.


If it be to infeoff a Stranger before such a Day there needs no Request, but the Feoffee ought to offer the Feoffment to the Stranger, otherwise the Feoffor may re-enter. So where it is to infeoff a Stranger generally, he ought to do it immediately, for the Stranger cannot have Notice; otherwise of the Feoffor. Br. Conditions, pl. 74. cites 9 E. 4. 22. per Coke. It ought to be performed in a convenient Time, where Notice may be given, having regard to the Distance of the Time. Br. Conditions, pl. 67. cites 14 H. S. 17. by Brooke. But it is at 14 H. 4. Fol. 21 a. S. C. and there it is not Distance of the (Time) but of the (Place).—Mo. 472. It was agreed by all the Justices Obier.

If one be infeoffed to infeoff a Stranger and his Heirs, he has Time during his Life if Request be not made; but if Request be made he ought to infeoff upon Request, but if the Feoffee dies, the Condition is broke. There is a Diversity between a Condition of an Obligation and a Condition upon a Peffment, where the Act that is local is to be done to a Stranger, and where to the Oblige or Feoffor himself. As if one makes a Peffment in Fee, upon Condition that the Feoffee shall infeoff a Stranger, and no Time limited, the Feoffee shall not have during his Life to make the Peffment, for then he should take the Profits in the mean time to his own Use which the Stranger ought to have, and therefore he ought to make the Peffment as soon as conveniently he may, and do it is of the Condition of an Obligation. But if the Condition be, that the Feoffee shall re-infeoff the Feoffor, there the Feoffee has Time during his Life for the Privy of the Condition between them, unless he be hinder'd by Request. Co. Litt. 208 b.

(II. b)
(H. b) [At what Time to be perform'd to]
Stranger and Obligor:

1. If the Condition be to infeoff a Stranger in Tail, Remainder to * FIrsh Eas
the Right Heirs of the Feoffor, he is not bound to do it before

Feoffor ought to do it in convenient Time; for that the Stranger is not privy to the Condition, and he
ought to have the Profits presently. Co. Litt. 219. b.

2. If Land be granted to the King, upon Condition that he, his
Heirs and Successors, shall give other Lands in Consideration thereof;
The King is not bound to do it in his Life, but any of his Success-
ors may, for the Word (his) extends to every of them. D. 3. 4. B a.
139. 32.

3. Baron seised of Lands infeoff'd F. S. on Condition to infeoff him and
his Wife for Life, the Remainder over to a Stranger in Fee; Hutton and
Crooke thought a Request ought to be made by the Baron, because the
particular Estate on which the Remainder depends ought to be made to the
Husband, who is Party to the Condition, and he may take or refuse it, and the Feme is at his Will: But if the Baron dies then he must
make the Feoffment to the Wife without Request, because he is a
Stranger to the Condition by Act in Law; and so where she dies, the
Estate must be made to him in Remainder, without any Request. Het.

4. But if the Condition be to infeoff the Feoffor and a Stranger, the
Feoffee must tender the Feoffment to the Stranger, for he had no No-
tice of the Condition, and he ought to be Party to all the Estate; and
by the Livery made to him, the Feoffor shall take well enough; Per

(I. b) At what Time it ought to be performed
where no Time is limited.

Upon Request.

1. If a Feoffment be upon Condition to re-infeoff the Feoffor and his * Br. Con-
Wife, he ought to do it upon Request. 21 E. 3. 11. b. 44 M r.

the Son of the Feoffor and his Wife, Remainder to the right Heirs of the Feoffor. * FIrsh. Entre
conceivable, pl. 53, cites S. C. but I do not observe exactly S. P.—Though the Feme be a Stranger
yet the Feoffee is not bound to make it within convenient Time, because the Feoffor, who is Privy to
the Condition, is to take jointly with her. Co. Litt. 219. a. b.

2. If the Condition of an Obligation be to pay a certain Sum with-
out limiting any Time, it ought to be paid upon Request. 38 E.
3. 12.

E e c
3. If a Man devises Lands upon Condition to pay his Debts, he
ought to pay them upon Request, otherwise the Condition is broke.
38 Eliz. 5. 11. B.

Debts are
not paid on Demand, the Heir may enter; by Percy, quod non negotit.

4. If the Condition of an Obligation be, that whereas A. the Ob-
liger hath conveyed Lands to B. the obligee, if A. the Obligor [and
C. his Son] shall do all Acts and Devises for the better Assurance of
thee Lands to B. which shall be devised by B. or his Counsel, then the
Obligation shall be void; and after B. devises and tenders a Release
to be sealed by A. and C. his Son, and A. presently seals it, but
[C] because he was not letter'd, nor could read it, prays B. to deliver
it to him, to flew to some Man learned in the Law, who might in-
form him whether it was according to the Condition, and if it was
according to the Condition he would seal it, which B. refuses, upon
which C. relies upon it. This was a Breach of the Condition,
because he did but require the Writing to be read to him, and he was
bound to take Conculse of the Law, whether it was according to
the Condition, and shall not have reasonable Time to have the
Writing to his Counsel learned in the Law, to be instructed by them.
Co. 2. Man. 3. pr. Curiam resolvit.

See (P. 2)
pl. 11. S. C.
and the
Notes there.
—S. C.
J. 514.
571. —S. C.
cited, Arg.
Godb. 445.
in pl. 513.

5. If A. covenants with B. to make such Conveyance of certain
Lands to B. as by him shall be devised, at the Costs and Charges of B.
and after B. devises, and tenders a Writing containing a Bargain and
Sale to [B] and A. requires Time to have it to his Counsel, to be
abidden therewith, and B. refusest it, upon which A. does not seal,
he hath broke his Covenant, for the Covenant was peremptory, un-
less, to be performed presently, at his Peril. D. 16 Eliz. 35. 39.
between Wotton and Coke.

6. Where a Man is bound to pay Money, or make a Poffemint, or re-
ounce an Office &c. and no Day is limited when he shall do it, there,
upon a Request, he is bound to perform it in as short a Time as he can.
But where Day is limited, and he refutes before the Day, this is no
Matter if he performs it at the Day. Br. Conditions, pl. 65. cites 15
E. 4. 30.

7. Debt upon Bond of 200l. condition'd to pay within 2 Days after
the Date of the Bond, but no Sum mentioned in the Condition. The Plain-
tiff declared on a Bond to pay so much Cum inde requisitus fuerit. After
Verdict it was moved that the Declaration was not good, because of the
Variance from the Condition, there being no certain Sum mentioned in
the Condition; but adjudged, there being no Sum mention'd in the
Condition, the Bond must be single, without any Condition, and then
the Money is to be paid upon Request. 2 Build. 156. Mich. 11 Jac.
Dorlington v. Waller.

(K. b) At
Condition.

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(K. b) At what Time it may be performed where a Day is limited.

Before the Day.

1. If the Condition be to stand to the Award of J. S. and he awards him to pay to L. such a Day; it is a good Performance if he pays it to the Oblige before the Day, and the other accepts it; for Payment before contains Payment at the Day. Ill. 14 Jac. at Serjeants Inn, between Berry and Perren, in a Bill of Error, where the Award was to pay at or before such a Day, and the Breach alleged for Nonpayment at the Day, without mentioning the Nonpayment before, and yet the Judgment affirmed per Curiam, because Payment before is Payment at the Day. Vide 21 Car. 3. R. between Ireland and Sutton adjudged accordingly upon Demurrer, in Curia Minor. Tr. 21 Car.


— If it be taken upon solid and Dumm. Payment before the Day maintains the Illia. Arg. 2 Vent 223, Mich. 3. W. & M. in C. B. in Case of Wauopp v. Hooper. — Lev. 295. S. C. and upon Demurrer Judgment was given for the Defendant; but though he did not pay it at the Day, he might have paid it before the Day, and the Payment before the Day is good Payment at the Day, where Payment at the Day is pleaded; yet in Pleading the Parties ought to purvue the Words of the Condition. — See Tit. Actions (Z. 12) pl. 52. and the Notes there, Hammond v. Ouden (alias) Hammond v. Ouden.

2. If the Condition of an Obligation be to pay so much to a Stranger such a Day; if he pays it before the Day, this is a good Performance, because Payment before contains Payment at the Day. 9 H. 7. 25. 10 H. 7. 10 b.

3. So if the Condition of an Obligation be, that a Stranger shall infound a Stranger such a Day; if he infounds him before the Day, this is a good Performance, because it contains a Feudiment at the Day. 9 H. 7. 19. 20. 10 H. 7. 14 b.

4. So if the Condition be, that a Stranger shall infound a Stranger after the Death of J. S. If he infounds him during the Life of J. S., this is a good Performance, because it continues a Feudiment after his Death. 9 H. 7. 17. 20.

5. If the Decease of an Obligation be, to pay a less Sum than Godb. 10, is contained in the Obligation at a Day certain; if he pays it before pl. 14. Mich. 376 cites 9 H. 7. 17. S. P. accordingly; but in such Case it should be pleaded specially — So where a Copyhold was surrendered on Condition for the Payment of a certain Sum on the first July, and the Payment was made before the Day, viz. on the 16th June, and the same was accepted, it was agreed by all the Court that the effect was a good Per-
6. If a Condition be to make an Assurance within a Month after the Date of the Obligation, he is not bound by any Request to make it at any certain Time, but he may perform it at any Time, (2) within the Month. Hill. 37. Eliz. in Perpoint and Thimbleby, per Curiam.

7. If a Condition be to make further Assurance within a Month upon Request of the Obligee; if the Obligee requires him within the Month, and he retires, though he be ready after within the Month, yet the Obligation is forfeited, in as much as the Time of the Month is limited to the Request. Hill. 37. B. in Perpoint and Thimbleby's Case; per Curiam.

8. If the Condition of an Obligation be, If the Obligor do at all Times hereafter, within the Space of one Month, when he shall be required, make such further Act and Acts, Assurance and Assurances, as the Obligee shall by his Counsel demand, for the Recovery of one Annuity of 30 l. due from J. S. then the Obligation to be void. In this Case, if the Obligor does not make any further Assurance within the Month after the making the Obligation, yet the Obligor is bound to make further Assurance within a Month after Request made after the Month past, after making the Obligation, because the first Words, (feiter, at all Times hereafter) are without Limitation, and the other Words, (within one Month when he shall be required) refer to the Request, feiter, he shall have a Month for the making thereof after Request, for the most benign Construction shall be made to make this Agreement effectual; for this is not like a common Assurance, by which it is covenanted to make further Assurance within 7 Years, because the life in such Case has interpreted it, that he shall not be troubled beyond 7 Years. Hill. 1658. between Wentworth and Wentworth adjudged upon a Demurrer. Erridurum Trin. 1658.

In Debt on an Obligation conditioned to pay 100 l. on the 10th of January, upon 3 Months Warning, the Defendant pleaded, that the Plaintiff had [not given] three Months Warning. Windham J. said, that though the Condition had been to pay on 10th Jan. after, the Date of the Obligation, upon three Months Warning by the Obligee, the Money would not be lost though the Obligee should omit the Warning; but adjourned. — Lev. 87. S. C. the Court at first thought that the Warning ought to be given by the Plaintiff; for otherwise, if the Defendant would never give Warning, the Money would never be paid; but adjourned. But afterwards, it being moved again, the Court held it should be taken that the Obligor is to pay the Money upon the 10th January next ensuing, giving the Plaintiff three Months Warning thereof; for the Words shall be taken most strongly against the Obligor, and Judgment for the Plaintiff. Nis 8c. — Feb. 415. pl. 122. S. C. adjudged for the Plaintiff, and ibid. cites the Principal Case of Wentworth v. Wentworth.

9. Condition to pay 10l within an Hour after Obligee has insessed him of a Mill. Payment of 5 l. before and 5 l. after is no Performance, for it is no Duty till &c. and the 5 l. paid before cannot be intended the same Sum; otherwise when Day is limited, for there it is a Duty. D. 222. pl. 22. Marg. cites Trin. 9 Eliz. Anon.

10. In Debt upon Bond the Defendant pleaded Payment according to the Condition, and it was found that the Payment was made and accepted before the Day. Per tot. Cur. Payment before the Day was a sufficient Discharge of the Bond; but it being pleaded generally that he paid according to the Condition, they held that the Jury must find against the Defendant, for the special Matter would not prove the Issue. Godb. 10. pl. 14. Mich. 24 Eliz. C. B. Anon.
(L. b) At what Time it shall be made [performed] where Time is limited. Upon Request.

1. If A. covenants with B. to make a Surrender of Land, or to convey Land to B. upon Request; If a Writing purporting a Surrender or Conveyance, be rendered to him, with Request to seal it, A. ought to seal it presently, and shall not have any Time to & S. P. rebe adjudged by his Counsel, whether it be according to the Covenant. Patch. 9 Car. 2. R. between Jones and Smith, per curiam resolved.

2. If A. covenants to make further Assurance at all Times and Godh. 445. Times, at the Charges of the Covenantee, and the Counsel adjudges, that he shall keep a fine, yet he is not bound to do it presently, but he shall have convenient Time to do it, though the Words be, that he shall do it at all Times; for the Words ought to have a reasonable Consequence. Till. 37 Ch. 2. between Persephone and Theron, per curiam.
Condition.

3. If A. being a Copyholder for Life; covenants with B. to surrender to B. in Reversion the said Copyhold Covenant Super rationalism Requiescetionem ei rendam by B. and after B. renders to A. a Writing purporting a Letter of Attorney of Surrender of the said Tenement to B. and A. requests, that before the sees it, the, by her Council Certa Scripturum illo ina rationalibus Capitus time overo sequens admodum, the which B. relishes, and therefore A. relishes to seal it; admitting that A. was bound to seal the Letter of Attorney, and to surrender by such Letter of Attorney, then the which broke her Covenant; for she ought to take Consequence of the Law at her Peril, whether the Letter of Attorney was according to the Covenant, and the shall have no Time to be adviz'd thereof; but the reasonable Time mentioned in the Covenant is intended (*) reasonable Time in the making thereof, therefore, the shall have Time to read it before the sees it, and therefore it ought to be sealed promptly, without Time to advise upon Request, according to the Words of the Covenant. Pach. 9 Car. B. R. between Sins and Dams Smith. per Curtaun, reversed upon Denmurer. Iteratun Bill. 6 Car. Not. But Judgment was given against the Plaintiff for another Matter. Co. 2. Mauzer 3. D. 16 Cl. 358. 39.

(L. b. 2) Limited to be done on Request. At what Time the Request must be made.

3 Salk. 799. 1. Condition to do an Act at the End of 7 Years on Request, Request must be made the last Day; and per Cur. 'tis not to be done Post Factum but Ad Factum, and the End of a Thing is always Part of that of which it is the End, and fo the Request should be made some convenient Time in that Day, that the other might have a reasonable Time to do it in. Adjudged per tot. Cur. and fo reversed a Judgment in the Marshall's Court. 2 Salk. 585. Mich. 3 Ann. B. R. Fitz-Hugh v. Dennington, low reversed Nisi. — 2 Lord Raym. Rep. 1504. S. C. and the Judgment in the Marshall's Court revers'd. And Holt Ch. J. and Powel J. held that there being a Time appointed for the doing the Act, the Request to do it must be at that Time. And the Chief J. said that the End of 7 Years was the last Day of the 7 Years; for there is no Fraction of a Day, and after 12 at Night is after the 7 Years; for the Day after is not the End of the 7 Years, but Post Expiration. For the Beginning and End of a Thing is Part of the Thing. And he said also that when a Thing shall be done upon Request, it must be done immediately upon the Request (which differs this Case from those cited by the Counsel for the Defendant in Error) As if a Condition of a Bond be to make a Feasibility at such a Time upon Request, there the Obligor must do it immediately upon the Request. But as to this, Powel said that if it appeared to them, that the Thing was of such a Nature as that it could not be performed at the Time limited for the Thing to be done upon Request, there the Obligor should have a convenient Time after to do the Thing in, otherwise if it can be done then it must. Powels and Gould J. held that at the End of 7 Years might be understood a reasonable Time after, sufficient to do the Thing in.

(M. b) Per-
Condition.

(M. b) Perform'd. At what Time it shall be.
Where Time is limited.

1. If the Condition be to do a Thing within a certain Time, he may perform it the last Day of the Time appointed. 8 H. 4. 14.

2. So if the Parliament makes a Constitution, that it J. S. comes not in B. R. within a Quarter of a Year after Proclamation, he shall be convicted of a Treason if he need not come before the last Day of the Quarter. 8 H. 4. 13.

3. If an Obligation be made the 17th Day of November, Anno 12 Jac. and the Condition is to pay 5 l. the 21st of November following, and 5 l. the 20th of December next after, the first 5 l. ought to be paid the 21st Day of November 12 Jac. for it refers to the Day, and not to the Month. It was adjourn'd in B. Mich. 13 Jac. B. be queen Price and Coa.

4. If the Condition be to pay 10 s. when A. comes to his House, and 10 s. at the Feast of St. Michael, and then at the Feast of St. Andrew then next ensuing 10 s. these last Sums ought to be paid at such next Feasts or Times, and not at the next Feasts after A. comes to his House.

5. If the Condition be to pay so much on this Side such a Feast, it ought to be paid in the Vigil of the Feast at the least, and not on the Feast-Day. 21 C. 4. 52.

6. The same Law where it is to be paid infra Featum. 21 C. 4. 52. cites S. C. but Brooke says, Quare infra ; for because it was Per & infra Featum &c. the Defendant pleaded that he was ready all the Vigil, and all the Day of the Feast.

7. The same Law where it is to be paid ante Featum. 21 C. 4. 52. cites S. C.

8. But where the Condition is to be performed in Feto, it ought to be done on the Feast-Day, and not before nor after. 21 C. 4. 52. cites S. C.

9. If the Condition of an Obligation upon an Adventure to Newfoundland be to pay so much within 40 Days next after the Ship shall make her first Return and Arrival in this Voyage from Newfoundland into the Port of Dartmouth, or into any Harbour, Creek, or Port of England, where the shall first unload her Goods &c. and after the Ship does not return to Dartmouth, but to Plymouth in Devonshire where she unloads her Goods; in this Case the Obligor is bound to pay the Money within forty Days after the Arrival of the Ship, and shall not have forty Days after the unloading the Goods, for this is not for Freight, but for an Adventure; and the unloading of the Goods is mentioned only to describe the Haven where the Arrival shall be, likewise, the Port of Discharge, and not put to make a Limitation of the Payment of the Money, to have forty Days for the Payment thereof after the Discharge; but perhaps there will be some
**Condition.**

Some doubt if the Discharge be not within the forty Days. *Trin. 23. Cat. 23. R. between Leece and Cholwickes adjudged for the Plaintiff, this being moved in arrest of Judgment, where it was allowed for Breach, that he did not pay the Bond within forty Days after the Arrival of the Ship, and ares, that the Sale was unlaid of the Goods, but no Time alleged of the unlaiding; (') and per Ditto, if it was not unlaid within forty Days, it ought to come of the other Part to shew it. *Intratut.* Hill. 22. Cat. Rot. 912.

10. Payment after the Day of Payment is not good, tho' the Obligee accepts it. Br. Tender, pl. 5 cites 46 E. 3. 29.

11. If a Man insells another, upon Condition to re-insell him within 40 Days, there if the Feoffor does not make any Request within the 40 Days, the Feoffee shall retain the Land for ever. Br. Conditions, pl. 55. cites 19 H. 6. 67. 73. 76. Per Newton.


13. Nor where a Re-entry is referred in Default of Payment, and he pays after the Day, yet the Lessor may re-enter; per Paiton, contra Portington. *Ibid.*

14. But all the Justices agreed that in Obligation of 20 l. to pay 10 l. at a Day, and he does not pay at the Day, but pays after, yet this shall not save the Penalty. *Ibid.*

15. If Deleafance is made after the Sale of Land, by which Inden- ture the Vendee leaves the same Land to the Vendor for 10 Years rendering a Rent, and grants that if the Vendor shall pay 500 l. within the said Term of 10 Years, that he may re-enter; and there he he tenders and tenders the 500 l. within the said 10 Years, he shall recover his Land. *Contra* if the Grant had been if be pays 300 l. within the Term afterf两地, without those Words 10 Years, and the Leaf, Surrender and Tender of the Money is not good in this Case; per Whorwood, in his Readings in Quaquaglima. Br. Deleafance, pl. 18. cites 35 H. 6.

16. If in an Obligation the Souldendum is made to the Obligor, whereby the Souldendum is void, the Money is demandable immediately, and to it it be made payable *Craifimo de Domin-Dia.* Br. Obligation, pl. 58. cites 21 E. 3. 36.

17. If a Feoffment in Fee be made on Condition to be void upon Payment of Money at a Day, albeit convenient Time before Sun-fet be the last Time given to the Feoffor tender, yet if he tenders it to the Feoffor the Mortgagee at any Time of the Day of Payment, and he refutes it, the Condition is saved for that Time. *Co. Litt. 207. b.*

18. A. covenants at 2 Years End to procure a Deputation &c. for 7 Years for J.S. In this Cafe A. must procure it immediately after the 2 Years are expired, that J.S. may not lose the Profits thereof afterwards. *Cro. J. 297. 298. Hill. 9 Jac. in Cam. Scacc. Barwick v. Gibbon.*

20. Condition in Confirmation of a Marriage had with the Daughter of the Obligor, to pay to W.L. the Husband, his Executors, &c. 500 l. within 2 Months after the Death of the Obligor, if the said Daughter, or any Ilifie of hers by her said Husband be living at the Death of the Obligor. W.L. died intestate, then the Wife died leaving a Daughter, then the Mother the Obligor died; in Debto upon this Bond, Defendant pleaded that there was no Executor, and that Administration of W.L.'s Goods &c. was not granted till 12 Months after the Obligor's Death; and upon Demurrer adjudg'd for the Plaintiff, because the Money being a Duty, the Defendant should have pleaded Uncore Prif. *Raymun. 416. Mich. 32 Car. 2. B. R. Lee v. Garret.*

21. Devile of Lands to his Wife for Life, and after her Death to D. his 4th Son, and his Heirs provided that if C. the 2d Son, should within 3 Months after his Wife's Death pay to D. his Executors &c. 500 l. then the Lands should come to C. and his Heirs. The Teiltator died; the Wife


**Condition.**

Wife died. Li Parker thought that C. had an *Equity of Redemption* that remained open to him in a Court of Equity, as well after the Time limited as before. 10 Mod. 419. 423. Mich. 5 Geo. 1. Marks v. Marks.

(1) after the legal Estate absolutely veiled in the Mortgagee, had C. been to come here for Relief against the Heir at Law; but here C. comes for Relief against a 3d Person, who had the Estate veiled in him for no other Purpose but to make the Estate redeemable. Per Lord C. Parker. 10 Mod. 424. Mich. 5 Geo. 1. in Case of Marks v. Marks.

(M. b. 2) **Performance.** At what Time, *after Refusal*.

Good in what Cases. And Pleadings.

1. **A Man seized of a Manor with Advocatus Appendant infeoff'd three**,

upon Condition that they, or any of them, who survive, or their Heirs, within 40 Days next after 10 Years next ensuing the Date of the Deed, re-infeoff'd, and E his Feme in Feoff, the Remainder to R. A. in Fee, and they made a Deed accordingly, with Letter of Attorneys to W. P. to deliver Seisin, and delivered it in the County of E. such a Day, within the 40 Days, and commanded him to make the Feoffee accordingly, which Attorney such a Day and Year at the Manor *offer'd* to the Baron, to make ESTATE within the 40 Days, according to the Deed and Condition, and the Baron refused, and also the Attorney was upon the Manor all the 40 Days ready to have made Livery, and for the non-performance of such Condition the Feoffor re-enter'd; and per Newton, if the Baron and Feme die within the 40 Days, there the Feoffees ought to make the Estate to R. to whom the Remainder is limited, and if all should die within the 40 Days, the Feoffor may re-enter for the Feoffor shall not lose the Land where the Condition is not performed, and no Default in the Feoffor. And fo it seems, that where *Time is limited*, if a Man refutes at one Time, he may agree at another Day *within the Time*, and all well; *Quere*.

Br. Conditions, pl. 55, cites 19 H. 67. 73. 76.

2. Debt upon Obligation with Condition, that *if the Defendant renounced all his Interest* that he had in the Administration of the Goods of J. S. before the Official of the Bishop of N. secondum Lexem, that then &c. And said, that he had renounced and renounced according to the Condition. Pigot said, that this is no Plea without pleading taken; for if he renounced, *pending the Writ*, it shall not lose the penalty, *Quod tota Curia concepisset*; by which he shew'd that he renounced such a Day before the Writ was taken, which was held a good Plea. Pigot replied, that after the making of the Obligation, and before this Day, which he supposes the renouncing the Plaintiff at R. in the County of N. pray'd the Defendant to renounce according to the Condition, and the Defendant refused. And per tot. Cur. where a Man is bound to pay Money, or make a Feoffment, or renounce an Office, or the like, and no Day is limited when he shall do it, there upon a Request he is bound to perform it in *as short a time as he can*; but where Day is limited to pay &c. and he refuses before the Day, it is not material if he perform it at the Day; *Quod Nora Divertit*; by which he said, that he performed the Condition, abque hoc, that he renounced at the Time suppos'd of the Plaintiff. Pigot said, that this is no Plea; for though he did not refuse at the Time of the Request made, yet he is bound to perform the Condition immediately after the Request, in as short a Time as he can, and therefore no Plea. *Quere,*
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Condition

Quere, because the Court arose and went away. Br. Conditions, pl. 65. cites 15 E. 4. 30.

3. Where no Day is limited, there the first Refusal determines the Condition for ever. Contrariwise. Day is limited, and the Condition is performed by the Day; and Disagreement to a Stranger is not material; Contra to the Party. Br. Conditions pl. 67. cites 14 H. 8. 17.

4. Grant was made by Leefee of a Term, on Condition Leefor should affect by such a Day. The Leefor refused to affect at one Time, yet he may give it at another, so as it be before the Day. But if no Time was limited, then one expresses Denial or Refusal would be peremptory, so as the Refusal was expressed to the Party to whom the Affent was to be given; otherwise if it were but in common Talk to or among Strangers. Went. Off. Ex. 226. cites it as held 14 H. 8. 23.

(N. b) [Performed.] How. [As to Time and Place.]

Br. Conditions, pl. 174. cites S. C. & S. P. by Choke, that he ought to say, that he was there all the Day, and that the Plaintiff nor any other was ready to receive it, and that he is yet ready; Quod omnes Judicantis concedunt.

1. If the Condition be to be performed at a Day certain, it is not necessary for the Obligor to be there all the Day. Contra 21 E. 4. 52.

2. If the Condition be to stand to the Award of B. to be made such a Day; if he does not make the Award at the Day, but at a Day after, he is not bound to perform it. 49 E. 2. 9.

3. If the Condition be to make an Obligation to the Obligee by the Advice of J. S. of 40 l. immediately, yet he shall have reasonable Time to do it by the Advice of J. S. 18 E. 4. 21.

Debt upon Obligation, that the Defendant shall make Satisfaction to the Plaintiff by Advice of W. N. of 40 l. immediately; and per Brian, Choke, and others, he may say, that the first Bond was made such a Day and Hour, and that be such a Day and Hour after made Obligation of 40 l. by Advice of W. N. and shall not speak of this Word immediately, and good; for it cannot be done immediately; for he ought to have Space to have the Advice of W. N. and after to write and seal it. Br. Conditions, pl. 162. cites 18 E. 4. 21.

4. Where by a Condition a Thing is to be performed upon Demand, yet he shall have reasonable Time to perform it after Demand. 15 E. 4. 32.

5. If A. recites by his Deed, That whereas he is indebted to B. in 100 l. he covenants with B. that the said 100 l. shall be paid and delivered to B. or his Assigns at Rotterdam in Holland per E. abique aliqua Secia Legis super primam Requisitionem in die deodem faceretur. In this Case the Demand may be made in any other Place prior to Rotterdam; for though the Payment is to be made at Rotterdam, yet the Demand may be made in any Place, and if the Demand be made in England, or at Dort, which is 10 Miles from Rotterdam, or in England, it is good; for he ought to have reasonable Time to pay it after the Demand, having Respect to the Distance of the Place. But if the Demand should be limited to Rotterdam perhaps he would never come there, and so the Covenant would be of no Effect. Nich. 1650. between halfed and Vanleyden, adjudged upon a special Verdict.

6. If
6. If a Man is bound to pay 10 l. before Christmas, and he pays it after Christmas, and the Oblige accepts it, yet the Obligation is forfeited. Br. Conditions, pl. 212, cites 14 H. 8, 13.

7. Debt upon an Obligation to be such a Day at the King's Head in B. Cro. E. 249. and there to choose two Arbitrators, to join with two others, to be chose by the Obliger, to arbitrate all Matters betwixt them. The Defendant said, that he was there at the last Instant to make the Choice. Adjudged for nee No Plea; for he ought to have been there in such Time that they the Plaintiff might have chosen Arbitrators, and have finished Matters the same Day. Mo. 543. pl. 725. Mich. 39 & 40 Eliz. Marth v. Edmonds.

(O. b) At what Place where none is limited.

1. If the Condition be, that a Stranger shall shew certain Evidences of such an Annuity to the Counsel of the Obliger upon Request; when the Request is made, the Stranger ought to seek the Counsel where they are. 19 E. 4. 1. 6.

2. If A. is bound to pay B. 20 l. on B.'s first coming to such a Place, this Place shall be taken for the Place where the Payment shall be made; per Popham. Poph. 11. Arg.

(P. b) [In what Cases it must be performed.] To the Person.

1. If the Condition be to pay a small Sum, and no Place is limited, he ought to seek the Obliger. 21 E. 4. 6. b. As an Obligation of 20 l. for the Payment of 10 l. Br. Conditions, pl. 166. cites 20 E. 4. 1. Per Brian & Car. S. P.

2. If the Condition be to do a Thing upon Request, and the Plaintiff alleges for Breach that the Defendant could not be found to make a Request to him, and therefore he made a Proclamation at the Church where he was born, and another Proclamation in several Markets in the same County, by them giving Notice of his Request; yet this was not any Request, in as much as it ought to be made to his Person. Per. 8 Car. B. R. between Grant and Tinsell; adjudged upon Remitter.

3. If a Man leases, rending Rent, and the Lessee binds himself by Indenture to pay 40 l. at every Session the Rent be arrest; and the Defendant pleaded Payment in another Place; and per Littleton, Pigot, and Beat, the Payment suffices upon the Land; and the same Law of a Request there, and of a Tender there; the Reason seems to be, in as much as it is all by one and the same Indenture, and therefore the Penalty is of the Nature of the Rent. Contra it seems if he was bound by Obligation Br. Conditions, pl. 169. cites 20 E. 4. 4. 6. 20 E. 4. 18. b.

Debt upon Indenture of Lease, rending Rent, in which the Defendant bound himself by Indenture to pay 40 l. at every Session the Rent be arrest; and the Defendant pleaded Payment in another Place; and per Littleton, Pigot, and Beat, the Payment suffices upon the Land; and the same Law of a Request there, and of a Tender there; the Reason seems to be, in as much as it is all by one and the same Indenture, and therefore the Penalty is of the Nature of the Rent. Contra it seems if he was bound by Obligation.
Condition.

If the Letter binds himself to pay a greater Sum, if he does not pay the Sum referred at the Day, yet he is not bound to make Tender in another Place than upon the Land. 21 C. 4. 6. b.

5. Note, that the Obligor or Mortgagor is bound to seek the Obligee or Feoffee to make to him a Tender, if he be within the Realm where no Place certain is limited. But he is not bound to seek for him out of the Realm; and therefore it seems that it is a good Plea, that he was not within the Realm at the Time &c. Br. Conditions, pl. 303, cites Littleton, Chap. Estate.

6. A. is bound to deliver to the Obligee 10 Bushels of Wheat, and no Place is limited where the Payment shall be. A. is not bound to seek the Obligee wherefoever he shall be, as he shall in Cafe of Payment of Money; for Clark, which Manwood granted. 3 Le. 260. pl. 347. Mich. 32 Eliz. Obiter, in the Exchequer.

and so of so many Load of Timber &c. but the Obligor or Feoffor before the Day must go to the Obligee &c. and know where he will appoint to receive it, and there it must be delivered; and so note a Diversify between Money and Things ponderous or of great Weight.

7. Homage, or any other corporal Service, must be done to the Person of the Lord, and the Tenant ought by the Law of Convenience to seek him, to whom the Service is to be done, in any Place within England.

Co. Litt. 211. a.

(Q. b) [At what Place it must be performed.] Where a Place is limited.

If the Condition of an Obligation be to pay 10 l. at a Day at S. & the S. P. but if the Obligee accepts it at any other Place it is good.—Firth. Dette, pl. 121, cites S. C. & S. P. by Finch. S. P. if he pays it by the Day; but Prior, quod non negatur. Br. Conditions, pl. 17. cites 34 H. 6. 17. See (X. b) 2 S. P. See (S. c) pl. 11. S. C. 3.

Br. Conditions, pl. 21. cites S. C. but S. P. does not appear. Firth. pl. 121. cites S. C. and S. P. by Finch. See (S. c) pl. 11. S. C. 2. So in such Cafe, the Obligee is not bound to receive it in any other Place upon a Tender. 41 C. 3. 25. * 46 C. 3. 4. b. 11 P. 4. 62.

Br. Dette, pl. 45. cites S. C. 3. Upon a Statute Merchant the Defeasance was to make Payment at B. and the Party paid at U. and yet well, because the Comfee received it. Br. Tenders, pl. 3. cites 4 E. 3. 4. 4. Payment at another Place than is comprised in the Condition of the Obligation is good. Br. Tender, pl. 5. cites 46 E. 3. 29.

Br. Barre, pl. 27. cites 21 H. 6. 24. Per Markham.

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where the Lands lie out of which it is to be raised; That the Settlement was made in England, and the Parties resided there; that this is a Sum in Grofs charged upon Land, and not a Rent issuing out of Land, that a Tender or Rent upon the Land is insufficient, but a Tender of a Sum in Grofs charged upon Land must be made to the Person who is to receive it, wherever he is to be found, and that the Reason of the different Penning of the Clauses, viz. that of the Jointure, and this of the Portion is, that the Jointure is a Rent-charge, and consequently payable upon the Land, unless another Place be particularly appointed for the Payment thereof; but the Portion being a Sum in Grofs, though charged upon Land, is payable to the Person of the Grantee where he resides and is to be found, and therefore no Occasion to add the Words without Deduction for the Exchange, because the Money is payable here. If a Man in England lends Money here, and takes a Mortgage of Lands in Ireland for a Security, the Money is to be paid here where it was lent and the Contract made, and not in Ireland where the Lands in Mortgage lie, and there is no Difference between these two Cases.

Parker C. was of Opinion that the Portion ought to be paid here where the Contract was made and the Parties resided, and not in Ireland where the Lands lie charged with the Payment thereof; for that this is a Sum in Grofs, and not a Rent issuing out of Land, and it was certainly the Intention of the Parties that the Portion should be paid here, and not to send the young Lady over into Ireland to get her Portion.

(R. b) [Disjunctive. Performance.] How. [What shall be a Satisfying of the Condition.]

1. If the Condition be to pay 10 l. at D. such a Day, or 10 l. at S. such a Day; if he tenders it at D. the first Day the Condition is said. 21 E. 4 52.

2. There is a Difference between Disjunctive Absolute and Disjunctive Contingent; as if a Man be bound to pay 10 l. or to infeoff one upon the Return of J. S. from Rome. If J. S. die before he return from Rome the Obligation is save through the 10 l. be never paid; But if it be a Voluntary Act as to pay 10 l. or to infeoff you before Michaelmas, there if the Obligor dies before Michaelmas, yet his Executors ought to pay the Money; per Popham Ch. J. Goldsb. 192. pl. 141. Hill. 43. Eliz. Anon.

(S. b) What
(S. b) What shall be said a Condition in the Disjunctive.

1. If the Condition be in the Copulative, and it is not possible to be performed, it shall be taken in the Disjunctive. Vide 21 E. 4. +4+

Thing, and the one is possible, and the other impossible, he ought to perform that which is possible. Br. Conditions, pl. 47 cites 21 E. 4. 24.

As in Debt A. was bound to J. in 100 l. to injure J. or the Heirs of his Body when he comes to his Aunt and said, that such a Day he come to his Aunt, and J. required him to injure him, and he refuted Skipwith said that here the Plaintiff alleges two Points in the Condition, viz. that A. injure him or the Heirs of his Body, but does not allege Breach of the other Point; and here J. may injure J., but he cannot injure the Heirs of his Body; for he has no Heirs in his Life, and therefore though he cannot injure the Heirs &c. he ought to injure J. himself, and because he did not, he shall forfeit his Obligation; Quad. Nova, and the Time is certain, viz. when he comes to his Aunt's, and the Condition is in the Disjunctive to do the one or the other. Br. Conditions, pl. 47 cites 21 E. 4. 25—S. C. cited Pl. C. 289. a. 11. 7 Eliz. In Case of Chapman v. Dalton, and says, that the Sense of the Words are to be taken to injure the Plaintiff it be alive, and if he be dead, then to injure his Heirs, and therefore the Defendant was driven to answer to the Court ——A Man covenanted to injure J. S. and his Heirs, whereas it is impossible to injure his Heirs while J. S. himself is living; and therefore it shall be taken for a Disjunctive. Ow. 52. Mich. 25 & 30 Eliz. Arg. cites it as Chapman's Case. —S. C. cited Goulds, 71. in pl. 16.

2. As if the Condition be that he and his Executors shall do such a Thing; this is in the Disjunctive, because he cannot have an Executor in his Life-time. 21 E. 4. 44 b.

3. So if the Condition be, that he and his Assigns shall fell certain Goods; this is in the Disjunctive, because body cannot do it. 21 E. 4. 44+.

4. Leaf referring Rent before Michaelmas a Pound of Pepper or Saffron. Before the Feast Leaf he has Election which to pay, but after the Feast Leaf may have Debt for which he pleads. D. 18. a. pl. 104. Trin. 28 H. 8.

5. A. covenanted with B. to make a Leaf for Years of Lands to B. and his Assigns; the same shall be construed (or) his Assigns; and so the Copulative shall be taken as a Disjunctive; Arg. Le. 74. pl. 101. cites Pl. C. 259. 7 Eliz.

6. Condition of a Bond was, that the Obligor should bring in the Son Mod. 53 pl. and Daughter of J. B. at their full Age to give Releases, as a third Perfon should require. This must be taken to be at their respective Ages. Vent. 58. Hill. 27 and 22 Car. 2. B. R. Bolvill v. Coates.

7. A Leaf was made to T. and E. (when T. afterwards married) if he Mo 259. pl. and be, or any Child or Children between them, should so long live, after 57. Bald- wards E. died without Issue. All the Judges agreed, that the Leaf was not determined by the Death of the Wife; and Judgment accordingly adjudged, Ow. 52, 53. Mich. 29 and 30 Eliz. Cooke v. Baldwin. not ended; for the Word (or) is distributive and to be applied to any one of the three, and Anderson said, that this was the Opinion of all the Judges of England ——And. 161 pl. 256 S. C. adjudged and agreed in C. B. that the Word (And) viz. (if he and she) notwithstanding it be Copulative, shall be taken Pluriously and that the Leaf continues; for it appears that this Leaf was made for the benefit of the Feme who intended to marry with T. which Benefit in Effect she Should not have if by the
the Death of T. she should lose her Eftate &c.—Gould b. 71. pl. 16. S. C. adjudged accordingly. And Periam, Windham and Anderfon said, that it appears by the Disjunctive Sentence, which ceased afterwards, that the Intent was, that the Leafe should not determine by the Death of one of them, and the Reafon which moved the Lord Anderfon to think so was because the Leafe was made before the Marriage, and fo it was a Jointure to the Wife, and consequently not determined by the Death of one of them.—Le. 73 pl. 101. S. C. Anderfon said it would be in vain to name the Wife in that Leafe, if the Leafe should cease by the Death of the Husband; and adjudged that the Leafe was not determined by the Wife’s Death. —S. C. cited Cro. E. 270. pl. 111. as adjudged, and says, that Anderfon commanded Nelson the Prothonotary to enter upon the Record that the Leafe continued for as long as any of them live.—S. C. cited Le. 244. pl. 350. Ays the Husband held the Land through the Wife was Dead; for the Disjunctive (Or) before the Wife (Child) made the Sentence Distinctive; and Graydy J. said this had been Law if no Such Word had been in the Case. —Co. Litt. 223. a. S. C. says the Disjunctive refers to the whole, and dispenses not only the latter Part as to the Child, but also to the Baron and Feme; so as the Senfe is, if the Baron or Feme, or any Child, shall live long—And fo if an Ufe be limited to certain Persons till A. shall come from beyond Sea, and attain his full Age or dot. If he comes from beyond Sea, or attains his full Age, the Ufe ceases. Co. Litt. 223. a. cites it as adjudged. Hill. 55 Eliz. B. R. Lord Mordaunt v. Vaux.—Cro. E. 269. pl. 11. Lord Vaux’s Case S. C. & S. P. agreed.—Le. 243. pl. 332. S. C. argued; fed adjournement.

8. A. and B. lease for Years, and covenant that Leafe may enjoy free from all Incumbrances made by them, and afterwards Leifie is disturbed by J. S. to whom A. had made a precedent Leafe, it is a Breach; for (Then) shall be taken severally and not jointly only. Lat. 161. Trin: 2. Car. Meriton’s Case.

9. If a Condition be to make an Assurance of Land to the Obligee and his Heirs, and the Obligee before the Assurance made dies, yet the Assurance shall be made to the Heir; for this Copulative is a Disjunctive; Per Allibone J. 3 Med. 235. Trin. 4 Jac. 2. B. R.

10. Legacies to four Grand-Children on Condition, that as they come of Age they should release all Claims to the Testator’s Eftate; This Condition must be taken Distributive, and fuch only as refuse to release shall forfeit their Legacies; per Wright K. 2 Vern. 478. pl. 432. Hill. 1704. Havex v. Warner.

(T. b) Perform’d. At what Time it shall be. Where a Day is limited.

1. If a Latio at to arrest J. S. be returnable Die Lune prox’ post Cranfium Sanetâ Trinitatis, which this Noot was the 10th of July, and the Sheriff arrests him the 10th of July; and takes an Obligation from him the fame Day, with a Condition to appear coram Domino Regis Ie Lune prox’ post Cranfium Sanetâ Trinitatis, as respondent &c. it seems he ought to appear the fame Day, and not this Day Twelve moneths. Cer. 3 Lat. B. R. between May and Hoeter, libidatur.

2. If the Condition of an Obligation be to pay 81. Anno Domini 1599, in and upon the 15th Day of October next after the Date hereof at D. &c. where the 13th of October next after the Date is a long Time before 1599, yet it shall be paid in 1599, and not before; for it appears the Intention was, that it should be paid in 1599, and this is first expected; and therefore if the Subsequent Words, upon the 15th of October next after the Date hereof, are contrary, they shall be
Condition.

be void; but it seems they may be interpreted, that it shall be paid the 15th of October, which shall be Ano Domini 1599 next after the Date thereof, and to all may stand together, otherwise not.  

St. Michael, the Archangel which is the most notable, and not St. Michael in Tumba.  

4. Tenement in Dover granted her Estate to him in Reversion by Deed, rendering Rent, and for Default of Payment a Re-entry, and the Tenant in Dover for the Rent arrear at the first Term immediately entered, and the Heir who had the Reversion tender'd her the Rent and Re-entered, and the Tenant in Dover brought Affise, and the Opinion of the Court was with the Tenant. Quære caufam it seems in as much as the re-enter'd without Demand, quære. Br. Tender, pl. 42. cites 44 All. 3.  

5. Where a Man is bound by Indenture or Obligation to pay 10l. at a Day, and pays it after the Day, this does not exculc the Forfeiture by all the Jullics. Br. Conditions, pl. 60. cites 22 H. 6. 57.  

6. Debt of 20l. by Obligation, which was, that the Obligee shall receive 5l. by the Hands of A. when K. comes to his House, and at Michaelmas 5l. and at St. Andrew then next following 5l. and at Christmas then next &c. 5l. And as to that which A. should pay, and which should be paid by the Hands of A. this is void, and shall be paid immediately by the Obligee; but by the Words that it shall be paid when K. comes to his House, therefore it is not payable till he comes to his House. And per Brian, as to the Words (and 5l. at the Feast of St Michael then following) by this he shall pay 5l. at next Michaelmas after the making of the Obligation, by reason of these Words, then next following; for if these Words (then next following) had been left out, it should be Michaelmas next after the coming of K. to his House, Quod tota Curia concinit. Br. Obligation, pl. 56. cites 20 E. 4. 17.  


8. Bond to pay Money at the Feast of our Lady, without mentioning Nativity, Conception or Annunciation; per ter. Car. the Deed shall be continued to intend each Lady-Day which should next happen and follow the Date of the said Obligation. 3 Le. 7. pl. 10. 6 Eliz. B. R. does not, Anon.  

9. An Obligation was condition'd that if A. deliver to B. 20 Quarters of Corn 29 Feb. next following the Date thereof, that then &c. The next February had but 29 Days. It was held that A. is not bound to deliver the Corn until such a Year as is Leap-Year, and then he is to deliver it, and the Obligation was held good. Le. 101. pl. 132. Patch. 32 Eliz. B. R. Anon.  

10. If I am bound in an Obligation in Lent, upon Condition to pay a lesser Sum in quarta Septembris quatuor decembris, this Money shall be paid in Lent Twelvemonth after; &c. Br. Jours, Gouldsb. 137. pl. 40. Hill. 43 Eliz.  

11. And if it is upon the Feast Day of St. Michael, if I am bound to pay a lesser Sum upon the Feast Day of St. Michael Prox' Futur', without Question it shall be paid the Twelvemonth after, and not the instant Day; &c. Br. Jours, Gouldsb. 137. pl. 40. Hill. 43 Eliz.  

I i i  (T. b. 2)
(T. b. 2) Performance. At what Time. Where a Thing is to be done on or before such a Day.

1. Debt upon an Obligation, condition'd to pay at or before the 29th of September next, at such a Place as L. to the Obligee. It was held by the Court that if the Obligor tenders the Money the 28th Day of September at the Place, and the Obligee is not there to receive it, it is a void Tender, for the Tender is to be the last Day; but if the Obligor meets the Obligee at the Place before the Day, and he then tenders it, this is sufficient, and the Obligee ought to receive it. Cro. Eliz. 24. pl. 1. Patish. 25. C. B. Hawley v. Simpson.

2. Debt upon Obligation, conditioned to pay 144. yearly to the Party during the Life of the Wife of the Defendant, at Mich. or within one Month after at D. The Defendant pleads that 2 Days before the End of the Month he came to D. and there tender'd the 144. and there was none to receive it; The Justices held that if the Tender had been to the Plaintiff himself in Person within the Month, if he had come thither, this peradventure had been good, but it seemeth hard to tender it when the Plaintiff was absent, and to compel him to attend all the Month was not reasonable. But by Wray, it is more reasonable that the last Day shall be for one to tender and the other to receive, but they were in Doubt of this Case; but afterwards it was adjudged for the Plaintiff. Cro. Eliz. 73. pl. 31. Mich. 29 & 30. Eliz. B. R. Allen v. Andrews.

(U. b) Performed. At what Place it ought to be. Where none is limited.

2. But

Condition.

2. But in this Case it was agreed per Curiam, that he may, with out Furniture of the Condition, lend him to any Place in England to cure a Patient.

---Brownl. 67. S. C. & S. P.

3. [But] if an Apprentice be bound to a Merchant, and the Master binds him with such Words as these, he may lend him over the Sea for this is his Trade, and incident to it. This was so agreed in the said Case.

4. If an Annuity be granted upon Condition to do Service to the Grantor, and to Counsel him in Time of War and Peace, and after the King warns the People to go with him into Britany, upon which the Grantor goes there with the King, and warns the Grantee to go with him also. If he refuseth, the Condition is broke, though it be out of the Realm, because the said War, which cannot be properly within the Realm, implies as much. Dubitatur. 17 E. 3. 26.

5. But if the Condition had been to serve him, and Counsel him generally, he had not been bound to go with him out of the Realm, because of common Right, a Man is not to travel out of the Realm. 17 E. 3. 26. admitted.

6. If a Man mortgages Land, upon Condition to enter upon Pay- ment of 10 l. he may tender it upon the Land, without seeking the Person of the Mortgagor, because this is to be paid in Recompence in lieu of the Land. 11 P. 4. 62. b. per Skene. 19 P. 6. 53. b. per Forrestell. Lit. 78. Muste.

Co. Litt. 210. a. in his Commentary on the said Section observes, that Littleton always sets down the better Opinion, and his own last, and that so he does here; for at this Day, Coke says, this Doubt is settled, it having been oftentimes resolved, that seeing the Money is a Sum in Gros, and collateral to the Title of the Land, the Feoffee must tender the Money to the Person of the Feoffee, and that it is not sufficient for him to tender it on the Land. But if the Feoffee be out of the Realm of England, he is not bound to seek him, or to go out of the Realm unto him.

7. If a Man releases all his Right in the Land, upon Condition if this he pays the other 10 l. such a Day, the Release shall be void; it shall be paid upon the Land, or to his Person. * 317 E. 3. 17. 16.

8. In this Case the Payment should be made in what Place his Person could be found. 17 E. 3. 16.

9. If a Man makes a Feoffment referring a Rent to a Stranger, and for Default of Payment, that it shall be lawful for the Feoffee to re-enter, this is not any Rent, because it cannot be referred to a Stranger, and therefore the Feoffee ought to tender the Sum to the Person of the Stranger where he may be found, otherwise the Condition is broke. Lit. 80.

10. Where an All is to be done at a Place, as to come to D. and there to repair my Hall, this is material. Br. Conditions, pl. 103. cites 17 All. 1.

(X. b)
(X. b) At what place it ought to be performed, where a place is limited.

1. If the condition of an obligation be to appear coram J u s t i c i a r i u s a n d i n d e f e n s a f a c e r u m, he ought to appear in B. and not in B. R. for this is not the style of the King's Bench. Hill. 14 Jac. B. R. between Malgrave and Robinson, per Curiam.

2. If a Place of Payment be limited by a condition, he is not bound to pay it in any other place. 17 C. 3, 16. 42. b. * 17 Ann. 2.

S. C. * Br. Condition, pl. 192, cites S. C. See (Q. b) pl. 1. S. P.

3. [And] if a Place be limited by the condition where it shall be performed, the other is not bound to receive it in another place. 17 C. 3, 2 b. 3, 16. 17 Ann. 2.

4. As if a release be upon condition of payment of 20 l. to another at D. he is not bound to receive it out of D. upon a tender to his Perfon, 17 C. 3, 2 b. 15. b.

5. So if the condition be to come to the Releasee at D. to help him with his Counsel; it is not performed if he tenders his Counsel at the Day at another place. 17 C. 3, 2 b.

6. If the condition be to pay a small sum of Money at such a place, the obligor is not bound to receive it in another place. 21 C. 3, 45.

(Y. b) How a condition is to be performed, where divers things are [or the same thing is at different times] to be performed in the Disjunctive.

[Eleon.]

And. 49. pl. 124. Cagle b. Further, S. C. adjudged for the Plaintiff, and the Plaintiff need not make any request, but the Defendant at his peril ought to have made the lease for 21 years before the said proof—S. C. cited 2 Sound. 151. Poph. 22 Car. 2.


2. If the condition be to infeott the obligor of D. or S. the obligor hath election. 18 C. 4, 17. b.

3. So if the condition be to infeott him of D. or S. upon request, the obligor hath election. 18 C. 4, 17. b.

4. The same law if it be to pay 20 l. or a pint of wine, upon request. 18 C. 4, 17. b.

5. The same law if it be to shew evidences to the obligee or his counsel, upon request made by the obligee. * 18 C. 4, 17. 20. b.

Et 19. C. 4. 1. it was repeated.

* Br. Conditions, pl. 161, cites S. C. but where it is thus, viz. Debt upon obligation with condition, that if the defendant forms his evidence of such rent...
**Condition.**

6. The same Law if it be to cut 20 Acres of Meadow or Corn upon Request. Dubiuita, 18 E. 4. 20. b.

7. The same Law if it be to go with me or my Wife to Church upon Request. 18 E. 4. 21.

8. The same Law if it be to go to York, or marry my Daughter, *See the upon Request; for in all these Cases the Request is of no other Effect. Notes at D. 18 E. 4. 21.

9. A covenant with B. to discharge him from the Wardship of his Body at his age of 21 Years, or before the Request of B. shall take effect, he hath the Election, if B. requests before 21. D. 1. 2. 108. 32.

10. If I am obliged to pay 5 l. at the Feast of P. next 25. or before, at the Request of the Obligee, the Obligee hath given his Content, that the Obligee shall have the Election in this Case. D. 1. 2. 108. 32.

11. But otherwise it is, if the Words are retorfund, as if the Condition be to pay 5 l. before the Feast of P. at the Request of the Obligee, or at the Feast of P. the Obligee hath the Election. D. 1. 2. 108. 32.

12. D. 20 Eliz. 36. 9. Whildor, Bargainee of Land for 60 l. by another Indenture, covenants to make back to the Bargainer and his Heirs, such Assurance as the Counsel of the Bargainer shall devise, within one Year after, provided that the Vendor makes Default in the Assurance, then if he does not pay 500 l. to the Vendor, that he shall stand liable to the Use of the Vendor; the Vendor does not render an Answer, and the 500 l. is not paid; Per Curiam the Vendor hath a Right to the Land, because it was the Folly of the Vendor, that no Assurance was devolved and notified to the Vendor, and therefore there was no Default in the Vendor.

13. Debt upon an Obligation to pay 20 l. or 20 Bales of Wool, and he demanded the 20 l. And per Pigot and Brian, before the Day of Payment the Obligee has Election to tender which of them he will, but after Day of Payment, and no Tender made, there is Election in the Obligee or Grantee to demand which of them he will; but where a Man is bound to pay 10 l. at Easter, or 10 l. at Michaelmas, he has Election to pay at the one Day or the other. Br. Leete, pl. 150. cites 13 E. 4. 4.

14. The Testator devised a Estate to W. S. upon Condition that he see my Mother well provided for during her Life, or give her 20 l. &c. The Jury found that the Mother lived with S. for 2 Years, and that she was well provided for during that Time, but that afterwards she went from him, and then was not provided for, and that she requested the 20 l. but S. refused. The whole Court held that S. had his Election either to pay her the 20 l. or to provide otherwise for her; and that by having suffered her to dwell with him 2 Years, he had made his Election, and it was her Folly to leave him, for now he is not obliged to pay the 20 l. &c. But had the Jury found that he had turn'd her away after the 2 Years, he must pay the 20 l. Palm. 76. Hill. 17 Jac. B. R. Shaw's স্যাত্রাতের। K k k

15. Debt
Condition.

15. Debt upon Obligation, the Condition was, that if he paid to A. or his Heirs annually 12l. at Midsummer, or Christmas, or paid to him or his Heirs at any of the said Feasts 150l. then &c. Upon Demurrer it was objected that Defendant had Election at any Time to pay the 12l. or 150l. and so no Breach so long as he liveth; but per toto, Car. the Obligation is forfeited. It is true he hath Election to pay the one or the other; but for as much as he hath not alleged Payment of the 12l. or the 150l. the Bond is forfeited, and Judgment for the Plaintiff. Cro. J. 594. pl. 15. Mich. 18 Jac. B. R. Abbott v. Rockwood.

16. Debt on Bond conditioned, that if a Ship at Sea, or the Goods there-in, or the Obligor returned safe, then to pay so much Money. The Defendant pleaded that the Obligor died before he returned, and the Plaintiff demurred; for the Money was to be paid upon 3 Contingencies, the Return of the Ship, or of the Goods, or of the Obligor, which being all, the Law supplies these Words, viz. (which shall first happen) and so the Money is to be paid at such Contingent which first happens and forecloses the Election of the Obligor, and gives it to the Obligee to take his Action upon the Contingent first happening; resolved, and Judgment for the Plaintiff. Lev. 54. Hill. 15 & 14 Car. 2. B. R. Sayer v. Glean.

17. Debt upon Bond for 40l. conditioned that if the Defendant should work out 40l. at the usual Prices in Packing &c. when the Plaintiff should have Occasion &c. to employ him, or otherwise shall pay the 40l. then the Bond to be void. The Defendant pleads that he was always ready to have worked out the 40l., but that the Plaintiff never employed him. But upon Demurrer the Plea was held ill, because the Defendant did not aver that the Plaintiff had any Occasion to make use of him, and for that it was in the Election of the Plaintiff either to have the Work or Money, and that by not employing him, but bringing an Action for the Money, he has determined his Election to have the Money, and Judgment accordingly for the Plaintiff. 2 Mod. 304. Pach. 30 Car. 2. C. B. Wright v. Bull.

18. If A. obliges himself to pay to B. 10l. if so much as f. S. shall appoint, if f. S. shall not appoint any Sum to be paid, A. shall pay the 10l. per Powel J. Lutw. 694. Trin. 9 W. 3.

(Y. b. 2) Condition Copulative. What is; and how to be performed.

1. IF I am bound to J. N. in 40l. upon Condition to inoff his before Christmas, and that then the Obligation shall be void, and that if he does not inoff him &c. if he pays him 10l. at Easter then next &c. that then the Obligation shall be void; if I do not inoff him at Christmas my Obligation is forfeited, which cannot be saved by the Payment afterwards, for that which is once forfeited cannot be saved afterwards, Per Brudnel, which Brooke in a Manner affirmed. Br. Conditions, pl. 66. cites 14 H. 8. 15.

2. Otherwise it is, as it seems, if the Condition had been in the Disjunctive and not in the Copulative as before; but Brooke makes a Quare of the first Case, because he says it seems to him, that a Man may make several Deletances of one and the same Obligation, and if any of those be observed it is sufficient. Ibid.

3. If a Man mortgages his Land to W. N. upon Condition, that if the Mortgagee and J. S. repays 100l. by June a Day, that he shall re-enter, and
and be due before the Day, but J. S. pays by the Day, the Condition is performed, and this by reason of the Death of the Mortgagor, notwithstanding that the Payment was in the Copulative; and \( \&c \) contra if it was not in the Case of Death. Br. Conditions, pl. 190. cites 38 H. 8.

Debt upon Bond conditioned, that the Plaintiff should enjoy such Lands until the full Age of J. S. and if J. S. within one Month after his full Age, make an Affirmance of the said Lands to the Plaintiff the Oblige, that then \&c. The Defendant pleaded, that J. S. is not yet of full Age; but because he did not answer whether he had enjoyed it in the mean time, and the Condition is in the Copulative, it was adjudged for the Plaintiff. Cro. E. 870 pl. 4. Hill. 44. Eliz. B. R. Waller v. Crook.

5. The Defendant covenanted, that he or his Son R. or either of them, shall work with the Plaintiff in grinding and polishing of Glases, paying to each of them so much, and in an Action of Covenant brought he assigned the Bequest, that he had required R. the Son to work, and tendered him so much \&c. &c. After Verdict it was moved in Arrest, that the Declaration was of a Request to R. only, who is a Stranger to the Covenant, and no Notice given to the Covenantor himself, and the Covenant is in the Disjunctive (or) and the Words (either of them) is the same as (one of them,) but Glyn Ch. J. said, that the Word (either) by our Books, may be taken Conjunctive or Disjunctive, and often his Reference to more than two, and that the Words (Each of them) would have been more proper here, and so it seems that the Action is well brought, and that the Plaintiff had his Election; and Judgment for him. 2 Sid. 107. Mich. 1058. B. R. Nela v. Reeve.

(Z. b) How a Condition is to be performed, where several Things are to be performed in the Disjunctive.
In what Cases he ought to make a Tender [or Request.]

[Condition.]

1. If the Condition of an Obligation be, That if the Obligor delivers certain Obligations to the Obliger before such a Day to be pl. 1. S. C. cancelled, or else if he fail to deliver a Deed of Release of all Actions which the Obliger shall cause to be made by the Advice of his Counsel, and shall deliver it to the Obliger to be sealed before the Day aforesaid \&c. In this Case both are in the Election of the Obliger; for if the Obliger does not deliver to him any Release to be sealed by him, he is not bound to deliver the Obligations, for both are only in his Power. D. 38. El. B. R. between Gunningham and Ever; and D. 39. El. who said, adjudged per Curiam, contra Popham.

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were an absolute Disjunctive Condition that the Obligor should do the one Thing or the other; then the Election would be to the Obligor absolutely; and if the Obligee disabals himself to perform the one Part, the Law shall discharge him of the other; but here it is only a conditional Election, viz. if the Obligee will discharge the Obliger, and if he will not discharge him, he is absolutely obliged to deliver the Obligations. - No. 514. pl. 515. Gunningham v. Ever, S. C. says it was resolved that the first Part of this Condition made a Condition clearly, and the second gave a Disjunctive Election to the Obliger upon a Contingency Precedent, viz. upon Devise of an Acquittance by the Council of the Obliger before the Day aforesaid; but though there be not any such Devise, yet the Obliger must perform the first Part of the Condition; and if such Acquittance be devised, then the Obliger has Election to perform which he pleases; but this is no Discharge of both for Want of an Acquittance devised by the Obliger's Counsel. - Goulph 192 pl. 53. S. C. Gandy held the Obligation void, because an Acquittance not being tendered by the Obliger, he has taken away the Election from him whereof he shall not take Advantage, but Popham and Fenner contra; for the Election is not in the Party, the making of the Acquittance resting in the Will of the Obliger, and so the Obliger has no Election. - Pop. 9.
Condition.

Section 98, Grimingham v. the Executors of Heydon, S. C. but is only stated there — S. C. cited 2 Mod. 261 — 3 Mod. 242. Arg. cites S. C. as adjudged that the Defendant had Election to deliver or release to the Plaintiff should devise, which if he will not do the Defendant is discharged by the Plaintiff's Neglect; for the Defendant being at his Choice to perform the one of the other it is not reasonable that the Plaintiff should compel him to perform one. Thing only. — 2 Mod. 265. S. C. cited per Car. and held to be Law.

Mo. 295. 1. In this Case if the Obligee had delivered to him a Release to be sealed by him, then he ought to have had his Election either to deliver or perform the Obligations to be cancelled, or to seal the Release. P. 38 El. B. R. per Jophan.

Cro E. 365. 2. So if the Condition of an Obligation be to deliver to the Obligee such Obligations before such a Day, or to pay him 10 l. if he requests it; if he does not request the 10 l. the Obligor ought to deliver the Obligations, for he has no Election till Request made; but after Request made, he hath Election which of them he will do. P. 38 El. B. R. per Jophan.


5. And per Windham J. if the Condition be to pay 20 l. in Gold or in Silver such a Day, at the Election of Obligee, the Obligor is not bound to provide both; But Anderdon and Periam J. thought, in such Case, that after the Day the Bond might be void, and the Obligor should pay the 20 l. be it in Gold or in Silver, because it was Parcel of the Obligation; But it seems to be otherwise of a Thing collateral which is not Parcel. Mo. 241. in Kerne's Cafe.

6. Bond conditioned to settle on Obligo within 6 Months, as Obligo's Counsel (and advise, an Annuity of 20 l. per Annum during his Life, or to perform within 6 Months 200 l. The Defendant pleaded, that the Bond had not tendered any Grant of an Annuity within the 6 Months. The whole Court held the Plea good, because the Defendant had the Benefit of Election, and the Plaintiff not making the Request within the 6 Months, had dispensed with one Part of the Condition, and the Law had discharged the Defendant of the other Part; And Judgment was given for the Defendant. 2 Mod. 260. Hill 28 & 29 Car. 2. C. B. Basket v. Basket.

Z. b. 2. (Edited)
Condition.

(Z. b. 2) Where it is to do one of two Things; and
Pleadings in copulative or disjunctive Conditions.

1. In Trespass the Defendant saith: that his Frankencement; the Plaintiff saith that he was seised in Fee, and intersected the Defendant in Fee, upon Condition to say Miss and Dirge, and ring the Bells to it such a Day. Exhibited ambo pro annis. J. N. Spec. and because he did not ring nor say Miss he was re-cast, and was seised till the Defendant did the Trespass. The Defendant saith that he had performed all as he ought, and showed How. And the Plaintiff saith that he did not say Miss, and the other contra; and after he amended his Paper, and said that he did not ring to the Dirge, and good; for the Issue shall be upon one Point only; for the Condition is a Copulative. Contra upon a Disjunctive, for there the Feoffee has Election. Contra upon a Copulative. Br. Conditions, pl. 95. cites 38 H. 6. 26.

2. Debt upon Bond, conditioned, that whereas certain Persons became bound to the Earl of Holland in 8 several Bonds, which were assigned to the Defendant to his own Use; Now it was agreed that he should assign them to the Plaintiff to his own Use, and the Defendant covenanted that the Money should be paid on the several Days mentioned in the Bonds, or within 8 Days after; The Breach assigned was, that 50 l. payable on the 1st Day of March was not paid, and found for the Plaintiff; But it being moved that the Replication was insufficient, because it might be paid within the 8 Days, and also that the Condition was for Maintenance, and so the Bond void, and Judgment was stayed. All. 60. Pach. 24 Car. B. R. Hodson v. Ingram.

3. Where a Condition is in the Disjunctive, and one Part of it is falsified (as in the principal Case it was by Defendant's Demurrer) the Plaintiff must have Judgment, and it was given accordingly. 8 Mod. 349. Pach. 11 Geo. 1. Griffith's Case.

(A. c) Disability [to perform the Condition, and what shall be said a disabling himself.]

If a Man promises to perform an Award, which is: that he shall deliver up a certain Obligation to the other, in which the other is bound to him, without limiting any Time when it shall be performed; if he brings an Action of Debt upon the Obligation, and recovers, and after delivers the Obligation, yet it is not any Performance of the Condition, but is broke, because he ought to deliver it up as it was at the Time of the Award made: for the Recovery in the mean time is a Decret, and a Disability of itself by his own Act to perform it. Ten. 15 Jac. B. R. between Nicolass and Thomas adjudged.

2. If the Feoffee upon Condition to re-infeof the Feoffor into Se a Stranger upon Condition to perform the Condition, yet the Condition is broke, because the Feoffee hath disabled himself to do it. 38 Al. 7. per Dowkay.
Condition.

3. If the Feoffee upon Condition to re-infeof or to inschoff a stranger, and after another recovers the Land against him by Default, yet all Execution fixed the Condition is not broke, for before Execution he is not disabled, for perhaps he will never sue Execution, and if he has Execution after he has made the Feoffment according to the Condition, the Feoffor may re-enter, for the Condition broke.

4. If the Feoffor upon Condition to re-infeof &c. grants a Rent-charge out of the Land; this is a Forfeiture of the Condition, because he is disabled to make a Feoffment of the Land as it was at the first Feoffment. * 44 Att. 26. + 44 Ed. 3. 9. b. per Perkin; and if the Feoffor should accept the Re-feoffment, he should be infed to the Charge.

* Br. Conditions, 217. cites S. C. &c. S. P. and so if he be bound in a Nature Sec. for by those Acts he has disabled himself to make a Re-feoffment, and says that Littleton in his Book, Title Eftates, is accordingly.

† Br. Conditions, pl. 26, cites S. C. & S. P. that if the Feoffor charges the Land the Feoffor may re-enter.

Firth. Entre cagioale, pl. 53, cites 44 Ed. 3. 8. S. C. — In such Case the Feoffor may enter, and so defeat the Charge. Litt. 578. — Co. Litt. 222, a says it is to be understood, that the Grant of the Rent-charge is a present Disability; and therefore though the Grantee brings a Writ of Amnui, and so discharges the Land of it ab Initio, yet the Case of Entry being once given by the Act of the Feoffor, the Feoffor may re-enter; and that is so it is the Rent-charge was granted for Life, and the Grantee had died before any Day of Payment, yet the Feoffor may re-enter.

Where a Man is bound or covenants to inschoff a. N. of the Manor of D. and after grants a Rent-charge out of H, and makes the Feoffment, the Bond is not forfeited; Per Keble and Fairfax, to which the Justices in a Manuer agreed. Br. Conditions, pl. 126, cites 3 H. 7 14.

5. In Debt, a Man was bound in 100l. to appropriate the Adowcution of D. to the House of C. by such a Day at the Cofts and Charges of the Ob ligor, and a Penition was assigned out of it after, and after this the Ob ligor appropriated it; and per Keble and Fairfax J. the Obligation is not forfeited. Br. Conditions, pl. 126. cites 3 H. 7 14.

6. A. Tenant in Dower of Land where Trees were growing, which it was lawful for her to cut, covenants with B. (the Receiver) that it should be lawful for B. every Year to cut 20 Trees. A. destroys and cuts all the Wood; this is a Breach. Mo. 18. pl. 65.

7. If I give Licence to take a Deer in my Park every Year, I cannot dispark my Park; otherwise it I give Licence to hunt only for Dyer, Mo. 19. pl. 65.

8. Leffor covenants that if Leflee surrender the old Leafe at any Time during his Life, he will make a new Leafe for a greater Number of Years. Leffor grants the Reverfon over, Lefflee need not now surrender his Leafe, but may bring Covenant, because the Leffor has disabled himself. 5 Rep. 20. b. Patch. 38 Eliz. B. R. Sir Anthony Mayne v. Scott.

in Debt on Bond for Performance of Covenants adjourned

in C. B. and affirm'd in B. R. — 2 And. 18. pl. 12. S. C. and the Court held the Bond forfeited. — Cro. E. 450, pl. 17. Scot v. Mayne in C. B. adjourned and affirmed in Error in B. R. Cro. E. 449, pl. 11. S. C. refurded by all the Justices without any great Argument, that the Defendant having disabled himself by this Tune to make the Leafe according to the Covenant, and because the Plaintiff is not to make the Suerender but with an Intent to have a new Leafe, which, now he cannot have, it would be in vain for him to offer his Suerender, but the Covenant is broken of itself, and to the judgment was affirm'd. — Pynk. 109. S. C. and Judgment affirm'd. — 10. 250, pl. 49. S. C. adjourn'd, and affirm'd in Error. — 20. C. cited 2 Roll Rep. 547. 548. — 8. C. cited Rayn. 56. — S. C. cited Hard. 587.
Condition.

1. And suppose he be but a Term to begin at a Day to come, yet by this the Obligation is forfeited, because the Obligor has thereby disabled himself to perform the Condition in such a Plight as he might have done if the Obligation was made. Poth. 140. pl. 6. Mich. 58 & 59 Eliz. per Cur. in Case of Scoc v. Many.

9. If a Man grant an Advowson upon Condition that the Grantee shall resign the same to the Grantor in Tail, in this Case if the Church become void before the Regrant, or before any Request made by the Grantor, he may take Advantage of the Condition; because the Advowson is not in the same Plight as it was at the Time of the Grant upon Condition, and to it it was resolved; therefore the Grantee in that Case at his Peril must resign it before the Church become void, or else he is disabled; otherwise he has Time during his Life if he be not haimted by Request. Co. Litt. 222. 6.

10. Leffor for Years covenanted to do for Leffor all reasonable Works with his Carts, Carriages, and otherwise as he should require; and in Covenant brought by the Leffor, he aligned the Breach, that he had required the Leffor to carry 3 Loads of Coals for him to such a Place, which he refused to do, and did not do it. Leffor pleaded that he had no Carts or Carriages at the Time. Leffor demurred. Jermin held that the Leffor is not bound to keep Carts to serve the Leffor; but when he has, then, if the Leffor requires &c. he is to do it, and Jones seem'd to incline to incline to this Opinion. Lat. 252. Mich. 2 Car. Maners v. Veley.

11. A Bond by a Widow was condition'd to make further Assurance of Lands &c. upon Request at the Charges of the Obligee. The Obligee tender'd an Assurance which differed in the Limitation of the Estates from what was mentioned in the Condition, whereupon the Widow refused to sign it, and afterwards married; The Question was, whether the Marriage was a Breach of the Condition, and it was argued that it was because she could not execute any Conveyance now but by Fine, and it being to be done at the Charge of the Obligee, he may now be put to more Charge, whereas had she been single, the Obligee might have been contented with a Feoffment, or a Loca and Release, but she is now disabled by her own Act to convey the Lands in the same Plight they were in before the married, and Conditions must be performed in every Circumstance where the Default is in the Party herself. The Court advised the Defendant to make a good Conveyance, that being the Intent of the Parties; And here the Obligee it prejudiced by the Marriage, and put to greater Charge for the Conveyance. Hard. 463. pl. 1. Trin. 19 Car. 2. in the Exchequer. Edwards v. Owen.

12. If Leffor covenants to have all the Timber which is growing on the Land lefted upon the Land at the End of the Term, if Leffor cuts it down, though he leaves it on the Land, it is a Breach of his Covenant. Raym. 464. Patech. 34 Car. 2. B. R. in Case of Griffith v. Goodhand. per Cur. So if a Co- venant be to deliver a Service, and the Defendant postpones thereupon. Raym. 464. Patech. 34 Car. 2. B. R. in Case of Griffith v. Goodhand. per Cur. Then delivers him, Covenant lies. Arg. 560. in pl. 8.

(B. c)
(B. c) How to be performed; [or rather, in what Cases it cannot be performed by reason of the] Obligor, [or Feoffee being] disabled. [Though re-enabled afterwards.]

1. If a Day be limited to perform a Condition, if the Obligor once disables himself to perform it, though he be enabled again before the Day, yet the Condition is broken. 21 Ed. 4 55.

2. As if the Condition be to infeoff before Michaelmas; if before the Feast he infeoffs another, though he alter re-purchases, yet he cannot perform the Condition. 21 Ed. 4 55.

3. So where no Time is limited, if the Obligor once disables himself, he is perpetually disabled. 21 Ed. 4 54 b.

4. As if the Condition be, that A shall suffer B. to recover in a Feoffment brought by B, against A. and that then B. shall infeoff A. if B. be noncit in this Feoffment, he hath disabled himself to recover and make the Feoffment. 21 Ed. 4 55.

5. If Feoffee upon Condition to infeoff another infeoffs a Stranger, this is a Foreclosure, because he hath disabled himself. 19 H. 6.

6. In Debt, A was bound to B. by Obligation in 100 l. upon Condition that if the said A. after the Death of his Father, and within 3 Months after, made sufficient Effate in such Land to a Feoff, that then &c. Per Fisher J. if the Baron after the Marriage had left the Lands to a Stranger for one Month, Remainder to the Feoff in Feoff; this had been a good Performance of the Condition. Quere inde, tamen non negatur. Br. Conditions, pl. 127. cites 4 H. 7 3.

Co. Litt. 7. If a Feeuement is made by A. to B. upon Condition to infeoff J. S. 225. b. S. P. before a certain Day, and B. before the Day is professed a Monk. A. may enter prentely into the Land, and notwithstanding that B. is deiern'd before the Day, yet the Condition shall not be revived. Perk. S. 801.

Litt. S. 517. 8. So if the Feoffee was Sole at the Time of the Feeuement, and before the Day, or the Condition perform'd, he takes a Wife &c. Perk. S. 801.

Co. Litt. 8. If the Feeuement is made by A. to B. upon Condition to infeoff J. S. 225. b. S. P. before a certain Day, and B. before the Day is professed a Monk. A. may enter prentely into the Land, and notwithstanding that B. is deiern'd before the Day, yet the Condition shall not be revived. Perk. S. 801.

Litt. S. 517. 8. So if the Feoffee was Sole at the Time of the Feeuement, and before the Day, or the Condition perform'd, he takes a Wife &c. Perk. S. 801.

The Reason is, for that, as Littleton says, immediately by the Disability of the Feoffee the Condition is broken, and the Feoffee may enter; but it is not so by the Disability of the Feoffee or his Heirs, for if they perform the Condition within the
Condition.

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the Time it is sufficient, for that they may at any Time perform the Condition before the Day; So it is if the Feoffee enter a new Register, and before the Day is designated, he may perform the Condition for the Case above mentioned, Ex fe de familia. Co. Lit. 221 b. 222. a.

10. If a Man makes a Feoffment in Fee, upon Condition that if the Feoffor or his Heirs pay 100 l. before such a Day &c. The Feoffor [before the Day] commits Trespass, and is attainted and executed, now is there a Disability upon the Part of the Feoffor, for he hath no Heir; but if the Heir be restored before the Day he may perform the Condition, as it was resolved Trin. 18 Eliz. C. B. in Sir Thomas What's Case, which Lord Coke says he heard and observed; otherwise it is if such a Disability had grown on the Part of the Feoffee. Co. Lit. 221. b.

11. If the Feoffee is dissembled, and after binds himself in a Statute Staple, or Merchant, or Recognizance, or takes Wife, this is no Disability in solated person, because during the Duration the Land is not charged therewith, neither is the Land in the Hands of the Dissembler liable thereunto. And in that Case, if the Wife dies, or the Consecree releases the Statute or Recognizance, and after the Dissembler enters there is no Disability at all, &c. the Case is the same as above, and therefore in that Case the Feoffee may enter and perform the Condition in the same Plight and Freedom as it was conveyed unto him. Co. Lit. 222. a. — Jenk.

255. pl. 44. S. C. & S. P. reliev'd.

12. Where a personal Notice is necessary, and the Plaintiff by his Affidavit, or the Notice had prevented it, so that it could not be given, the Defendant was not bound to seek the Plaintiff to give Notice. 1 Salk. 214. Pach. 6 W. 3. B. R. Nurie v. Frampton.

(C. c) What shall be a Disability.

1. If a Stranger recovers by Real Action against Feoffee upon Condition to re-inceff, this is no Disability of the Feoffee before Execution sued, for perhaps he will not the Execution. 44 Ed. 3. 9. b. Br. Conditions, pl. 26. cites 24. S. C. pl. 53. cites Pach. 44 E. 3. S. C. — See (A. c) pl. 3. and the Notes there.

2. But if he that recovers sues Execution, or enters upon the Feoffee, the Condition is broke, for he is disabled. 44 Ed. 3. 9. b. Br. Conditions, pl. 26. cites 24. S. C. Fitch. ENTER congeable, pl. 53. cites Pach. 44 E. 3. S. C. Fitch. Enter congeable, cites Pach. 44 E. 3. S. C.

3. So if after such Recovery the Feoffee makes a Re-incoll, and after he that recovers enters upon him, or susses Execution, now the Condition is broke, and the Feoffee may re-enter. 44 Ed. 3. 9. b. — Fitch. Enter congeable, cites Pach. 44 E. 3. S. C.

4. If an Annuity be granted till he is promoted to a Benefice, if Br. Annuity, the Grantee takes a Wife, the Annuity is determined, because by the Marriage he is disabled, &c; non cogit mutare, fellecit, to profect it to him. 7 D. 4. 16. Br. Annuity, pl. 16. cites 24. S. C.

5. In Debt A. was bound to B. by Obligation in 100 l. upon Condition that if the said A. after the Death of his Father, and within three Months after, made sufficient Estate in such Land to a Fine, then &c. M in m The
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The Obligor himself married the Feme, this is clearly a Forfeiture of the Obligation. Contra if the Obligee had married her. Br. Condition, pl. 127, cites 4 H. 7. 3.
6. He, who is bound to carry my Corn, cannot say that he has no Cart. Br. Barre, pl. 111, cites 16 H. 7. 9. per Kebbe.
7. So where a Man is bound to weod my Groves, it is no Plea that he has no Scythe. Ibid.

See Tit.
(Tender) (N)
(Q) (R)
See Tout
Temps Prift.
(D) &c.

(D. c) What Thing will excuse the Penalty of the Obligation only.

* Br. Touts Temps Prift. pl. 51 cites S. C. — The Sum mentioned in the Condition is not lost by the Tender and Refusal, not only because it is a Duty and Parcel of the Obligation, and therefore is not lost by the Tender and Refusal, but also for that the Obligee has Remedy by Law for the same. Co. Lit. 207. a.

Temps Prift. pl. 55, cites 5 H. 4. 18. S P. [but it seems misprinted and should be 7 H. 4. 18 as in Roll, and to be the other Editions] — Br. Tender and Refusal, pl. 6, cites S. C. [but the Point of the Penalty being saved does not clearly appear in either of the half Books.]

2. So it is, though there be a Place limited for Payment, and the Obligee refuses it. D. 3. 4. Sar. 152. 84. Contra 22 E. 4. 25.

3. In Debt, if the Defendant be bound to the Plaintiff in 20l. to pay 10l. such a Day, and the Defendant tenders it at the Day, and he receives Part, and of the rest he repays the Receipt thereof till Agreement be made between them; and after the Plaintiff at another Day requires Payment, and be refused, yet the Defendant shall not forfeit the Penalty, for this is saved by the first Offer. Br. Conditions, pl. 145. cites 7 E. 4. 3.

4. Where an Obligation is made, and afterwards a Defaulce is made thereof if he pays a lesser Sum &c. there by a Tender of the lesser Sum the Obligor is discharged of all; but otherwise it is of an Obligation with a Condition to pay a lesser Sum. Cro. E. 755. pl. 16. Patch. 42 Eliz. C. B. Cotton v. Clifton.

(E. c) Perform'd. At what Time it shall be, if no [or an uncertain] Time be limited. And what not.

Br. Obliga-
tion, pl. 58.
cites 20 E.
4. 17. S. C. and after the Words (when he comes to his Houfe) the Condition went on, viz. and at Mi-
chaelmas 5 l. and at St. Andrew's Day then next following 5 l. and at Christmas then next &c. 5 l. Briton said
Condition.

The text is a legal document discussing conditions and obligations. It mentions terms such as "per Car. 14 Rep. 2.," "Co. Lit. 211 a.," and "E. 4. 30.," indicating references to legal precedents or statutes. The document appears to be discussing a case involving Edward Barrowes, possibly related to a fine or obligation, and it references several legal citations and precedents from different legal works and cases. The text is too detailed to summarize concisely without losing the context of the legal discussion.
Condition.

H 8 22. where a Day is limited, there is heukes or schilles before the Day, per he may alter it at the Day. *46 C. 3. 3. b. 14 H. 8. 23. b. 

d 8 14. 

(G. c) [Performance.] What will excuse the Performance of a Condition. 

[And how he shall perform it afterwards.]

Co. Litt. 20 a. S. P. 1. If a Condition, which was possible at the making thereof, becomes impossible by the Act of God, the Delegation is discharged. 

See pl. 8. and the Notes there.——See (L. c) pl. 1. S. P. 

* (I. c) pl. 3. S. C. 2. If a Man be let to Mainprize, it is a good Plea at the Day when the Manucautors ought to have the Body of the Manucautors to lay, that he who was let to Mainprize was dead before the Day, so that they could not have his Body at the Day. *21 E. 4. 70 b. Curta. Contra *21 E. 3. 51. b. because, that this cannot be averred by the Manucautors, but it ought to come in by Return of the Sheriff upon a Capias against him and the Manucautors. 

** F. 109. 3. But it is clear by these Books, that his Death excuses the Manucautors, Sith. 32, 33. Et. B. R. between Warre Plaintiff, and Perry and Spring Defendants, per Curiam. 

* Fitch. A. F. 4. If A. agrees with B. to give him eight Marks, to serve him three Years, and because he hath not the Money ready, in Surety of the Payment he encoils him of Lands in Phe, upon Condition, to continue till the eight Marks are paid, et. and after A. dies within three Weeks after this Agreement, yet his Death shall not excuse the Payment of the eight Marks, for the Hire cannot enter before payment thereof, or raising thereof out of the Land. 

** Br. Comm. pl. 18. his taking A. to be his Apprentice for 3 Years; and A. died within 3 Weeks, yet the Heir of A. cannot enter till the 3.1 is paid, but after the Money is levied he may, Brooke says, Quod negat: for the Condition on the Feoffment was only for the 3.1. and not for instructing A.——Br. Affizet pl. 239. (239) cites S. C. ——

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5. If A. recovers a Debt against B in Banco, and B. brings a Bill of Exchange, and after dies before the Return of the Bill, the Court thought that the Plea was not good, and Judgment was given for the Plaintiff accordingly against the Defendants.

6. If a Man becomes Bail for another in an Action, and after the Plaintiff recovers against the Principal, and the Capias against him is returned Non est inventus, and this is filed, and after the Principal dies before any Scire Facias is filed against the Bail, then this Bail shall not excuse the Bail, in as much as he died after the Capias returned and filed; (for it seems, that after this, and before the Return of the Scire Facias, the Bail is excused by Gratia, by bringing him in.) Trin. 3 Jac. B. R. between Timberly, and Boote, adjudged upon Demurrer.

7. But, otherwise it had been if he had died before a Capias returned or filed. Trin. 5 Jac. B. R. agreed per Curiam (C) pl. 2. 8. 2 Car. between Calf and Others Plaintiffs, and Doweress Defendant, adjudged upon Demurrer, as in such as it was not avowed by the Plaintiff in the Scire Facias against the Bail, that there was a Capias returned against the Principal before his Death, which ought to come in at his Part, and then was cited by Justice Jones, 43 Eliz. B. R. between Hobbs and Doverer, adjudged, That the Death of the Principal before the Return of the Capias discharges the Bail.

8. If a Man covenants to do a certain Thing, before a certain Time, though it becomes impossible by the Act of God, this shall not excuse him, in as much as he hath bound himself precisely to do it.

If a Co. or a Condition be possible at the Time of the making it, as to inchoate J. S. and afterwards it becomes impossible by the Act of God, or of J. S. As if J. S. dies, or enters into Religion by the Day, the Obligation is saved by the Condition, Br. Obligation, pl. 45. cites 2 E. 4. 2. by the Justices.—Co. Lit. 206. a.

9. If a Man, for a certain Consideration given by A. assumes to deliver to A. certain Goods in London; though he after puts the Goods into a Boat to carry to London accordingly, and in going the Boat is overthrown by the Violence of the Tempest and Water; then this shall not excuse him in an Action upon the Case upon this Promise. Tr. 32 Eliz. B. R. between Compton and Miles, per Curiam.

10. If a Man covenants to build an House before such a Day, and after the Plague is there before the Day, and continues there till after the Day, this shall excuse him from the Breach of the Covenant, for the not doing thereof before the Day, for the Law will not compel a Man to venture his Life for it, but he may do it after. H. 8. Jac. B. R. between Lawrence and Twemman, per Curiam.

11. If the Condition consist of two Parts in the Disjunctive, in which the Party hath an Election which of them to perform, and R. 5. Trin. both possible at the Time of the making the Condition, and one be comes impossible afterwards by the Act of God, This shall excuse the Performance of that and the other also, for otherwise his Election on should be taken away by the Act of God. Co. 5. Laughton 22. was, that if one R. aliened his Wife Lands; if then during her Life he purchased other Lands of as good Title and Annual Value to his Wife, and her Heirs; or do, or shall leave her by his Will, so much as Value, by making her Executrix, or in a Legacy, that then she R. aliened the Land. The Wife died, bring R. who neither in her Life time, or since her Death purchased other Lands; all
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Condition.

the Justices resolved that the Obligation was not forfeited; for the Condition is express, that R. perform it at any Time during his Life, and the Impossibility thereof, being by the Act of God, shall not turn the Obligor to any Penitency. So as now being prevented of Part of the Time, he is discharged from performing it. But when the Law appoints a Plain Time to do a Thing during his Life he ought at his Peril to perform it, or otherwise his Obligation is forfeited. And when one has Election to do one Thing or another before a certain Time, and by the Act of God it is become Impossible to perform the one, the Law will privilege him from the other, that he shall not forfeit his Obligation by the Non-performance thereof. But Carly considered that the Obligation was not forfeited, but that R. ought during his Life to purchase Lands to his Wife's Heir, or otherwise the Obligation will be forfeited; but the other Justices were e contra in that Point; and Judgment for the Defendant. — Mo. 357. pl. 485. Barton's Cae. S. C. adjudged for the Defendant; because the Condition of the Obligation, was for the benefit of the Obligor, to give him Election to purchase other Land, or to leave Money, or Goods; which Election he is prevented of by the Death of his Wife, which is the Act of God, and so in Law a Discharge of part of the Condition, and then the whole Condition and Obligation is discharged. — Poph. 98. S. C. but is only fixed there. — S. C. cited Palm. 514. 516. Arg. — S. C. cited Arg. Mod. 324. — S. C. cited 2 to 66. per Cur. — 3 Mod. 253. Arg. cites S. C. and says it was inferred that the whole Event of the Condition was to provide a Security for the Wife, so that the Dying before R. the Non-performance could not hurt anybody, there being no manner of Necessity that any Thing should be done in order to it after her Decease. — 1 Salk. 152. pl. 2, the Ground of Laughter's Cae. was denied to be Universal. — S. C. cited by Powell, J. Lutw. 662. Trin. 9 W. 3, and said, that Laughter's Cae. is good Law, but the Reason thereof given in 3 Rep. has been denied. And Treby, Ch. J. said that Doblen, J. had informed him, that the Reason of Laughter's Cae. had been denied in a Cae when Seint-John was Ch. J. of C. B. and that 2 of the Judges in that Cae. had spoke with 2 of the Judges in Laughter's Cae. who affirmed to them that no such Reason was given for the Resolution in Laughter's Cae. — Ed. Raym. Rep. 258. Treby, Ch. J. cited the Affirmation of Seint-John as to Laughter's Cae. yet the whole Court held that the principal Cae. of Laughter was good Law.

* Br. Conditions pl. 47. cites 21 E. 4. 29 S. C. — And the performing the Part which is possible is sufficient; per Popham and Clinch. Cro. E. 780. in pl. 12. Mich. 42 Eliz. B. R. —

12. [Bar.] If a Condition consists of two Parts, of which one was not possible at the making of the Condition to be performed, he ought to perform the other. * 21 C. 3. 39. Ch. 5. Laughton 22.

13. As if the Condition be to enfeof I. S. or his Heirs, when he comes to such Place, he is bound to enfeof I. S. when he comes, because the other is not possible, for he cannot have an Heir during his Life, and so he had not any Election. * 21 C. 3. 30. Ch. 5. Laughton 22.

14. If a Condition of an Obligation be to make an Assurance of certain Lands to the Obligee and his Heirs, and after the Obligee dies, yet he ought to make the Assurance to his Heirs, for this is Cumulative, and his Heirs, shall have the Signification of a Disputive. Trin. 40 El. B. between Horn and Mary, adjudged. * [All the Editions of Brooke are (may) but the Year-Book is (shall) infixed] — Rendl. 55. pl. 6. Pack. 4 E. 6. S. P. held e contra by Mountague Ch. J. of C. B. and he said that this was Welton Browne's Case, but cites Litt. Tit. Edates, that otherwise it is at Peace from upon Condition.

Jo. 171. pl. 6. Wood v. Barton. S. C. resolved Una Voce, that...
Condition.

501. within six Months after, the Obligation shall be void. And if within six Months after the Marriage takes Effect, and B. survives A., and dies within three Months, without receiving any Thing of the said 500 l. by the Will of A., or by the Customs of London; it seems the Death of A. within the three Months shall not excuse the Obligor to pay the 500 l. to the Executors of B., because it is not any dissuasive Condition, of which the Obligor had any Election to do the one or the other. But the Condition is, That if a Stranger does not pay to much within a Time, that he himself will pay another Sum to that the Death of the Party who is to receive from the Stranger shall not excuse the Obligor. Thir. 3. Case, between Wood and . . . . . . the said B. does not receive 500 l. within 2 Years after his Death, either by his Will, or by the Customs of London, and the said B. dying within the said 2 Years, making it become impossible by the Act of God, that this Part should be performed; therefore the Obligor is not bound to perform the other Part. —Palmer. 515, 516. and at first 3 Justices were of Opinion for the Plaintiff. But after further Argument, the whole Court was against the Plaintiff, because the Performance is prevented by the Act of God; for the Feme ought to receive so much, and not to have so much left her by the Baron only; and the Court said that a Difference taken by Nat. (of Counted for the Plaintiff) is not Law, viz. that where it is in Election of the Stranger, that there, though Part becomes impossible by the Act of God, the Condition is not discharged; for it is discharged by the common Cafe of Bail who enter into Recognition to pay, or that the Principal shall render himself, in such Cafe if the Principal dies the Recognition is * not discharges. Now it is feared that here it might be impossible, upon the Death of the Baron, as to both Parts, because the Baron has left nothing by his Will, and perconce there is nothing left for the Feme to take by the Customs, and consequently the Obligation forfeited immediately. But per Cur. this does not appear the one Way or the other, and so is out of the Cafe; whereupon Judgment for the Defendant and *.

It seems the Word [not] is omitted by the Error of the Press.

17. There is a Diversity between a Disability and an Impossibility: As this Cafe is Mich. 14 E. 1. and in Debte by the Clerk, and the Bond the Patron pleased for the Clerk's taking a Wife before the Avoidance, and that so he was disabiled to take the Church; but by Hengham the Patron is not to judge of this, but he ought to have prelected him to the Bishop, who ought to demand if he was convenable [capable] or no; and then the Patron was quitted. Fitzh. Dette, pl. 164.

18. Where a Man is bound for the Appearance of W. N. in Banco, Br. Condition, there if he dies before the Day, the Bond is saved. Cur. if he be in a Prison. Cites 8 E. 4. 12. 13. per Littleton.

19. There is a Diversity where a Condition becomes impossible by the Act of God, as Death, and where by a 3d Person [for Stranger] and where by the Obligor, and where by the Obligee; The first and last are sufficient Excuses of Forciture, but the 2d is not; for in such Cafe the Obliege has undertaken that he can rule and govern the Stranger, and in the 3d Cafe it is his own Act. See Br. Condition, pl. 127. cites 4 H. 73. per Brian Ch. J.

20. Debte upon Obligation; the Defendant said, that it is inforced upon the Condition, that if J. S. comes to L. before such a Feast, and brings two Servants with him, to be bound to the Plaintiff in 40 l. that then &c. and that before the said Feast J. S. died, Judgment &c. and a good Plea per rot. Cur. And as to the Time before the Feast it is not material, for all this Time is the Defendant's, for if he does it in the Vigil of the Feast it is sufficient. Br. Conditions, pl. 70. cites 15 H. 7. 2.

21. If I am bound by Bond to inforss the Obligee as Mich. and I die before Mich. my Executors shall not be charged with it; for the Condition is become impossible by the Act of God, because the Land is devoted to the Har. Sq. L. 155. pl. 159. 19 Eliz. B. R. per Cur. in the Cafe of Kings-well v. Chapman.
23. Husband bound himself in a Bond conditioned, that he and his Wife, upon the reasonable Request of the Obligee, should keep a Fine &c. The Request was made when the Wife was sick and could not travel. The Court thought it not a reasonable Request during her Sicknes; and if he is excused the Baron is excused also, because in such Case he and his Feme cannot levy the said Fine, and Joint-Convience is intended by the said Condition, whereupon Ille was taken on the Sicknes. Cro. E. 10. pl. 6. Mitch. 24 & 25 Eliz. C. B. Kingwell v. Knapman.

24. A. covenants that B. shall make such reasonable Affurances &c. to D. and his Heirs, as D. or his Heirs should reasonably desire or require. D. required a Fine. B. came before the Justices to acknowledge it, but B. was Non compus, and the Justices would not take the Convience; the Condition is not broken, the Words being General; but if the Words had been Special to acknowledge a Fine it would have been otherwise. Le. 304. pl. 412. Mitch. 32 Eliz. C. B. Petit v. Callis.

25. The Condition of the Bond was, that J. S. a Stranger, should stand to an Award, if it be made before the last Day of August next &c. and if no Award should be then made, then he should come into the Pearch of the Guildhall in Norwich, the 7th Sept. and there pay two Hours, to be arrested again at the Suit of the Obligee, or should pay to the Obligee 10 l. in that Pearch on Mich. Day next after. No Award was made by the Time, and J. S. the Stranger, who was to perform these Things, died before the 7th Sept.; yet it was adjudged, that the Money ought to be paid at Mich. Mo. 357. in pl. 485. cites Mitch. 34 & 35 Eliz. B. R. Crapp v. Field.

26. Bond to pay 20 l. before the 1st of May, or marry J. S. before the 1st of August, if J. S. dies before 1st. of August, yet the Bond is forfeited; Per Walmley. Cro. E. 864. pl. 42. Mitch. 43 & 44 Eliz. C. B. in Cafe of More and Morecombe.

27. If a Condition be, that if the Mortgageor or his Heirs pay such a Day &c. and he dies before the Day without Heir, whereby the Condition becomes imposable to be performed by the Act of God, the Eftate of the Mortgagee is hereby become absolute. Co. Litt. 296. a.

28. A Bill to be relieved against a Bond of 300 l. conditioned to pay 15 l. per Annum during the Plaintiff's Life; but the Plaintiff pretended, that the said Bond was for the Performance of an Agreement which was by the Death of the Plaintiff become imposable to be performed, and fo the Bond ought to be discharged. Deedred the Plaintiff to pay the 15 l. per Annum, and Arrears with Damages. Chan. Rep. 149. 27 Car. 1. St. Nicholas v. Harris.

29. In
Conditioa.

29. In Debt upon a Bond conditioned to give security by a certain Day as the Chamberlain of London should appear, Defendant pleaded that there was no Chamberlain of London at the Day. Adjudged on Demurrer for the Defendant. Vent. 186. Hill. 23 and 24 Car. 2. B. R. Sands v. Judge.

30. The Condition of a Bond recited, that W. was indebted to the Plaintiff in 70l. by Bond, and the Defendant became bound with him that he should pay the Money on or before the 25th December, or that the Defendant, on or before the said 25th December, should render the Body of W. so as the Plaintiff might declare against him in the Custody of the Officer next Hillary Term. The Defendant pleaded, that W. died before the 25th of December. The Court held that there was no difference between this Case and that of Laughter v. Honor. 5. Rep. 21. and gave Judgment for the Defendant Quod querenis nil capiat &c. 2 Jo. 95, 96. Mich. 29 Car. 2. B. R. Warner v. White.

impossible the Bond is laxed. 29. Ibid. 761. pl. 49. Panch. 29 Car. 2. B. R. the Court inclined strongly that the Defendant was excused by the Death of W. Sed adiutoribus. the bond is void. Ibid. 770. pl. 9. Trin. 29 Car. 2. B. R. adjudge for the Defendant; Nis. 2. Mod. 201, 320. Arg. cites S. C. but states that W. died after the 25th December, but before the Term, and held that the Bond was not forfeited; because the Obligor had Election to do the one or the other, and the Performance of the one being impossible by the Act of God, the Obligation was laxed.

31. Condition that A. (a Stranger) shall pay so much such a Day, or personally appear such a Day at Ten in the Morning at B. s House; the

Aegrotas suas ex Vignatiu Dei &c. is a good Plea as to that Part of the Disjunctiva; yet being in the Case of a Stranger the other Part ought to be performed. Raym. 373. Trin. 32 Car. 2. B. R. Topham v. Pannel.

32. Debt upon Bond conditioned to give the Plaintiff a true Account of all Money received by him &c. by the 28th Day of November &c. or render his Body to Prison at the Plaintiff's Suit in any Action he shall then commence against him, then &c. The Defendant pleaded, that he was always ready to render an Account; but farther, that the Plaintiff had not commenced any Action against him ad vel ante 28th November, whereupon he ought render himself to Prison; The Plaintiff replied, that 300l. was due to him &c. and that after the said 28th November (viz.) 12 Apr. he sued out an Original in Account; and the Defendant not appearing he sued out a Capias, whereof he gave the Defendant Notice and required to render himself according to the Condition. Upon a Demurrer Judgment was given per t. Cur. for the Defendant; because he being to do the first Act, has Election either to give an Account, or render himself on the Action. Besides, the Breach is not well aligned, for the Defendant is not obliged to render himself on an Action which shall not be sued against him 28th Nov. the Word in the Condition being (then commenced) and is not to be construed then, or from thenceforth; for that would be to give the Plaintiff Liberty to commence an Action at Any Time during his Life, and Conditions are always made for the Advantage of the Obliquer. 3 Lev. 137. Mich. 35 Car. 2. C. B. Stanley v. Fern.

33. One deviled to his eldest Daughter, upon Condition she should marry his Nephew on or before she attained the Age of 21. and the Nephew died young, and the Daughter never remarried, and indeed never was required to marry him; and after the Nephew's Death, she being about 17, married J. S. and it was adjudged in C. B. and affirmed in B. R. that the Condition was not broken being become impossible by the Act of God. 1 Salk. 170. pl. 1. Trin. 4 W. and M. in B. R. Thomas v. Howell.

4 Mod. 66. S. C. three Judges were for affirming the Judgment, but God, and it was affirmed by the Act of God, this excuses and discharges the Condition; per the Matter of the Rolls, Trin. 1731 and said it is a Rule in Law, for Lex non cogit ad Impossibilita.
Condition.

34. **Condition** was to **make Obligee a Lease for Life** by such a Day of **pay 100 l.** to him; Obligee dies before the **Day,** his Executors shall have the **100 l.** Per Treby Ch. J. and the Ground of Laughter's Cafe was denied to be universal. 1 Salk. 170. pl. 2. Mich. 9. W. 3. C. B. Anon.

**Time of Staint John Ch. J Latw. 694. Trin. 9 W. 3.—S. P. by Powell J. Ibid.—S. P. Gid by Treby Ch. J. to have been adjudged accordingly, in Time of Saint John Ch. J. Le. Raym. Rep. 379, 2 So. and the Reporter adds a Note, that this Cafe seems to be undistinguishable in Reason from Laughter's Cafe.**

But see pl. 34. 
4. An Exception to this Rule.

35. Where a **Condition** is in the **Disjunctive,** if one Part becomes impossible by the Act of God the Obligor is discharged from Performance of the other Part. Arg. 10. Mod. 268. Mich. 1 Geo. 1. B. R.

(H. c) **[What will excuse the Performance.]**

**Acts of the Law.**

1. **If an Annuity be granted upon Condition,** that the Grantee shall be Attorney of the Grantor in all **Pisus;** if he be after made Sheriff, yet this shall not excuse him from the Performance of the Condition, but he ought to be his Attorney, otherwise the Condition shall be broke. 5 Ch. 2. Annuity 44.

Geo. J. 374. 
pl. 5 & C. adjured.
Roll.
Rep. 135. 
pl. 18. S. C. 
the Court seems to incline that the Condition was not broken.

2. If a devise **Land** to B. and his Heirs upon **Condition,** that he, his Heirs and Assigns, with the Ilues and Profits of the Land, shall pay yearly to such charity as he shall determine, and after the Devisee dies his Heir, within Age, and in Ward of the King, the **Payment** shall be **excused** during the **Life** of the King, at his **Discretion.** For by the **Survivorship of the Condition** the **Payment** ought to be made with the Ilues and Profits, which are transferred by Act in Law to the King. Cr. 12 Jac. 25 R. between **Slade and Tonson,** adjured.

Ibid. 198. pl. 1. S. C. adjured per tot. Cur. for the Plaintiff; but Crooke J. took a Diversity between a collateral Condition, and a Condition which limits it to be paid out of the Profits of the Land; for had it been collateral it must have been paid notwithstanding the Wardship.—5 Bull. 58. S. C. Crooke J. cited the Difference will be between this Cafe and a Sum in Gross, which is certain.—Hard. 16. cites S. C.

3. If the **Lease** was upon **Condition** the **Land recovered in Value** shall be discharged of the **Condition.** Br. Rents, pl. 12. cites it as said elsewhere.

Fitzh. Detti, pl. 35. cites is bound to the Sheriff in 40 l. to appear at the same Day to save him harm-
less, and this Term at the **Day,** and all the **Returns in it are adjourned to** 15 Mich. there his Appearance shall not be recorded Oftab. Trin. but at 15. Mich. and this shall save his Bond and discharge him; for no Appearance, Elfon nor Default, nor other Thing, shall be entred at the Term adjourned; for no Roll is made of it, but only of the Writ of Adjudgment, and all Things which should be done at these Days adjourned, shall be done at the Day to which the Term is adjourned; and this shall serve for all. Br. Conditions, pl. 142. cites 4 E. 4. 21.

(I. c) **What**
I. Regarhly, if a Condition which was possible becomes impossible See (G. c) pl. 1. S. P.

2. As if a Man hath Liberty to perform a Condition till a certain Day, it after becomes impossible by the Death of any Person before the Day, the Obligation is discharged. Substantie 14 C. 4. 3.

but both agree, that if the Obligee had died before the Day the Bond had been paid. Br. Conditions, pl. 155. cites S. C. If a Man be bound to appear next Term in such a Court, and before the Day the Conforor Obliger dieth, the Recognition or Obligation is saved. Co. Litt. 226. a.

3. If a Man be let to Mainprise, it is a good plea at the Day when the Battceptors ought to have the Bond. See (G. c) pl. 2. S. C. before the Day (for this excuses the Performance) 21 E. 4. 70. b. Cufm.

4. If the Condition be to infeof off J. S. within a certain Time, if J. S. dies before the Time be passed, the Obligation is discharged.

5. If two be infeof off to re-infeof off, and one dies, the Survivor ought to perform it, and may. * 41 E. 3. 17. b. Co. 2. Cornwall 79.

6. But if Feoffee to reinfeof dies before the Feoffment, the Condition is broke, for he is to perform it, and ought to do it during his Life. Co. 2. Cornwall 79.

7. But if the Condition had been that the Feoffee, or his Heirs, should re-infeof off, and he dies, his Heir may perform it. Co. 2. 79.

Ibid. 472. pl. 679. S. P. agreed — And. 73. S. P.

8. If a Man mortgages his Land to W. N. upon Condition that if the Mortgagee and J. S. repay 100 l. by such a Day that he shall re-enter, and he dies before the Day, but J. S. pays by the Day, the Condition is performed, and this by Reason of the Death of the Mortgagee, notwithstanding the Payment was in the Copulative, and ex contra if it was not in the Case of Death. Br. Conditions. pl. 190. cites 30 H. 8.

9. Where one was bound to keep and maintain the Sea-walls from ever- flowing, if this happen by his Negligence it shall be waste, otherwise if it so happen by the Act of God suddenly and so unavoidable; Per Coke. 2 Bull. 280. in Cause of Bird v. Aftcock, cites Dal. 6. Eliz.

10. The Condition of an Obligation was, that if J. S. prove not a Sus- pect, or that a Bill depending in such a Court, before Utas Halaris, then if the said J. S. his Executors or Assigns, pay 20 l. &c. The Court feared S. C. cited Arg. Opinion prima facie, that it is a good Plea in Bar, that J. S. died before the Utas at such a Place. D. 262. a. pl. 30. Mich. 9 Eliz. Arun- del v. Combe.

11. When the Law prescribes a Means to perform or settle any Right or Estate, if by the Act of God this Means in any Circumstance become impossible, yet no Party that was to receive Benefit, if the Means had been with all Circumstances executed, shall receive any Prejudice by the not executing it in such Circumstance as becomes impossible by the Act of God.

Acts of God.
of God, if all else be performed without Laches, which the Party can do. 
12. Promise to carry certain Apples from Greenwich to London for the Plaintiff, and the Apples being in the Boat, the Boat by a great and violent Tempest sunk in the Thames, so as the Apples perished; this was held no Plio in Discharge of the Affairs, by which the Defendant had subjected himself to all Adventures. 4 Le. 31. Triu. 26 Eliz. B. R. Taylor's Cafe.
13. If a whole House falls by sudden Wind it excuses the Waller, and the Tenant is not bound to rebuild it. Co. Litt. 53. a.
14. There is a Divinity between a Condition annexed to Estate in Lands, or Tenements upon a Feoffment, Gift in Tail, and of an Obligation Recognizance &c. If a Condition annexed to Lands be possible at the making of the Condition, and become impossible by the Act of God, yet the Estate of the Feoffee shall not be avoided. Co. Litt. 206. a.
15. As if a Man make a Feoffment in Fee upon Condition that the Feoffor shall within one Year go to the City of Paris about the Affairs of the Feoffee, and presently after the Feoffor dies, so as it is impossible by the Act of God that the Condition should be performed, yet the Estate of the Feoffee is become absolute; for though the Condition be subsequent to the Estate, yet there is a Precedency before the Re-entry, viz. the Performance of the Condition, and if the Land should by Construction of Law be taken from the Feoffee, this should work a Damage to the Feoffee, for that the Condition is not performed which was made for his Benefit, and it appears by Littleton, that it must not be to the Damage of the Feoffee. Co. Litt. 206. a.
16. So it is if the Feoffor shall appear in such a Court the next Term, and before the Day the Feoffor dies, the Estate of the Feoffee is absolute. Co. Litt. 206. a.
17. But if a Man be bound by Recognizance or Bond, with Condition that he shall appear in such a Court, and before the Day the Courtier or Obligor dies, the Recognizance or Obligation is saved, and the Reason of the Divinity is this, because the State of the Land is executed and settled in the Feoffee, and cannot be redeemed back again but by Matter subsequent, viz. the Performance of the Condition; but the Bond or Recognizance is a Thing in Action and Execution, whereof no Advantage can be taken until there be a Default in the Obligor, and therefore in all Cares where a Condition of a Bond, Recognizance &c. is possible at the Time of the making, and before the same can be performed the Condition becomes impossible by the Act of God, or of the Law, or of the Obligee &c. there the Obligation &c. is saved. Co. Litt. 206. a.
18. C. binds himself Apprentice to S. for 7 Years, and S. bound himself to pay C. his Executors or Assigns, 10 l. at the Time of the End or Determination of his Apprenticeship. C. serves 6 Years and then dies; the Money shall not be paid to his Executor. The whole Court, (abente the Ch. J.) held that the Obligation was discharged, and that the Money should not be paid. Brownl. 97. Mich. 5 Jac. Cheyney v. Sell.
19. When two Things are depending upon another, there the Act of God preventing one of them, both are discharged. D. 262. a. pl. 30. Marg. cites 8 Jac. B. R. Skidmore's Cafe.
20. If Leuife covenants to repair a House, though it be burnt by Lighting, or thrown down by Evacues, yet he must repair it; For when the Party by his own Contract creates a Duty or Charge upon himself, he is bound to make it good if he can, notwithstanding any Accident by

and outrageous Blood, but if there was any Penalty to be forfeited that is excused, because it was the Act of God. D. 35. a. pl. 10. n. Patch. 28 & 29 H. 8. by Fincher and Shelly.

21. The Condition of the Bond was, that whereas Christopher the Au-
actor did affirm that he had paid 60 l. to H. L. which H. L. did deny, if
Christopher by the 10th of November did not legally prove the Money paid,
then if he paid the Money he paid 10th of November the Bond should be void.

The Defendant pleaded, that Christopher died before the 10th of November. The Plaintiff demurred; But the Court held this was not like a dis-
unjective Condition, though it did depend upon a Condition, and the
Party having undertaken to make Proof, it was at his Peril if he did not; and though he was prevented by the Act of God, yet the Bond was forfeited; Judgment pro Quer. Freem. Rep. 269. pl. 297. Hill. 1679. Vinier v. Joyner.

v only a collateral Affidavit, for in the first Case the Executors are bound to perform it.

(K. c) [Performance excused.]


1. If the Condition of an Obligation be to deliver a certain Thing
to the Obligee bought by him of the Obligor, it is not any
Discharge that a Stranger recovered it from him after. Contra 21. C.

3. 12 adjudged, as is laid.

2. If a Person be bound in a Recognizance in Court for the Appearance
of another, in a Seire Facias he shall not avoid this Recogni-

dance by proving, that he that ought to appear was imprisoned at the
Day. 22 C. 4. 27.

and Choke accordingly; but Catesby and Nole J. c contra, and that it is a good Plea; and they said that it is common in B. if not to be lawful Imprisonment by the Order of the Law; Quod Nota.

3. But in such Case, at the Day of Appearance, if the Manuca-
tors come and shew it to the Court, and the Court, of Courtey, do not
record the Default, but send to the Gaoler to certify whether he be
imprisoned, and for what; by this Way he shall have Advantage of
the Imprisonment to avoid the Recognizance. 22 C. 4. 27.

4. If there be a Constitution upon a Penalty in Parliament, that S. P. So
J. S. shall render himself in B. R. within a certain Time, if he renders
himself to the King within the Time where he is imprisoned until the
himself be-Time is palled, he hath forfeited the Penalty, because it was his
Folly to render himself where he ought not. 8 H. 4. 14. 20.

And after

the Time limited he was not permitted to plead on his coming in, but Writ of Inquiry of Damages was awarded to the Sheriff of the. For the Ordinance in Parliament was a Judgment in itself, and because of his not coming in pursuance thereto is sufficient for the awarding the Writ of Inquiry; Quod Nota. Br. Parliament, pl. 11. cites 8 H. 4. 13 & 20. — And ibid. Cites 9 H. 4. 1. that the Plaintiff was viewed, and upon View of the Stakes, the Court awarded double Damages, viz. 200 Marks, notwithstanding, it was alleged that J. S. was dead; for he was out of Court before, and cannot be want'd to appear again. And this as it seems by the Awarding the Writ of Inquiry of Damages — This was for being a Servant of a Knight as he was going with his Master to the Parliament. Anno 5 H. 4. ibid. P p p

5. [So]
5. [So] if there be a Constitution made in Parliament upon a
Principle that J. B. render himself before the Parties in B. R.
within a Quarter of a Year after Proclamation made, if Proclamation
be made Termino Pacis, so that the Quarter of a Year is passed be-
fore Michaelmas Term, yet if he does not render himself within a
Quarter, he shall forfeit the Penalty. B D. 4. 15. 20. adjudged.
Let he could not appear in the Vacation; but some said that he
might before the Chief Justice. (But in this Case he ought in the
Term within the Quarter, because he knows in Principis, that in
the Vacation he cannot appear.)

6. Regularly, if a Condition be to be performed to a Stranger, and
he refuses to accept thereof, yet the Obligation is enforced, because
the Obligator takes upon him that a Stranger shall accept it.

 cites 11 H. 4. 57.

7. A Man is bound by Mainprie in Bank to answer to W. N. in suit an
Action such a Day, and does not come all the Day, but Proclamation
is for faw him, this shall save the Mainprie and the Bond, per Cur.
Br. Conditions, pl. 251. cites 11 H. 4. 57.

S. C. Twif-
den it thought it
hard that
this should
be a Breach;
for the De-
fendant
cannot be
intended to
convenant
against an
Act of Par-
lament,
which was
a Thing
out of his
Power. But
Hilsf told
that my
Lady
Graham's
Cafe is not
like this; for
there
the Party was in by the Queen's Content to the Alienation by the Act the passed, but here the Cove-

nent is broken, as much as if a Man recover Land, and then fell and covenant that, and then it be-
visited in a Write of Right, for this is in the Nature of a Judgment. Though it be by the legislative
Power, it may be the Prospect of this Act was the Reason of the Covenant; nor has the Defendant
Reason to complain, for the Act was made because of his own Fraud and Force; Every Man is so far
Party to a private Act of Parliament as not to gain any, but not so as to give up his Interest. It is
the great Question in Sirrington's Case, 8 Ca. the Master of the Act there directs it to be between
the Proprietors and the Proprietors of the Soil, and therefore it shall not extend to the Commoners to
take away their Common. Supposes an Act says, Whereas there is a Controversy concerning Land
between A and B. it is enacted that A. shall enjoy it. This does not bind others, then he has no
Saving, because it was only intended to end the Difference between them two. Whereupon Judg-
ment was given for the Plaintiff. — The Case was, Sir Thomas Graham convey'd Lands to certain
Ults with Power of Revocation, and then he revoked, and alien'd, and died; but the Revocation be-
ing not pursuant to his Power, it was afterwards made good by Act of Parliament, and then Proceed
went out against his Widow for a Fine, the Lands alien'd being held in Capite, but she was discharged
because the Alienation took Effect by an Act of Parliament, which can do no Wrong. Arg. Vent. 176.
adjudg'd Trim. 51 Eiz. in the Exchequer. The Queen v. Lady Graham.

(L. c)

[And who shall be such a Stranger.]

1. A. and B. submit themselves to the Award of C. and D. enters it into an Obligation to C. to stand to the Award, and B. does not. B. also, and C. awards A. to pay 10s. to B. who tenders it, and it is the Obligation of B. the Stranger is excused because B. is not a meer Stranger, but pay, and A. is the Obliger. 22 E. 4. 25. b. Curia. 

2. But if the Condition be, that the Son of the Obligor shall marry Br. Conditions, pl. 182. cites S. C.- Br. Arbitrement, pl. 41. cites S. C.

3. If the Condition be to inoff a Stranger, who refuses, yet the Obligation is satisfied. 2 E. 4. 2. 39. b. 6. 10. b. 22 E. 4. 26. b. 

4. [So] if there be a Feoffment upon Condition to inoff a Stranger if the Stranger refuses, yet the Condition is broke, because the Intent was not that the Feoffee should retain it. 19 D. 6. 34. b. Fizh. Ens. cited per Car. Le. 199. — Cy. Litt. 299. a. takes a Diversity between a Condition to inoff the Obliger to a meer Stranger in his own Life, and where it is to inoff a Stranger for the Benefit or School of the Obliger, and but in the last Case a Tender and Refusal that God the Bond, because he himself upon the Matter is the Cause why the Condition could not be performed, and therefore shall not give himself Cause of Action. But if A. be bound to B. with Condition that C. shall inoff D. in this Case if G. tender, and D. refuses, the Obligation is saved, for the Obligor himself undertakes to do no Act, but that a Stranger shall inoff a Stranger. And it is hidden in our Books, that in this Case it shall be intended that the Feoffment should be made for the Benefit of the Obliger. Some to reconcile the Books seem to make a Difference between an express Refusal of the Stranger, and a Readiness of the Obligor at the Day and Place to make Performance, and the Absence of the Stranger, but that can make can make no Difference. If take it rather to be the Error of the Reporter, and the Records themselves are necessary to be seen, for the Law therewith is as hath been before declared.

5. But otherwise it had been, if the Condition was to make a See pl. 3. Gift in Tail to a Stranger, and he refuses, for the Intent was, that he should have the Recession. 2 E. 4. 


6. Re-
Condition.

Where the Covenant or Condition is, that the one shall marry a Stranger, or shall interjew him by such a Day, the Refusal of the Stranger is no Plea, for the Party has taken new him to do the Wrong. Br. Conditions, pl. 17, cit. 53 H. 6. 16. — Cites if the Act shall be done to the other Party, for there the Refusal is a good Plea. Note a Diversity, and therefore it is lawful in such Cases of Strangers to add such Words, and if the said Stranger will consent to it. Ibid. — Br. Covenants pl. 3. cites S.C. — Fitzh. Barre, pl. 62. cites S. C. — 5 Bult. 20, 52. Arg. S. P. cites 57 H. 6. 16, 17. Sir John Barre's Case [but seems misprinted for 35. H. 6. 16.]

7. As if the Condition be that my Son shall serve J. If he will not, my Obligation is forfeited. 22 C. 4. 26 b. 
Br. Conditions, pl. 182. cites S. C. but I do not observe S. P. there.

8. If the Condition of an Obligation be, that whereas the Obligor and Obligee are jointly sealed of the Office of the Court of Admiralty, if the Obligor shall permit the Obligee to use the said Office, and to take the Proofs thereof only to his own Use during his Life without Interruption made by the Obligor, then ye. Although after the Admiral dies, and the new Admiral grants the said Office to a Stranger (as he may by Law) and he interrupts and ouits the Obligee, yet if the Obligor after this interrupts the Obligee also, the Condition is broke. 39. 32, 33 El. 3. R. between Parker and Howard, adjudged.

9. If a Man is bound to me to carry a Sum of Money, and is robbed thereof in his Journey, he is not excused of his Bond. Per Chabr. argumento in Covenant; But per Kirton, he certainly shall be. Br. Obligation, pl. 9. cites 40 E. 3. 6.
10. Foulence upon Condition to interjew the Fieffor; if Day be limited there he need not request; for if he does not interjew him by the Day, the other may re-enter without Request. Br. Conditions, pl. 26. cites 44 E. 3. 8.
11. If A. is bound to B. that I.S. shall make him a House by such a Day, or else to pay him 20 l. by such a Day. It is no Plea for him to say that I. S. was Dead before the Day, for that another might have made it, per Coke, Ch. I. 3 Bult. 30. cites 31 H. 6. Fitzh. Tit. Bar. pl. 59. and says that to this Purpore is 15 H. 7. fol. 13.
12. If a Man be bound to appear here at Westminster such a Day before the Justices, and at the Day no Justice is there, he shall not forfeit his Bond; per Littleton. Quod nullus Negativ. Br. Conditions, pl. 149. cites 2 E. 4. 2.
13. Debt upon Obligation, the Defendant said that it is indorsed, that if the Defendant or any for him goes to Brifief such a Day, and there fies to the Plaintiff, or his Counsel, sufficient Discharge of Annuity of 40 s. per Ann., which the Plaintiff claimed out of 2 Mijangis in D. that then &c. and said that A. and B. by Affigement of the Defendant came the same Day to B. and tender'd to fiew to N. and W. The Plaintiff's Counsel, a sufficient Discharge of the Annuity, and they refused to see it, Judgment li Aetio, and the Plaintiff demurred, and it was awarded no Plea by all the Justices after great Argument, because he did not fiew.
Condition.

what Discharge be tender'd, as a Release or Unity of Poffeffion, &c. For this lies in the Judgment of the Court to adjudge it; but if they had said that he did not come there at the Day, this shall be tried per Pais. Br. Conditions, pl. 183, cites 22 E. 4. 49.

14. In Debt, A. was bound to B. by Obliger in 100 l. upon Condition that if the said A. after the Death of his Father, and within 3 Months after made sufficient Estate in such Land to a Pence, that then, &c. The Defendant said, that the same Feene took the Obliger to Baron in the Life of the Father, which Espanjals continued 3 Months after the Death of the Father, to that he cannot enforce him. Per Townend J. the Obligation is forfeited; for when he is bound to affire it to a Stranger, as here, he ought to do it at his Peril; for in this he took upon him to Rule the Stranger. Br. Conditions, pl. 127. cites 4 H. 7. 3.

15. And if the Feene in this Cafe had entered into Religion, the Obligation had been forfeited. Ibid. But if the Obligee himself be the Caufe that the Obligation be not performed; this is no Forfeiture, for this is his own Act. Ibid.

17. Debt upon Obligation, the Condition was to pay the Plaintiff, or his Assigns 21 l. at such a Day and Place, that then, &c. The Defendant pleaded that the Plaintiff appointed another A. to receive the Money of him, and the Day and Place, and that he tender'd the same to the said A. who refused it. The Plea was held good, without alleging Payment in Fact. Mo. 37. pl. 120. Trin. 4 Eliz. Anon.

18. But otherwise it is when the Condition is to pay the Money to a Stranger, for that the Payment ought to be at the Peril of the Obligee. Mo. 37. pl. 120. Trin. 4 Eliz. Anon.

19. Covenant. Lease for Years covenanted at the End of the Term to yield up the Tenements well repaired; it was allowed for Breach, that he had not letts, &c. The Defendant said that the B. was seized, until by Lease disch. the Plaintiff disch. who leased to the Defendant, and after B. entered and enjoyed it. S. who yet is seized, &c. and adjudged a good Bar. Cro. the Common Law, for by the Landis being gone, the Obligation is discharged.

20. In Debt on Obligation, Condition'd to make such a Release, in 5 Rep. 25 Mich. Term next, as the Judge of the Infrigement should think meet; the Defendant said that I. S. was Judge there at the Time, and that he did not appoint or devise any Release; adjudged no Plea, because not authorized, and that he could a Release to be drawn and tender'd to the Judge, for he for the Defendant to get such a Release drawn as the Judge shall allow of. Cro. E. 716. pl. 41. Mich. 44. and 42 Eliz. C. B. Lamb v. Brownewent.

21. Audita Querela, that he was obliged in a Statute of 60 l. to the Cro J. 12. Defendant, to the Ufe of I. B. defended, that if he paid such Sums, pl. 17. Pauch. 71. Jac. B. R. at such Days, to I, B. it should be void; and pleaded that at every of the Philippa, they, all the Court held, that the Tender was a sufficient Performance, and Judgment for the Defeasance being made to the Ufe of J. B. but if he had been a meer Stranger, and was not to have any Benefict thereof, it would be Ye. 95. otherwise, and Judgment for the Plaintiff. Cro. E. 754. pl. 18. Pauch. Philippa. 42 Eliz. C. B. Hulth v. Phillipa.

P. R. the S. C. and Judgment affirmed by all the Justices.

22. In Debt upon Bond, conditioned to deliver to the Plaintiff, pl. 84 the Tackle of such a Ship under the Hands of 3 Persons, or in Default thereof, to pay to the Plaintiff so much Money, &c. as the 4 Persons should value for the Plaintiff.
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value the Tackle to be Worth; the Defendant pleaded, that the 4 Persons had not valued the Tackle; and upon a Demurrer to this Plea the Plain-
till had Judgment, for where the Defendant has Election by the Con-
dition to do one of 2 Things, it by any default of a Stranger, or of
himself, or of the Obligee, or by the Act of God he cannot do one of
them, there he ought to do the other ; and the Defendant in the prin-
ciple Cate ought to have got the 4 Persons to value the Tackle. Mo.

the Rule there put was denied.—S. C. cit. Arg. Mod. 166. Says the Resolution of that Cate is
Law, and that there needed no such Rule, and that it goes upon the Reason of Lamb's Cate, 5
Rep. [23. b.]

23. If A is bound to Build a House for B. before such a Time, and A
dies before the Time, his Executors are bound to perform this; per
Coke Ch. J. 3 Bulit. 30. Patch. 13 Jac.

(M. c) What Things will dis pense with a Condition. Acts of him that will have the Advantage.

If a Condition be to recover certain Land against J. S. and there-
be. of to enforce another, who is Party to the Obligations, if he to
whom the Feoffment is to be made, accepts a Feoffment of the Land
before any Recovery had by the other, the Condition is performed
( it seems, because he had dispensed with the Condition.) 29 Eliz.
3. 5. 6 b. But M. c. for perhaps he hath disdissed J. S. but it
is there said, that it shall be intended that he himself was sild thereof.

2. If a Lease for Years be made upon Condition not to Alien
without Licence, and after the Leffer licences the Leffer to alien,
and dies before Alienation, yet the Leffer may alien; for the Death
of the Leffer is not any Countermand; for this was executed on
the Part of the * Leffer as much as it could be. Co. Lit. 52 b.
cites 13. Jac. b. to be recited.

* In Roll.
it is Mis-
printed
(Leflee.)
Cro. J. 102.
pl. 56. Mich.
5 Jac. B. R.
Walker v.
Bellamic, seems to be S. C. only here it is said to be that the Leffer died before the Alienation,
whereas in Cro. it is slated that the Alienation was after a Grant of the Reversion by the Leffer,
and Attornment by the Leffe; and held that though the Alienation was after the Grant of the Rever-
on by the Licence of the Grantor, yet it was good enough, and Judgment accordingly.

3. If a Man be bound to present J. N. to the Church of D. and J. N.
takes Feme, and the Church voids, yet the Obligor ought to present J. N.
for otherwife he shall forfeit his Obligation; the reason seems to be, in
as much as it is a Condition in fact, as to stand to a void Award &c.
Br. Conditions, pl. 189. cites 34 E. i. and Fitzh. Debt 164.

4. Annuity was brought by a Man, to whom it was granted till he
was promoted to a competent Benefice. The Defendant said, that the Plain-
tiff had taken Feme, and so could not receive a Benefice, and a good Plea by
Award. Br. Annuity, pl. 16. cites 7 H. 4. 16.

5. If a Man is bound in an Obligation of 40 l. upon Condition or De-
fendence that if J. S. be Servant to the Oblige for 7 Years, that the Obliga-
tion shall be void; Per Cur. it is a good Plea that the Oblige licensed the Servant to go &c. though the Licence be only by Pard. Br. Licen-
ces, pl. 15. cites 6 E. 4. 2.

6. Where a Man leaseth Land, rending Rent, and the Tenant is bound
to pay it, and the Oblige enters into part of the Land, the Obligation is de-
termined
8. The Plaintiff had entered into Articles to purchase Land, but Objections being made to the Title they were removed, after which he paid a considerable Part of the Money, and came into several Orders of Court with the Defendant, to pay the Rent by such a Day, and in Default thereof to give up the Articles, and lose what he had before paid. The Plaintiff made further Default, and prayed to be relieved on Payment of Principal and Interest. Lord Chancellor said, that the Articles being looked upon to be intended only as a Security for Payment of the Money, if the Defendant had his Principal, Interest, and Costs, he could not complain; that at the Time when the Money was to have been paid, being in 1720, Money was locked up; that a Delay happened by the Death of Defendant’s Father, and his Executors not acting, and the Defendant’s delaying to administer to his Father with the Will annexed, which was the Default of the Party, so that the Plaintiff’s Payment at the exact Time was dispensed with, and therefore decreed the Plaintiff to be relieved upon Payment of Principal, Interest, and Costs. Trin. 1722. 2 Wms’s Rep. 66. Vernon v. Stephens.

(N. C) What Act or Thing will excuse the Performance of the Condition. Acts of him who is to have the Advantage.

1. If a Condition be to incoff the Obligee, though the Obligee disf. This feifes him of the Land, yet this does not excuse the Perform. of the Condition, for he may re-enter, and perform it notwithstanding. Co. 8. Francis * 32. Co. 2. Julius Win. [Winchester’s Caff. 59.] b. admitted.

2. If
2. If Leesor for Years covenants to drain the Water which is upon
the Land before such a Day, and after the Leesor enters before the
Day, and there continues till the Day is past, per this shall not excuse
the Performance of the Covenant, because this is collateral to the
Land. Hill. 37 El. 2. B. per Curiam dismissed.

3. If a Man be bound to build an House 98. he is excused if the
Obliger will not suffer him to build it: For he cannot come upon the
Land without his Will. 19 Ed. 4. 2. b. per Curiam.

4. If a Condition be to repair a House, he is excused thereof if a
Strange by the Command of the Obliger himself disturbs him, and
will not suffer him to do it. 9 Ed. 6. 44 b.

5. If a Condition be to erect a Mill, and after he comes to the
Obliger, and lays all ready for the erecting thereof, and demands
of him when (9) he shall come with the Mill to erect it, if the Obliger
lays he will not have the Mill, and entirely discharges him of the Bill,
this shall excuse him of the Performance. 3 Ed. 6. 37. admitted by
the House.

6. If Leesor for Years covenants to drain the Water that lands
upon the Land before such a Day, and after the Leesor enters upon the
Land, and disturbs the Leesor: this is a good Excuse of the Per-
formance of the Condition. Hill. 37 Eliz. 2. B. per Curiam.

7. If a Man covenants with me to collect my Rents in such a
Town, if I interrupt him in the collecting thereof, this excuses the
Covenant. 13 D. 7. Reel. 34 b.

8. If Leesor for Years of an House covenants to repair it, and
to leave it in as good Plight as he found it, and after certain Sparks of
Fire come out of the Chimney of the Leesor into an House not much
remote, by which the House of the Leesee is burnt, this will excuse
the Performance of the Covenant to the Leesor, that he is not
bound to rebuild, because this comes by the Act of the Leesor
himself. Chinn. 12 Jac. B.

9. If the Condition of an Obligation be, that the Obligor shall
intend the Obliger of the Land before such a Day, and after before the
Day the Obligor discharges the Obliger, and keeps it with Force till af-
der the Day, so that the Obligor cannot enter, this will excuse the
Performance of the Condition. Co. 3. Francis 92.

--- 8 Rep. 92 a. per Cur. in Poncian's Case. Where a Person agrees to do a Thing, he must perform.
Condition.

he has done all in his Power to perform it, and he ought likewise to show how it came to pass that it was not performed; As that the Defendant was there and refused to accept, or was not there at all, or on the full convenience Time of the Day which the Law appoints for doing the Matter, and all this the Plaintiff ought to shew to bring himself to his Action; Per Holt Ch. J. 12 Mod. 523. Trin. 15 W. 3. in Cofi of Lancashire v. Kiltingworth.

And upon this Reason of Law isthe Case in S Rep. 92. Francis's Cave. One makes a Peccant, upon Condition that the Feoffee shall in-rent Obstigue by such Day, and before the Day the Feoffee, or Obstigue is disabled by law that was to be in-rented, and then the bond is put in Suit, it is not a good Piesa to shew, that you were always ready to in-rent him, but that he himself before the Day ouled you, but you ought proceed further, and say, that he kept you out of the Possessio till after the Day with Force; for though he had interrupted you, perhaps you might have come upon the Land after and performed the Agreement, or made a Tender, which if he refused would have been tantamount; for you ought not only to show a Disturbance by him, but alfo fuch Continuance of that Disturbance as made it impossible for you to perform on your Side, and in that Case he ought to shew, that he came to endeavour to make a Peccant, but could not do it by reason of the Force he met with from the Plaintiff, and that had been a good Excafe; Per Holt Ch. J. 12 Mod. 522. Trin. 15 W. 3. in Cofi of Lancashire v. Kiltingworth.

10. If a Leece be made upon Condition that the Leefee shall not * Godh 70. permit or harbour any Where within the House to him let, and that if he in-rents fuch Woman to in-rent there for 6 Weeks after Warning * not S P.—it shall be lawful for the Leefor to enter; and after the Leefee in-rents him by the Leefor; cites the Although after the Leefor commands the Woman to in-rent there for 6 Weeks, yet this shall not excuse the Performance of the Condition, because the Leefor did not do any let; and notwithstanding the S.C. & S.P. Command, the Leefor might have removed her. * 55 D. 6. Bar. 162. per Curiam. Co. S. Frances 91 b.


12. If a Leffee for Beaus covenants to leave Part of the Land at the fand of the Term fallowed and fit for Wheat, provided that the Leffee, upon fuch Warning, may surrender and depart at any Feall of Michaelmas at any Time within the Term, performing the Covenants; If after Warning he in-rents, and does not leave the Land fallowed, he hath forfetted his Covenant, for the Acceptance of this Surrender does not in-rent with the Covenant, in as much as by the Covenant he is to accept thereof. Hilt. 4 Jac. B. R. between Able and Aflen, adjudged.

13. If two are bound in a Statute, with a Defiance, that they two shall make fuch Affurance as shall be devifed, &c. if an Affurance be devifed and tender'd to one, and he refuses to leal it, the Condition is broke for both; for he need not require both at one Time. D. Mo. 555. 41 City. B. R. Love and Terry's Cafe. 531. Terry and Lowe v. Redding, S.C. adjudg'd.

14. Upon a Marriage between A. a Woman and B. by Indenture between A. and B. and C. a Friend of A. it is agreed, That C. shall have all the Stock, Portion, and Estate of A. prout tunc fine, vel potuiter etiam depunctum vel etiam tunc fine, vel potuiter etiam depunctum veles eaeve, relater et remanenter in Principiis & Mill, Anglice, Employment of C. vel util ipse disponere, till B. shal provide a certain Jointure. &c. ipso C. 31st annuatim solvendo Querenti interesse proinde secundum Carmen 31 I. pro quoque lib. 100 l. pro quoque Anno durante Tempore quo Status apponit A. in Sambus vel Dispositione C. remanenter; and after the Marriage is had, and then 400 l. of the Substantia of A. comes to the Hands of C. and for one Year continues in his Hands; But B. takes and detains in his Part of the Substantia of A. Goods to the Value of
Condition.

100 l. over and above the said 400 l. and this is against the Will of C, so that C hath not all the Substance of A in his Hands; yet he shall pay according to the Rate of 8 l. for every 100 l. of the said 400 l. which he had in his Hands, as much as the Words act. That he shall pay 8 l. pro qualibet 100 l. Ibid. 8. Ch. 2. R. between Aftio and Norley, adjudged upon Demurrer, I being de Confiitio Non-riensis.

15. Where a Man is bound, that he shall not refuse to make such Indemnity, and he says that the Plaintiff required him, and he was ready, and the Plaintiff refused; and the other said, that at another Time the Defendant refused, and the others for contra, and bound for the Plaintiff; and alleged in arrest of Judgment, because the Rule should be upon the Return of the Plaintiff & non allocatur, but the Plaintiff recovered; for the Defendant ought not to refuse at any Time; Quod Nota. Br. Repleader, pl. 15. cites 7 H. 6.

16. If the Condition had been to implead J. S. before such a Day, and J. S. in the mean Time entered into Religion, the Obligation was saved by the Condition. Br. Obligation, pl. 45. cites 2 E. 4. 2.

17. Writ of Entry of 40 s. Rent out of the Monastery of S. where Variance was between the Plaintiff and Defendant for Tithe, and the Plaintiff granted to the Defendant the Tithe, and be granted the 40 s. Rent to the Plaintiff and his Successors for the said Tithe, and the Defendant said, that the Plaintiff had taken 24 Loads of the Tithes; Judgment and Action. And per Littleton and Brian the Bar is no Plea; for where the Rent was granted for the Tithes, all is executed, therefore the one cannot be stopped for the other; for the Grant of one Thing for another is no Condition. Br. Conditions, pl. 61. cites 9 E. 4. 19.

18. But where Annuity is granted pro Conflito impendendo, and the Grantee refuses to give him Counsel, this is a Fortitude of the Annuity; for this is a Condition in Law, and the Counsel is executory. Ibid.

19. So where one is bound to make a new Pale of the Park, and be shall have the ancient Pale, there if he be disturbed of the ancient Pale, he is not bound to make the new. Br. Conditions, pl. 61. cites 9 E. 4. 19.

20. So where a Man grants to me 10 l. Annuity to have a Gorse or Gutter in my Land, and I hop the Gutter or Gorse, I shall not have the Annuity; for these are Things executory; and there if the one be disturbed, the other may do the like. Ibid.

21. And where a Man is to have my Meadow in Secessity after the Hay carried away, because I shall have Easement to carry it over his Land, if he disturbs me of the Easement, I may disturb him for the Meadow. But it is not adjudged. Ibid.

22. But per Littleton, where a Man grants an Advowson to me, and I grant it to him an Annuity, and I disturb him of the Advowson, this is no Bar of the Annuity, for both are executed; for the Annuity is executed by the Grant. Ibid. cites M. 15 E. 4. 2.

23. If the Oblige himself be the Caufe that the Obligation cannot be performed, this is no Fortitude; for it is his own Act. Br. Conditions, pl. 127. cites 4 H. 7. 3.


25. It is a General Rule in Conditions, that if the Plaintiff himself be the Caufe of Disablement, so as the Condition cannot be performed, he
Condition.

he shall not take advantage of the Condition. Arg. Godb. 76. pl. 90.

Mich. 23. and 29 Eliz.

26. A Lessed to B. at 40 l. per Ann. and a Stranger covenanted with ; Le. 139.
A. that B. shall pay the 40 l. for the Farm and Occupation of the Land;
A. brought an Action of Covenant against the Stranger, who pleaded,
that before the Day of Payment, the Plaintiff sold B. of the Farm ; it S. C. in not
was objected that this was no Plea, because this is a Collateral Sum,
and not for Rent tittling out of the Land ; but the Court held the con-
try, that it is a Conditional Covenant, and that the Consideration
upon which the Covenant is conceived, viz. The Farm and the Occu-
pation of it was taken away by the Act of the Plaintiff himself. 2

27. Acceptance of Rent, is a Dispensation of a Forfeit for Non-
payment of Rent, but not of a Breach of a Collateral Condition. Cro.

28. Debt on a Bond Condition'd to save harmless from a Bond made to
C for Payment for Payment of 100 l. at a Day and Place, &c. The De-
fendant pleaded, that at the Day of Payment, he was going to the Place
to pay; and the Plaintiff by Coven said him to be impris'ed till after Sun-
set of the same Day, to the Intent the 100 l. should not be paid, and so the
Obligation to be forgotten; and so he could not come to the said C. to pay
him the 100 l. Adjudged upon Demurrer, that such a bare Surmise
was no Bar. Cro. E. 672. pl. 30. Paxh. 42 Eliz. C. B. Morris v.
Lutterel.

29. The Condition of a Bond was, that before such a Day, the Obli-
gor would procure such a Woman to Marry the Obligee; the Obligee goes
to her, and tells her, how barbarously he would Ufe her if the Married
and him, and called her Whore, and threatened to tie her to a Poll, and
told her such Things that no Woman in her Sense would marry such
remarkable a Man; after the Day, Debt was brought upon Bond, and this Matter
especially Pleaded in Bar, and adjudged to be no good Plea, but that,
notwithstanding the Menaces, the Obligor ought to have proceed, that
he had done his utmost Endeavour to procure her to Marry him, but that
she by Reason of the Menaces refused, and so he was hindered by the
Andrews.

30. A Feevment was made on Condition to pay 200 l. at such a Day, and
to make a sufficient Lease of Bl. Acre, parcel thereof, for 21 Years. The 200 l.
was paid, but as to Bl. Acre it was insisted that that was Parcel of the
Land, whereof the Feevment was made, which the Feevte yet continued in
 Possession of, so that he could not make a Lease thereof, the Feevtee demand'd,
because it was not alleg'd that the Lease of Bl. Acre was made; but it
was held that he need not to allege Performance of that Part, because
it is impoible to be perform'd; and his performing the possible Part is
sufficient. And here he cannot make a sufficient Lease, because the
Feevlee is always feied; and it is not intended that he should make a
Lease by Ecpapel, the Words being that he should make a sufficient
Blackwall.

31. If A. be bound to B. that A. shall marry Jane G. before such a
Day, and before the Day B. marries with Jane, he shall never take ad-
avantage of the Bond, for that be himself is the Mean that the Condition
could not be perform'd, and this is regularly True in all Cafes. Co.
Lit. 206. b.

32. A Mortgagee, or Obligor must on the Day of Payment seek the Lit.S. 342.
Mortgagee or Obligee, and tender the Money, &c. if the Mortgagee,
&c. be in the Realm of England, but if he be out of the Realm of
England, the other is not bound to seek him there, but shall have the
same Benefit as if he had made a Tender. Hawk. Co. Lit. 294. 295.

33. If
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2 Browd.

33. Queen Mary granted to T. a Reversion in Tail upon Condition that if T. or his Heirs pay 20 s. at the Receipt of the Exchequer, &c. the Granter shall have a Fee; Refolved that if afterwards the Queen, under her great Seal, refuses to receive the Money, yet if the Granter tenders it at the Receipt of the Exchequer, he shall gain the Fee; for the Queen by no Means can countermand or hinder the Increase of the Estate in such Cafe. Adjudged 8 Co. 76. b. Trin. 7 Jac. Lord Stralowd's Cafe.

34. In Covenant Plaintiff counts that he by Indenture leased his Personage rendering Rent, and the Lessee covenanted to pay his Rent. The Lessee pleaded that before any Day of Payment, the Personage was setoffed for Non-payment of the first Fruits; the Court held this no Plea; for he does not show that any Act was done by the Plaintiff himself in his Default, and he cannot say that the Lessee had nothing at the Time of the Lease made; so in Cafe of an Obligation for Payment of the Rent; for he had bound himself to pay it, and the Occupation is not material where the Lease is for Years or for Life; But otherwise of a Lease at Will. Hert. 54. Mich. 3 Car. C. B. Jekill v. Linne.

35. If he, to whom a Thing is to be done, binder the other, that is to do it, ever so much, yet the other must use his utmost Endeavours on his Side to perform; and shew that he has done it, or else he forfeits his Bond, or breaks his Agreement. 12 Mod. 352. Trin. 13 W. 3, per Holt Ch. 1. in delivering the Opinion of the Court in Case of Lancashire v. Killingworth.

(O c) What Things excuse the Performance of Conditions, and what not.

Acts of him who shall have the Advantage. [Refusal.]

1. If the Condition be to do a Collateral Act, and not to pay Money, which is of the Nature of the principal Sum, it seems if the Obligee refuses it at the Day, this discharges the whole Obligation. D. 3. 4. Bl. 110. 84. 12 D. 4. 23.

2. Death by Executors of Obligation bought by the Teclar to the Defendant, who said that he and N. D. bailed upon certain Conditions, &c. and prayed Garnishment against N. and had it; N. came and said that it was delivered upon Condition, that if he refused to make such Indenture to the Teeactor when he should be required, then it shall be delivered to the Teclar, and otherwise to the said N. and said that such a Day he was ready to have made the Indenture, and the Teclar refused; by which he prayed Livery of the Obligation; the Plaintiff said that at another Time, viz. such a Day the Teclar required him and he refused, and the other said that he did not refuse, Prist, and to illuse, and found for the Plaintiff; and it was pleaded in Arrest of Judgment, because when the Teclar once refused, the illuse shall be upon this Plea, and the refusal of the Garnithet alter instat material, and yet because he was bound that he should not refuse, therefore it seems that he shall not refuse at any Time, and after the Plaintiff recovered by Judgment. Br. Conditions. pl. 49. cites 7 H. 6. 24.

3. In
Condition.

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3. In Quare Impedit, a Man seiz'd of a Manor with Ashfown Appen
dant ent'ld 5, upon Condition that they or any of them who succeed
or their Heirs, within 40 Days next after 10 Years next ending the
Date of the Charter, shall re-inseff 7 to B. his Feoffee in Fee, the Re-
mainder to B. in Fee, and they made a Deed accordingly with Letter of Attor-
ney to W. P. to deliver Seisin, and delivered it to the Attorney of Man-
or, within, is Quod E. Quere Where Br. to had the is upon the
is of directing, not within a

4. And if it is certified that the Baron and Feoffee are alive, and R ought to have it till after their Deaths; and therefore it seems that after their Deaths they ought to enfeoff him. And as it is the best Obi-

5. And if the Baron and Feoffees die within the 40 Days, there the Feo-

6. And if A. infego's B. upon Condition to re-inseff him in Fee, and A. dies, yet B. ought to inesff the Heir of A. and if B. had tender'd a Feoffment to A. and he refused, and died, yet the Heir of A. shall make Request, and shall have the Land; Quære inde where no Time is limited. Ibid.

7. Debt upon Obligation by J. B. against J. C. who said that the Ob-

8. Where a Man is bound in an Obligation to do a Thing out of the Ob-

9. And per Danby, the Obligor shall say, that he attended all the Day; Contra per Littleton, for if the Obligee refuses at one Time it is suffi-

10. Where the Condition is to do a Thing by a Day, the Refusal before

11. Refusal and Delivery to him who is privy is material, and to a Stran-

S s s

(P. c)
(P. c) [Excuse.] Acts of the Obligee. [Refusal]

1. If the Condition be, that the Son of the Obligor shall serve the Obligee for 7 Years, if he tenders his Son, and the Obligee refuses, it is no Forfeiture. 22 Ed. 4. 26. 2 Ed. 4. 2.

2. A Man is bound to J. N. that A. B. shall make Obligation of 10l. to the said J. N. by a Day, and A. B. offers, and J. N. the Obligee refuses, the Obligation is not forfeited; for the Refusal was by the Obligee himself; Contra if it shall be made to a Stranger, and he refuses &c. Br. Conditions, pl. 197. cites 10 H. 6. 16.

(P. c. 2) Tender and Refusal. Pleadings.

1. Debt upon Obligation, with Condition that the Defendant in Peofession A. B. and his Feme, and said, that he tendered Estate to the Baron and Feme, and the Baron refused; Per Catesby, this is no Plea, but shall say, that the Baron and Feme refused; but per Brian J. it the Baron once refuses, the Defendant is discharged for ever; and if the Baron refuses, it is the Refusal of the Baron and Feme. Br. Conditions, pl. 62. cites 15 E. 4. 5. 6.

2. And so it is held there, that Refusal of a Stranger to the Obligation shall save the Obligation. Ibid.

3. Debt upon Obligation; the Defendant said, that it is indorsed, that if the Defendant, or any for him, came to Bristol such a Day, and there shew to the Plaintiff, or his Counsel, sufficient Discharge of Annuity of 40 s. per Annum, which the Plaintiff claims out of two Messuages in D. that then &c. and said, that A. and B. by Assignment of the Defendant, came the same Day to B. and tendered to shew to N. and W. of Counsel with the Plaintiff, a sufficient Discharge of the Annuity, and they refused to see it; Judgment is Aetio; and the Plaintiff demurred, and it was handed no Plea by all the Justices, after great Argument, because he did not shew what Discharge be tendered, as a Release or Unity of Possession &c. for this lies in the Judgment of the Court to adjudge it; but they said, that if he came not there at the Day, this shall be tried per Pais. Br. Conditions, pl. 193. cites 22 E. 4. 40.

(Q. c) [Excuse.] Acts of the Obligee.

1. If A. is obliged to B. and the Condition is, that the Son of A. shall serve B. for seven Years, if B. takes him, and after, within the Term, commands him to be gone from him, the Obligation is not forfeited. 22 E. 4. 26.

2. If the Condition of a Bond be, that the Obligee shall peaceably enjoy certain Copphold Land without the Interruption of any, and after the Lord enters for a Forfeiture by Nonpayment of the Rent according
Condition.

1. If the Obligor pays Part of a small Sum contained in the Condition at the Day, without any Mention of the Rest, yet the whole Obligation is forfeited. 21 Ed. 4. 25. b.

2. If the Condition be, That he shall not disturb the Obligee in certain Land leased to him; yet if he surrenders to the Obligee, this is a good discharge of the Obligation. 22 Ed. 4. 37. admitted.

3. [If a] Condition [is] broke, Performance with the Acceptance Per Brim, contra Sulli, ard, and the Reporter says, Ideo Quære.

4. If A. be bound to an Abbot that B. shall resign the Abbot by such a Day; there if B. enters into Religion in another House before the Day, the Obligation is forfeited; and contra if he enters into Religion with the same Abbot, for now the Obligee is in Default by Acceptance of him into Religion. Br. Conditions, pl. 127. cites 4 H. 7. 3.

(R. c 2) Execute pro Tempore. Accident.

1. Fine by an Abbot to find a Chaplain to chant in such a Chapel or Church, the Defendant said, that the Church or Chapel fell such Items, pl. a Day &c. so that he could not do his Service there; Per Keble this is no 241. cites 10 Plea, for the Conسور is bound to do it there, and therefore he shall make the Chapel; but the Opinion of the Court clearly was, that the Obligor was Plea that the Chapel was fallen was a good Plea for the Time, and excused, that the Coniue shall make the Chapel who took the Commodity of the Services, and the Judgment in these Cases is Dillings ad facienda Servitlua, which cannot be till the Chapel be rebuilt; but Judgment may be given, quod celiet Executio, till the Chapel be made. Per Keble;
Condition.

Keble; but per Fineux contra. And this Case of the Divine Service is the Default of the Plaintiff for not making of the Chapel; so Judgment shall not be given for the Plaintiff where all the Default is in the same Plaintiff, and the Defendant shall not do Divine Service in the Place when the Chapel is fallen, and it is a Barr for the Time; Per Fineux, Brian and Darners, but per Vavlor it is a Barr for ever. Br. Bat. pl. 111. cites 16 H. 7. 9.


P. 2. So if a Man be bound to carry the Corr to the Barn of J. S. and the Barn falls, he is discharged of the Carriage. Per Brian, ibid.

3. Covenant to keep a Fine by him and his Wife at the reasonable Requests, Sickness of the Wife is excuse. No. 124. pl. 270. Pach. 25 Eliz.

See Tit. accord. per totum.

(S. c) In what Cases a collateral Thing may be given in Satisfaction of a Condition.


† 3. Bull. 142. Moorwood v. Dickens, and was on a Bond of 20 l. conditioned to deliver to the Obligee before such a Day to such Land; the Defendant pled, that before the Day at the Request of the Plaintiff himself he had paid one S. 10 l. which the Plaintiff was indebted to him, and this he paid for the Plaintiff in full Discharge of the first Bond, and that to the Plaintiff had accepted it. The whole Court were clear of Opinion that the Plea was not good, and that the Plaintiff had good Cause of Demurrer, and gave Judgment for the Plaintiff —— Roll. Rep. 262. pl. 4. S. C. fist it was adjudged per tot. Cor. against the Plaintiff. (But it is added, that it seems it was for the Plaintiff.)


2. But when the Condition is to pay Money there any other collateral Thing will be a Satisfaction. Co. 9. * Festy, 79. † 19. Co. 4. 1. b. † 12. H. 4. 23. b.

* In such Case the Payment of another Thing is good, if the Obligation be to pay a certain Sum of Money; Per Coke Ch. 2. Brownell. 1317 in S. C. † Br. Conditions. pl. 161. cites 13 E. 4. 14. 17. 20 and is the S. C. with that of 19 E. 4. 1. b. —— 4. Br. Conditions. pl. 41. cites S. C. as if he pays Corn for the Money, it is good; Per Hanke. —— Birch. Barre. pl. 189. cites S. C.

Co. Litt. 212. b. S. P. and says not only Things in Postition may be given in Satisfaction, but also if the Feoffee or Obligee accept a Statute or a Bond in Satisfaction of the Money, it is a good Satisfaction. —— Bull. 146. S. P.

Debt upon Condition upon Obligation to pay 10l. before such a Day: the Defendant said that before the Day of Payment he delivered a Horse in full Satisfaction, to which he agreed, Judgment & Actio, and a good Plea; by which the Plaintiff took the Receipt by Proclamation, and traversed the Agreement; But it seems there that it is a good Plea that he did not pay the Horse. Br. Conditions. pl. 199. cites 2 R. 3. 22. —— Co. Litt. 212. b. S. P.

3. A Man bound in 200 Quarters of Malt, upon Condition to pay 20l. A Ring or Horse, or other collateral Thing, is a Satisfaction. Co. 9. 79. (a.)

4. S.
Condition.

4. So a Feoffment upon Condition to pay 20 l. A collateral Thing is a Satisfaction. Co. Lit. 212. b. S. P. 21. in Case of Feoffment in Mortgage, if the Feoffor pay to the Feoffee a Horse or Gold Ring &c. in full Satisfaction of the Money, and the other receives it, it is good enough, and as strong as if he had received the Money, though the Horse was not the twentieth Part of the Value, because the other had accepted it in full Satisfaction. Co. Lit. 8. 344.

5. A Man bound in 20 Quarters of Grain, conditioned to pay five Quarters, Money or other collateral Thing, is not a Satisfaction, because of the original Contract.

6. But otherwise it is in Contract without Deed. Co. 9. 79. b. In such Case Payment of Money is a clear Discharge of the Contract; Per Haughton. J. 3 Ballit. 149.

7. If the Condition be to pay a less Sum at a Day; if the Obligee agrees that he shall pay an Horse, or other Thing in Satisfaction, yet if he refuses it, the Obligor ought to pay the small Sum at the Day, otherwise he hath forfeited the Obligation; for the Agreement 17. 20. and by Parol, without Acceptance, cannot alter the Agreement by Deed beforehand. 19 E. 4. 1. b. 2.

S. C. cited by Roll; but if the Obligee accepts the Horse in Reconciliation, this is a good Discharge of the Bond. Ibid.

8. So if the Condition be to erect an House of such a Length as he cannot plead another Agreement in another Manner in Satisfaction thereof, unless it be by Deed. 19 E. 4. 2. 6. per Curiam.

9. So if the Condition be to pay a small Sum at D. at such a Day; So in Debt an Agreement to pay at another Place, without Acceptance, is not a Discharge. 19 E. 4. 1. b.

10. So if A Thing be to do by Implication of Law to the Person of any Person, and the Obligee appoints him to do it at a Place in certain, yet if the Person be not there to accept it, it is not discharged, but the other ought to seek him. 19 E. 4. 1. b.

11. If a Condition of an Obligation be to pay 10 l. at a Day at D. * Br. Conditions, pl. 161. cites 18 E. 4. 15. 17. 20. and 2. Part of the S. C.


S. C.—See (Q. b) pl. 1. 2. S. C.


12. So if the Defaulence of a Statute be to pay at D. so much Rent. 46 E. 3. 4.

& S. P. as to Payment of Money, but mentions nothing as to Rent. — Fizth. Audis Quercus, pl. 1. cites S. C.—(Q. b) pl. 2. S. C.

13. If a Condition be to pay a Rent to the Obligee, an Agreement to pay to his Bailiff, who refuses, is no Plea without Deed. Dubitation, 9 H. 6. 29. b.
14. If a Condition be that a Stranger shall indorse the Obligee of Land, wthich the Stranger tenders, and he refuses to accept, but by his Command he indorses another; this is a good Performance without Deed. 42 C. 3. 22. b. It seems the Trufal is the great Caufe thereof, yet there the Title is taken upon the Command.

15. If the Defeafance of a Statute be to pay 10l. Rent at a Day; it is a good Performance without Deed, that he paid Part for the Expenes of one of the Confes, and the Reparations of the House; (which he himfelf was not bound to repair) by the Command of the Confe. 46 C. 3. 33. b. adjudged.

16. If a Lease be made by Deed, rendring Rent upon Condition, it is a good Performance, that by Accord the Rent fhould be re-

could for the Table of the Levies. 47 C. 3. 24. b.

17. If I deliver Money to another without Deed to my Use, and make a Defeafance by Deed to pay a less Sum, if I accept Corn in Satis-
faction without Deed, this is not any Discharge. Contra 18 C. 3. 39. b.

18. If the Obligee accepts the Thing to be done after the Condi-
tion is broke, (a) yet this is not a Discharge of the Obligation without Deed. + 46 C. 3. 29. b. + 47 C. 3. 14. Contra, 18 Ed. 3. 58. b.

19. If the Condition be to stand to an Award to be made such a Day; if at the Day no Award is made, but the Arbitrators, by Assent of Parties, appoint another Day to do it, and do make it at the Day, yet he is not bound to perform it. 49 C. 3. 9. demurrer.

20. If a Grantee of an Annuity, pro Confcilio impendendo, promifes the Grantor to come to a certain Place at a certain Day to give him Counsel, if he does not come at the Day there, yet the Condition is not broke, tbe he is not bound by the Condition to go there, and this cannot alter it. 21 C. 3. 7. b.

21. If the Diffidente takes Homage of the Diffejor, this shall bind him for his Life, and contra against the heir in Writ of Entry for Diffejor. Quære of the Diffejor. Br. Acceptance, pl. 16. cites 17. All. 3.

22. Debt for Meat and Drink, it was laid for Law that it is no Plea that a Stranger has made an Obligation to the Plaintiff for the fame Debt, Contra to say that the Plaintiff himself has made an Obligation to the Defendant for the same Debt, tho' it be in such Action of Debt in which the Defendant may wage his Law. Br. Dette, pl. 19. cites 28 H. 6. 4. 23. Con-
Condition.

23. Condition of a Bond was, that a Stranger should pay to the Obligee 10l. such a Day. The Defendant pleaded Acceptance by the Plaintiff of a Horfe in Satisfaction at the Day. This was held a good Plea, but if the Payment had been to be made by the Stranger, or by the Obligor himself to a Stranger who had accepted such Recompence, the Plea would not be good; for it ought to be performed strictly according to the Condition. D. 56. a. b. pl. 19. 19. Trin. 85 H. 8. Anon.

24. When the Condition is for Payment of Money, there is a Diversity when the Money is to be paid to the Party, and when to a Stranger; for when the Money is to be paid to a Stranger, there if the Stranger accepts au Horfe, or any collateral Thing in Satisfaction of the Money, it is no Performance of the Condition, because the Condition in that Cafe is strictly to be performed; but if the Condition be, that a Stranger shall pay to the Obligee or Feoffee a Sum of Money, there the Obligee or Feoffee may receive a Horfe &c. in Satisfaction. Co. Litt. 212. b.

25. Right or Title of Freehold or Inheritance cannot be bar'd by any collateral Satisfaction but by Release or Confirmation, or some Act which is tantamount. 4 Rep. 1. Mich. 14 & 15 Eliz. Vernon’s Case.

26. Debt on a single Bond for 8l. The Defendant pleaded, that after his entering into that Bond, he entered into another to the Plaintiff of 14l. for the Payment of 7l. at such a Place and Day not yet come, which the Plaintiff accepted in Discharge of the said Bond for 8l. Adjudged for the Plaintiff that the Plea was ill, and not any Bar. Cro. E. 716. pl. 40. Mich. 41 & 42 Eliz. C. B. Manhood v. Crick.


28. The Reason why a collateral Thing cannot be satisfied with Money, or other collateral Thing, is, because the collateral Thing is not due, and so no Contract can be made of it till the Day of Payment. Arg. Rolle Rep. 296. pl. 5. Hill. 13 Jac. B. R. in Case of Forewood v. Diction.

29. In Debt by an Executor upon a Bond to his Tettator, the Defendant contested the Bond, but pleaded, that he gave another Bond to the Tettator in Satisfaction of that Bond, which Bond the Tettator accepted in Satisfaction. The Court held it an ill Plea to say, that one did accept of one Chofe en Action (for so is a Bond till the Debt is recovered) in Satisfaction of another Chofe en Action, and here the Defendant has confessed the Debt, and at another Day Judgment was given against him. Style 339. Mich. 1652. B. R. Brock v. Vernon.

30. A. sells Land to B. A takes a Lease of the same Lands of B at a Rent beyond the Value, with a Condition of Re-entry, and gives collateral Security for the Payment of the Rent. A. was arrear 5 Years Rent. B. re-enter’d. A. could have no Relief against the collateral Security without Payment of the Arrears, as well after as before the Re-entry; the Land was worth but 160l. but the Rent was 250l. per Annum. Chan. Cases 261. Trin. 27 Car. 2. Anon.

31. A. is bound to B. to pay B. 100l. B. may take any collateral Satisfaction for it; but if A. is bound to B. to pay C. 100l. there C. shall not receive any collateral Satisfaction to save the Bond, for he cannot alter the Terms of an Agreement made between Strangers; Per Holt Ch. J. Farr. 144. Hill. 1 Ann. B. R. in Case of Booth, alias, Gould v. Johnion.

(T. c)
(T. c) Who may dispense with a Condition.  
A Stranger.

I. If the Condition of an Obligation be, to assure a Copyhold to A. and B. his Wife, (who are Strangers to the Obligation) for the Life of C. and the Obligor at the Request of A. surrenders it to the Use of A. &c. to the Use of such Person as he shall nominate, this is not any Performance of the Condition; For A. who is a Stranger cannot dispense with the Condition, nor by his Agreement after the Thing to be done, but he ought to take it as the Condition limited it.  (N.B. Zad. B. R. between Style and Smith adjudged upon a Demurrer.)

(U. c) What Things will excuse the Performance of a Condition.  
Acts of him that shall have the Advantage.  
Absence.

1. If a Thing be to be performed by a Condition, which cannot be performed without the Presence of the Obligee, there his Absence shall excuse the Performance.  12 D. 4. 23. b.
2. If a Condition be to make a Feoffment to the Obligee, if the Obligor do not perform the Condition, the Performance is execut.  12 D. 4. 23. implied.
3. If a Rent be referred to be paid at a certain Day upon Condition, if the Lessee be ready at the Day, and none comes for the Lessee, this will excuse the Performance of the Condition. (And here the Lessee ought to demand.) Contra 4 H. 6. 9.  
---See Tit. Rent (P. a) pl. 2. S. C and the Notes there.

4. If the Condition be to enter into a Statute to the Obligee, if the Obligee be absent at the Day, yet because it may be performed in his Absence, he ought to do it.  12 H. 4. 23. b. Otherwise c contra. 12 H. 4. 24. b.
5. If an Abbot covenants with B. to sing Mass such a certain Day in his Manor of D. for him and his Servants; though B. nor his Servants do not stay there, yet be ought to sing. 42 C. 3. 3. b.
6. If a Condition be to take an Estate to himself for Life, Remainder to another, (who is privy to the Condition, and is to have Bénéfit by the Obligation) at a certain Day, though he in Remainder be not there at the Day, yet it is forfeited if it is not taken according; 18 P. 3. 11. 8 C. adjourn'd for the Plaintiff; For it was not laid in the Negative, that if the Plaintiff did not come that no Estate should be made.  
---Br. Garnishment, pl. 12. cites 50 E. 3. 11. 8 C. adjourn'd for the Plaintiff; For it was not laid in the Negative, that if the Plaintiff did not come that no Estate should be made.

7. But
Condition.

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7. But, in this Case, if the Condition had been also, that he in the Remainder should be present at the Day, his Audience would excuse the Performance of the Condition, liciter, of the taking of the Remainder, and of the Lease to him, also. Contra 40 E. 3. 12.

8. He who will have Advantage of the Condition shall make the Attendance, and therefore in Debt upon an Obligation the Obligor shall make the Attendance, and so it shall be pleaded, and upon Lease for Years the Leslee shall make the Attendance. Br. Ent're Congeable, pl. 2. cites 20 H. 6. 30, 31.

9. For be it whose Part it comes to plead the Condition, shall make mention of the whole Day, which see in the End of the Book Infrattonum Placitorum. Br. Ent're Congeable, pl. 2. cites 20 H. 6. 30, 31.

10. And therefore it was said, that the Tenant may come the last Instant of the Day, and this suffices, and of the Oblige the like; Contra ex parte the Obligor or Lessor, for they shall plead the Condition, and therefore they shall make the Attendance. Br. Ent're Congeable, pl. 2. cites 20 H. 6. 30, 31 & 32, & 36 H. 8. accordingly.

11. In Debt, A. was bound in 40L to B. that C. should infeoff B. of such a Manor by such a Day, and said, that the said C. such a Day, viz. in the Vigil of the Day, was upon the Manor all the Day to have infeoff'd B. and B. did not come all the Day; Sulyard said, that B. was there upon the Manor all the Day to have taken the Estate, abique hoc that C. was there, and good; for the first Plea in the Affirmative ought to make the Issue, and the Refusal of the Oblige is not material in this Case. Br. Conditions, pl. 186. cites 22 E. 4. 43.

(X. c) What Thing will excuse the Performance of the Condition.

In what Case he, that shall have Advantage, ought to do the first Act.

Acts of him that shall have the Advantage:

1. If the Condition of an Obligation be, that the Obligor, being a Subscriber, should resign to the Oblige within a certain Time for a certain Pension as they should agree, the Oblige ought to agree for the Pension, and tender a Deed thereof to the Obligor before he is bound to resign. 14 H. 4. 18. b.

2. If an Annuity is granted till he is promoted to a Benefice by the Grantor; if the Grantee after accepts a Benefice from another, and after the Grantor professes him a Presentation to his Benefice, and he retires, the Annuity is determined. 17 Ed. 3. 11. dubitatur.

3. Where a Rent is to be paid upon Condition at a certain Day, he cannot enter for the Condition broke before a Demand of the Rent. * Br. Ent're Congeable, 40 Afl. 11. adjudged.

4. And the Demand ought to be at the Day, and it is not sufficient after. Contra 20 H. 6. 30, 31.

5. Where
Condition.

5. Where a Rent is referred to be paid upon Condition at a certain Day, the Lessor ought to demand it at that Day, otherwise the Performance of the Condition is saved, although the Lessor was not there ready. Cont. 4 H. 6. 9.

6. If the Condition of an Obligation be to pay a Sum at a certain Day, the Obligee ought to tender it without any Demand. 20 H. 3. 6. 30. 2 Ed. 4. 3. b. 8 Ed. 4. 1.

7. If I am bound to be attendant upon you at all Times when you come to your Manor of D. I shall be bound to take Notice when you come to your Manor of D. at my Peril, without any Notice given by you. 8 Ed. 4. 1. b. per Bingham.

8. If the Condition of an Obligation be to stand to the Award of J. S. ft. who awards a certain Thing to be done at a Day, he ought to perform it at his Peril, without any Notice given by any other. 8 Ed. 4. 1.

52d. Artbirtment. pl. 15. cites S. C. & S. P. by Catesby, which Jenny agreed.

2. A Man was bound in a Bond to make a sufficient Leafage to the Obligee before such a Day, the fame to be made at the Cafes of the Obligee. In Debt upon the Bond it was held that a sufficient Plea, that the Plaintiff did not tender the Colts to him, and if he had, that then he was ready &c. Mo. 22. pl. 76. Hill. 3 Eliz. Anon.

10. D. made a Deed of Fee Simple to D. on 15th Octob. 4 Maria, upon Condition the Poet should re-infect him of all the Lands which were to him in his life, and it was resolved that if D. made his Fee Simple within 20 Days, the Condition was not broken, though all were not re-conveyed within the 20 Days according to the Letter of the Condition, which is entire. The Reason was, because it was his own Fault that it was not conveyed, without which it could not be conveyed, and therefore the Letter was abridged, the Condition being taken that he should recover so much as was conveyed. Hob. 24. cites it as resolved 20 Eliz. in Lord Darce's Cafe.

11. Condition was, If Obligee before Easter pay 10 l. so as Obligee be ready at Payment thereof to enter into Bond of 200 l. with Sundry to purchase such Land &c. that then &c. per Wray Ch. J. the first Act is to be done by the Obligee, and at the Payment the other is to do which to him belongs to do. 4 Le. 91. pl. 159. Patch. 31 Eliz. B. R. Harris v. Whiting.

12. Covenant to seal and deliver a Lease for Years to commence from Michaelmas next, and a Bond for Performance of Covenants, and on an Action of Debt brought on that Bond, the Breech alleged was, that the Obligee had not made any Part of such Lease before the said Time, whereupon the Obligee put one Part in Writing and tendered it to the Obligee to seal, which he refused. Et per Cur. where a Man covenants to
(Y. c) In what Cases the Obligee ought to do the first Act.

[And what is a sufficient doing such first Act.]

1. If theCondition of an Obligation be to levy a Fine to the Obligee, he is not bound to levy it, if the Obligee does not sue for a Writ of Covenant against him. 18 Ed. 3. 27. b. 8 Ed. 4. 2. b. per Barham, 21. b. Cd. 5. Painter 127. 7 Cd. 4. 2. b. observe any such Point in any one of them, nor any Thing applicable thereto——But Hutt, 48 Hill. 19 jac. Chiefend v. Hill, the Condition of a Bond was, that such a one and his Writ, before Expiry of Term &c. should levy a Fine of such Lands to the Plaintiff; the Defendant pleaded, that before the End of such Term the Plaintiff did not sue forth a Writ of Covenant whereupon a Fine might be levied, and Howard Ch. 1. was of Opinion it was a good Plea; for that the Plaintiff ought to procure the Writ to have made himself capable of the Fine.——Win. 29. Hill v. Waldron, Patch 25. Jac. 8. C. B. the S. C. & Howard Ch. 1. said it was not reasonable to compel the Obligor who is a Stranger to the Estate, which paies by the Fine to sue out a Writ of Covenant, to which Hutton J. agreed, but Winch doubted.

2. If the Condition be to levy a Fine upon Warning given; if he be summonsed in a Writ of Covenant, this is sufficient Warning. 29 Ed. 3. 44. b.

3. If a Defeasance be to pay a small Sum in Discharge &c. he ought to pay it at the Day, though the Plaintiff will not give him any Acquittance for it; because in an Action for the principal Sum, he may plead Payment of the les Sum, without any Acquittance. Square, 18 Ed. 3. 59. b.

4. If a Condition be to inroll a Deed in Subsahall, he is not bound to do it before Request made by the other. 39 Ed. 3. 3.

5. A Lefsee for Years upon Condition, that if the Lessor sell, the Lessor to have the first Offer, he shall give as much as another; here the Lefsee ought to demand, if the Lessor will give as much for the Term as another will, if he say, No, he ought to shew him no more; but if the Lessor say that he will, then the Lefsee ought to shew how much another will
Condition.

will give more. And this Question the Lessor is to determine of present-
ly; for it is no Reason to deter the Sale while he considers of it. Dyer,

6. An Obligation was conditioned, that J. S. shall acknowledge a J udg-
m ent in C. B. to J. D. In Debt the Defendant pleaded, that the Plain-
tiff had not sued forth any original Writ, and it was held a good Plea.

7. Covenant was at the End of two Years to procure a Deputation for
J. S. Proviso, that upon the granting thereof J. S. should give Security for
Payment of 100 l. per Annum Rent for it and Performance of Cov enants.


8. In Debt on Bond conditioned to make all the Linen for the necessary
wearing of the Oblige during his Life, the Court held, that the Oblige-
must deliver to the Obliger the Cloth of which it is to be made; for all Con-
tracts are to be interpreted according to the Intent and Subject matter.
As if a Seamstress is bound to make me a Linen suit he is to find the
Linens, but it is not thereon that the Obliger was a Seamstress, or such
Peron as used to make Linen and find the Stuff; and therefore Judg-
ment was given for the Defendant. Lev. 93. Hill. 14 and 15 Car. 2.
B. R. Oles v. Thornhill.

Is Seamstress, and it is her proper Trade to make Linen, and therefore, as a Taylor, she is not bound
to find the Linens, which Twifden agreed; but otherwise of a Shoe-maker or Goldsmith; and Judg-
ment for the Plaintiff.

9. So if a Taylor is bound, or promises to make a Suit of Clothes for me,
I ought to deliver him the Cloth, because this is usual, and not for him
to provide it; Per Cur. Lev. 93. in S. C.

10. But if a Shoe-maker is bound to make me a Pair of Shoes, he is also
bound to find the Leather, because it is usual; Per Cur. Lev. 93.
in S. C.

11. Debt on Bond, condition'd to pay such Costs as should be stated by
2 Arbitrators by them chosen, Defendant pleads that none were stated,
Plaintiff replies that Defendant brought not in his Bill, to which it was
demurred; for tho' if the Defendant were the Caufe that no Award
was made, it was as much a forfeiture of his Bond as not to perform it
would be; yet here there was a precedent Act of the Plaintiff's Neces-
Sary, viz. to choose an Arbitrator, which he ought to have thrown before
any Fault could be alleged in the Defendant in not bringing in of his
Bill, and to this the Court did incline. Sed Adjournatur. Vent. 71.
Pach. 22 Car. 2. B. R. Baldway v. Qufon.

12. If by the Agreement of the Parties, 2 Ads are to be done, and
Time is limited for doing of one, and no Time for the other, there if the
Nature of the Thing will bear it, that Thing is to be done first for
which the Time was limited. Arg. 10 Mod. 224. Pach. 13 Ann. B.

(Y. c. 2)
(Y. c. 2) Demand. Necessary; in what Cases.

1. Debtor upon Indenture of Covenant to pay 4l. annually, and 12 s. Rent per Ann. ad quas conventions perpendunt the Defendant bound himself in 100l. by the same Indenture, and brought Debt, and proved that the one and the other were Arrears; and the Defendant said that he was at all Times ready to pay, and yet is, and tendered the Money in Court. Alleged he, that the Plaintiff required it; and by the best Opinion he ought to pay it at the Day without request, because he is bound to pay it, and contra where he grants Annual, there is it no Damage unless the Grantee requires Payment; Note a Diversity. Br. Conditions, pl. 153, cites 11 E. 4, 16.

2. Debt upon Obligation, that if the Plaintiff shall enjoy an Annual Interest if he be which the Defendant had granted to him out of the Manor of Dale, according to the Form of the Gift, that then, &c. and said that at every Day he was ready to pay. Quære if he ought to tender; because if a Man be bound in a single Obligation payable at such a Day, there he need not pay without request, and the Plaintiff shall not recover Damages without request. B. Tender, pl. 22, cites 14 E. 4. 4.

3. In Debt upon a single Obligation the Plaintiff ought to request Payment; but upon an Obligation of a greater Sum, to pay a less, the Defendant ought to tender it. Per Hullsey Ch. J. Br. Tender, pl. 25, cites 21 E. 4. 42. B. Tender, pl. 14, cites 14 H. 8, pl. 29.—S. P. but Contra of Condition to pay such a Day, &c. Br. Tender, pl. 27, cites 14 H. 8, 29.

4. If a Man be bound to me in 20l. by single Obligation, he is not bound to offer it before Request. Br. Tender, pl. 34, cites 21 E. 4. 50. 42.

5. But if he be bound in 40l. by another Obligation to pay the Sum in the first Obligation, there the Defendant ought to tender it. Br. Ibid. 6. And it no Day be limited, he ought to do it in as convenient Time as he can, quod nona. Ibid.

7. If a Man is bound in 20l. to pay 10l. there he shall make Tender at his Peril. Br. Tender, pl. 43, cites 16 H. 7, 14.

8. So where he is bound to perform an Arbitrment. Ibid.

9. But where it is by Contract or single Obligation, there the Creditor ought to make Request, and upon this the Debtor ought to be ready to pay, and there without actual Request the Plaintiff shall never recover Damages; Per Brian and Fineux, and therefore the Request shall make the Ills. Ibid.

10. Debt upon bond condition'd, that the Obligee, his Heirs and Assigns, flatly, and may lawfully bold and enjoy a Mijflage, &c. without the Law, &c. of the Obliger, or his Heirs, and of every other Person discharged, or else, upon reasonable Request, was harm'd by the Obligee from all former Gifts, &c. The Defendant pleaded, that no Request was made to save harmless. Adjudg'd for the Plaintiff, because the Condition has two Parts, one for Enjoyment, the other to save harmless upon Request, and to the Enjoyment of the Land the Defendant has not made any Answer. Mo. 591. 592. pl. 797. Trin. 39 & 40 Eliz. C. B. Creifwell v. Holmes.

11. Debt upon Bond with Condition to resign a Benefice within 3 Months after Request, viz. at the Pasçange-Heney of C. that then, &c. the Defendant pleaded not reasonable, upon which they were at Ills, and the Jury found for the Plaintiff, who had judgment accordingly; It was

X x x
Condition

affixed for Error, 11th that the Plaintiff did not set forth the Request precisely at the Pannage-House, but alleged a Request at the Pannage-House of C. by a (viz.) fed non Allocatur; for it is the usual Curie, 2dly that he did not show that the Defendant was there present, or had Notice of the Time of the Request; but Non Allocatur; for being alleged to be made unto him at the said Place, it must necessarily be intended that the Defendant was present, and had sufficient Notice of it, otherwise they ought not to have found the Request. Cro. J. 274. pl. 2. Patch. 9 Jac. B. R. Lawrence v. Johna.

12. A. covenanted to transfer to B. provision that B. such a Day by Word, or by Writing, left at the East India-House in Leaden-Hall, Street demand the said Fund to be transferred to him. Upon the Day B. made Demand I or tenus (and not by Writing) at the East India-House, and held good, and that it need not to be the Person, nor at the last Hour of the Day, Per Cur. and Judgment for the Plaintiff. Croth. 268. Per Cur. Patch. 5. W. and M. in B. R. Hall v. Capper.

(Z. c) Demand. Where another than he who is to perform the Condition is to do the first Act.

1 If a Man leases Land for Life, or Years, over a Rent, and Demand of Payment, a Re-entry The lessor ought to demand the Rent at the Day, otherwise the Condition shall not be broken by the Non-payment of the Rent.

2. So if a Man leases Land, referring a Rent to be paid at a Place out of the Land, upon Condition of Non-payment to recede: Though the Rent be to be paid out of the Land, yet this is a Rent and not an Amity, and therefore the lessor ought to demand it at the Day, otherwise he shall not enter for the Non-payment. Cro. 4. 32. B. R. admitted. Trin. 39. El. in Camera Staccart, between Edmunds and Baskin, per Curiam in a Pet. of Error upon a Judgment in B. R. where it was so adjudged. But Trin. 39. El. B. R. contra. Co. Kid. and Brand. 71.

S. C. sued was a Leafe by the Queen, in which the Rent was made payable at the Receipt of the Escheuer, and the Queen granted the Reversion to D. who demanded the Rent at the Receipt of the Escheuer, and the Tenant tender'd it upon the Land; and adjudi'd for the Defendant that the Tender was good; for the Grant of the Reversion had alter'd the Place of Payment from the Escheuer to the Land —— Gould's 124. pl. 9. Hill. 43 Eliz. S. C. adjudi'd that the Grant of the Reversion must demand the Rent on the Land; for now the Rent shall endure the Nature of other Rents referred by common Person, and such are payable on the Lands.


‖ Cro. E. 575. pl. 5. Mich. 37 & 38 Eliz. B. R. Buskan v. Edmunds, S. C. which was a Leafe of Lands in Bucks, rendring Rent at the Receipt of the Royal Exchange in London. Gardy J. held that there needed not any Demand; but all the other Justices held that there ought to be a Demand at the Place where it was payable, for it remains a Rent which in its Nature is demanend by him who would have it, and that so it had been adjudged, and Judgment accordingly that the Entry of the Lessor was not lawful.—— ibid. 575. pl. 69. Mich. 38 & 39 Eliz. in Cam Scott. and all the Justices and Baron held there were ought to be a Demand, besides Anderson, who held o contra; for he held that it being appointed to be paid out of the Land, it is only a Sum in Gross, and no Rent. —— Cro. E. 626. pl. 53. Mich. 46 & 48 Eliz. B. R. is upon a D. P. —— 5. This should be Pl. Com. Kidwells v. Brand —— No. 598. pl. 521. S. C. adjudi'd that the Rent ought to be demanded; or no Re-entry can be; contrary to Kidwells's Case in Pl. C. — And in Kidwells's Case in Pl. C. 50. 43 to this Point was utterly denied by the whole Court. 4 Rep. 72. a. — Co. Litt. 323. a. S. P. Accordingly, and cites S. C.—See Tit. Rent (I) pl. 5. and the Notes there. —— And see Tit Rent (K) (L).
Condition.

3. [But] if a Man reserves a Rent, and that if the Rent be Arrear, he shall forfeit to much by way of Nomine Pente, the Nomine Pente shall not be forfeited without Demand made. Bib. 19 Jac. 2 R. per Curiam. Hobart's Reports 180. per Curiam, between * Howel and Sandbeck. Hobart's Reports 173. between Sir J. Richard Graham and Donnorgby, adjudged upon Demunter. S. C & S. P. 1 Hob. 82. pl. 108. Hill. 10 Jac. S. C & S. P. —— Brownl. 73. S. C, accordingly.

4. [So] if a Man grants a Rent-Charge to another, and for Default of Payment to forfeit a Nomine Pente, no forfeiture shall be of the Nomine Pente without a Demand at the Day. Co. 7. to Nomine Pente, see Tin. Rent. (D. b) to (1 b).

5. If a Man leaves Land for Life or Years, referring the Demand for Nonpayment of the Rent at the Day by the Lease, to demand the Rent by the Lessee, that then it shall be lawful to the Lessee to re-enter; in this Case, by this Special Agreement of the Parties, the Lessee may enter for Default of Payment of the Rent, without any Demand. Co. 5. Dormer 20 b.

6. [But] if a Man leaves Land for Years, referring the Demand for Nonpayment of the Rent at the Day by the Condition, or otherwise the Lease is not void, though it be not paid by the Lessee. Patch. 1649. adjudged. Intratu. Hill. 24 Car. 2 R. Hor. 312. between Davis and Roper, adjudged upon Demunter per Curiam, where an Action of Debt, for Rent incurred after, was brought by the Lessee against the Leesor, and this Bater pleaded, Lease not to be made by the Lessee, and adjudged that the Action lies.

Mo. 87. pl. 213. Patch. 10 on. Eritre. Apre. Dyer held that Debt does not lie; because after Failure of Payment the Leesor is only Tenant at Sufferance; but Welton contra, that Debt lies for all the Time that the Leesor continues in Possession after; but Dyer said that there is a Diversity between the Cases —— Jo 9, 10. pl. 9. Mich. 18 Jac. C. B. Hanlon & Northrop, resolved, that the Nonpayment of the Day does not make the Leesor void, and if the Party would defeat the Lease, he ought to plead the Demand, and to the Defendant ought to have done in this Case, whereupon Judgment was given for the Plaintiff in Debt for the Rent. —— Hob. 531. pl. 414. S. C and resolved that for want of the Defendant's alleging a Demand actually his Plea was naught, and so it is at the Election of the Leesor and his Heirs to continue or avoid the Lease in such Case. —— 5 P. Arg. 2. Le. 141.


† Brownl. 19. S. C but S. P. does not

8. [So] if a Man leaves Land by Indenture for Years, referring a Rent, payable at certain Days at London, and the Lessee in the same Indenture covenants to pay the said Rent at the Days and Places aforesaid, he ought to pay it by Force of this Covenant, without any Demand of the Lessee, (') otherwise he hath broke his Covendants. 1 Godl. 174. pl. 210. S. C. but the 210. S. C. but the
Condition.

9. If a Sun leaves for Years, referring a Rent, with a Clause of Rent-Entry, and upon the making the Lease the Lessee lends him 200l. Stock, and the Lessor covenants to pay the Rent at the Days and Places, and after, by another Covenant, covenants that if Default of Payment of the said Rent be made at any of the Days in which it ought to be paid, according to the Effect, Limitation, and true Intent of these Precedents, then the Lessee covenants to repay the said 200l. Though there needs no Demand of the Rent to make the first Covenant to be broken by Nonpayment, yet there ought to be a Demand to intimate him to the 200l. For this Lessor Covenant does not refer to the Covenant before, but to the Retention; The Words are (according to the Limitation of the Indenture) which is the Retention, and by these Precedents is intendment the Indenture, or the most notable Part thereof, which is the Retention. \textit{Poth. 6 Inc. B.R. between Sir J. Spencer and Sir J. Poore}, by two against one.

10. If a Sun leases Land by Indenture, referring a Rent, and the Lessor binds himself by Obligation, upon Condition to perform all Covenants, Articles, Agreements and Payments in the Indenture mentioned; in this Case there ought to be a Demand by the Lessor to make the Obligation to be directed. \textit{Poth. 12 Inc. B. between Baker and Spurine. The same Case Howard's Reports ii. Hill. 2 Car. in Starearon, between Chapman and Daven. per Curiam, upon a Demurrer; but the Court gave Leave to the Plaintiff to discontinue the Suit, because that otherwise this would have been a personal Case of the Obligation, if Judgment should be given against him.}

And Warren J. said that S. P. was referring accordingly in a former Case in this Court; but that he is not bound to seek the Lessor, but to tender it only on the Land; for he has bound himself to pay it, but still as a Rent, and where the Law will. Brownl. 76. Baker v. Pain. S. C. & S. P. seems to be admitted. So where the Bond was to perform all the Covenants and Agreements contained in the Deed, and Lessor brings Debt for Nonpayment of the Rent, and the Obligor pleads Performance of all Covenants and Agreements; the Lessor replays that the Rent is behind, it was held no Plea to say that the Rent was never demanded, but he should have pleaded that he had performed all Covenants and Agreements, except the Payment of the Rent, and at it that, that he was always ready to have paid it, if any had come to demand it; but as to the first Plea it was held not to be good, and as to the Demand of the Rent, the Court was of Opinion that it was to be demanded; for the Payment of the Rent is contained in the Word (Agreements) and not in the Word (Covenants); and then if he be not to perform the Agreements in another Manner than is contained in the Deed of that Agreement, the Law, faith, that there shall be a Demand of the Rent; but if the Lessor be particularly expressed by Covenant to pay the Rent, there he is bound to do it without any Demand. Gads 95. 96. pl. 108. Mich. 29 & 30 Eliz. C. B. Anon.

* Cro. C. 76. 77 pl. 2. S. C. in the Exchanger Chamber, and all the Judges and
pay him the Rent at the Time of Payment thereof by the Reserva-
tion, without alleging that he demanded the Rent at the Day of Pay-
ment, for he is not bound to demand it, but the other ought to 
pay without Demand. Sib. 2. Car. B. R. between Champion and 
Chapman, adjudged per Curiam; but a Writ of Error was brought 
in Camera Statecral, and there the better Opinion was to reverse the 
Judgment, because the Condition is to precede all else, in the Gene-
ralty, and according to the Indenture. But Ten. 3. Car. the 
Judgment was affirmed. Sib. 3. Car. B. R. between Poilson and 
Covenants, and Agreement, in Case of a Lease of Land, adjudged per Curiam ac-

he really performed them, and so had paid all the Rents; and when the Plaintiff replies, that he
not paid such a Rent, he need not allege a Demand, for the Defendant may not say it was not de-
manded, for then it should be a Departure from his Plea, wherefore they held the Replication was
good, and yet the Obligation being general for Performance of Covenants, doth not alter the Nature
of the Rent, that it ought to be demanded, and upon this Reason a Cafe was cited, which was
Patch 40 Edw. Rot. 106., betwixt Sprout and Sheare, in C. B. and the Judgment was affirmed.

Hutt 90. S. C. adjudged for the Plaintiff, but says, that the Matter upon which the Defendant judi-
fied, viz., whether the Plaintiff ought to have demanded the Rent, came not in Question.

S. C. cited 2 J. Eliz. 25.

11. [But] If a Man makes a Lease, rendering Rent, and [Lessee]
covenants by the Indenture of Lease to pay the Rent, being lawfully
requested, and enters into an Obligation to perform the Covenants;
the Lessee is not bound to pay the Rent without a Demand. Sibch.

in such Case is not necessary as to the bringing Debt on the Bond. Cro. E. 222. pl. 11. Trin. 56.
S. P. accordingly. — Godb. 357. pl. 452. Arg. cites 22 H. 6. 17. that the Bond in such Cafe is not
forfeited unless the Rent be first demanded.

13. [So] If A. leaseth Land to B. by Indenture for Years refer
Co. C. 241.

being 20 l. Rent per Annum, payable at four Pounds by equal Portions, 
pl. 13. S. C. and after B. is bound in an Obligation to A. upon Condition that if he
does not pay it to A., for the Rent of the said Premises, the yearly Rent of 20 l. for
such Term, (suitable, the Term demised) at four Quarter Days, 25s.
controlling the Tenor and Effect of one Lease thereto made, bearing
Date with this Obligation, and made between the said Parties, ac-
cording to the Tenor and Effect of the said Lease, by equal and even
Portions, then this Condition shall be void. The Lease is not bound
" to pay the Rent by this Condition, without any Demand of the
Leasee, because it refers to the Indenture of Lease, and that it
shall be paid as a Rent, according to the Indenture. 9. 11. Car.
B. R. between Horse and Barber, per Curiam, resolved; But this
does not come materially in Point of Judgment.

14. If a Man makes a Writing sealed of a Grant of a Rent out of Co. 1. 144.
Land, and after devises, that the Grantee shall have the said Rent ac-
p. 4. Molin-
geording to the Intent of the said Writing; and that if his Deed paps the
said Rent according to this Will, then he shall have the Disposition
of the said Land so long as he shall perform the Will, and if his
Heir does not perform his Will, then that his Executors shall have the tiff, and
Disposition of the land, to the Intent that his Will be performed; and if there be Default in the Heir that his Will be not performed,
and Default in his Executor that his Will is not performed, then the
Land shall be to J. S. In this Case, the Grantee of the Rent ought
to demand the Rent at the Days of Payment from the Deed, and
from the Executor when it comes to him, otherwise J. S. shall have
Y y

nothing.
Condition.

nothing; for the Will refers to the Writing, and the Clause of the Executor is not that he shall pay the Rent, but if there be Default in him, so that this is to be paid as a Rent, and then it ought to be demanded. D. 4 Jac. B. R. between Frezzwell and Molinetts, adjudged.

It seems to Manwood and Moun- son, that the Demand be yearly paid and Manwood and Mounson clearly a contra, and was the Opinion of Wray, and Saunders Ch. J. and Ch. B. in President's Manwood and Menam, and they thought that there was no need for the Feoffee to demand it at the Land, but that it is payable by the Devisees at their Peril, if they will have the Land, D. 348. a, b. pl. 15; S. C.—Ibid. Mage, says, that no Judgment was given in this Case, and that it seemed to several Justices that the Plaintiff should recover, the Will being on a Condition which was broken.

Pl C. 60. b. Hill. 4 S 5 E 6 S C. adjudged accordingly. D. 68. 6. pl. 28. S. C. adjudged for the Plaintiff. * 2 Dam. 103. translates this (to) D. the French Word in Roll is (3) and in Dyer it is (4). which was a Place different from the Land, but payable to the Leisor, and not to a Stranger.

16. If a Man leaves Lands for Years upon Condition, that if the Lessor does not pay yearly 40s. at the Rent of P. during the Term at D. it shall be lawful to the Lessee to re-enter. In this Case the Lessor ought to pay it, at his Peril, without any Demand, because this is not trifling out of any Land, C. Kidwille and Brind, adjudged in Effect.

The 34th is foreigners, and Brown. 73. S. C. that the Action would not lie for the Nomine Pazine, but that it would lie for the Rent. — S. C. cited Arg. 2 Jac. 15. 19 Car. 2. C. B. In Case of Tuftian v. Reper.

And the King is not bound to offer Acquittance to any Man, but the Subject, who pays to the King, ought to bring with him an Acquittance, and to demand it of the King. Ibid.

19. In Debt, a Man was bound in 100 l. to make such Estate by such a Day as the Counsel of the Obligee should devise; in this Case the Obligor would not tender the Assurance nor make Request, because the first Matter is the Devise which must come from the Obligee. Br. Conditions, pl. 133. cites 6 H. 7. 4.

20. But where a Man is bound to pay such a Sum, or to make a Feoffment &c. there he ought to tender it without Request. Ibid.

21. A Man makes a Feoffment on Condition that the Feoffee, and his Heirs, shall pay a Rent to a Stranger and his Heirs, this is a good Condition, yet such Payment is not properly Rent, because it lies not out of Land, and an Allife lies not for it; and yet if it be not paid the Feoffor shall re-enter, and the Feoffee ought to seek the Stranger; for the Payment is but of a Sum in Gf. Haw. Co. Litt. 297. 22. A.
Condition.

22. A. feized of Lands in Fee, covenants to infolj J. S. thereof upon Request, and after makes Restraint in Fee to another of the same Lands; J. S. shall have Action of Covenant without Request. 5 Rep. 21. a. resolved, Paich. 38 Eliz. B. R. in Maine's Cafe.

23. A. conveyed Lands to J. S. in Tail Male, upon Condition that J. S. and the Heirs Male of his Body, pay to the Daughter of A. 200 l. or so much thereof as shall be unpaid at the Death of A. according to the Intent, of his last Will. Afterwards A. by Will makes the said J. S. his Executor, and devises to his Daughter 200 l. viz. 100 l. to be paid that DayTwelve-month next after his Death, and the other 100 l. that DayTwelve-month next after &c, and dies. J. S. is not bound to pay the 200 l. without Demand, for the Payment is referred by the Indenture to be according to the Will, and the 200 l. was devised as a Legacy, which ought to be paid but upon Demand, and not at the Peril of the Executor, and therefore the Nature of the Payment is altered by the Intent of the Will, and so being not demanded, the Nonpayment shall not prejudice the Tenant in Tail of his Land if it had been a Condition, for then it should be but a Condition to be paid according to the Nature of a Legacy upon Demand, and not at the Peril of the Party. The Opinion of three Judges was certified to the Chancellor accordingly. Poph. 102. Hill. 38 Eliz. Staining's Cafe.

24. Covenant to stand seised to the Use of himself for Life, and after to his Wife for Life, so long as she should be effectually ready to demise it to his Heir at 50 l. Rent, when she should not dwell on it herself, and for so long as she should not dwell on it. The Husband died, and the Wife married, and did not live upon it, yet the need not make any Devise unless the Heir demands it. Mo. 626. pl. 860. Mich. 43 & 44 Eliz. Sir Cha. Rawleigh's Cafe.

25. A Copyholder in Fee of Lands in Burrough English had issue three Sons, B. C. and D, and surrendered to the Use of his Will, by which he devised it to C. in Fee, upon Condition he to pay to his 4 Daughter 20 l. a-piece at their full Age, and dies. B. had issue two Daughters, and dies. C. is admitted, and does not pay the said Sums to the Daughters at their full Age. It was held by all the Justices, besides Williams, that it is a Condition, but that it was not broken without a Demand of those Sums after their full Age, for he is not bound of himself to take Notice of their Age, but after Notice ought to pay it. Cro. J. 57. pl. 2. Hill. 2 Jac. B. R. Curtis v. Wolverton.

26. A. covenanted with B. to procure a Deputation at 2 Years end for B. for 7 Years, in the same Manner as J. S. had it; A. is bound to procure it at his Peril, and such an one as J. S. had, without being shown by B. how that was. Cro. J. 297. pl. 4. Hill. 9 Jac. B. R. Barwick v. Gibbon.

27. In Assumpsit &c the Plaintiff declared, that the Defendant, in Confirmation that the Plaintiff had paid him so much Money, promised to join with him in the Surrender of certain Copyhold Lands. It was ob- jeeted, that the Plaintiff should have shewn that he requested the De- fendant to join with him in the Surrender, for it was not a single Act to be done by the Defendant alone, but he was to join in the Act with an- other, and Roll Ch. J. held accordingly; and Judgment against the Plaintiff. Sty. 107. Trin. 24 Car. B. R. Freeborne v. Purchase.

28. On an Action brought on a Charter-party, Hale Ch. J. said, that upon a Penalty you need not make a Demand, as in Case of a Nomine Pa- ne; As if I bind myself to pay 20 l. on such a Day, and in Default thereof to pay 40 l. the 40 l. must be paid without any Demand. Mod. 89. pl. 52. Mich. 22 Car. 2. B. R. Bradcat v. Tower.

29. Co-
29. **Covenant by Baron and Feme to make Assurance on Request within 7 Years.** The Feme dies within 7 Years, no Request being made, and the Heir of the Feme (whose the Effece was) is an Infant; Per Car. the Covenant is not broke, for it was the Plaintiff's Fault not to demand the Assurance in the Life of the Wife, it appearing by the Verdict that she was of Age before she died, and to the Breach not well aligned. 2 Jo. 196. Parch. 32 Car. 2. B. R. Nath v. Atton.

30. **Where the Condition of a Bond is to pay such Sums as shall become due for such and such Things, no Demand is necessary, the Money becoming due being as a Sum in Gross;** Per Holt Ch. J. Ld. Raym. Rep. 596. Trin. 12 W. 3. Levins v. Randolph.

31. After pleading General Performance, the Defendant is stopped to say that there was no Demand; Per Gould J. to which Holt Ch. J. agreed. Ld. Raym. Rep. 596. Trin. 12 W. 3. in Case of Levins v. Randolph.

32. **Where the Thing in its Nature requires a Demand, a Bond for doing thereof is not forfeited till Demand;** and in that Case the Defendant must take Advantage of the Want of Demand by pleading that he was always, and still is, ready to pay it; for if he pleads Performance generally, and Plaintiff aligns a Breach in his Replication, the Defendant shall not rejoin and allege Want of Demand, for that would be a Departure; Per Gould J. quod Holt concil. 12 Mod. 414. Trin. 12 W. 3. Levins v. Randall.

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(a. d) **What Thing will excuse the Performance of the Condition.**

In what Cases he who is to have the Benefit ought to do the first Act, sicilicet, by giving Notice. [And who must do the first Act, pl. 29. &c.]

1. **If a Man in Consideration that J. S. will deliver a Horse to a Stranger, promises to pay to J. S. 5 l. cum inde requitus effect. J. S. need not give Notice to him of the Delivery of the Horse, but he ought to take Notice thereof at his Peril; for he ought to pay it upon Request.** P. 5 Jac. B. R. between Pownfret and Shadd, per Lefterton.

2. **If the Condition of an Obligation be to pay 10 l. to the Oblige at the Day of the Marriage of the Oblige, the Oblige is not bound to give Notice to the Obliger before his Marriage at what Day he will be married, but the Obliger ought to take Notice thereof at his Peril, in as much as he had taken upon him to pay it at the Day. By Reports, 14 Ja. between Berciford and Goodbar, per Doderidge and Doughten, adjudged, for this becomes a Dece by the Marriage.**

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S P where the Promise was in Consideration of a Horse given to the Defendant, he promised to pay it upon the Plaintiff's Return from London to G. and alleged the Time of his Return, Notice was alleged to be given of his Return, it was adjudged that the Action was not maintainable. Arg. Roll Rep. 314. cites Mich. 6. Jac. Moule v. Gardiner.

Roll Rep. 535; pl. 7. S. C. but S. P. does not appear. — Roll Rep. 535; pl. 29 S. C. accordingly, and upon View of precedent Judgment was given for the Plaintiff by the Assent of the Court. — Cro. J. 474; pl. 3. Beriford v. Wanstro, S. C. and Exception being taken, because the Notice was not given, it was over ruled by reason of a Precedent flown of a Judgment in 13. R. Trin. 44 Eliz. 7 Chidley v. Clarks, and adjudged for the Plaintiff, and affirmed in Error; and so it was in the principal Case — 3 Holt 233; Berniford
Condition.


3. [So] if a Man promises to J. S. in Consideration that he will marry A. W. his Cousin, to pay 10l. to him at the Day of his Marriage, J. S. need not give Notice to him who made the Promise, before he marries with A. W. at what Date he will marry her, but 10l. in S. C. he ought to take Notice thereof at the Peril, in as much as he has taken upon himself to pay it at the Day, though the Marriage is to be had by J. S. himself. By Reports 14 Jac. between * Beresford's 5. P. See and Godcuts, adjudged; for it becomes a Debt by the Marriage. Tit. Acc. Contra, C. 4 Jac. f. R. between * Wheeler and Street, adjudged, i. e. Notice to the Notes thereon;— 4 Yelv. 122. S. C. cited in the Cafe of Ab. b. Daughter, That Notice ought to have been given; but that Cafe was afterwards deman'd per toto. Cur. Yelv. 160. Mich. 7. Jac. B. R. in Cafe of Bentley & Tindall, where it was him, that Notice was not necessary, and that its being by Promise was through it as it was by Bond; and Judgment for the Plaintiff.— Cro. J. 228. pl. 4. Bradt t. Bower, S. C. adjudged for the Plaintiff, — Nov. 123. Brumley t. S. C. & S. C. adjudged.

* 3 Bull. 256. 272. Hall, 1 Car. B. R. Alltray t. Blackmore, adjudged accordingly per tot. Cur. — And ibid. Hucham Serjeant informed the Court, that he had the same Day moved the Court of C. B. in the like Cafe, and that it was adjudged there per toto. Cur. clearly that no Notice was to be given — Lat. 57. Alltray v. Blackmore, & C. but I do not observe any Opinion of the Court.

4. So a Portion, if a Sum promises to pay 10l. to J. S. at the See pl. 2. & Day of the Marriage of W. N. For there the Judgment is not to be had by him to whom the Promise is made. By Reports, 14 Jac. pl. 5. S. P. per Curiam.

5. If J. S. gives an Action against J. D. and J. N. comes to J. S. * S. C. cited and promises him, that if he will forfear his Suit against J. D. that he himself will pay him all the Charges of the Suit, in which he forllies, J. S. comes into Somersetshire. If J. S. forfears his Suit, and after comes into Somersetshire, J. D. is bound to perform his Promise, without and Notice given of the coming of J. S. (C. D. pl. 6. into Somersetshire, because this was a Duty by his coming there. By Reports, 12 Jac. * Richardson's Cafe, adjudged. Vide Dovart's 63. pl. 3. Reports 03. between * Richards and Carvill, it seems this was the S. C. Hall. large Cafe, and it seems to the opinion is contra.

in arrest of Judgment, that the Plaintiff should have given Notice of his first coming into Somersetshire, because it lay bey of his own Notice, and also because the Defendant understo't not the Payment by Bond, but by Affinage only; and to this Opinion Warnerston agreed. — Brownl. 10. 11. S. C. and though he did not allege that he gave Notice of his coming, yet Judgment was given for him. — 14 Yelv. 44. Bish. & 2nd Bish. Caile, where the Promise was to pay Money on the Plaintiff's coming from London; Yelverton J. held, that Notice ought to have been given by the Plaintiff of the Time of his Return, and took this Diversity, When it rests upon a matter to be done between the Parties without force, then Notice is to be given of this to the Party, who is to make the Payment upon an Act to be done by the other to whom the Payment is to be made, at heres where it is to be done by a Stranger, for there he has allowed upon himself to take Notice, and so there at his Peril he ought to do, and so it had been formerly adjudged upon this Difference, and so in this Cafe the Act to be done before Payment of the Money being to be done by the Party himself, to whom the Money is by Promise to be paid, he is himself to give Notice of the Time of the Performance of this Act by him to the Party that this is the money, before he is to pay the same; and there being no Notice of this laid in the Declaration, as the same ought to have been, for this Cafe the Declaration is not good, and this is a good Error; and consequently the Judgment for this Cafe is erroneous and to be reversed. Too Curia clear of Opinion, that this is a good Error, for that Notice ought to have been given of the Time of his Return from London, and this ought to have been laid in the Declaration; and to for this Opinion the Declaration is not good, and the Judgment for this Cafe erroneous, and for this Error Judgment was reversed by the Rule of the whole Court. — See Freem. Rep. 254 pl. 270. S. P. by Baldwin.

6. If J. pays to B. that if he will sell certain great Cattle to C. for such Sum as shall be agreed between them, if C. does not pay him the Sum according to the Agreement, he himself will pay it; and
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B. sells the Cattle to C. for 20 l. to be paid at a Day to come, and C. does not pay the 20 l. at the Day; A. is bound to pay it at his Peril, without any Notice given to him by B. for how much he sells them, at what Time, because he hath taken upon himself to pay it at his Peril. dict. 12 Ja. B. R. between Polletton and Linghan, adjudged, this Matter being moved in Arrears of Judgment.

7. If A. sells Lands to B. by the Name of 20 Acres, according to the Rate of 200 l. for every Acre, and it is agreed between the Parties that the Land shall be measured by J. S. before the 1st of January next ensuing, and A. covenant to repay according to that Rate for every Acre before the 1st of May after, if there be not 20 Acres upon the Measure; if J. S. measures it, and it is found there is not 20 Acres, A. ought to repay it before Pay at his Peril, without any Notice given how many Acres it wants of 20, for he hath taken upon himself to perform it at his Peril. By Reports, 13 Ja. between Goates and Sir Baptist Hixt, per Curiam.

8. So in this Case, if by the Agreement no certain Persons had been appointed to measure it, but that it should be measured by one elected by one of the Parties, and by another elected by the other, if the Vendee elects J. S. and gives Notice thereof to the other, and of a certain Time to measure it, and J. S. does it at the Day, and none comes for the other to join with him, yet he ought to take Notice, at his Peril, how many Acres it wants of 20, otherwise an Action of Covenant lies; for now, by the Matter subsequent, and the Default of the Vendor, it is as much as if J. S. had been appointed at the Beginning to have measured it. By Reports, 13 Ja. between Goats and Sir Baptist Hixt, adjug'd.

9. If the Condition of an Obligation be to account before such Auditors as the Obligee will assign, and the Obligee assigns Auditors, he ought to give Notice thereof to the Obligor, otherwise he is not bound to account. 8 Ed. 4. 1. b. per Fairfax.

10. If I am bound to inchof such Persons as the Obligee shall name, he ought to give Notice of those which he names, otherwise I am not bound to inchof them. 8 Ed. 4. Arbitriment, 15. per Willing.

11. If the Condition be to seal such Obligation as an Eicrow as the Obligee shall Write, he is not bound to seal it without Notice of the Eicrow written.

12. If the Condition of an Obligation be, That if the Obligee returns from beyond the Seas before the 2nd of April next, then if the Obligor pays unto him at Easter following 100 l. the Obligation shall be void. If the Obligee returns within the Time, he is not bound to give
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Give Notice thereof to the Obligor; but he ought to take Notice from Rents, therefor at his Peril, for he hath bound himself to this Inconvenience, Hitch. 37, 38, Eliz. B. R. between Rue and Duxbury, per Curiam:

that he can have an Action upon this Obligation, for he may stand at Newcastle or Plymouth; where he cannot know whether he be returned or not; per Dodderidge J. and this was agreed by the Ch. J. and Jones. Popham 164. Patch, 2 Car. B. R. in Case of Hodges v. Moore.

13. If the Condition of an Obligation be to pay 20 l. within 10 Days Co. J. 177 after J. S. hath rode five Times in six Days from London to York, and from York to London; he ought to take Notice of the doing thereof at his Peril, because it is to be done by a Stranger. Hitch. S. C. After Verdict it was moved, that this Bill obligatory is not payable but at 10 Days after Notice of his going and returning, and that Securitas requisiti would not serve Popham said the Bar was not good; and according to this Case there is here none Notice, because the Act is to be done by a Stranger, and his Time of Return lies as well in the Notice of the Obligor as the Obliger; wherefore the Obligor is at his Peril to take Notice thereof; but the other Justices doubted thereof, and Judgment was given upon another Point. See (D. 6) pl. 2. and the Note there.

14. [So] If the Condition of an Obligation be to pay 20 l. to B. the Obligor, within one Year after B. shall marry C. In this Case he is bound to pay it to B. within One Year after the Marriage, without any Notice given of the Marriage by B. for he hath taken upon him to pay it within a Year; and he may take Notice of the Marriage of C. who is a Stranger to the Condition, Trin. 1651. between Shepherd and Frie; and in another Action between Shepherd and Latley, adjudg'd upon Denier's.

15. [But] If A. falls to B. certain Weys of barley, or other Things, * Roll Rep. and B. affiliates to pay for every Wey as much as he shall a Wey for to any other Man, if he after falls to others certain Weys for a certain Sum he shall not have an Action upon the Cafe against B. upon his Promis, till he hath given him Notice for how much he sold the Wey to others; for B. is not bound to pay it till Notice, because it is uncertain, and not known to him, and here he affiliates in general, and not in particular, except, to pay so much as A. shall pay for a Wey, and to be he does not affiliate to take Notice at his Peril, Hitch. 5 Rep. 13 Jac. between * Halse and Hemyng adjudg'd, between Doges and Wicfis, in Camera Scaccarii adjudg'd in a Weit of Error, the same Cafe. Hobart's Reports 70.


† Hob. 51. pl. 17. Holmes v. Twill S. C. which was, that H. sold to T. a Ton of Wood, [Wood] to be paid for in 6 Months, after the Rate that he should sell the reft, and alleged, that he sold a Ton to C. at the Rate of 25 l. a Ton; and adjudg'd in B. R. for the Plaintiff, but reversed in Cam. Secar, for want of alleging Notice to the Defendant of the Sale and Price, being a Thing of his private Knowledge; and Hobart says, that some Judges of B. R. allowed of the Judgment. Jenk. 294 pl. 43. S. C. adjudg'd by the Judges of both Benches—— S. C. cited per Cur. Cro. J. 432. in pl. 12. — Roll Rep. 285 pl. 2. S. C. cited Arg.—S. C. cited Arg. 3 Ballit. 86. — Jenk. 311. pl. 92. S. C.

16. But if he had affiliated to pay as much for every Wey as he sold S. P. per a Wey for to J. S. if J. S. after bought a Wey for a certain Sum, he ought to take Notice thereof at his Peril, without any Notice at all, otherwise he hath broke his Promiss. Hitch. 15 Jac. B. R. between Pollington and Lingham, per Curiam.

17. If A. is indebted to B. by Obligation in 60 l. for the Payment of 30 l. and thereupon in Consideration that B. will mutuo dare to C. a Stranger upon Request, so much as will make it 100 l. and will accept C and D to be bound to B. for the Payment of the 100 l. and will deliver up the said Obligation of 60 l. A. affirms to B. that the said 100 l. with Interest, shall be paid as certainly as any Money in Engl.
land. In an Action upon the Cargo by B, he is not bound to allege more, but that he lent the 70 l. to make the 30 l. 100 l. to C, without averting that he gave Notice thereof to A, for the Reason aforesaid. *Tri. 22 Car. 3 R. adjudged. Intract P. 22 Car. Rising.

18. If A. covenants with B. to make such Assurance to him of the Manor of D. as the Counsel of B. shall devise before such a Day, and after the Counsel devises an Assurance, B. ought to give Notice thereof to A. otherwise he is not bound to perform it. *Patch. 42 Eliz. B. R. per Gaudy.

19. But if A. covenants to make such Assurance as the Counsel of A. himself shall devise, then if his Counsel devises, he ought to perform it without Notice given by B. *Patch. 42 Eliz. B. R. per Gaudy.

Cro. C. 132.
pl. 7. Juxon v. Thornhill, S. C. the Plaintiff did not allege that he gave Notice of the Ld. Manchester's Order, yet he alleged that he required the Sum according to the Said Order, which is an implied Notice; whereupon it was adjudged for the Plaintiff Nis.

Cro. E. 234.
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in to D. for he ought to take Notice thereof at his Peril, though the Time of the Delivery is uncertain. 5d 9 Car. B. R. between Pard and Payne, per Curiam adjudged.

24. If a Condition of an Obligation be to perform an Award, and the Arbitrator awards, that one shall make a general Release of all Things till the Date of the Obligation, it is not an Excuse to him to say, that he was at all Times ready to make such general Release, but the other never requested him to do it. Ibid. 14 Car. B. R. between Rify and Hulman adjudged upon Demurrer. Intracit. 13 Car. Rot. 157.

25. After a Marriage by C. with D. the Daughter of A. B. the Father of C. in Consideration that A. will give 30 l. to C. for the better Maintenence of C. and D. and at the Request of B. B. promises A. to pay 30 l. to D. the Daughter of A. if she survives C. her Husband. In an Action upon the Case by the Administrator of A. against B. after the Death of C. it is a good Declaration to give, that A. paid the 30 l. to C. in like Life, and yet the Defendant B. did not pay the 30 l. to D. who survived C. without alleging any Notice given or the Payment of the 30 l. by A. to C. for he hath taken it on himself to pay it at his Peril. Ibid. 22 Car. B. R. between Playfield and Collins adjudged, this being moved in Arrest of Judgment. Intracit. 22 Car. Rot. 673.

26. If a Man promises another at another Time, upon Request, to make him a good and sufficient assurance of certain Lands for seven Years, he ought, upon Request, to make a Lease for the Years, without any Tender of a Lease by him to whom the Promise is made, for he ought to make a good Lease at his Peril; for there the Request does not refer to the Manner of the Conveyance to be made, but only to the Time when the Lease shall be made. Trin. 15 Jac. B. R. between Rockland and Curtisson adjudged.

27. If the Condition of an Obligation be, that whereas the Obligee is Lessee for Years from the Assignee of certain Lands, it is his duty to render up the Possession of the Land, at the End of the Term, to the Lessee, his Heirs or Assigns, upon Request, then the Obligation shall be void, and after the Lessee assigns over his Reversion, and the Assignee at the End of the Term requests him to render up the Possession to him, he is bound to do it, without any Notice given him that he is Assignee, for he ought to take Notice thereof at his Peril, in as much as he hath bound himself to render up the Assignee. Dalch. 10 Jac. 25. R. between Longden and Payn adjudged.

28. If a Man leases a Mill for Years, and the Lessee covenants to repair the Mill, and the Lessee covenants to find him great Timber for it, the Lessee ought to give Notice to the Lessor, how much will suffice for the Reparation, and not to demand in general Timber for Reparations, or otherwise the Lessor is not bound to deliver any. Trin. 12 Jac. B. between Piddler and Taylor, per Curiam.
29. If the Condition of an Obligation be, that if the Obligor, with two others, make, and upon Request lead, to the Obligee an Obligation of 40 l. then 26. It is sufficient for the Obligee to make Request only, without tending any Writing to them, but he ought to do it at his Peril. Mich. 3 Jac. B. Stokes's Case, adjudged in an Action upon the Case upon a Promise to do it.

30. If the Plaintiff in an Action upon the Case declares, that in Consideration that he would become bound to the Defendant, by Obligation, for the Payment of 11. at a Day, the Defendant adjourned to deliver an Herse to the Plaintiff; and the Plaintiff avers, that he offered to be bound to the Defendant, and did not lay the Obligation was Sealed, and that he offered to deliver it to Sealed, as he ought; This is not good, for he ought to do it of his Part. Po- bart's Reports 25. 105. between Abyss and Gorus.

31. If A. being a Bailiff of the Borough-Court of London, in Consideration of 10. given to him by B. promises B. to arrest J. S. at the Suit of B. by Processes out of the said Borough-Court. In an Action upon the Case upon this Promise, it is a good Plea for A. to say, that he was always ready after the said Promises to arrest J. S. at the Suit of B. if he had brought to him any sufficient Warrant to do it; but says, B. never brought him any Processes out of the said Court to arrest him; This is a good Plea, because it belonged to B. to sue out the Processes, for it will be Maintenance in A. to do it, and the Law (where the Words are General) will not Marital them, that he ought to do it for whom it is most proper. Chin. 7. Car. B. B. between Davis and Ridgeway adjudged upon a Demurrer.

32. If the Condition of the Obligation be, That the great Bell of Mildenhall shall be carried to the House of the Obligor, in W. at the Coats of the Men of Mildenhall, and there shall be weighed, and put in the Fire in Praefentia Hominum de Mildenhall, and then the Obligor shall thereof make a Tenor, to agree in Tono and Sono to the other Bells of Mildenhall; In this Case the Obligor ought to weigh and put it in the Fire; for he ought to do it to whose Occupation it properly belongs to do it, which is the Defendant, who ought to make the Bell. 9 Ed. 4. 2. b.
33. If A. binds himself to B. to deliver to B. a certain Quantity of Hops, well pick'd and condition'd, and that B. shall have the Choice of these Hops, out of 204 Bags of Hops of A. of his own Growth. In this Case B. ought to do the first Act, select, he is obliged to require A. to shew him to view his 204 Bags, out of which B. shall have his Election; for otherwise B. cannot make any Election without View of the 204 Bags which are in the Custody of A., and A. cannot deliver them before Election. 15 Car. 3. Art. 14. vis. to B. R. between * Brooks and Botke, Plaintiff, and 204 Bags, and admissible to B. R. between the same Parties, in a new Action, given against the Plaintiff for a Suit in his Declaration. 15 Car. 13. Suit against the Plaintiff to bring upon the same Issue, and thereupon a Demurrer, and the Court to redetermine the Suit by Counsel and Advice. Decret. 15 Car. Rotut. 434. which they did.—In Consideration of Goods of the Value of 40l. delivered to C, the Defendant promised to deliver to C. so many Pipes of Beer, then lying in the Cellar of J. & B. at London, as shall be of Value of the said Goods at Leadenhall Market, and agreed that at Newmarket he required the Defendant delivereth Vinum predictum to the Plaintiff, as said, and thereunto the Goods to be delivered in good Order and Condition. 13 Geo. 4. whereupon B. was sentenced to fine 40l. 34. If a Man covenanteth to make further Assurance at all Time and Times, at the Charge of the Covenantor, and the Covenantee demands a Fine after for further Assurance, the Covenantor is not bound to agree it, if he does not appoint a certain Day when he will have it leyed. 37 £t. 2. per Curiam.

35. If a Man promises to make such Assurance of such Lands as he hath by Copy to another, before such a Day as his Counsel learned shall advise; if he tenders an Assurance to him without any Advice of his Counsel, yet he who made the Promise is bound to Seal it, therefore he hath forfeited the Assumpsit. P. 38 £t. 2. R. be Queen Clifton and Gibson adjudged.

36. In an Action upon an Assumpsit, if the Plaintiff declares, that whereas he, at the Request of the Defendant, had delivered to the Defendant so much old Laty Metall, to be artificially made by the Defendant into Pewter Vessells, capiendo inde of the Defendant quantum for his Labour he shall reasonably deliver; in Consideration, the Defendant after, select, the same Day, affirmed to deliver to the said Plaintiff, Lay Metal artificially made into Pewter, when he should be requested; and avers, that although the Defendant was requested to deliver the said old Lay Metal made into Pewter Vessells, yet he had not delivered it cc. and the Defendant pleads Non Assumpsitis, and it is found for the Plaintiff. Though it is not averred, that he tendered to the Defendant so much as he delivered for the making thereof into Pewter Vessells, yet the Declaration is good, for this is a precedent Condition; but the Words capiendo pr vide, &c. is but to shew the Contract between them, upon which he may have an Action of Debt, though the Defendant may retain the Goods

\[\text{Condition.} \]
Goods till he be paid as much as he detenes, and that he was ready to deliver it upon Payment thereof; for this ought to come properly out of his Part, in as much as it does not lie in the Containment of the Plaintiff how much he detenes, without meaning thereof by the Defendant, and also it is at the Election of the Defendant, either to bring his Action for what he detenes, or retain the Goods till Payment, and therefore it ought to come of his Part, and here the Defendant does not reply upon it, but stands Non Assumpsit. P. 1629, between Brookley and Brookley adjudged in B. R., in a Writ of Error upon such a Judgment in Bars, and the Judgment affirmed accordingly. Intreteat Mich. 29 Car. 36. 77. If A. Covenants with B. to surrender a Copyhold, which he hath for Life, to the Use of B. who hath the Reversion thereof upon Request made by B. to A. and after B. tends to A. a Letter of Attorney in Writing, by which he gives Power to two Attorneys to surrender for him, at the next Court of the Manor, to the Use of B. and this Course is unreasonable by theasion of the Manor. In this Case, upon this Tender and Request to Seal, A. is not bound to Seal the Letter of Attorney, nor to surrender in Court or otherwise, for A. hath taken upon him to surrender upon Request, so that it is at the Election of A. whether he will surrender in Court or by Letter of Attorney, or any other Ways that he may, and this Election cannot be taken away by B. and therefore when B. does not require him to surrender, but only to Seal a Letter of Attorney, this is a void Request, and as no Request, and therefore B. [A.] is not bound to Seal the Letter of Attorney, nor to surrender in Court, or otherwise, upon this Request. Patch. 9 Car. 2. B. between Simms and Walker, Plaintiffs, and Dame Smith, De- fendant, adjudged upon a Demurrer. Intretate Pilt. 8. Car. 35. I being of the Council for the Defendant.

Mar. 168. pl. 186. Tyttn. 17. Car. C. 8. Dewel v. Malon, S. P. and seems to be S. C. adjourned per rot. Cur that the Plaintiff ought to have Judgment, and that upon their Peti-

38. If A. and B. assume one to the other to perform the Award of J. who awards that A. shall pay to B. 81. 8s. or 31. and all Coists that B. expoSist in & circa Professionem cecidit Placitum Trans- scriptionis inter ipsos A. & B. pendent' praet per Nominatum prae- dicti B. apparet, et Librum ipsos A. In this Case, B. is not bound to render a Note of his Attorney to B. of the Costs that he hath expended in it, without Request made by B. to do it, because A. hath Election to pay one or the other, either, the S. which is certain, or the S. and Costs of Suit, which are uncertain; and B. does not know whether he will pay the one or the other, and therefore A. ought to doubt the first Act, either, to pay the 81. or re- quest B. to give him a Note from his Attorney of the Costs, and if B. refuses to deliver it, A. is excused. Pilt. 17 Car. 2. B. between Totten and Kingdon adjudged per certam Civilian, this being moved in Writ of Judgment; But some of the Judges gave ad-
other Reason, either, because they conceived that the Attorney of B. ought by this Award to give the Note, and he is a Stranger, and therefore it need not be moved before Request made. Intretate Pilt. 16 Car. 2. Rot. 1493.
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Condition.

4 B

277. The ad Difference found upon this, that no Notice is to be given, or Tender made of a

Thing which lies not in the Power or proper Contiuence of the Plaintiff, so as the Difference stands

where it is a Thing which lies in the Consequence of the Plaintiff and ekever not, and therefore where the

Award was that the Defendant should pay to the Plaintiff 3l. or 3l. and Costs of Suit, as should ap-

appear by a Note under the Attorney’s Hand, it was resolved in that Case, that although

the Attorney be in some respect as a Servant to his Master, yet to this Purpose he is a mere Stranger,

and therefore the Plaintiff was not bound to make any Tender of that Note, but the Defendant

ought to have gone to the Plaintiff’s Attorney, and required a Note of him of the Costs of Suit, so as he

might have made his Election; but they all agreed that where it is a Thing which lies in the Know-

ledge of the Plaintiff, that there he ought to have made a Tender or given Notice, but in this Case

it lieth not in the Knowledge of the Plaintiff, and he cannot compel the Attorney to make it, where-

fore it was resolved that the Plaintiff should have Judgment.

39. If A. be bound in an Obligation to C. of which the Condition S. C. cited

33, that A. shall pay to B. all such Money, as by a true and justifiable

Act. 25. M. 5. W.

Bill, under the Hand of the Attorney of B. shall appear before dis-

bursed by B. or his Attorney, or any of them, or by any of their B.B. in Case

Means or Appointment upon such a Day, in such a certain Sum, he is a party

even so. In an Action upon this Obligation, if B. aligns for a 

Special

Breach, that 24s. by a true and justifiable Bill under the Hand of J. which was

S. the Attorney of B. appeared before to be disbursed, which A. did Debt upon

not pay, this is a good Breach, without alleging that A. had No a bond con-

tract thereon, or that the Bill of the Attorney was sworn to him, and

sworn to

though it was expressly alleged by A. that no such Bill was tendered

to him, by which it appeared what Sum was disbursed; because

the Attorney was a Stranger, of which A. ought to take Notice at his Peril. Ill. 15 Cat. B. Ror. 432. between Deal and Witho

adjudged upon Damurer.

30. In Case of an Obligation, where the subject Matter of the Notice is

secret, and Ex Parte the Plaintiff, Notice is necessary. Jenk. 311. pl. 92.

41. Covenant. The Case was, A. covenanted with B. to make such

Affirmance as his Counsel should advise; the Court held clearly that B.

must give Notice of the Affirmance, for otherwise A. does not know his


Bennet’s Case.

42. In Debt on Bond to perform Covenant, whereof one was to affure

to the Obliger and his Wife, Land before such a Day, at the Costs of the

Obliger; but no Request of any Part was mentioned in the Covenant; Ad-

judged the Obligor having Election what Manner of Affirmance he

would make, ought first to give the Obliger Notice, that he would

not fail to make such a particular Affirmance, and then the Obliger is to supply


43. In Debt on Bond to perform Covenant, whereof one was to affure

to the Obliger and his Wife, Land before such a Day, at the Costs of the

Obliger; but no Request of any Part was mentioned in the Covenant; Ad-

judged the Obligor having Election what Manner of Affirmance he

would make, ought first to give the Obliger Notice, that he would

not fail to make such a particular Affirmance, and then the Obliger is to supply


44. In Debt on Bond to perform Covenant, whereof one was to affure

to the Obliger and his Wife, Land before such a Day, at the Costs of the

Obliger; but no Request of any Part was mentioned in the Covenant; Ad-

judged the Obligor having Election what Manner of Affirmance he

would make, ought first to give the Obliger Notice, that he would

not fail to make such a particular Affirmance, and then the Obliger is to supply


45. In Debt on Bond to perform Covenant, whereof one was to affure

to the Obliger and his Wife, Land before such a Day, at the Costs of the

Obliger; but no Request of any Part was mentioned in the Covenant; Ad-

judged the Obligor having Election what Manner of Affirmance he

would make, ought first to give the Obliger Notice, that he would

not fail to make such a particular Affirmance, and then the Obliger is to supply


46. In Debt on Bond to perform Covenant, whereof one was to affure

to the Obliger and his Wife, Land before such a Day, at the Costs of the

Obliger; but no Request of any Part was mentioned in the Covenant; Ad-

judged the Obligor having Election what Manner of Affirmance he

would make, ought first to give the Obliger Notice, that he would

not fail to make such a particular Affirmance, and then the Obliger is to supply


47. In Debt on Bond to perform Covenant, whereof one was to affure

to the Obliger and his Wife, Land before such a Day, at the Costs of the

Obliger; but no Request of any Part was mentioned in the Covenant; Ad-

judged the Obligor having Election what Manner of Affirmance he

would make, ought first to give the Obliger Notice, that he would

not fail to make such a particular Affirmance, and then the Obliger is to supply

43. Covenant to assure such Copyhold Land to the Plaintiff, if he be married with his Daughter, and alleged that he wrote & legimine effected the Daughter of the Defendant; it is sufficient for the Plaintiff to allege, Licit sapisius requiritus, without giving Notice of the Marriage, for he at his Peril ought to take Notice thereof; Judgment for the Plaintiff. Cro. J. 102. pl. 35. Mich. 3 Jac. B. K. Fletcher v. Pinfet.

44. In Case the Plaintiff declared, that there being a Difference between him and the Defendant, concerning how much Rent he ought to pay; the Defendant promised, that if J. S. would pay that the Rent referred was 6l. then he would pay double that Sum, and that the said J. S. did affirm the Rent to be 6l. After Verdict, upon Non Affirmat, it was mov'd in arrest of Judgment, becaufe the Plaintiff did not allege that he had given Notice to the Defendant, but only that J. S. did affirm that the Rent referred was 6l. but adjudged for the Plaintiff; for the Defendant is to take Notice of what J. S. should affirm, and to the Declaration good without alleging any Notice given. 2 Bult. 143. Mich. 11 Jac. Child v. Horden.

45. A. at B's Request, demifed a House to J. for a Year, rendering 50l. Quarterly, and B. promised, that if J. did not pay the Rent he wouldJ Notice need not be given of the Non-payment, but B. at his Peril, must take Notice of the Non-payment, and pay the Rent; for otherwise the Promise is broken; and to a Judgment in B. R. was affirmed in the Exchequer Chamber. Cro. J. 684. pl. 2. Hill. 21 Jac. Brookbank v. Tayler.

46. The Tenant made a Lease of Lands for Years, rending Rent, and devised the Receiption to P. in Fee, and by his Will declared, that his Intention was, they Executors should have the Reversion during the Term, upon Condition that they gave Bond to the said P. within six Months after his Death, by the Advice of the Overseers of his last Will, to pay him £4 2l. per Annum during the said Term. The Executors within 3 Months signed the Will to the Overseers, but they adjoin'd no Bond, nor was any given by the Executors, nor any Rent paid, though required by the Plaintiff. Adjudged, this was a Condition by which the Term was vested in the Executors, but it was in T. till the Condition was performed, which not being done, he in Reversion shall have the Rent. Win. 69. Hill. 21 Jac. C. B. Trecherne v. Claybrooke.

47. Leflee for Years covenant'd to find necessary Provision for the Steward, and the Lord, and his Servants, and Horses, at all Times when he should hold Courts there. Per Doderidge, the Leflee shall take Notice when the Courts are to be holden, and no personal Notice need be given; for a general Notice is given him, as by the Proclamation at the Court. Palm. 532. Paich. 4 Car. B. R. the Bishop of Rochester v. Young.

48. A Promise was to pay so much Money at the full Age of an Infant; It was held, that Notice need not be given of his attaining his full Age, because it is as notorius to the one as to the other. Hard. 42. Arg. cites Paich. 23 Car. B. R. Page v. Barnes.

49. In Debt upon an Obligation to pay so much Money upon the Return of such a Ship from Sea, Notice of the Return need not be given; but where a Thing lies more properly in the Conscience of the Plaintiff than of the Defendant, there Notice shall be given, as in the Cases that have been cited by the adverse Party, viz. to give the Plaintiff so much for
for a commodity as any other had before that time given him for the like, or to serve so much for every cloth the plaintiff should buy, or to pay the plaintiff what damages he has sustained by a battery, or to pay the plaintiff's costs of suit. Hard, 42. cites Trin. 23 car. B. R. Bear v. Choldwich.

50. Attaffmit &c. to pay the plaintiff 2 s. 6 p. piece for every piece of cloth. All 24. he should buy for the defendant, and declares for so much money due, and if it be, he did so. After verdict it was moved, that he had not alleged that he gave notice to the defendant how many cloths he had bought for varied, bias; to which it was answered, that they were bought for the defendant, and he may take notice of the number without any notice given him; and that the requisit for such, for the payment implies a notice; but Roll said, that the request does not imply a notice, and that so is plaintiff's case; and besides, the notice ought to be by implication, but must be alleged certainly; led adjournment. Syr, 53. Mich. 23 car. B. R. Tanner v. Lawrence.

Reques of the to l. to be paid by the defendant according to his promiss; and that after verdict it was moved, that the plaintiff had not alleged she had given the defendant notice how many pieces he bought for him; resolved that notice is not necessary, and not supposed by the special request; for the defendant cannot tell that it is due to the plaintiff unless he had notice how much he bought for him; and judgment against the plaintiff.

51. A. covenanted to surrender to B. Copyhold land upon requisit. All 68. S. C. ing a breach, that he did not surrender it into the hands of two tenants of the Manor, is not sufficient; for he may surrender it into the hands of the lord, or in court, and the surrendering it into the hands of two tenants is only a particular way. Syr. 107. Trin. 24 car. B. R. Freeborn v. Farm. 9. Car in case of Smith.

the lady Smith.—And Syr. 107, cites 9 car. Smith v. Mathir accordingly.

52. L. promised J. the plaintiff, to enter into a judgment to him for so much money as H. owed the plaintiff, if he would take common bail of defendant in case H. should die before me. After verdict it was moved, that it did not appear that the plaintiff gave notice to the defendant how much was due from H. but Roll Ch. J. said, that notice was not necessary; for defendant, at the time of the attachment, had taken up himself to know it, but if it was necessary, he might have gone to H. to tell him, and so it shall be intended that he both knew it himself, and also might have known it by others; and Nicholas and Ask were of the same opinion, but Jerman doubted; and judgment pro quer’ nil. Syr. 154. Mich. 1649. Johns v. Levitton.

53. A. the defendant promised B. the plaintiff, if she married with the consent of C. he would settle such a farm on her for the advancement of their marriage. B. married, and not settling the farm B. and her Baron brought action for cafe. After a verdict, it was moved in arrails, that the plaintiff had not given the defendant notice of the consent of C. but where one may take notice as well as the other, no notice need be alleged, and judgment was given for the plaintiff. 2 sid. 115, 116. Mich. 1658. B. R. Sprat v. the defendant. A. as niece, he would give B. 50 l. in attachment for the 50 l. exception was taken because the plaintiff had not declared, that he gave the defendant notice of the marriage; but the Ch. J. said it had been adjudged, that where the plaintiff is upon marriage of the defendant’s daughter to have 20 l. that the action lies without notice, and he thought there was no difference as to this between a daughter and this cafe of a niece, wherefore 25. sid. 36. pl. 3. Patih. 15. car. 2, C. B. Brown v. Stephens.

54. The defendant took the plaintiff’s son to be his clerk, and covenanted to give him so much for every score of paper he should write, and for non-payment the plaintiff brought his action, without alleging notice. All 9 need. ter v. guest or s. P. does not fice appear.
Condition.

...
(B. d) What Thing shall excuse the Performance of the Thing, [Condition.]

Where he that is to have the Advantage ought to do the first Act.

Where before Notice.

1. If a Man affirms to me, in Consideration that I will enter into an Obligation to J. S. for his Debt, to save me harmless from all such Obligations in which I shall enter to J. D. for his Debt not exceeding 500 l. If I enter into an Obligation to J. S. under 500 l. he ought to save me harmless at his Peril, without any Notice given to him that (*) I have entered into an Obligation, because he hath bound himself to it. Hill. 14 1st B. R. between Gerard and Payne adjudged.

2. If the Condition be, that he shall pay so much as he shall be found in Arrear before such Auditor as the Obligee shall assign; When the Auditor is assigned, he ought to take Notice at his Peril how Debts, much as he is found in Arrearages, and perform it. * 13 2. 4. 18. 24. 168. (169) cites S. C.


4. If the Condition of the Obligation be to pay the Damages that shall be recovered by J. S. against him; he ought to take Notice of the Sum recovered at his Peril, and pay it. 18 2. 4. 18.

5. If a Man promises another to pay him so much at the Marriage S. P. by a Stranger, he ought to take Notice of the Marriage at his Peril, without Notice given. By Reports, 14 Ta. Bersford and Good.

vex. 454 in S.—See (A. d) pl. 3. 4. S. P.

6. If A. be indicted in a Leet for an Incroachment upon the High Way, and after A. dies, and B. his Heir continues the Incroachment, and thereupon an Order is made in the Leet, that B. shall reform the Incroachment by a Day upon the Pain of 40 s. and for not reforming thereof, the Lord of the Leet brings an Action of Debt for the 40 s. and declares thereof as before; This is a good Declaration, without alleging that B. had Notice of the Order made; Immaterial as he is within the Jurisdiction of the Leet, he ought to take Notice thereof at his Peril. Mich. 11 Car. R. between Lee and Booth. by, advanced per Curiam, this being moved in Arrears of Judgment. Intrarum. Tr. 11 Car. Rot. 1802.

Jo. 449. pl. 14. S. C. is a different Point.—
Gro. C. 331. pl. 22. S. C. is a different Point.—
2 Roll Abr. Tit. Nafiens (8) pl. 4. S. C. but the Point of Notice does not appear.

7. Debts upon Bond condition'd that the Obligor should make an All. 24. 25. Plate of Inheritance to the Obligor, at such a Day and Place; the Deb. S. C. adjudged that he was ready at the Day and Place &c. to make an Plate of Inheritance &c. The Plaintiff demurred, because Defendant had
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Condition.

Defendant had not set forth that he gave the Plaintiff Notice what Estate he would make; and Roll Ch. J. held the Plea ill, and Judgment Nisi &c. Sty: 61. Mich. 23 Car. Brook v. Brook.

The Plaintiff being desirous that he would make him such a Conveyance, to the making whereof the Presence of the Plaintiff was necessary; but if the Condition had been for the making a Footment, then because a Day certain was appointed, the Plea had been good for the Plaintiff at his Peril ought to attend at the Day.

8. Debt upon Bond conditioned, that whereas the Plaintiff was bound with the Defendant (who was an Excise-man) that he should give a true Account in the Exchequer for such Monies as he should receive for Excise &c. that the Defendant should save him harmless &c. He pleaded that no Suits, Processes, &c. were against him on that Bond, and so he saved him harmless. The Plaintiff replied, that a Scire Facias was brought against him out of the Exchequer upon the said Bond, and that he was forced to retain an Attorney, and paid i. s. for his Appearance. The Defendant demurred, because the Plaintiff did not allege that he gave him Notice of the Scire Facias; adjournatur. Vent. 35. Trin. 21 Car. 2. B. R. King v. Atkins.

9. Leafe of a Mill covenanted to leave the Mill-Stones as good as when he entered, or to pay the Difference according to the Discretion of the Parties who viewed the same at the first, and gave a Bond for Performance of Covenants. In Debt on the Bond, the Defendant pleaded that he left 2 Stones in the Mill at the End of the Leafe, and that the Persons who viewed those which were there when he entered had not agreed how much those that he left were worse than the other. Upon Demurrer, the Plaintiff had Judgment; (Treby Ch. J. and Povel J. being only present) for this being a disjunctive Covenant, and by Consequence for the Advantage of the Defendant, and he having undertaken that such Persons shall adjust the Value who were Strangers to the Agreement between him and the Leifor, he must procure them to do it, and if he cannot, he must leave as good Stones in the Mill as those were when he entered. Luw. 683. 693. Trin. 9 W. 3. Sudholme v. Mandall.

(C. d) At what Time it ought to be performed where no Time is limited.

[Or rather, in what Cases Notice is necessary.]

1. If A. promiseth B. in Consideration that he will marry C. his Daughter, that he will give in Marriage Portion to B. with C. such Portion, and as good an Estate in Money as he had given or after should give with any other. In an Action upon this Promise, if the Plaintiff avers that he married C. and that after B. [A] gave 100 L. in Money and Goods to D. another Daughter, in Consideration of the Marriage-Portion of D. this is a good Declaration, without any Vermer, that he gave Notice of the Marriage of him with C. to B. [b]
Condition.

[A.] because he had taken this upon himself. Tr. 22 Car. 3. R. between Lord and Green, adjourned. Juratman, 30. 22 Car. Rot. 2.

2. If one promises another, in Consideration that he will marry his Roll Rep. Daughter, to give him 20l. at the Day of his Marriage; he ought to take Notice of his Marriage at his Peril, without any Notice given thereto by the other. By Reports, 14 Ja. B. B. Hodges v. Moor. — See (A. d) pl. 5. S. C. and the Notes there. — See (B. d) pl. 5.

3. So if no Time of Payment had been appointed in this Case. Tr. 7 Ja. Rot. 235. adjourned. By Reports, 14 Ja. 2.

he had married his Daughter, and afterwards he married her, and brought Deb. upon this Obligation; and it was not asserted that he had given Notice to him of the Marriage, but demanded the Money. It was argued that there was an implied Notice, because the Marriage was at the Insolence of the Defendant, which implies a Notice. It was argued that judgment should be given for the Plaintiff. Poph 164. Patch. 2 Car. B. R. Hodges v. Moor. — See (A. d) pl. 5. S. C. and the Notes there.

4. So if a man, in Consideration of 6 d promises to give me 22 s. Roll Rep. at the Day of my Marriage, he ought to take Notice of his Marriage at his Peril, without Notice given by me, because he hath under- taken to pay it at the Day. By Reports, 14 Ja. 44 El. Rot. 238. adjourned.

5. If a Man sells certain Weys of Barley to me, upon which I pro- mised to pay him so much for every Wey as other Men give for a Wey, in this Case the Action does not lie without Notice before given for how much he sells a Wey to other Men. By Reports, 13 Ja. 14. Notes there.

6. If I promise another, for a Consideration, to give me 20l. when he comes into Somersetshire, he need not give me Notice when he goes there, because this is a Duty by the coming into Somersetshire. By Reports, Rich. 13 Ja. * Richardon's Cafe, B. adjourned. Contra, my Reports, 13 Ja. Mosle and Gardener.

7. If a Man sells Land by the Name of 20 Acres, and covenants to repay so much for every Acre under this Number, and that it shall be measured by such a Man before such a Day; if Part is measured ac- cordingly, the Covenantor ought to take Notice thereof at his Peril, without any Notice given by the other. By Reports, 13 Ja. Sir Bostf. Host and Gaites.

8. So in the last Cafe, if the Covenant had been, That the Land See (A. d) pl. 14. the same Cafe, B. adj. should be measured by two Men, Llilicon, one by the Alignment of pl. 8. S. C. each Party, before such a Day, and one align, and gives Notice to the the Notes there.

Covenantor of the Times of the Measuring; If the other does not align any for him, but he that is aligned measures it alone, the Covenantor ought to take Notice thereof at his Peril, for it is his Default that his Land was not there; and therefore it is as if the other had been only appointed to measure it. By Reports, 13 Ja. Sir Bostf. Host and Gaites.

9. Cafe against the Defendant as Executor upon a Promiss made by his Testator for a Marriage-portion, and the Plaintiff did not set forth that Notice was given to the Defendant of the Marriage; adjourned, that where a collateral Thing is to be done at or after Marriage, there Notice ought to be given of it; but where Money is to be paid, in such Cafe it is a Debte due to the Party, and may be recovered without any Notice given of the Marriage. 2 Full. 254. Mich. 13 Jac. Selby v. Wilkinon.

(D. d) Where
(D. d) Where the Want of Notice will excuse the Performance of the Condition.

[And at what Time Notice, if given, ought to be given.]

[And in what Cases Notice shall be intended.]

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1. If A. and B. levy a Fine to the Use of A. in Fee, if B. does not pay 10s. to A. at Michaelmas after, and if he does pay, then it shall be to the Use of A. for Life and after to B. in Fee; and after B. dies before Michaelmas, the Heir of B. ought to take Notice of the Condition at his Peril; so that if he does not pay the 10s. at Michaelmas, A. shall have the Land absolutely in Fee, for A. is not bound to give him Notice, nor is any other appointed by the Law to give Notice in this Case, and therefore he ought to take Notice thereof at his Peril, for he is as privy in Law to the Estate limited by the Fine, and Adventure of title, as the Assignee himself, and the Assignee had Power to give the Land absolutely, and divers Times in such Case it is not known who is her. This. 13 Car. B. R. between Spring and Sir Julius Caesar Haley of the Rolls, adjudged per Curiam in a Debt of Error upon a Judgment in Rais'd in a Quære implead. Intercut, Mich. 11 Car.

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2. If A. in Consideration of 10l. given to him by B. a Tennis to pay 20l. when such a Ship, which was ready to go from D. to Hamburg, beyond the Seas, should go from D. to Hamburg and return to the same Place, unless to D. is afforded; it seems he ought to pay the 20l. upon the Return of the Ship, without any Notice given by the Obieree; for he hath taken upon himself to pay it at his Peril upon the Return of it. Courto, 6. 13 Car. B. R. between Hull and Hamburgh, adjudged per Curiam, in a Debt of Error upon a Judgment in the Machtzelt, where the Judgment was reversed for not alleging Notice of the Return.

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3. If A. promises B. in Consideration that B. will permit A. & C. to enjoy a Tavern in Sturbridge-Fair during the Fair, to pay to B. 10l. for the Use of the Tavern; and also that before the End of the Fair, he will pay all such Money as B. shall disburse for Wine and Beer for the said A. and C. during the Fair aforeaid, to be expended in the said Tavern. In an Action upon this Promise, after the End of the Fair, if the Plaintiff does not aver, that he gave Notice before the End of the Fair, how much he had disbursed for Wine and Beer for them to be there expended, this is not good, though he does how much he disbursed for it, and a Demand thereof after the Fair is not sufficient, for A. could not have known how much he had disbursed without Notice, and Notice thereof after the Fair is not sufficient (1) in as much as it is to be paid for by A. during the Fair. Sirh. 16. 1699. between Harris and Gibbon, adjudged in a Debt of Error upon a Judgment in Cambridge, and the Judgment reversed accordingly. Intercut. 16. 1699. Rot. 323.

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4. If
Condition.

4. If A. and B. agree and promise to marry one with another, and after B. the Man, promises A. in Consideration that the will divest of him of his said Promise, he will give her 1000 l. In an Action by A. against B. for the 1000 l. if A. avers, that the after the same Day ex. omnis ipsum (Anglice, did divest him) of his said Promise, and he he hath not paid the 1000 l. this is a good Assertment of the Performance of the Promise, without alleging any Notice given to B. of the Dilegengement; for it shall be intended, prain Facte, that this Dilegengement was made to B. himself, and not in the Absence of B. for it shall be a full Dilegengement made to the Person of B. so that he should have his Liberty to marry any other. But as 1651. between Baker and Smith; adjudged per Curiam, this being moved in arrest of Judgment. Intractus.

295. says that upon its being argued again the next Term, Judgment was then given for the Plaintiff, for the Reason mentioned in Roll — Rayn. 420, 421. Arg. cit. S. C. as adjudged accordingly.

5. [Q 9] If A. promises B. (a Woman) that if she will leave her Father's House, and come to his House, that he will marry her; In an Action by B. against A. upon this Promise, if she avers, that the hath left the House of her Father, and come to the House of B. and there oblit to marry him, and the the said A. did not marry her; this is a good Assertment that B. had Notice thereof; for by the Obligation to marry the Defendant, is intended, that the oblit be made to the Person of the Defendant himself, in as much as this is a Personal Act to be done between them. Ch. 1651. adjudged per Curiam, after a Verdict for the Plaintiff.


6. Debt upon Obligation by J. B. against J. C. who said, that the Obligation is indisposed, that if makes Estate fail to G. before Michaelmas, that then &c. Notice shall be given to him who takes the Estate because he is a Stranger to the Condition; by which he pleaded accordingly. Br. Conditions, pl. 140. cites 2 E. 4. 2.

7. If a Man be bound to inesse such a Man as the Obligee shall name, ibid. cites there if the Obligee names him to a Stranger it is void; for he shall do it 14 H. 2. accordingly. Br. Conditions, pl. 150. cites 8 E. 4. 12. 13.

8. Condition to repair a House by Lefsee within six Months after Notice; Mo. 680, pl. Lefsee assigns Part of his Term. Afillage of the Reversion gives Notice not to an under Lefsee then in Leffission of the House. This Condition is merely Cats, S. C. Collateral to the Land, and Personal, to Notice is not of Necelhity to be adjudged, given at the House, but ought to be made to the Perfon of the Lefsee where that has the grand Interest. Yelv. 36. adjudged, Patch. 1. Jac. B. R. Swe- ton v. Cuffe.

9. Lefsee tending Rent per Annum. Quandancumque the Lefsee shall de-Cro. 1. 9. mand it; if Lefsee comes to demand it before the End of the Year his 10. S. C. & Demand on the Land is not good unless the Lefsee be there also, for S. P. by Po. and the Time being uncertain when the Lefsee will demand it, he ought to the Lef- give Notice to the Lefsee of the Time; But if Lefsee stay till the End for's Way is appoint the Lefsee that such a Day shall be upon the Land and demand his Rent; and then if the Lefsee be not there to pay it upon his Demand, the Lefsee is forfeited.
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Condition.

10. An Estate was limited by Use to J. F. by Deed after his Father's Death (he being heir at Law to this Use) and there was a Provision, that if the said J. F. should not suffer his Father's Executors quietly to take away the Goods and Chattels of his said Father, which should then be in the Hands, then the said Uses limited to the said J. F. should cease and be void. It was resolved, that J. F. the Son being a Stranger to the Feoffment; though he had disturbed the Executors contrary to the Words of the Provisto, yet he shall not lose his Estate without Notice given him of the Provisto and his Father's Will. 8 Rep. 89. b. 92. a. Mich. 7 Jac. Fraunces's Cafe.

11. In Debt upon a Bond of 200 l. conditioned to pay 100 l. to the Plaintiff on his Marriage-Day; Defendant pleaded in Bar, that he had no Notice given him of his Marriage-day. Coke and the whole Court agreed herein, that no Notice of the Marriage-day was here to be given, but that at his Peril he ought to take Notice of it; and judgment was awarded for the Plaintiff. 2 Bull. 254, 255. Mich. 12 Jac. Selby v. Wilkinson.

13. Leffee for Years was bound in a Bond to deliver Possession of a House to Leffor, his Heirs and Assignees, upon Demand at the End of the Term. The Leffor bargained and sold the Reversion to A. and B. by Deed intolled. At the End of the Term B. demanded Delivery of the Possession. The Leffee refused, pretending that he had no Notice of the Bargain and Sale. It was adjudged, that the Bond was voided. Godb. 272. Patch. 16 Jac. B. R. Ingin v. Payne.

14. The Defendant promised, that if the Plaintiff would forbear his Suit against one B. who had affulted and beaten him, that he would pay the Plaintiff as much as he was damaged by the said Assault; it was moved after Verdict, that the Plaintiff did not let forth that he gave the Defendant any Notice what Damages he had sustained by the Battery; but the Court held, that as to the Notice of what Damages the Plaintiff had sustained, the Request to perform the Assumption implies that sufficiently, and gave Judgment for the Plaintiff. Sty. 57. Mich. 23 Car. Finer v. Jeffery.

Place required, had not paid, and adjudged for the Plaintiff, tho' he had not given Notice to the Defendant how much he was damaged; for the Defendant took upon him to pay the Damage inflicted, which when the Plaintiff atersains to him, the Defendant at his Peril must pay him on Request, it in Truth he was so much damaged.

Skim. 125. pl. 4. Mat- toon v. Firr- gerard, S. C. argued for adjacent-
This 179. pl. 8. S. C. ad- judged according- and to a Judgment in Ireland was affirmed — 2 Show. 315. pl. 320. Mallowne v. Fitz Gerard,

14. J. F. seised in Fec, had Issue K. his only Daughter, and settled his Lands upon Trustees and their Heirs to the Use of himself for Life, and after to K. in Tail, provided he married with the Consent of the Trustees, or the major Part of them &c. but if not, then the said Trustees should raise a Portion out of the said Lands for her Maintenance, Remainder over to Latitia (his Sister) in Tail, &c. The Daughter K. being then but 2 Years of Age, had Notice of this Settlement at 14 Years old, but not by the Direction of the Trustees; and at the Age of 18 Years she married &c. without the Consent of the Trustees, or the major Part of them. It was argued that the Estate Tail to K. was determined, and that Notice was not necessary to be given her, because her Father had not order'd it in his Settlement, and that he might dispose of his Estate as he pleased; and having made particular Limitations of it, there is no Room now for the Law to interpose, to supply the Defect of Notice in the Deed; That as K. took Notice what Estate she has in the Land, so as to pur-
(E. d) What collateral Thing shall be said a Satisfaction.

1. If the Condition of an Obligation be to pay £1 on a Day, * Brown, S. C. adjudged, 66. pl. 77. Mich. 6; Lovelace v. Cocket, 5 S. C. adjudged; for it was held, and is held, to be such a Condition as the said Day, and not * Brown, 47. 5 C. and adjudged, for another, S. C. cited per Cur. as adjudged not a good Discharge for the Obligee, in no better Condition than the said Day was before. — * Litr. Rep. 48. Mich. 3 Car. C. B. Enn's Case, S. P. adjudged; and it was said to be a good Time to adjudge; and Hutton J. said one Reason was, because a Choice in Action cannot be a Satisfaction. — * Cro. C. 85. pl. 9. Anon, seems to be S. C. and ruled accordingly. — Ibid. 86. pl. 9. S. P. cited to have been ruled by the Court to be no good Pia Trim. 41 Eliz. Rot. 1409. Maynard v. Crick. — * Cro. E. 716. pl. 42. Mich. 41 Eliz. C. B. Manhood v. Crick. S. C. adjudged accordingly. — So where a Stranger joined with the Obligee in the 2d Bond, it was adjudged for the Plaintiff; for one Deed cannot determine a Duty upon another Deed. — * Cro. E. 727. pl. 61. Mich. 41 Eliz. C. B. Norwood v. Grynge. — Debt upon a Bond of 100l. The Defendant pleaded that he delivered up to the Plaintiff a Bond, wherein the Plaintiff was bound to him, which he accepted in Satisfaction of the said Bond. Resolved per Cur. this is a good Pia, for although the giving of one Bond is not a good Satisfaction for another, yet this is tantamount to a Payment when the Defendant discharges such a Debt due to him from the Plaintiff; And so differs from the Case of * Hob. 68, &c. Freeman. Rep. 323, 335. pl. 719. Mich. 1683. Marshall v. Jennison.

2. If a Man be bound in 20l. in a Statute, and he makes an Obligation for himself, and he accepts it, this is not any Satisfaction, because the Statute is of greater Advantage than the Obligation. 12 V. 4. 23 b.

3. If the Condition of an Obligation be to pay 25l. at Michaelmas, and the Obligee leaves Land to the Obligee, rendering 39l. Rent an Obligation, at the said Feast of St Michael, and after, before the said Day of Payment, together with the Land, and ... debt, that the said Obligee, being the Lessee, should retain 25l. of the said Rent, in Satisfaction of the said Obligation, and for the Rest of the Rent, that he should remain answerable to the Obligee, and after the said Day, because of the said Agreement, the Obligee does not pay the said 25l. This Obligation is forfeited, for this Agreement cannot be any Discharge of the Obligation, in as much as the Rent at the Time of the
Condition.

4. If the Condition of an Obligation be to pay 101. at a Day, which is not paid at the Day, but after the Day the Obligee accepts a Statute Staple from the Obligor for the same Debt, in full Satisfaction of the Obligation, yet this is not any Satisfaction; for though the Statute be a Matter of Record, and higher than the Obligation, yet the Obligation remains in Force, and the Obligor hath his Election to sue the one (*) or the other. *Fol. 371.*

5. If the Condition of an Obligation be to pay 100 Marks at a Day, and at the Day the Obligor and Obligee account together at another Place, and because the Obligee owes to the Obligor 20l. by another Contract, the Obligee allows the 20l. in Payment of the 100 Marks; this is a good Satisfaction of the Condition, for this is all one as if the Obligor had paid the Obligee, and he had repaid him. 12 R. 2. *Barr. 243.* This is a Payment by way of Retainer.

6. If the Obligee and Obligor, before the Day of Payment of the Money to be paid by the Condition, agree together that the Obligor shall do several particular Things, as, amongst other Things, to assign his Interest in the Farm of the Cottums of French Wines, and he pleads adjudged that he did all in particular, shewing how, and it appears to the Court that he could not by Law assign his Interest in the said Cottums, they being in Covenant only; though the Obligee had enjoy'd them accordingly, yet this is not any Discharge of the Obligation, in as much as this is like an Accord, to that all ought to be performed, otherwise it is not good, because the Obligee hath not any Remedy for that which is not performed. *Trin. 6 Car. B. R. between Simons and Mowldson adjudged, this being moved in Accord of Judgment.*

7. Before the Day of Payment, Obligee agrees to accept a Debt due by Obligee to Obligor, in Satisfaction of the Sum payable by the Condition. *Mo. 573.* in pl. 587. *Hill. 41 Eliz.* cites 12 R. 2. *Fitzh. Barr. 243.* which was agreed to by the Court.

8. If a Man by Deed acknowledges himself to be satisfied, this is a pl. 13. *Anno* good Bar without receiving any thing. 36 H. 6. 37. *Debt up-on*
on a Bond for 10l. the Defendant pleads that F. was bound with him, 5 Eliz. S. P. and that Plaintiff had made an Acquittance to F. bearing Date before the Obligation, and delivered afterwards, by which Acquittance he acknowledged the Receipt of 20s. in full Satisfaction of the 10l. 3 Rep. 117, b. in Pinnel's Cafe, the Reporter in a Note cites 36 H. 6. Tit. Barre, 37.

9. In Annuity of 10l. the Defendant pleaded that the Plaintiff promised him that if he pay him annually at Easter 20s. that the Annuity would be void, and said that he paid it except at Easter last, and that then he was to be leased to the Plaintiff the Use of an Acre of Land for the 20s. and Bar Br. a good Plea, per Curiam. Brooke says it seems that the Promise was void, in Writing. Br. Annuity, pl. 54, cites 11 H. 7. 20, and says it is there agreed that tho' an Annuity be charged on Lands, yet another Thing to be in Recompence sufices.

Arrangements of Annuity, the Defendant pleaded that he leased such Land to the Grantee in Recompence of the Annuity, or Arrangements of the said Annuity, but the Court held it no Plea; for the Annuity is in Writing, and cannot be discharged by Matter in Quaest; Quod Nota; Brooke says, Quære if it was Annuity by Preemption.——The Year Book says the Plea was only Matter in Surmise.

10. In Debt upon an Obligation, the Defendant pleaded in Bar, that it was indorsed upon Condition to make Account before Michaelmas &c. and that the Plaintiff before the Day had accepted of a Lease at Will of a House and 200 Acre of Land, in Satisfaction of all Accounts &c. Judgment &c. The Plaintiff demurred, and it was adjudg'd no Bar; for where a Condition is collateral, the Acceptance of another Thing is no Bar; contrary, where the Condition is to pay Money: D. 1. pl. 1, 2, 3. Patch. 4 H. H. Anon.

11. If A. and B. contract with C. for Corn, and at the Price of 100l. and after C. takes Bond from A. only for the Money, now is B. discharged of the Debt, because B. is discharged only by the Contract, which is extinguished by the said Specialty. Went Off. Ex. 116, 117.

12. In Debt on Bond of 150l. the Defendant said he was posseised of 3 Writings, viz. a Release by one F. of all his Right in such Lands to Perfons &c. and that he delivered all those Writings to the Plaintiff in full Satisfaction of the said Debt, and that he accepted it. Manwood held the Plea ill for want of alleging a Value, as if he had said that he had given him a Russ or a Feather it would not be good, because of no Value; besides perhaps the Plaintiff may take Illue on the Value; whereupon the Counsel for the Plaintiff said he would put in a Value. Dal. 105, pl. 51. Anno 15 Eliz. Temple v. Atkinson.

13. In Debt on Bond for 300l. the Condition was, that a Stranger should make a good Efflate to the Plaintiff and his Heirs of Lands in E. in the County of N. The Defendant pleaded that the Plaintiff had accepted a Judgment with certain Covenants contained therein, in full Satisfaction for the 300l. and adjudged per tot. Cur. to be no Plea. D. 1. a. Marg. pl. 1. cites Mich. 27 & 28 Eliz. B. R. Dod v. Alphin.

14. If a Feoffment in Fee be made, on Condition to pay 100l. on such a Day, and at the Day the Feeoffees make an Obligation to Feeoffor for Payment of it, the same is no Performance of the Condition; per Anderson Ch. J. Le. 112. pl. 155. Patch. 36 Eliz. C. B. in Cafe of Stamp v. Hutchins.

15. Debt upon Obligation dated 29 April 23 Eliz. conditioned to pay Cro. E. 46. 10l. at St. Thomas's Day next at the Church Porch of N. The Defendant pl. 2 Patch. pleaded, that before the said Feast the Plaintiff agreed, that if he would promise to pay him 6l. and pay it at his House in N. the 15th of December next, and promise to pay the other 4l. at Midsummer-Day following, he would accept of it in Satisfaction of the said Sum of 10l. and Defendant pleaded before the Payment of the 6l. at the Day, and that Plaintiff accepted his Pro.

wife
Condition.

accept the
Money af-
the Day
of Payment.
The De-
pleaded Acceptance after the Day, but held the Plea not good.

16. Debt on Bond of 14 l. for Payment of 7 l. Defendant pleads Payment at the Day ; it was found the Defendant paid 50 s. in Part, and that Defendant then delivered Hints to the Plaintiff to the Value of the Reidue, which he accepted. Adjudged against the Defendant, for this is no Payment, but he might have pleaded specially this Matter, and then the Acceptance of the Plaintiff had been a Barr. Cro. E. 309. pl. 17. Mich. 35 and 36 Eliz. B. R. Thimblethorp v. Hunt.

17. Condition of a Bond was, that if A. appear before the Plaintiff at the Commissary's Court at Oxford, such a Day, that then, &c. Defendant pleaded he had appeared before the Plaintiff before the Day of 8. which the Plaintiff accepted of, and allowed for his said Appearance to be at O. &c. Adjudged for the Plaintiff on Demurrer, because it was to do a collateral Thing, and the Acceptance of another Thing cannot dispence therewith, nor is a Discharge of the Bond. Cro. E. 453. (bis) pl. 4. Patch. 38 Eliz. B. R. Norton v. Ridlen.

18. Debt upon an Obligation conditioned for the Payment of 20 l. at a Day certain. The Defendant pleads, that before the Day the Plaintiff, in respect of a Trepass by his Beasts in the Defendant's Land, gave unto him a longer Day of Payment, which is not yet come. It was adjudged for the Plaintiff; for a parol Agreement cannot dispence with an Obligation. Cro. E. 697. pl. 8. Mich. 41 & 42 Eliz. B. R. Hayford v. Andrews.

19. In Debt on a Bond, the Condition of the Bond being, that the De-
fendant should pay a Sum of Money unto the Plaintiff on the Birth-Day of the first Child of the Plaintiff &c. The Defendant pleads, that after the Bond, and before the Birth of the Child, the Plaintiff accepted of the Defendant one Load of Lime in full Satisfaction Diff't Scrip'ti Obligations &c. Held to be an ill Plea, for this cannot be a Discharge of an Obligation by Words, but by Writing. Contr. If the Acceptance had been of the Load of Lime in full Satisfaction of the Sum of Money contained in the Con-


21. In an Action of Debts brought upon a Bond for Payment of Money such a Day ; The Defendant pleads, that he the same Day made an Obligation for the Payment of the said Money another Day, which the Plaintiff accepted for the Money, and that he took it, and tried for the De-
fendant; and after the Verdict the Plaintiff moved the Court to have Judgment, though the Verdict passed against him, because the Plea was insufficient, and that he confessed the Debt, but the Court would not grant it. Brownl. 74. 1 Trin. 13 Jac. Rawdon v. Turton. The like

22. In Debt upon a Jingle Bill, the Defendant pleaded, that he insuffici-
ted the Plaintiff of such Land in Discharge of the said Bill, which he accepted, and it was held an ill Plea. Cro. C. 86. in pl. 9. cites Trin. 14 Jac. Rot. 734. Oliver v. Leafe.

23. The
Condition.

24. The Condition of an Obligation was to make an Assurance of 
Loss to such Uses as therein expressed; An Acceptance of a Settled thing 
of other Uses was pleaded, but held ill, because he ought not to vary 

25. In Debt on Bond against the Heir of the Obligor, he pleaded, that 
the Obligor did not satisfy, and that J. S. administered, and had given the 
Plaintiff another Bond in full Satisfaction of the former &c. Upon Plea the 
Defendant had a Verdict. It was held, that if the second Bond had 
been given by the Obligor himself it would not have discharged the for- 
mer, but it being given by the Administrato, so that the Plaintiff's Se- 
curity is better'd, and the Administrato chargeable de Bonis Propriis, it 
is a sufficient Discharge of the first Bond. Per 3 Justices, contra A: 
brought

kins; And Windham J. said, that otherwise the Heir and Administrato 
might both be chargeable; and Judgment for the Defendant Nin. Mod. 
225. pl. 14 Trin. 28 Car. 2. C. B. Blythe v. Hill.

Justices held accordingly; and that the Administrato being now chargeable in his own Right, it may 
well be laid in full Satisfaction of the first Obligation, and that if a Security be given by a Stranger, it 
may discharge a former Bond, and this in Instance is given by such; but Atkins inclined contra.

In Debt upon Bond condition'd to pay 10 l. the Defendant pleaded an Agreement that Defendant 
should give the Plaintiff a new Security for this Debt and another, and that he being Executor of the 
Obligor, and the Person with whom the Concord was made, gave thereupon a penal Bill sealed by 
himself; but Judgment was given for the Plaintiff; for one Bond given in Satisfaction of another is no 
Discharge, be it given by Agreement or not, and the Agreement cannot run the Matter, and yet 
here the new Bond binds him De Bonis Propriis, whereas the first Bond bound him only De Bonis 

26. A Bond was given as an accumulative Security for Payment of 
a Sum decreed. This Bond shall not go in Discharge or Satisfaction of 

27. Executor of an Oblige accepted a Note on a Goldsmith for the 
Money; the Goldsmith accepted the Bill, and before Payment fails; the Executor afterwards brought Action on the Bond, and this Matter 
being given in Evidence was adjudged a good Payment; cited per Jeffries 
C. to have been adjudged in Ch. J. Pemberton's Time. Vern. 474. pl. 

28. In Debt on Bond conditioned for Payment of 12 l. at a certain 
Date, the Defendant pleaded, that after the Day he paid 8 l. and then the 
Defendant and one J. S. gave another Bond conditioned for Payment of 10 l. 
which the Plaintiff accepted in full Satisfaction. It was adjudg'd ill; for 
admitting one Bond may be given in Satisfaction of another, yet here 
the first Obligation was forti'd, and the whole Penalty due in Law, and 
in such Case Acceptance of a less Sum cannot be Satisfaction for a 

29. In Debt on Bond, the Defendant pleaded that the Plaintiff, after 
the Day, did accept a second Obligation in Satisfaction and Discharge of 
the Sum in the Condition of the former. Judgment was given for the Plaintiff 
perrot. Car. though no Exception was taken to the Plea, for want of 
alluding that the second Obligation was given in Satisfaction &c. but only 
that the Plaintiff accepted it in Satisfaction and Discharge &c. Lutw. 

30. One on the Marriage of his Daughter gives a Bond to the Husband 
for the Daughter's Portion, and afterwards by Will devises Land of much 
greater Value to the Husband and the Wife, and their Heirs. The Devil 
is no Satisfaction of the Bond, though there be a Defect of Allots to pay 

21. One
31. One Bond cannot be a Satisfaction for another. Lit., Rep. 58.

32. Debt upon several Assamptions; Defendant pleads, that he had given a Bond for the same, and on Demurrer judgment for the Defendant. 12 Mod. 456. Trin. 12 W. 3. King v. Woolfanton.

33. Debt upon a Bond; the Plaintiff did by his Deed grant and agree to, and with the Defendant, to accept a Bond for the Building of a House, in Satisfaction of the first Bond, and now it was held not to be a good Plea, for it amounts to no more than a Covenant, and not to a Release. 12 Mod. 539. Trin. 13 W. 3. Baber v. Palmer.

34. Holt Ch. J. said, that a Bond may be a Satisfaction of the Condition of another Bond before it is forfeited, otherwise after. 12 Mod. 539. Trin. 13 W. 3. Baber v. Palmer.

35. In Debt upon Bond the Defendant pleaded in Bar, that he made a Footment to the Plaintiff of Lands, and that the Plaintiff accepted thereof in Satisfaction, and feoms admitted for a good Plea; but per Cur. the Acceptance must be laid where the Footment was made, it being local. 6 Mod. 52. Mich. 2 Ann. B. R., Williams v. Farrow.

36. A covenants on his Marriage to purchase Lands of 200 l. a Year, and settle them for the Jointure of his Wife, and to the first &c. Sons of the Marriage. He purchases Lands of that Value, but makes no Settlement, and on his Death the Lands descend to his eldest Son. On a Bill by the Son for a specific Performance, decreed the Lands descended to be a Satisfaction of the Covenant. 2 Vern. 558. Trin. 1706. Wilcocks v. Wilcocks.

S. C. cited by Sir Joseph Jekyll, Master of the Rolls, and says, the Book takes Notice that the Lands were worth 200 l. per Annum, which imports, that they were just of that Value, and this plainly shews, that the Lands were bought with an intention to satisfy the Covenant, and the eldest Son could not complain, or object, when he had his 200 l. per Annum from his Father, that it was another Estate than what was covenanted to be settled upon him, viz. that it was a Fee simple instead of an Intail, for which Cause this seems to have been a reasonable Decree. 5 Wilm's Rep. 225. 226. Mich. 1733.

37. W. devised a Leafehold Estate to M. chargeable with 10 l. a Year to A. for Life. Afterwards M. by Will made J. S. Executor, and devised also to J. S. a Year to A. for Life. J. S. being afterwards feized in Fee of other Lands, settled his Estate on himself for Life, Remainder over &c. Remainder to Trustees for 99 Years, to pay his Debts and Legacies, and afterwards that A. should have and receive 20 l. a Year for Life; the Remainder vested in the Trustees. Ld. Chancellor agreed the Gifts by the Will to be good, and that where a Man is Debtor in 10 l. and gives 20 l. it shall be a Satisfaction, and not a Legacy, and that he believed, in his own private Opinion, that the 20 l. a Year Annuity was intended for a Satisfaction, and that (as Mr. Dolbin had said) there was no Cafe like this in Point. Gilb. Equ. Rep. 65. Patsh. 7 Ann. in Canc. Davison v. Goddard.

38. Sir William Davie had an Estate in Somersbyshire by his first Lady, which was to her in Tail; they levy a Fine, and declare the Uises, and the Issue of their Bodies, Remainder to Sir William and his Heirs; They have a Daughter Mary, and the Feme dies. On this Marriage there were Articles, that Sir William should have his Daughter 2500 l. if the Trustees demanded it within one Year after his Death &c. Sir Jo. the Father of Sir William was then living. Sir William marries a second Wife, and by her had Issue several Daughters. By Deed executed in his Lifetime he gives the Estate in Somersbyshire to Mary and her Heirs, and by Deed also charges his Lands in Devonshire which he had purchased, with 5000 l.
Condition.

apace to the three Daughters, and dies. Mary demands the 2500 l. and Interest; But to this it was objected, that the Gift of the Somerseathire Elate was an Equivalent, or the Reversion of the Lands in Devonshire was esteemed to be such, and that Sir William often declared, that he would leave all his Children equal, and amongst his Debts, of which there was a Lift of his own Hand writing, this 2500 l. was not mentioned; But decreed by Ld. Keeper Harcourt, that Mary should have the 2500 l. with Interest from Sir William's Death, at 5 l. per Cent. That the Somerseathire Elate could not be an Equivalent, because it would from her Mother, and was the Condition of the Agreement for the 2500 l. That the Reversion of the Lands in Devonshire could not be so, because Sir William's Father was then living, and there was no Respect had to these Reversions, neither were they then in being, and to make it an Equivalent, ought to be in Being, and in View as the Time of giving the Equivalent. Mich. 9 Ann. Canc.

39. Bill to have a performance of a Marriage Agreement contained in a Condition of a Bond, viz. that the Husband should purchase Lands of the Value of 250 l. to be settled upon himself for Life, Remainder to his Wife for Life, Remainder to the Heirs Male of the Husband begun on the Body of the Wife, Remainder to the right Heirs of the Husband &c. The eldest Son of the Marriage brings this Bill against the Executors of his Father to have the Benefit of this Agreement. The Defendant insisteth, that the Father in his Life-time purchased a Copyhold Elate which descended to the Plaintiff, and his Wife by his Will devised 100 l. Legacy to be raised out of Land to the Plaintiff, and that this Copyhold and Legacy shall be taken as a Satisfaction of the Marriage Agreement especially in this Case where the Husband and Wife were Tenants in Tail and might bar the Elate. Harcourt C. Decreed the Plaintiff must have a Satisfaction of the Agreement in the Bond, and 4 l. per Cent allowed him for Interest of the 300 l. from the Death of his Father; that the Copyhold Elate descended to him from his Father, must be taken as a Satisfaction pro tanto of the Agreement, according to the Value of the Land and the Purchase Money, but the Legacy of 100 l. being devised out of Land is not to be taken in Part of the Satisfaction; And as to a Conveyance made of 6 Acres paid to be made by the Father to the Plaintiff in his Life-time, to inquire whether it was a voluntary Conveyance, and then to go pro tanto in Satisfaction of the Agreement; but if the Purchase Money was paid to the Father, then to be no Part of the Satisfaction. MS. Rep. Trin. 12 Ann. Canc. Wilks v. Wilks.

40. H. being seized in Tail of some Lands with Remainder over, and also seized for Life of other Lands, with a Power to make a Jointure in Bar of Dower, with Remainder over &c. during his Minority, in Consideration of a Marriage to be had with the Daughter of U. and 1000 l. paid down, and 300 l. more to be paid by H. to H. at his Age of 21, doth covenant by his Guardian to settle a Jointure of 300 l. per Annum, when he comes of Age, upon his intended Wife. The Marriage took Effect, and afterwards U. the Plaintiff's Father, pays H. the 300 l. Residue of the Partible, when he came of full Age, and then H. in Pursuance of the Covenant entered into by his Guardian, doth settle a Jointure of 300 l. per Annum upon his Wife the Plaintiff. Some Years after H. makes his Wife an additional Jointure of 250 l. per Annum upon her Father's dying, and leaving her the Value of 500 l. and at the same Time persuades his Wife to join with him in a Fifth of all the Residue of his Elate. Afterwards H. dies, and by his Will devises a House and Lands to his Wife for her Life, to the Value of 270 l. and gives her a Legacy of 300 l. and his Plate and Jewels, to the Value of 200 l. more, and makes her Executrix, and gives her the Money of the Residue of his personal Elate &c. It happened that the Jointure, made pursuant to the Marriage Articles, proved defective both in Title and Value.
Value, and thereupon the brought a Bill against the Remainder-man to have a Satisfaction out of the Real Estate for the Deficiency of her Jouiure &c.

There were two principal Points in this Case.

1st. If the additional Jointure, being a voluntary Settlement after Marriage, should go in Satisfaction pro tanto of the Jointure made pursuant to the Marriage Articles.

2dly, If the 250 l. per Annum, devised to her for Life, should go in Satisfaction of the Marriage Articles, or if the Legacies left her by the Will should be deemed a full Satisfaction.

Harcourt C. was of Opinion, that the additional Jointure of 250 l. per Annum shall not go in Part of Satisfaction of the Marriage Agreement, which, though made by the Guardian, did bind H. as strongly as if he had been of full Age, and had signed the Articles himself, especially since H. at his full Age did receive the 3000 l. Residue of his Wife's Portion, and did actually make a Jointure of 500 l. per Annum to his Wife in Pariinance of those Articles. Now when he settled the additional Jointure of 250 l. per Annum upon his Wife, he could not intend it in Satisfaction pro tanto of 500 l. per Annum, because before that Time he had made her a Jointure of 500 l. per Annum, pursuant to the Marriage Articles, which he then thought to be a good Settlement, and therefore there is no room left for the Pretention in Equity, that a voluntary Settlement shall be intended in Satisfaction of a precedent Covenant or Agreement, though not made in Pariinance of it, and fo as to the Devise of 275 l. per Annum for her Life, and the 4000 l. Legacy &c. they cannot be intended by H. in Satisfaction of the Jointure by the Marriage Articles, but given to her as a Bounty by her Husband, because at that Time he thought his Wife's Jointure was well settled and secured; besides, Money or Personal Estate shall never be deemed in Equity a Satisfaction for a Freesold.

And decreed, that the Remainder-man do settle 500 l. per Annum upon the Plaintiff for Life, out of the Lands which came to him upon the Death of H. and that the Lands contained in the additional Jointure, or devised to the Plaintiff, shall not come in Aid of the other Lands pro rata to make a Satisfaction for the Marriage Articles, but the whole 500 l. per Annum shall entirely come out of the other Lands in Remainder, notwithstanding the Fine levied by H. and his Wife the new Plaintiff of those Lands, though that be a Bar and Elloppel of her Dower at Common Law. And that the Plaintiff have a Satisfaction for the said 500 l. per Annum from the Time of the Death of her Husband H. His Lordship did also direct the Defendant to account for the Rents and Profits of the additional Jointure of 250 l. per Annum from the Death of H. But the Counsel for the Defendant moved, that the additional Jointure was made out of the Lands of which H. was only Tenant for Life, with a Power to make a Jointure &c. and that the Power was not well executed at Law, and being a voluntary Settlement, if the Power was not well executed, it ought not to be aided in Equity; To which LD. C. said, he saw no Reason why a defective Execution of a Power for the Benefit of the Wife, though otherwise provided for, should not be aided in a Court of Equity, as well as want of a Surrender of a Copyhold in Cafe of a Devise to a Child, who hath another Provision by the Will, but since it was infilled on, that there is no Precedent in this Court, of supplying a defective Execution of a Power in Cafe of a voluntary Settlement, he gave Leave to try the Validity of the Execution of the Power at Common Law, and retained the Bill quoad that Part until it be determined at Law. Decree affirmed in Dom' Procer'. MS. Rep. Mich. 12 Ann. Cane. Lady Hooke v. Grove &c. al.
41. One covenant to have his Wife 650 l. He dies intestate, and the Wife’s Share on the Statute of Distributions comes to more than the 650 l. this is a Satisfaction. 2 Vern. 709. pl. 632. Hill. 1715. Blandy v. Wildmore.

42. A by Marriage Articles is bound to pay his Wife, if she survives him, 1500 l. in full of Dover, Thirds, Custum of London, or otherwise, out of his real and personal Estate. A dies intestate, this bars the Wife of her Share by the Statute of Distributions. 2 Vern. 724. Mich. 1716, Davila v. Davila.

43. A having two Sons, E. and H. has a Design to disservit the Eldest, and to that Purpose gives an Estate to the Youngest, and thereupon he marries and obtains a considerable Fortune; but the Eldest contrives, (by insinuating as if the Father had commanded it) that he should give a Bond to have 3000 l. to one of the Children of the Eldest. The Bond was dated in 1668. H. makes his Will, and takes Notice of this Bond, and declares that he would never pay it as a Debt, but gives an Estate in Land to the Children &c. The Questions were, Whether the Court would not damn this Bond? whether, considering the Length of Time, and here being a Devil, this shall not be taken as a Satisfaction &c. And Ld. C. Parker chose rather to make his Decree on the latter, and the Matter was directed to enquire into the Value of this Estate to be given. An Estate for Life is no Compensation for a Sum included upon the Wed-ding. D. was married to the Daughter of H.—The bond was having made by his Aderects to a Lady, and all, according to the Declaration of the Party; the Prefumption is always in Favour of the Satisfaction, unless the Intent of the Party appear to be a Satisfaction. Trin. 5 Geo. Canc. Hancock v. Hancock.

44. In a Settlement a Term was raised for Daughter’s Portion, (viz.) 10,000 l. with a Proviso, that if the Father by Deed or Will should give, or leave the Sum of 1000 l. to his said Daughters, it should be a Satisfaction. The Father leaves Land to the Daughters of the Value of 1000 l. this is no Satisfaction. 3 Wins. Rep. 245. Parch. 1734. Chaplin v. Chaplin.

(F. d. 2)
Condition.

(E. d. 2) Where the Acceptance of the like, or a lesser Sum, or Estate, shall be a good Barr.

Br. Diet pl. 1. If N Debtor upon Obligation, where a Man is bound in 201l. to pay 100l. at a Day, and he pays it after the Day, and the Plaintiff accepts it, yet the Obligation is forfeited; but if a Man be bound upon Condition to pay at such a Place, and he pays it at another Place, this is good by the Acceptance of the Plaintiff, note a Diversity. Br. Conditions, pl. 31. cites 46 E. 3. 29.

where a

Man is bound in a Statute Merchant with Defences to pay 40l to C. for a Day, if he pays it elsewhere at the Day or before the Day it suffices. Br. Conditions, pl. 38. cites 21 E. 3. 45.

Br. Conditions, pl. 126. cites & C.

2. Acceptance of Land to the Value of 10l. per Ann, where it ought to be 20l. per Ann. is no discharge of the Bond in which he is bound to make Estate of 20l. Land per Ann. Br. Acceptance, pl. 12. cites 3 H. 7. 4.


3. Where the Condition is for Payment of 20l. the Obliger or Farmor can't at the Time appointed pay a lesser Sum in Satisfaction for the Whole, because 'tis apparent that a lesser Sum of Money can't be a Satisfaction of the Greater. Co. Litt. 212. b.

Ibid. 502.

S. P. accordingly, by Crew Ch. J. and by Doderidge J. the 20l. cannot be paid in Satisfaction of a greater as for Instance, of 200l. in the principal Case there, yet 20l. may well be paid to end a Suit for 200l. and this may well be so done by Law, and Judgment was given for the Plaintiff accordingly by the Opinion of the whole Court. Mich. 1 Cor. B. R — s Rep. 117 a. Trin. 44 Eliz. C. B. Pin nell’s Cafe, S. P. adjudged accordingly. — Mo. 677. pl. 923. Penny v. Core, S. C. held accordingly.

S. P. I. he

4. But if the Obliger or Office do at the Day receive Palls, and gives Acceptance thereof make an Acceptance under his Seal in full Satisfaction of the Whole it is sufficient, by reason the Deed amounts to an Acceptance of the greater of the Whole. Co. Litt. 212. b.

Sum, but this is by reason of the Writing, for if it was without Writing then the Payment of Part could not be a Satisfaction for the Whole, as Bendows said was lately Argued and Adjuggd. Mo. 45. pl. 142.

Pacch. 5 Eliz. Anon.

2 Butft. 501. — 5. If the Obliger or Office pay a lesser Sum either before the Day or at another Place than is limited by the Condition, and the Obliger or Office receives it, this is a good Satisfaction. Co. Litt. 212. b.

S. P. accordingly, — D. 1. Marg. pl. 5. cites S. P. Per Periam v. Anderson, and 18 E. 4. 13. 17. 20. — s Rep. 117 a. b. Trin. 44 Eliz. C. C. Pinnell’s Cafe, S. P. adjudged accordingly; but then he must not plead generally that the Plaintiff accepted it in full Satisfaction, but also that he paid it in full Satisfaction, for the Manner of Payment is to be directed by him who makes it, and not by him who accepts it, and Judgment was given accordingly. — 5 Mod. 86. cites S. C.

Mo. 677. pl. 923. Penny v. Core, S. C. the Court thought the Plea good, because the Acceptance was before the Day.

6. A Bond to pay 81. 108. 11 Nov. 1600. In Debt, Defendant pleads that he was at the Plaintiff’s request before the Day, viz. 1 Office, paid 5l. 25. 2d. which Plaintiff accepted in full of Satisfaction of the 81. 108.

C. the Court resolved that the Payment and Acceptance before the Day of Parcel in Satisfaction of the Whole shall be a good Satisfaction in respect of the Circumstance of the
the Time; for perhaps Parcel of it before the Day will be more beneficial to him than the Whole at the Day, and the Value of the Satisfaction is not Material. But Judgment was given for the Plaintiff for the insufficient Pleading.

7. An Executor brought Debt upon several Bonds made to the Telsator, the Defendant pleaded that he paid a lesser Sum than expressed in the Bonds to the Telator in his Life-time, and that he did accept the same in full Satisfaction of the said Bonds; upon Demurrer the Question was, whether the Payment or the Acceptance of the Money should be traversed. Roll Ch. J. held it indifferent to traverse either, but that it was more to take Prize upon the Payment, but the Court would advise. Stry. 239. Mich. 1630. Bois v. Cranfield.

8. Payment of a lesser Sum in Satisfaction of a greater is good in Appearance, but in Debt upon Obligation the Defendant pleaded in Abatement that the Plaintiff received part of the Money after the Action brought, and ruled ill. Comb. 19. Patch. 2 Jac. 2. B. R. Hilliard v. Smith.

(F. d) By whom the Collateral Thing being given, it shall be a good Satisfaction.

1. If the Condition of an Obligation be to pay 20 l. at a Day, and Cro. E. 541. a Stranger surrenders a Copyhold to the Use of the Obligee in Satisfaction of the 20 l. which the Obligee accepts; this is a good Satisfaction and Discharge of the Obligation. Term. 39 Eliz. 2. R. between Grimes and Blyfield. A stranger, that it is not a good Plea, for he is in no Privy to the Condition, and afterwards adjudged, Per Popham and Glencis (ceteris abscissibus) for the Plaintiff.

(F. d. 2) Pleadings as to Acceptance of Collateral Things.

1. Defendant pleaded that Plaintiff accepted Wares in full Satisfaction &c of the Reddie of the Debt (upon Bond) but upon Demurrer it was adjudged ill, because he did not plead that he gave the Wares in full Satisfaction, but only that the Plaintiff accepted them in full Satisfaction, which can't be, unless the Defendant gave them for that purpose. Carth. 237. 238. Patch. W. & M. in B. R. Frederick v. Gosright.

2. And to likewise must the Acceptance be pleaded in Satisfaction. In a Bill in Carth. 347. 348. Patch. 7 W. 3. B. R. Young v. Rudd. Chancery, the Plaintiff set forth an Agreement for purchasing Stocks of the Defendant at so much, and that he held 6 d. as Earnest; the Defendant pleaded, that he did not accept or receive it as Earnest; Per C. B. King, this is not well pleaded; for it is not material how or in what Manner the Plaintiff received or accepted it; but how the other paid it; for Quasquid fecitur, fictum ad medium fictavit, and cited 5 Rep. 117. Pinift's Case, and so overruled the Plea. Mich. 1725. 2 Wm's. Rep. 304. 308. Colt v. Nettavill.
Condition.

See Tit. Ap-portionment, for rotan.

(G. d) In what Cases the Dispensation or Extinguishing of Part of the Condition shall be of the Whole.

1. If a Han leases for Years upon Condition that the Lessee or his Assigns shall not alien without Licence of the Lettor, and after the Lettor licences the Lessee to alien to whom he pleases, who after alien to F. S. The Condition is quite gone by this Licence, for by the Dispensation to the Lessee, the Condition is utterly discharged, as to the Assignees. Co. 4. * Dunlap against Sinn 119.

2. [So] If a Han leases Land upon Condition that he shall not alien the Land, nor any Part thereof, without the Consent of the Lettor, and after he alien Part with the Consent of the Lettor; he may after alien the Residue without his Consent, for all the Condition is gone by this, for it cannot be divided or apportioned. Co. 4. Dunlap's Cafe, Contra, D. 16. Eliz. 334. 32. adjudged.

S. P. by Popham Ch. J. a Rep. 120 a. in Dampore's Cafe, and he denied the Cafe in Dyer, and said that he thought the said Cafe in Dyer to be fully printed, for he held it clear that it was not Law——Cro. E. §16. S. C. and held by Popham accordingly. No. 205. Arg. is the Cafe of 16 Eliz. D. 334. but says, that if any Part of the Land shall be discharged of the Condition all is gone, but that it is not so where the Person is discharged of Parcel of the Labour which belongs to his Eafe; but Anderon and Rhodes e. contra in this Point, and yet both agreed with him, that if a Subject has a Reversion to which a Condition is incident, and grants over Parcel of the Reversion, or Purchase by Surrender Parcel of the Land, the Condition is gone for the Whole; for so it was adjudged in one Winter's Cafe and in Southampton's Cafe in Bulk. Term Hill. 27 Eliz.——Where one has an entire Condition he cannot by his own Act divide in, but by Act of Law it may be divided, As by Recovery in Waife, or Deline of Part of the Reversion in Gaswellkind or Borough English, but not by Grant of the Person himself. Per Cur. 156. 98. pl. 243. Trin. 14 Eliz.——S. P. by Rolle Ch. J. Syr. 217. Hill. 1651.—S. C. cited Arg. Raym. 357. ad finem. and Ibid. 288. cites 14 Car. 2. Gardner's Cafe, that in such Cafe the Condition is gone even in the Queen's Cafe.

3. If a Han be bound to build an House, and the Obligor discharges one Part, he is discharged of the Whole. 4. U. 7. 6. b. Per Keble.

4. If a Han be bound to go with A. C. and D. and the Obligor discharges him from [going with] D. he is discharged of this from going with A. and C. though that which discharged is for Advantage, for the Condition is entire. Contra, 4 D. 7. 6. b. Per Brian.

5. So if the Condition be to plough my Land in such a Town, and I discharge him of Parcel; this also discharges the rest. Contra, 4 D. 7. 6. b. per Brian.

Mo. 205, Per Periam). Arg. cites S. C. that though I discharge him of Plowing one or two Acres, yet he shall plough the Residue.

6. If a Han hath a Power of Revocation, and he by his own Act extinguishes his Power of Revocation in Part, as by keeping a Fine of Part, yet the Power of Revocation remains for the Rest, because this is in Nature of a Limitation and not of a Condition. Co. Litt. 215. cites the Cafe of Shrewsbury's Cafe in Curia Wardorun, Patch. 39 Eliz. & Mich. 40 & 41 Eliz. reiled.
Condition.

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7. If A leases Land to three upon Condition, that they, or any of them, shall not alien without Licence of the Leesor; and after one alien the Leesor, with the Licence of the Leesor, this discharges all the Condition as to the other two also. *Comm. 28 Eliz. B. between Leeds and Cropwell*.

8. If the owner of a Ship covenants with B. that he will receive such Lading as he shall appoint at York by such a Day, and then to go with the first Wind to R., and there to unload and take in other Wares; and after B. discharges him from taking in Goods at Y., but that he shall receive his Lading at R. This discharge of Parcel of the Covenant is not an discharge of the Restive. *Comm. 14 Jac. 2. between Southend and Banes, per Curtin, for these are several.*


10. If a Man makes a Lease for Life of 2 Acres upon Condition, and after the Condition is broken, the Leesor may enter into one Acre only and wave the Benefit of the other Acre, and yet the Condition is entire. *Per Cottamore*. Co. R. on Fines, 13. cites 1 H. 6. 4.

11. Three Parteers are, and the one enters and leaves to me rendring Rent, and I am bound to pay the Rent, and after the two enter, I forfeit the Obligation if I do not pay the 3d Part of the Rent, but by the Entry two Parts of the Rent are extinct.* Br. Conditions*, pl. 207. cites 20 H. 6. 23.

12. Debts upon a Bond for Payment of Rent reserved upon a Lease for Years *Br. Dette pl. 178.* made by the Plaintiff to the Defendant, the Defendant said that, before that the Plaintiff any Thing had, j. N. was seized, and had Issue the Plaintiff S. C. and two other Daughters, and died; and the Plaintiff entered into all and leased to the Defendant rendering the Rent, and he was bound to pay it; and before any Day of Payment the two other Daughters entered Judgment li Aiito. And the Chief Opinion was, because by the Entry into two Parts the Rent shall be apportioned, and the Defendant has not paid the third Part according to it, therefore the Obligation is forfeited. *Br. Obligation*, pl. 6. cites 20 H. 6. 23.

13. For a Bond cannot be apportioned; for where he is bound in 10 l. to pay 4 l. and he pays 3 l. and not 4 l., the Bond is forfeited. *Ibid.*

14. *Brook* says it seems there, that if the Entry had defeated the Estate of the Plaintiff in the whole, that then the Bond had been discharged in all. *Ibid.*

15. If A. infests B. upon Condition &c to re-enter, there is a Man infests B. who subleases A. and so recovers, or if A. re-enters upon B. without Cause, and is surprised and lefts, there, in the one Cafe and the other, the Condition is determined; for the Land is recovered against him who made the Condition. *Br. Judgment*, pl. 136. cites 26 H. 8.

16. If a Man leaves Land for Life, or Years, rendering Rent with 5 p. For Clause of Re-entry, if the Leesor enters into any Part of the Land he cannot be apportioned for the Rent again afterwards, by Reason that Condition cannot be apportioned.
17. Feoffment to two upon Condition to make an Estate back to the Feoffor for Term of Life, the Remainder over in Fee to a Stranger; one of the Feoffees makes an Estate accordingly; it seemed to several, that this is good for the Moteity, because the Party to the Condition hath dispensed with the Condition by the Acceptance of the Estate. Dy. 69 b. 70 a. pl. 36. Patch. 5 E. 6. Anon.

18. Feoff for Years has Execution, by Elegit of a Moteity of the Rent and Reversion, against the Feoffor where the Leaf was upon Condition. This is a Suspension of all the Condition during the Time of the Extent; and though only a Moteity of the Rent was extended, yet the entire Condition was suspended, for it cannot be apportioned; Per Curiam. Mo. 22. pl. 75. Patch. 2 Eliz. Anon.

Leffor, it was held, that the Moteity of the Rent and the Reversion was extendable by Elegit, and upon such Extent the Condition is suspended during the Extent, as well in the Leffor as in the Party who has the Extent.

S. P. by the
Judges,
Mo. 98.
pl. 241
Trin. 14
Eliz. and seems to be S. C. —— S. P. per Periam J. Mo. 203. Patch. 27. Eliz.—Mo. 114. pl. 255
Patch. 20 Eliz. S. P. obiter, by Dyer and Manwood.

20. A Person leased Land, whereof he is seised in his own Right, and Land whereof he is seised in the Right of his Church, for Years, rendering Rent, with Clause of Re-entry, and dieth; the Rent shall go according to his respective Capacity, and the Condition divided. Per Jefferies. 4 Le. 28. in pl. 82.

Mo. 203.
in pl. 349.
Patch. 27.
Eliz. S. P. by Periam J.

22. A Man makes a Lease for Years, rendring Rent, with Clause of Re-entry, takes a Wife and dies; the Wife recovers the 3d Part of the Land demised for her Dower, now that 3d Part is discharged of the Condition during the Estate in Dower, but the Residue is subject to the Condition; Per Mounton J. 4 Le. 28. in pl. 82.

S. P. agreed, 4 Rep. 123. b. Hill. 45 Eliz. B. K. or Defect of Part of the Reversion in Gavelkind or Borough English, in Dumper's but not by Grant of the Person himself. Mo. 97. 98. pl. 241. Trin. Cafe.—

24. A Termor for 20 Years, and seised of other Lands in Fee, leaves all for 10 Years, referring Rent, with Clause of Re-entry, and dies; Now the Heir has a Reversion for the Land in Fee, and the Executor for the other Land, to the Condition is divided according to the Reversion. 4 Le. 27. pl. 82. per Manwood.

25. A. has a general Tail in Bl. Acre, and special Tail in Gr. Acre, and leaves both, rendring Rent, and dies having several Issues ineritable to each
Condition.

28. A Condition is an entire thing, and cannot be divided; as if I lease 3 Acres for Years, with a Condition of Re-entry for Non-payment of Rent, and then I grant the Reversion of 2 Acres, the Condition is destroyed, for it is entire, and against common Right; but in the King's Court the Condition is not destroyed, but remains still in the King. Co. Litt. 215 a.

29. So a Condition may be apportioned by the Act or Fort of the Lessor: As if a Lessor makes a Settlement of Part, and the Lessor enters for the Forfeit, or recovers the Place waited, the Rent and Condition shall be apportioned; for the Lessor shall not be prejudiced by the Act or the Lessor apportioned, and no one shall take Advantage of his own Wrong. 4 Rep. 120 b. Hill. 45 Eliz. B. R. Dumper's Cafe, alias Dumper v. Symms.

30. [A Condition may be extinguished as to one, and in Esso as to another.] As where Tenant for Life of a Rent acknowledged a Statute, and by releasing to the Tertenant, the Statute is forfeited, it was held that the Rent as to the Conuee was in Esso, per Coke and 2 other Justices. 4 Le. C. B. in Duncomb's Cafe, and seems to be S.C.


32. Covenant to levy a Fine to the Use of himself and Wife for Life, and afterwards made a Lease of the Lands for 21 Years, rending Rent every Half Year, and after the Death of J. S. to pay a Fine of 125 l. by 5 l. per Ann. quarterly: Proofs, that if the Rent or Fine is not paid, it shall be lawful for the Lessor to re-enter. Afterwards he levied a Fine, and then assigned over the Reversion. It was objected that the Condition, as it respects the Fine of 125 l. is a Condition in Gross, and not incident to the Reversion, and so not transferred by the Assignment, but that the Condition as to the Rent is transferred; But Roll Ch. J. said that a Man cannot by his own Act divide a Condition which goes in Destruction of an Estate, and by assigning over the Reversion the whole Condition is gone; and this is not within the Statute of 32 H. 8. to which all the Justices agreed. Sty. 316. Hill. 1651. Dekins v. Latham.
33. Where the Condition runs with the Rent, if the Rent is gone the Condition is gone. See Tit. Reservation [N] pl. 6. and the Notes there.

(G. d. 2) What shall be a Suspension.

1. Tenant in Tail made a Feoffment in Fee, and retook Estate in Fee, and after was bound in a Statute-Merchant, and then made a Feoffment in Fee upon Condition, and died; the issue in Tail within Age enters for the Condition broken, and was remitted by his Nonage. Per Keble, the Execution of the Statute was stayed against the Father of the Issue in Life, which Execution is not yet incurred, therefore the Condition was and is suspended during the Execution; for he who may make a Condition may suspend or discharge it, and this is as a Grant to discharge the Land of the Condition during this Time by the Equity of the Statute of Annuity 1 R. 3. For the Father might have released the Condition, or if he had taken a Leafe for Years after, and had granted it over there, during this Leafe, the Condition had been suspended. But Rede contra. But Brook says, it seems, the Law is with Keble, and not denied but that a Condition may be suspended. Br. Conditions, pl. 134. cites 8 H. 7, 7.

2. In Trespass. Tenant in Tail discontinues upon Condition, and after is bound in a Statute-Merchant, and the Commiss has Execution; the Tenant in Tail dies; the Condition was performed in the Life of the Feoffor. The Issue in Tail may enter, and the Condition is not suspended by the Execution, per Brian Ch. J. and his Companions; but Brook says quod mirum! because it seems that the Execution suspends the Condition, and also the Tail is discontinued; and then if the Heir does not recover by Formedon, or otherwise be remitted, the Heir cannot enter. Br. Conditions, pl. 229. cites 11 H. 7, 7.

3. By Extent on a Recognizance of the Moiety of the Rent and Reversion a Condition of Re-entry is suspended; cited by Mead to be the Opinion of the Court 6 Eliz. 4 Le 28.

4. A. makes a Leafe to a Man and a Feme folio, rendering Rent with Clause of Re-entry, and afterwards the Leffer enters with the Feme, the Condition is suspended. Per Mead 4 Le. 28.

5. When a Condition is suspended in Part, it is suspended in all. A. leaves for Years on Condition, and afterwards Leffer confirms his Estate in Part of the Land for Life, the Condition is gone. Per Harper, 4 Le. 29, 30.

6. Lease was made of Land, Part Borough English and Part at Communion. Leafe by Licence of the Lord, upon Condition, that if &c. afterwards Reversion of Part descends to the eldest, and of the other Part to the youngest Son. Per 2 Justices the Law which has severed the Reversion has severed also the Condition; and where one purchased the Part of the other, he shall have Advantage for the latter Part of the Condition as Heir and the other as Affignee. Mo. 113. pl. 254. Pach. 29 Eliz.
7. A. makes Leafe to B. rendering Rent upon Condition to pay a Fine on a Day certain. B. renegotises this Land to A. before or after the Day of Payment of the Fine, this is no Suspension of the Condition because it is Collateral, but if the Condition had been to pay the Fine annually the Redemise would suspend the whole Condition, because in such Case it is entire. Jenk. 254. pl. 46.

8. Mortgages demifes the Land to the Mortgageor for Years. This Demife does not suspend the Condition; for the Payment of the Mortgage-Money does not arise from the Profits of the Land, and it is a Condition Collateral. Jenk. 254. pl. 46.

9. A. Leases to B. 2 Acres for 20 Years, rendering Rent with Condition of Re-entry: Leafe leased 1 Acre for 10 Years, and afterwards granted the Reversion in the 20 Years in the said one Acre to Leffor, it was held to be no present Suspension of the said Condition, because there was not any Possession. 3 Le. 221. pl. 295, Palfch. 30 Eliz. in Can. Scacc. Brightman's Case.

10. Leafe with Condition to re-enter for not repairing &c. The Leffor, with the Consent of the Leeree, builds a new Barn on Part of the Land, and the Leffe takes a new Leafe of the new Barn. By the new Leafe the Condition is suspended; for it cannot be apportioned, and the new Leafe is a Surrender for that Part. Noy 126. Culcove v. Sharp.

11. If A. lets to B. for 10 Years, and B. renegotises to A. for six Years The Condition to commence in future, in the mean time this works no Suspension either of Rent or Condition; Per Car. Vent. 91. Trin. 22 Car. 2. B. R. in the Case of Lion v. Carew.

12. A. Debe, the Defendant was bound to the Plaintiff in 100 l. to make his eldest Son marry the Daughter of the Plaintiff, and that if he dies before carnal Copulation, he shall make his second Son marry the same Daughter within a Year, if the Law of the Church will permit it; and after the eldest Son married her and died before carnal Copulation, and the Plaintiff obtained a Licence, and required the Defendant to make the second Son marry with the Daughter within the Year, and he refused, and the Plaintiff sued the Obligation; and they demur &c. For it was agreed there, that at the Time &c. of the making of the Obligation, it was not lawful that the younger Brother should marry her who was the Feme of his elder Brother; and therefore Quaere if the Obligation, which was discharged before by the Licence, in as much as the Law of the Church would not permit it, may revive by the Licence obtained after, and to be forfeited now where it was discharged before; For the second Marriage was not permissible by the Law, but by the Licence obtained after; For the giving of the Licence proves that the Law would not fulfill it, for the Licence is a Dispensation with the Law; and therefore it feems that the Obligation is not forfeited. Br. Conditions, pl. 194. cites 12 H. 8. 5.

(G. d 3) Revived in what Cases.
Condition.

(H. d) In what Cases, after Refusal, he shall say Uncore Prift.

* 9 Rep. 79 a. —
And it is a Charge to the Obligee to keep it: and says, that fo it was held in 28 H. 8. in C. B. as Carell has reported. Ibid. 79 a. b. — Co. Litt. 207 a. 2 S. P. accordingly.
† D. 24. b. 21. a. pl. 154. Hill. 28 H. 8. cites Trin. 12 H. 8. A. 442. Brickhead v. Wilton S. P. adjudged for the Plaintiff; for that the Defendant should have pleaded that he was Uncore prift to deliver the 10 Quarters.

S. P. because

2. A Man bound in a Statute, Recognizance, or Obligation, declined for a lesser Sum; the Obligee retained at the Day, it is gone for ever.

Co. 9. Petyoe 71. b.

5. In Debt upon Obligation upon Condition, that if the Defendant, by and within the Feast of St. Bartholomew, or before the Feast, deliver 40 Cloths to the Plaintiff, the Plaintiff paying to him 10l. for every Cloth immediately, that then &c. and that in the Vigil of the Feast, the Defendant came to the Plaintiff's House, and there was ready to have delivered &c. and the Plaintiff, nor any for him, were not ready to pay him; Per Choke, you ought to say that you were there all the Day, and the Plaintiff, nor any other was ready to receive it, and that he is yet ready, which all the Jurisdictions, by which he said accordingly. Br. Conditions, pl. 174. cites 21 E. 4. 52.

4. In Debt upon Obligation, the Defendant pleaded that the Plaintiff by Deed intended betwixt them Covenanted that the Defendant paid him 50l. at Mich. The Obligation should bevoid, as which Day he tendered the Money, and the Plaintiff refused it; the Court held the Plead good without paying uncure prift; for the Indemnity of the Plaintiff is a Collateral Covenant, and not Parcel of the Obligation, as the Condition indorsed is; Per Dyer, Mo. 36. 37. pl. 119. Trin. 4 Eliz.

This is to be understood that he that ought to tender the Money is discharged for ever to make any other Tender; but if it were a Duty before, though the Feoff be entered by Force of the Condition, yet the Debt or Duty remained; As if A. borrows 100l. of B. and after mortgages the Land to B. upon Condition for Payment thereof; if A. tenders the Money to B. and he refuseth it, A. may enter into the Land, and the Land is freed for ever of the Condition, but yet the Debt remaineth, and may be recovered by Action of Debt. But if A. without any Loan, Debt or Duty preceding, infopt B. of Land upon Condition for the Payment of 100l to B. in Nature of a Gratuity or Gift, in that Case if he tenders the 100l to him according to the Condition, and he refuseth it, B hath no Remedy therefore; and so is our Author in this and his other Cases of like Nature to be understood. Co. Litt. 209 a. b.

(I. d)
(I. d) *What Things will destroy a Condition;* and what not.

**Acts by the Referor.**

1. *D.* 14. Eliz. 309. 75. agreed per Curiam that by the Grant of *D.* 308. b. the Reversions of Part of the Lands upon a Lease for Years, *509. a. W. W. Winter's* Cafe. the Condition is so founded, because it is penal, and therefore cannot be divided; and he must destroy his own Grant if the Condition shall remain, although this Condition was referred upon several Rents. *Co. 5.*

† Knight 55 b. resolved.


B. R. Anon. S. P.

2. *Co. 5. Knight 55 b. resolved, that* the King grants Part of the Reversion, His Patentee shall not take Advantage of the Condition, *but the King by his Prerogative may, because it remains in him.*

that the Condition was gone, but by Anderson and Rhodes e content, and at the length the Cause was ended by Agreement. — And. 174. pl. 211. S. C. & S. P. argued. — Gouldsb. 15. pl. 14. S. C. — 2 Le. 124. pl. 178. S. C. — Co. Litt. 215. a. S. P. that in the King's Cafe the Condition is not destroyed.

3. If a Man leaves for Life upon Condition, the Remainder over, the Condition is destroyed, because otherwise he shall destroy the Remainder which he hath created.

4. So if a Man devises for Life upon Condition, the Remainder to *See (P. d) pl. 2. & 9.* and the Notes there.

5. If a Man leaves for Years upon Condition, and after leaves for Years by Indenture to another, to commence presently, this second Lease hath not given away the Condition, for it is but by Entoppel between the Parties. *Patch. 41 Eliz. 2. R. per Curiam.*

6. If a Man inforces his upon Condition to pay him *101. such a Day, or to re-enter, and I lease the Land to him renting Rent,* and at the Day I do not pay the 101. now he shall retain the Land, and the Rent referred by me is extinct; per *Brian Ch. J. Br. Conditions, pl. 167. cites 20 E.*

4. 18. 19.

7. But if a Man makes a Feoffment in Fee, rendering Rent, with Clause of Re-entry for Non-payment, and the Feoffee re-infos the Feoffor, the Feoffor cannot re-enter for Non-payment of the Rent, because he himself has the Land out of which the Rent is sluing; but that otherwise it is of a Sum in Gros as above; per *Brian Ch. J. Br. Conditions, pl. 167. cites 20 E.*

8. And the Law seems to be the same of a Lease made after by the Feoffee to the Feoffor for Years or Life, for hereby the Rent is suspended. Ibid. per Brooke.

9. In Debt, the Master and Brothers of St Bartholomew of London had granted to J. S. for his Life such *Corody &c. faciendo taka servitia as Co. Litt. 215. a. S. P.*
N. and others did, and the Grantee leased to the Master and Brothers for 7 Years, rendering 10 l. Rent; The Grantee brought Debt, and the Grantor said that the Plaintiff has not done the Services; and the Plaintiff said that he is excused by Reason of the Lease to the Grantor, which is a Sufferance, by which it was awarded that the Plaintiff shall lose his Rent and the Corody. Br. Conditions, pl. 167. cites 22 E. 4. 17.

10. If a Man mortgages his Land upon Defeasance of Re-payment to re-enter, and the Bargain to be void, and the Vendee gives his Land to the Vendor for 10 Years by Indenture of Defeasance, and further grants to him that if he pays 100 l. within the said Term of 10 Years, that then the Sale shall be void &c. and the Leafe surrenders the Term, yet the Tender of the 1000 l. within the 10 Years is good, because the 10 Years is certain so the Leafe is surrendrer'd or forfeited; and e contra if it was to repay within the Term aforesaid, without these Words (10 Years). For in the one Cafe the Term, viz. the Leafe is a Limitation of the Payment, and in the other Cafe the 10 Years. Note a Divinity. Br. Conditions, pl. 223. cites 3H. 8.

11. Leafe for Life reserving Rent, and for Default a Re-entry. The Remainder over in Tad; this Remainder does not destroy the Condition, because it was made all at one Time. But when Condition is once annexed to a particular Estate, and after by other Deed the Reversion is granted by the Maker of the Condition, now the Condition is gone. D. 127. pl. 53. Hill. 2 & 3. P. & M. in Cafe of Warren v. Lee.

12. A. leases a House and Lands to B. and takes back a Leafe of Part, and after Part of the Rent is behind, and A. enters into B.'s Part for the Condition broken. Adjudg'd that the Condition is gone and void by A.'s taking a Leafe back of Part, because a Condition is special and entire, and not to be severed. Owen 41. Hill. 26 Eliz. Britman v. Staniford.

A Condition must be exact where Part of the Thing demised comes to the Leffer, because it is annexed to such a Rent in Quantity; for if the Rent be diminished the Condition must fall. per Hale Ch. J. Vent 273. Mich. 27 Car. 2. B. R. in Cafe of Hodgkins v. Robson and Thornborough.

The Cafe was, viz. A Conveynder made a Leafe for 16 Years, rendering 20 l. Rent. Leffer made a Leafe of Part of the Land for 10 Years without any Rent. The last Leffer assigned his Term to the first Leffer. All the Court agreed that the first Leffer shall have all the Rent against the Leffer, and he nothing against his Under-Leffe, because he referred nothing, nor shall the Under-Leffe have any Thing against the first Leffer for the same Reason. 2 Lev. 143, 144. Trin. 27 Car. 2. B. R. Hodgson v. Thornborough.

13. A. gave Land upon Condition to B. and afterwards A. by Fine released to B. all his Right, yet the Condition remains. 2 And. 84. Mich. 39 & 40 Eliz. cites the Cafe of Denham v. Dormer.

14. A Leafe was made for Years upon Condition to be performed by the Leffer, and before the Time of Performance the Leffer leaves it to a Stranger for Years, and then performs the Condition. It was objected that by making this 2d Leafe the Condition was dispensed with; but all the Court e contra; for the Eloppling is only between the Leffer and the 2d Leffe, and adjudg'd that the Leffer's Entry was lawful. And Coke Att. Gen. being in Court said it was a clear Cafe. Cro. E. 665. pl. 16. Patch. 41 Eliz. Ferrers v. Burrough.

15. But if one makes a Feoffment on Condition, and afterwards levies a Fine to a Stranger, the Condition is gone. Cro. E. 665. pl. 16. Patch.

41 Eliz. in Cafe of Ferrers v. Borough.

16. Leafe for Years rendering Rent with Clause of Re-entry, Leffe assigned all his Term in one Part to one, and in another Part to another, and kept a Part to himself; Leffer leased a Fine of the Receipt of the Whole to Rent is Arrear. The firstLeffe paid all the Rent. The Rent is Arrear again. The Assignee of the Leffer demands the Rent and enters. Per tot. Cur. his Entry is lawful; for the Leffe by the Appor-
Condition.

if the Leffor grants the Reversion of Part, all the Condition is destroyed, and the Acceptance of the Rent is not Material. 2 Roll. Rep. 332.

Trin. 21 Jac. B. R. Anon.

of the Leffe himself and to no colour to destroy the Condition. —— Palm. 582. S. P. on a Leaf made by Fitz Williams, and seems to be S. C. and for Non-payment the Grantee entered into the Whole and held lawful; for the Law by Apportionment of the Land cannot destroy the Condition, as Leffe may by Grant of Part of the Reversion, and Chamberlain J. said it had been so adjudged before in this Court.

(K. d) [Destroyed or suspended by] Acts in Laws.

1. D. 14 Eliz. 309. 75. Per Curiam, if the Reversion of a Leaf D. 328. b. for Years be forever in any Part, the entire Condition removed upon the Leaf for Years shall not be destroyed, if the Securit Yance be by Dilect, Eviction, or Act of the Law; otherwise by the Act of the Party.

2. If a Man makes a Feoffment to the Use of himself for Life, the Mo. 58 pl. Remainder to another 92. with Power of Revocation, and after makes a Leaf for Years; he cannot after revoke during the Leaf. Part. 3 Jac. between Yeald and Fattis, Per Curtiani, agreed.

3. But after the Leaf expired he may revoke. Dubitatur, P. 3 Jac. B. between Yeald and Fattis.

Term; and that if one makes a Conveyance with Power to make Leaf, and with Power of Revocation, if he makes a Leaf he may revoke for the Residue; but he said the Doubt here is, where he has no Power to make Leafes and yet he makes one; the Court were divided in Opinion. —— Med. 314. pl. 15; Hale Ch. 4. cited 16 Car. Snape v. Sturt, that if there be a Power of Revocation and a Leaf for Years is made, it supersedes Quoad the Term, but after it is good. —— See Tit. Powers, (A. 16) (D) & (E).

4. Leaf for Years, Proviso, that the Leafee his Executors or Assigns, shall not alien nor grant over the Term without Licence of the Leafor, but only to one of the Children of the Leafee; The Leafee died, and his Executor granted the Term to one of his Sons. Brooke, Browne and Dyer held that by the Grant to one of the Sons the Reversion was not determined, and that the Son could not grant over to a Stranger without Licence; but Stamford and Catline contra. The Reporter adds, Sec quoque hoc, and also quære if this be a Condition or only a Covenant; for it was not agreed as to that Point among the Justices. D. 152. a. pl. 7. Mich. 4 & 5. B. & M. Anon.

5. Leaf for 100 Years leafes for 20 Years with Clause for Re-entry. The first Leffor grants the Reverlion in Fee, and Attornment was had accordingly; Grantee purchase the Reverlion of the Term, he shall neither have the Rent nor Re-entry; for the Reverlion of the Term, to which it was incident, is extinct in the Reverlion in Fee. Mo. 94. pl. 232. Patch 12 Eliz. Ld. Treasurer v. Barton.

6. Condition was that all Afferences shall be to the Use of the Indor. Jenk. 242. ture; this Condition is not extinguished by a Fine; but without such pl. 24. S. C. Agreement Condition should be extinct by Fine, or Feoffment, or by general Entry into a Warrany, or by being Reversed generally. Mo. concurring. 160. pl 105. Mich. 17 & 18 Eliz. Andrew's Cade.

(7) A.
Jen. 213. 7. A. infeoffed B. on Condition to convey it to A. for Life, Remainder to A.'s eldest Son in Fee; A. takes the Profits, and leaves the Land to C. for Years by Indenture, and yet continues the Possession; Resolved, that A.'s taking the Profits, and making a Lease for Years, was a Defeat to B., and suspended the Condition during the Term. 2 Rep. 59. b. Mich. 40 & 41 Eliz. B. R. the 2d. Resolution in Winning- nington's Case.

8. A Term for Years granted his Term to J. S. upon Condition, that if the Grantee did not Yearly pay to R. 10 l. that the Grant should be void, and after the Grantor made the Grantee Executor and died. Per Popham and Gawdy, the Condition is extinguished, but Clench and Fenner, c. contra. Goldsb. 181. pl. 117. Hill. 43 Eliz. Turball v. Smotce.

9. A Condition is annexed to 2 Acres, 1 Acre is vested by an Eign Title, the Condition is gone. Per Haughton J. 3 Bulk. 60. Trin. 13 Jac.

(L. d) Into what Thing the Entry may be for the Condition broke.

1. If a Man leaves two Mills upon Condition that if the Leesee leaves them, or affigns either of them to another, it shall be lawful to him to re-enter; if he leaves one, the Leesor may enter into both, for the Condition goes to both. 33 Eliz. 3. 34.

Le 292. pl. 400. Anon. S. C. States it that one of the Daughters levied a Fine on Con- sary de Droit Come coe &c. Clench J. said that the Words are (or any of his Heirs) and therefore it is a Forfeiture, quod sit conscuum Per rot. Cur. And Judgement accordingly.

3. A Lease was made to 2 for Years upon Condition that they, nor either of them, shall alien any Part of the Land, without Affent of the Leesor: they make Partition, and one alieneth his Part, this is a Forfeiture of the Whole. Cro. E. 163. pl. 2. Mich. 31 and 32 Eliz. C. B. Goldwick's Case.

(M. d) At what Time he may enter for the Condition broke or performed.

Cro. C. 273. 1. If A. make a Feoffment of the Land to J. S. in Fee upon Con- dition that it pays 10 l. to J. S. the first of May, 6 Car. that it shall be lawful for him to re-enter, and after he pays the 10 l. before the Day, relecit, the first of April, and J. S. accepts it; though this is a good Performance of the Condition, inasmuch as Pay- ment before the Day is Payment at the Day, yet A. cannot re-enter and revolt his old Edile by Force of the Condition till the first of May,
May, because the Condition does not give him Power to re-enter till the full Day. Ditch. 8 Car. B. R. between Burgoyne and Sporing, held by Barkly, in the Case of a Surrender of a Copp-hold.

3. In Alliffe the Jury laid, that A. failed to B. upon Condition, that if A. or his Heirs pay to B. or his Heirs $10 l. within a certain Time, that he shall re-enter, and if he does not pay within the Time, and B. pays him $10 l. within another Term after, that then B. shall have Fee, and A. nor B. does not pay, and A. re-enters, and after that both Days were past B. quit him, and A. brought Alliffe, and took nothing by his Writ, because it seems that B. has Franktenement for his Life by the first Library for A. cannot re-enter, because he did not pay, and B. cannot have Fee because he did not pay. Br. Conditions, pl. 102. cites 12 All. 5. 

3. In Alliffe a Feme was seised, and inffeofed a Man, who had a Feme, Br. Conditions upon Condition that he should marry her. The Feoffor inffeofed A. who inffeofed B. who inffeofed C. who inffeofed D. The first Feoffor died; The 2d, 3d, and 4th S. C. and a Feoffment entered upon D. 16 Years after, and the Entry good, for it is admitted a good Condition; For though the Feoffor cannot marry at the Time of the Feoffment, yet it may be that his Feme shall die, and then he might have married the Feofferees, and therefore a good Condition, and the Entry lawful. Br. Conditions, pl. 119. cites 40 All. 13. 

4. Note, by three Justices, that if a Man covenants with C. that certain Receivers shall suffer him to take the Profits of such Land till J. satisfy him of 100 l. There C. shall take the Profits till J. pay him 100 l. and the Profits shall not be taken as Parcel of the 100 l. Contra Shelley, but he did not perlit strongly in his Opinion. Br. Exploitation, pl. 1. cites 27. H. 8. 5. 

5. The Condition of a Feoffment was to pay 20 l. at Michaelmas, and so every Year, and after such Default the Feoffment to be void. Ruled by the Judge, that it is uncertain in this Case when Re-entry shall be made. Clavt. 86. pl. 145. Summer Allifies, 16 Car. before Fofter J. Fall's Cafe.

(N. d) **Who may enter for the Condition broke.**

1. If a Feoffment be made upon Condition to inffeof a Stranger, and the Feoffor does not perform it, the Stranger cannot enter, for the Breach of it, because he is a Stranger to the Condition. 21 C. 4. 56.

Feoffor, and the Feoffee offers to him, and he refuses, there the Feoffor cannot re-enter; for there is Default in him. Contra in the other Case; there is not any Default in the Feoffor when the Stranger refused. Per Newton and Patton J. and Fulthorpe J. accordingly, and so 3 Justices in one Opinion, and none to the contrary but Force (orce), Serjeant; Quod Nota. Br. Conditions, pl. 55. cites 19 H. 6. 34.

So if a Man inffeof J. S. upon Condition that if J. S. do not pay 10 l. yearly to a Stranger, that then the Stranger may re-enter, and it is by Deed indented, and after J. S. does not pay the Stranger, there the Feoffor may enter, but not the Stranger; Quod Nota. Br. Conditions, pl. 209. cites Doe. & Stud. 2. fol. 73. 34.

2. But in this Case the Feoffor himself may enter for the Condition broke. 21 C. 4. 56.

the Intent of the Feoffor that the Feoffee should retain the Land. Br. Conditions, pl. 55. cites 19 H. 6. 67. 73. 75. 76.

4 K. 3. De
3. He in Remainder cannot enter for a Condition broke by the particular Estate. 29 Att. 17.

The Alienation was by
Liber of the King,
and the Condition was to
then 80 a. b. cites S. C. and the Reporter adds his Opinions upon it.—Tenant of the King
infeuded A to re-inform him or his Heirs, and died before Re-informent, his Heir being within Age,
and this was found by Office, whereupon the King failed for the Condition. Br. Conditions, pl. 229,
cites 42 Att. 6.

5. If the King's Tenant aliens upon Condition, and dies, his Heir within Age, the King may enter in the Right of the Peer for the Condition broke. 17 Att. 20.

6. If a Man leaves for Years, upon Condition if the Rent be arrear that the Lease shall cease, and then grants over the Reversion, and after the Condition is broke, the Grantee of the Reversion may enter into the Land, for the Lease is determined before Entry by the Condition of the Grantor. H. 41 El. B.R. between Darby and Mathews.

MAY III. pl. 694. Darby

Mathews and Binfield, S. C. but states it, that A, failed for Life of his Wife made a Lease of a Mill to B. the Defendant in Ejectment for 17 Years, calle afterwards affirmed the same to C. for 14 Years, rendering yearly 3 Bushels of Malt, and 1 Bushel of Wheat every Saturday, and if any Part thereof should not be paid the Lease should cease, B. entered and was possessed, and C being possessed of the Reversion by Deed-Poll, granted all his Reversion &c. to D. to whose behalf &c. D. demanded the Rent, and for Non-payment entered. Clench, Gawdy, and Fenner (abente Popham) agreed, that by the Common Law the Allignee de toto Statu shall take Advantage of the Tenant of the Term in Life, and make Demand of the Rent, if the Grant de toto Statu be by Writing and Appoiment had, and vouch'd it. H. 7, and Smith v. Stapleton, in Plaueen. And they all, (abente Popham) agreed, that by the Statute 52 H. 8, the Grantee of the Reversion of the Term shall have Benefit of the Condition annexed to the leffer Term derived out of the Griffin Term, and this by reason of the Words in the Statute, viz. that the Grantee, their Executors &c. and therefore it was adjudged for the Plaintiff. —Cro. E. 629 pl. 42. Darby v. Mathews, S. C. and Clench and Fenner held, that in this Case the Grantee shall take Advantage by the Common Law; for the Eiufalle shall cease without Entry, because § beginning by Pardon it may to determine; but it he cannot by the Common Law, he may clearly by the statute, for by that Lease made the Leifor has the Reversion, and the Grantee has that Reversion and Rent, and is within the Issue of the statute 52 H. 8. for he has the entire Reversion, and Gawdy was of the same Opinion as to his being within the Statute, but he doubted whether he might by the Common Law; wherefore, Popham abente, it was adjudged for the Plaintiff. —But in this Case, if the Lease had been for Life upon such Condition, the Grantee shall not take Advantage of the Breach of the Condition, for this is but avoidable by Entry after the Condition broken, which cannot be by the Common Law transfer'd to a Stranger. S Rep. 95. b. Trin. 7 Jac per Cur. in Manning's Cafe. —10 Rep. 48. b. S. P.

†[Quare what this Means.]

7. Aliens; Feme Tenant in Tail after Possibility of Issue extinct, the Reversion to R. in Fee, takes Baron; the Baron and Feme alien to him in Reversion, rendering Rent for Life of the Baron by Deed intented, with Clause of Re-entry for Non-payment within 8 Days. The Alien extinct over. The Rent [was] arrear. The Baron and Feme entered for the Rent arrear, and the Entry adjudged lawful because of the Rent arrear, and not because of the Alienation of the Alien; and it cannot be adjudged a Surrender, because it was made by the Baron for his Life, and the Feme may forgive him, and it cannot be adjudged Alienation to the Dilinherence &c. for it was made by Affent of him in Reversion, and it is not a Discontinuance, because it is made to him in Reversion. Br. Conditions, pl. 112. cites 29 Att. 64.
Condition.

8. Baron seised in Deed Usoris infeessed J. S. upon Condition to lease to
him and his Feme for Term of Life, the Remainder over in Tail, the Re-
mainder in Fee to the right Heirs of the Baron. The Baron dies. J. S. S. C. for
by the Re-entry of the Feme, Remainder in Tail, Remainder to the right Heirs
of the Feme. The Heir esew'd for the Condition broken, and the Feme the
Dissentance is purged, and thereby gives

Br. Conditions, pl. 71. cites 4 H. 6. 2. 3.


9. S. C. and when the Heir has entered for the Condition broken his Estate vanishes, and the E-
state is presently vested in the Wife. — Ibid. 256. b. S.P.

10. If A. infeessed B. upon Condition to re-infeess him in Fee, and A.
dies, yet B. ought to infeess the Heir of A. and if B. had tendered Foot-
ment to A. and he refuted, and died, yet the Heir of A. shall make Re-
quest, and shall have the Land; Quere inde, where no Time is limited.

Br. Conditions, pl. 55. cites 19 H. 6. 67. 73. 75.

11. If a Man leases Land for Term of Years upon Condition that if
there is a

Diversity between a

Feeshold, or to a Lease

in Tail, or a

Gift

Lease for Life upon Condition, that if the Donor &c. goes not to Rome before such a Day, the Gift &c. shall cease or be void, the Grantee of the Reversion shall never take Advantage of the Condi-
tion, because the Estate cannot cease before an Entry. Co. Litt. 214. b.

But if the Lease had been for Years the Grantee should have taken Advantage of the like Con-
dition, because the Lease for Years, 160 years, by the Branch of the Condition without any Entry was
void; for a Lease for Years may begin without Ceremony, and so may end without Ceremony; But an
Estate of Freehold cannot begin nor end without Ceremony, and of a

Entry an Erranger may take Benefit, but not of a

Gift by

Entry. Co. Litt. 214. b.—S. C. cited Le. 61. in pl. 79.

12. Pot a Thing void Purchaser may take Advantage, and the fame

of Lease for Term of Life. But Brook lays Quere inde; for, per

Bromley Ch. J. 2 M. it is not void till an Entry. Ibid.

13. A Man gave in Fee upon Condition that if the Donee die without
Ifis, or be, or his success, then that his Estate shall cease and the
Land shall remain to a Stranger; the Donee aliened in Fee, and had Hife
and died, and it was held a good Condition as to the Donor, if he had
reserved the Entry to himfelf, but it is not good to make the Stranger
have the Remainder; for Rent, Re-entry, Condition nor Remainder
cannot be reserved nor appointed to a Stranger quod nona, and so, per
Frowvicke, the Condition in the principal Cafe cannot make the Land to
remain to a Stranger, quod Vavaro concedit, and this by three Justices.

Br. Conditions, pl. 83. cites 21 H. 7. 11.

14. The Prior of Saint John's in Jerusalem in England leased for Years
the Commandry of Babyl to Indenture to Martin Deckney, Provoce,
that if the said Prior, or any of his Brothers there being Commanders, would
be in an undue Place to the said M. D. and his Assigns obliges themselfes by
the same Indenture, upon a Year's Warning, to remove or give Place to the
said Prior Commander; And after the Prior died, and one who was Brother
at the Time of the Denys was made Prior, and was also Commander, by
which he gave Warning by a Year, and M. D. would not avoid, and
the Prior entered, and it was in Question whether the Prior may be Com-
mander also or not, and if a Man may give Place to a dead Person as the
Brothers were? But this was not much weighed &c. But the Question
were, Whether the Words above were a Condition, and if it be a Con-
dition whether they extend to the Successor, because no Successor was
mentioned in the Indenture? and by the Belt Opinion it does not extend to the
Successor if the be a Condition, because the Indenture spoke only of the
Prior
Condition.

Prior and not of the Successors. And, per Audley Chancellor, this Word (Habitation) in the Condition gos to the Petition of the Prior only who is now dead. Br. Conditions, pl. 7, cites H. 8. 14. 15.

15. No Manner of Persons shall take Advantage of Conditions Executory if they be not Parties or Privies; for Privies in Estates shall not take Advantage of Conditions Executory &c. Perk. S. 830.

16. If a Man feid of Land leaves it for Life upon Condition that the Lefsee shall pay 20s. at a Day certain, the Remarque unto J. S. in Fee, J. S. shall not take Advantage of this Condition by way of Entry, and yet he is privy in Estate; for both their Estates were made at one and the same Time &c. Perk. S. 831.

17. Nor Privies on foot shall not take Advantage of Conditions Executory; and therefore, if a Man feid of Land leaves it for Life upon Condition &c. and afterwards grants the Reversion unto a Stranger in Fee, and the Lefsee attorns, yet the Grantee shall not take Advantage of this Condition by way of Entry, notwithstanding he be privy on foot, because he has the Reversion by Grant &c. Perk. S. 831.

18. Nor Privies in Law shall not take Advantage of Conditions Executory, and therefore, if there be Lord or Tenant, and the Tenant doth leave the Tenancy for Life unto a Stranger upon Condition, and afterwards the Tenant dies without Hend, and the Reversion escheats to the Lord, the Lord shall not take Advantage of the Condition by way of Entry; and the Lord in this Case is said privy in Law, because he has his Estate in the Reversion by the Law only, viz. by Execut. Perk. S. 831, 832.

S. P. that the Lord by Execut. shall not enter for Breach of Condition, because he is not Heir to the Lefsee; but if any Rent becomes in Arrear he may disrain. Litt. S. 533.

19. But Privies in Right shall take Advantage of Conditions Executory &c. and therefore, if Lefsee for Years be of Land, and he grants to his Estates unto a Stranger upon Condition &c. and maketh his Executors and assignees, in this Case his Executors and assignees shall take Advantage of this Condition, by way of Entry, for they are Privies in Right; for if the Condition be broken, and they do enter into the Land &c. they shall have the fame Right in Right of the Testator &c. Perk. S. 832, 833.

20. If a Man, feid of Land for the Term of 20 Years in Right of his Wife, leaves it to a Stranger for 10 Years rendring Rent &c. and for Default of Payment to re-enter; the Husband dies and then the Rent is behind. I conceive that the Wife shall have the Rent, and not the Executor, because the Rent was to the Husband by way of Reservation, and the Wife has the Remainder of the Term; but though the Wife have the Rent, yet she shall not enter for the Condition broken; Caufa perit &c. Perk. S. 834.

Baron disseizes the Right of the Feme, upon Condition, that after his Death his Heirs shall enter into the Land by Reason of the Condition broken, now the Feme shall enter; Per Fineus J. Kelw. 64. b.

So if a Bishop, Archbishop, Prebendary, Parson, or any other Body Politick or Corporate, Ecclesiastical or Temporal, make a Lease &c. upon Condition his Successor may enter for the Condition broken; for they are privy in Right. Co. Litt. 218. b. —— M. 52. pl. 152. Patch. 5. Bizz. Est's Cafe, S. P. at an Entry for a Condition in Deed broken; but otherwise of a Condition in Law as Wille, Porture &c. And. 9. pl. 19. Anon. S. C. but S. P. does not appear. —— D. 231. b. at 20. Ayer v. Orme, S. C. and was upon a Lease made by the Archbishop of York, and confirmed by the Dean and Chapter, in which the Rent was referred to the Archbishop and his Successor, provided that in Time of Vacancy of the Archbishoprick the Rent shall be paid pro Rata of the Vacancy.
22. And Privies in Blood as the Heir of the Feoffor &c. shall take Ad. in Tref-
pas of breaking
his
Clefe the Defendant pleaded, that his father, whole Heir he is, intailed the Plaintiff upon Condition to re-inherit him when required, and did not name his Heir in the Condition; but the Heir showed that he required the Plaintiff to re-inherit him after the Death of his Father, and because he would not, he re-entered; and the Plea held good notwithstanding the Heir was not named in the Condition. 
Kelw. 177 pl. 115 Catus certifi Temporis cites Mich. 7 H 6. —Co. Litt. 219 a. the Heir may enter. 

23. Devise of Lands to A. on Condition to pay a certain Debt, and if
A. fails Payment, then to B. and his Heirs for ever on Condition that he shall pay the Debt &c. Devisor dies. A. the Executor doth not pay the Debt. B. dies. The Money is demanded of his Executor [who does not pay it.] Quere, If the Heir of B. may enter to perform the Condition or not. J. 128. pl. 59. Hill. 2 and 3 P. & M. Willford v. Wilford.

24. Bailiff cannot by his Office enter for Condition broken without special Warrant. No. 52. pl. 152. Patch. 5 Eliz. per Cur. agreed. 
Eiris's Case.

25. A Feoffment is upon Condition that the Feoffee shall give the Land in Ifl infed of
Till to a Stranger, who refuses the Gift, there the Feoffor may re-enter; one on Con-
dition to in-
foof J. S.

26. But a Feoffment upon Condition to infed of a Stranger, or to grant a Rent-charge, if the Stranger refuses, there the Feoffor shall not re-enter; now the
Feoffor shall be permitted to
for his Intent was not, that the Land should revert &c. Per Dyer, 2 Le.
222. pl. 281. Patch. 16 Eliz. C. B.

give in Till it would be contrary; held per Cur. And Harper J. said, that if a Feoffment in Fee be made to J. S. on Condition that he shall grant a Rent-charge to A. who refuses it, J. S. shall be feised to his own Use. Le. 266. pl. 154. 20 Eliz. C. B.—S. P. Arg. Le. 159. cites 2 E. 4. 2. & 19 H. 6. 34. 
—Co. Litt. 209 a. S. P. is to making a Gift in Till or granting a Rent charge; but contrast as to Condition to infed of a Stranger who refuses; for there he pays the Feoffor may re-enter, because by the exp-

cess Intent of the Condition the Feoffee should not have and retain any Benefit or Estate in the Land, but is as it were an Instrument to convey over the Land. —See (L.c.) pl. 4. 1. and the Notes there.

27. If a Feoffment of Lands in Borough English be made upon Condition, the Heir at Common Law shall take Advantage of it; agreed. But whether the younger should enter upon him Manwood put as another Question. Gotb. 3. pl. 3. Patch. 20 Eliz. C. B. Anon.

28. R. Caffy que Use after the Stat. 1 R. 3. and before the Statute 27
H. 8. devises the Use to his younger Son upon Condition. The Condi-
tion was broke. J. the eldest Son of R. entred. Adjudg'd for the Heir doubting, for J. the Heir; because the 27 H. 8. gives the Possession in the Plain-
Quality and in the Conditions with the Use, and likewise to Cefly que Use itch fihic. 
Stat. 76. 6. 155. 
S. C. ad-
judg'd that the
Entry 

29. Where the Words of a Condition are Quando Diminifho predita, and no Clause of Re-entry is referred, so that Privy is not requisite, Tenant in Dower shall take Advantage. Le. 61. pl. 79. 
Parch. 29 Eliz. C. B. Garnock v. Chl. 

30. No one can defeat an Eftate of Freehold by Condition, unless the Heir. 
And, 194. pl. 220. Trin. 29 Eliz. in Cale of Paine v. Samms. No one can take Ad-

vantag of 

a conditional Fee simple but the Donor &c. and not a third Person. 2 And. 22. 25.
Condition.

An Abbot leased Lands to 3 Men for 80 Years, and in the End of the said Lease was a Clause, that if they died within the said Terms, then the Lessee might enter. The Poffiffons of the Abbey came unto the King, who granted the Reversion to J. S. who made a new Lease thereof to J. D. for 21 Years to begin after the Expiration, Determination or Surrender of the former Lease. The 3 Lessees died within the Term, All the Justices held that J. D. could not enter before J. S. had entered; for it is in the Election of J. S. if he will take Advantage of the Condition, and defeat the Lessee, but that ought to be by Entry; and none can make such Entry but the Lessee himself, or by his express Direction &c. 3 Le. 269 pl. 363. Parch 33 Eliz. C. B. Anon.

A. having 5 Sons devises Land to B. the eldest and his Heirs, and 20 l. to every of his younger Sons to be paid by B. at their Ages of 21 Years. And if B. does not pay, then he devises the Land to the younger Sons and their Heirs. Adjudged that if the 20 l. be at the Time unpaid to any one of the younger Sons, though all the others are paid, yet the Estate by the Condition precedent shall go to all 4, and not to that one only. Mo. 644. pl. 891. Hill. 41 Eliz. R. R. Hainworth v. Pretty.

If a Man makes a Lease for Years upon Condition that the Lessee shall not go to Rome, or upon any other collateral Condition, with a Condition that the Lease shall be void, if the Lessee here grants over the Reversion, and after the Condition is broken, the Grantor shall take Benefit of it; but if a Lease for Life be made with such Condition, there the Grantor shall never take Advantage of it, but the Estate for Life doth not determine but by Re-entry; and Entry or Re-entry in no Cafe by the Common Law can be given to a Stranger. 3 Rep. 65. a. Tirn. 38 Eliz. B. R. in Pennant's Cafe.

A Condition or Limitation annexed to an Estate of Land ought to destroy the whole Estate to which it is annexed, and not Part of it, and cannot determine it in Part and continue it for the Remainder; per Cor. 1 Rep. 85. b. Parch. 42 Eliz. C. B. in Corbet's Cafe.

There is a Diversify between a Condition that requires a Re-entry and a Limitation that ipso Facto determines the Estate without any Entry. Of the first no Stranger shall take Advantage, but in case of a Limitation 'tis otherwise. Co. Litt. 214. b.

As if a Man makes a Lease Quo Vadis (that is to say) until I. S. come from Rome, the Lessee grants the Reversion over to a Stranger. J. S. comes from Rome; the Grantor shall take Advantage of it and enter, because the Estate by the express Limitation was determined. Co. Litt. 214. b.

If it is so, if a Man makes a Lease to a Woman Qua vadis efta visirer, or if a Man make a Lease for Life to a Widow, St. Iustinian in pursuance of the statute viseret. So 'tis if a Man makes a Lease for 100 Years if the Lessee live so long, the Lessee grants over the Reversion, the Lessee dies, the Grantee may enter. Co. Litt. 214. b.

Diversify between a Reversion of Rent and a Re-entry; for a Rent cannot be referred to the Heir of the Feoffor, but the Heir may take Advantage of a Condition which the Feoffor could never do. Co. Litt. 214. b.

As if I infeoff another, upon Condition that if my Heir pay to the Feoffe &c. 20 s. that be and his Heir shall re-enter; This Condition is good, and if after my Decease my Heir pays the 20 s. he shall re-enter. for he is privy in Blood, and enjoys the Land as Heir to me. Co. Litt. 214. b.

If Lessee for Years deniess or grants the same upon Condition &c. and dies, his Executors or Administrators may enter for the Condition broken; for they are privy in Right, and represent the Pertson of the Dead. Co. Litt. 214. b.

In
In the Cafe of a Lease for Years there is a Diversity where the Condition is that the Lease shall cease or be void, or that the Lessor shall re-enter. In this last Cafe the Grantee shall never take Benefit of the Condition. Co. Litt. 215. a.

It'sfily que Ufe had made a Lease for Years &c. the Feoffees should not enter for the Condition broken, for they are privy in Eftate, but not privy in Blood. Co. Litt. 215. a. in principio.

By Aét in Law a Condition may be apportion'd in the Cafe of a common Perfon; As if a Lease for Years be made of two Acres, one of the Nature of Borough English, the other at the Common Law, and the Lessor, having given two Sons, dies, each of them shall enter for the Condition broken; and likewise a Condition shall be apportion'd by the Aét, and wrong of the Feoffee. Co. Litt. 215. a.

Guardian in Chivry, or in Savages, in the Right of the Heir, shall by the Common Law take Benefit of a Condition by Entry or Re-entry. Co. Litt. 215 b.

No Entry nor Re-entry may be reserved or given to any Perfon, but only to the Feoffor, or Donor, or Lessor, or to their Heirs, and cannot be given to a Stranger; for if a Man leaves Land for Life by Indenture, rending Rent to the Lessor and his Heirs, with a Clause of Re-entry &c. if afterward the Lessor by Deed grants the Reversion to another in Fee, and the Tenant for Life attorn &c. if the Rent be after behind, the Grantee of the Reversion may distrain for the Rent, because it is incident to the Reversion, but he may not enter into the Land and out the Tenant as the Lessor might have done, or his Heirs, if the Reversion had continued in them &c. Litt. S. 347.

Feoffee on Condition to re-infeofc a Copyright made by such as ought to have the Eftate, the Feoffor or his Heirs may enter. Litt. S. 353.

In every Exchange a Condition is implied; as if B. exchange with A. and A. with B. and B. assigns to C. and A. is evicted, he may enter upon C. but if C. be evicted by a Title paramount, he shall not enter upon A. For the Condition runs in Privy, and does not extend to the Assignee. 4 Rep. 121. a. b. Pasch. 1 Jac. per Cur. in Bultard's Cafe.

If a Lease be made upon Condition to be void if to I. be not paid at a certain Day, the Grantee of the Reversion shall not enter for such Condition, because it is collateral; Resolv'd. Mo. 876. pl. 1228. Chaworth v. Phillips.

(O. d) What Things shall be avoided by Entry for the Condition broke.

1. If the Baron he infeofc'd in Fee, upon Condition for the Nonpay- F'th. Com- ment of a certain Rent to re-enter, and after the Baron dies, and after the Condition is broke, and the Feoffor enters upon the Heir for the breach thereof, the Wife of the Baron shall not be endow'd; for her Title is defeated by the Entry for the Condition broke. 22 C. 3. 19.

2. In Feoffine Firmes it was said by Finch, that if a Man makes a Feoffment upon Condition that the Feoffee's Leafe to A. for Life, the Remain- der to W. and he leaves to A. re-assigning the Reversion to himself, and the Feoffor enters; by this he defeats the Eftate for Life which is well made, because he ought to take Franke same by his Re-entry; but contra if the Condition had been to make a Lease for Years to A. the Remainder to W. 

Condition.
W. and he leaved for Years to A. referring the Reversion to himself; in this Case the Feoffor shall re-enter, and the Lease for Years is good; Quod quere inde; for he that enters for Condition in Feint broken defeats the meane Estate, and is in as clearly as he was in at the Time of making of the Lid Feoffment. Br. Conditions, pl. 27, cites 44 E. 3. 22.

3. And it was said, that if the Feoffee in such Case leaves for Life or for Years, and after had granted the Reversion to W. according to the Condition, it is a good Performance of the Condition. Ibid.

4. The Father surrenders a Copyhold to the Life of B. his Son in Fee, upon Condition to perform Covenants in such an Indenture. B. after Admission surrenders to J. S. upon Condition, that if B. pay 10 l. the Surrender to be void. B. neither pays the 10 l. nor performs the Covenants. The Father enters and dies feised, and the Lands descend to the Son, who enters upon whom J. S. entered. It was the Opinion of the Court, that by the Entry of the Father both the Surrenders were avoided, and that the Son might then well enter, and so he may confes and avoid the Surrender made to J. S. and Judgment for the Defendant. Cro. E. 239. pl. 6. Trin. 33 Eliz. B. R. Simonds v. Lawnd.

Litt. S. 532.

* Rep. 2. a Hill.

5. A. infrizz'd B. on Condition to convey to A. and his Wife in special Fail, Remainder to the Heirs of A. If A. dies before the Conveyance, and B. conveys to the Wife an Estate for Life only, omitting the Privilege of without Impeachment of Waifs, (which should have been inferred in respect of the Estate to be made to her) yet this Omniyon shall not give the Heir of A. (for whose Benefit this Omniyon was) a Re-entry which would defeat the Estate of the Wife. Hawk. Co. Litt. 504.

6. Lease for Years was made, rendring Rent, upon Condition of Re-entry for Non-payment. Afterwards the Lezfe acknowledged a Statute. The Rent was arrear, and the Term was extended, but before the Liberate the Lezfor enter'd and took the Cora. It was argued, that this Entry was lawful, for that an Extent is only a Valuation of the Lands and Goods, but does not alter the Estate, and by Consequence the Lezfor may enter for a Condition broken; and though by the Extent the Lands are seised into the King's Hands, that is only a Fiction in Law, and is only with Intent to do that which Law and Justice requires, and it is not seised into his Hands by way of Feoffment, for if it was, then the Entry of the Lezfor would not be lawful; and the Court inclined that the Entry was lawful, and gave the other a peremptory Day to maintain his Demurrer. 2 Roll Rep. 468, 489. Mich. 22 Jac. B. R. Nicholas v. Simonds.

(P. d) How he shall be said in, who enters for the Condition broke.

Of the same Estate.

4 Rep. 120. b. in a Note of the Reporter, in Dumpper's Cafl, S. P. — D. 509. a. in pl. 75. S. P. — S. P. but this fails in respect of Impollibility; As if a Man seised of Lands in the Right of his Wife makes a Feoffment in Fee by Deed indicated, upon Condition that the Feoffee should demise the Land to the Feoffor for his Life &e. The Husband dies. The Condition is broken. In this Case the Heir of the Husband shall enter for the Condition broken, but it is impollible for him to have the Estate that the Feoffor had at the Time of the Condition made, for therein he had but an Estate in the Right of his Wife which by the Couverture was dissolved, and therefore when the Heir has enter'd for the Condition broken, and defeas-
Condition.

2. If an Estate for Life be upon Condition, the Remainder over, The Case admitting it a good Condition, if he enters for Breach thereof, it shall defeat the Remainder, because the Livery is defeated. D. 3 Hn. 127, 54.

3. A Gift in Tail, Remainder to the right Heir of the Donor * up- * in Roll. on Condition that if the Donor or his Heir alien * this shall defeat the Interest of the Tail only. D. 23. Hn. 127. 55.

4. Lease for Life makes a Feoffment upon Condition, and enters Br. Entre, for Breach, he shall be Lease for Life, and reduce the Redemption to the Lessee. * 8 H. 6. 3. b.

5. If Lease for Life enfeods the Redemption upon Condition, and ent. Fitch. Rent for Breach thereof, he shall be Lease for Life, and reduce the Redemption to the Lessee. * 8 H. 6. 3. b.

6. Feoffment of two Acres upon Condition to enter into one, if he enters for Breach thereof, it shall be but into one. D. 3. Hn. 127. 55.

7. Lease for Life and the Reveriioner join in a Feoffment upon Condition, referred to the Lease; if he enters for Breach thereof, this shall not defeat the entire Estate. D. 3. Hn. 127. 55.

8. In Devise Life upon Condition, the Receipt of the Remains shall defeat the Remainder, (admitting it a good Condition,) the Entry shall defeat the Remainder, though it is not created by Livery, and the Remainder may be without a particular Estate by Devise, for he ought to be in the same State of the Land as at the Time of the Devise. * 29. Hs. 17. and 14. C. 9. [10] Hn. Port. 41. b. Contra, D. 3. Hn. 127. 54.
Condition.

for the Deed of the Clerk, the remainder have left their remainder; for the heir by the entry cannot be severed of a life estate than fee simple; and after the justice each of the judge to lay for the Plaintiff, by which they left that the Plaintiff was setted and divested, and this was for Convenience of the remainder as it seems, Quere. Br. Conditions, pl. 111. cites 29 All. 17. — S. C. cited Per Harper and Dyen, Pl. C. 412. b. in the case of News and Scholastic v. Locke. But for the said case as there cited, remitted upon in 10 Rep. 28. b. and see 2 Law. 21. where to Rep. 29. b. is denoted. — Fitch, Affile, pl. 231. cites 3 C. and 28 All. 71. — 11 to Rep. 31. b. Pettington's case the reporter says he had seen a Report in Hill. 5 and 4 P. and M. moved by Derby Serj in C. B. that Dr. Butts was setled in Fee, and having 3 sons W. E. and T. devised Part to his wife for life, upon Condition that the educate his sons in Learning and good Manners, the remainder to T. his youngest son in tail. The Revision in fee defended to W. his eldest son. The condition was broken. The question was if the heir shall enter for the condition, or if T. should enter as for breach of a limitation, or if the condition be defeated by the limitation of the remainder over; and it was resolved by Brooke Ch. J. and the whole Court, that clearly this is no limitation, for they are express Words of condition, and the intent of the testator was, that his heir (who always is to take Advantage of a condition) shall enter and defeat the estate of the pene, but his intent does not agree with law, because he cannot defeat the estate for life, unless he defies the remainder, and therefore by limiting the remainder over the condition is defeated, but in such case his intent never was that he in remainder should enter for the condition broken. — D. 126. b. 127. a. b. Warren v. Lee, S. C. argued.

Br. Conditions, pl. 111. cites S. C. and that it was so, but that it was denied by Birtton, but Brooke says, Quere. — Fitch, Affile, pl. 231. cites S. C.

10. Tenant in tail made a feoffment in fee, and re-tok estate in fee; after was bound in a statute merchant, and then made a feoffment in fee upon condition and died; the issue in tail within age enters for the condition broken, and was remitted by his non-age. contra if he had been of full age; for then he should be adjudged in fee, as his father was when he made the feoffment upon condition, for he who entered for condition broken shall be in of the same estate as he was when he made the condition, at the time of the making thereof. Br. Conditions. pl. 134. cites 8 H. 7. 7.

11. Tenant in special tail has issue, and his wife dies. Tenant in tail makes a feoffment in fee upon condition. The issue dies, the condition is broken, the feoffor re-enters, he shall have but an estate for life as tenant in tail after perforibility of issue extinct by the re-entry; and yet he had an estate tail at the time of the feoffment, and that also for necessity. Co. Litt. 222. a. b.

12. In some cases, the feoffor by his re-entry shall be in his former estate, but not in respect of some collateral qualities; as it tenant by homage anceful make a feoffment in fee upon condition, and enters for the condition broken, it shall never be held by homage anceful again; and so it is if a copyhold ejectant, and the lord makes a feoffment in fee upon condition, and enters for the condition broken, and the reason in both these cases is, for that the copyhold or prescription for the time is interrupted. Co. Litt. 202. b.

13. Every limitation or condition ought to defeat the entire estate, and not to defeat a part and leave part not defeated, and it cannot make an estate to cease quod non quam perfessum and non quod alterum. Per Cur. 6 Rep. 49. b. Mich. 3 Jac. B. R. in Finch's case.

14. A tenant in tail, remainder to B. in fee. B. bargain and sells the land to the king upon condition; afterwards A. dies without issue; the condition is broken. B. recovers the land by the condition, and yet by the bargain and sale he parted only a remainder; Per Haughton and Doderidge J. and admitted by the counsel of both sides at the bar. 2 Roll. Rep. 62. Mich. 16 Jac. B. R. Holdy v. Holdy. (Q. D.) Where
Condition.

(Q. d) Where on a Condition of Re-entry for Non-Payment of Rent, and a Retainer till Satisfaction, the Profits after Entry shall be accounted as Parcel of the Satisfaction, and what Estate Feoffor gains upon such Re-entry.

1. Where a Feoffment is made referring Rent &c., upon Condition that if the Rent be behind, the Feoffor and his Heirs may enter and hold till satisfied &c. By Entry of the Feoffor, the Feoffee is not altogether excluded, but the Feoffor shall hold and take the Profits until he be satisfied, and then the Feoffee may re-enter and hold as before. For in this Case the Feoffor shall have the Land but in Manner as a Distress until be be satisfied &c. though he take the Profits in the mean Time to his own Use. Litt. S. 327.

partly by the other, B. may re-enter. Co. Lit. 205. a.—But if it was not for the Words (to hold till satisfied of the Profits) it would be an Inheritance in the Land to remain in the Heir as a Penalty; but because of those Words it is only a Distress and shall go to the Executors, who are the Perfons to be satisfied of the Arrears. Per Twilden. Lev. 171. Trin. 17 Ca. 2. B. R. in Cafe of Jenmott v. Cooley.

2. So if a Man make a Leafe for Life, with a Referrav of a Rent, and such a Condition, if he enter for the Condition broken, and take the Profits of the Land, Quoque &c. he than't have an Action of Debt for the Rent arrear, for that the Freehold of the Lessee continues. Co. Lit. 205. a.

3. But in Cafe of Leafe for Years referring a Rent, with a Condition that if the Rent be behind, that the Lessee shall re-enter and take the Profits, until theref be be satisfied; there the Profits shall be counted as Parcel of the Satisfaction, and during the Time that he do takes the Profits he than't have an Action of Debt for the Rent, for the Satisfaction whereof he takes the Profits. But if the Condition be that he shall take the Profits until the Feoffor be satisfied, or paid of the Rent (without paying thereof) or to the like Effect; there the Profits shall be accounted no part of the Satisfaction, but to haften the Lefsee to pay it, and as Littleton here says, that till he be satisfied, he shall have the Profits in the mean Time to his own Use. Co. Lit. 203. a.

(R. d) Where upon Condition broken or unperform'd, a Man shall be adjudged in Possession presently, without Entry, Claim or Demand, and so upon the Performance &c.

1. If a Man infeoffs a Feme, upon Condition that if he will marry her be may re-enter, and be marries her; he may alien, for he has performed the Condition, and by this he shall be enabled to alien; but Quere how he shall be adjudged in after the Marriage, it in Jure Uxorius or not, till he has made Alienation, or done other Act, it seems in Jure Uxorius. Br. Conditions, pl 204. Cit. 5 E. 2.

2. If
Condition.

2. If a Man infeoff another, and that upon Condition perform’d the Feoffment shall be void, or that the Feoffor may re-enter; in the one Case nor the other upon the Condition performed the Feoffente is not in the Feoffor till he has re-enter’d; Quod Nota. Br. Condition, pl. 249. cites 11 H. 7. 2. per Brian Ch. J.

3. Estate of Inheritance, as where Estate Tail is given on Condition not to alien &c. cannot cease without Entry; but contra of Estate for Life, for this cannot be surrender’d by Parol, and to may cease by such Condition. Br. Conditions, pl. 83. cites 21 H. 7. 11.

4. As if I leave Land for Life or Years, upon Condition that if I pay to him 10l. that his Estate shall cease, there if I pay the 10l. the Estate is determined without any Entry; contra of Estate of Inheritance; for this cannot cease ’till the Donor, or Feoffor, or his Heir has entered. Ibid.

5. If Land be granted for 5 Years, that if he pay within the 2 first Years 40 Marks then he shall have Fee, or otherwise but for 5 Years, and Livery is made. Now he hath a Fee-Simple conditional &c. And if the Grantee do not pay to the Grantor the 40 Marks within the first 2 Years, then immediately after the said 2 Years paiz, the Fee and the Freehold is in the Grantor, because the Grantor cannot after the said two Years immediately enter upon the Grantee; because the Grantee hath yet Title for 3 Years by the Grant. And so because the Condition of the Part of the Grantee is broken, and the Grantor cannot enter, the Law will put the Fee and the Freehold in the Grantor; for if the Grantee does Waite, then after the Breach of the Condition &c. and after the 2 Years the Grantor shall have his Writ of Waite. And this is a good Proof then that the Reversion is in him &c. Litt. S. 350.

6. If I grant a Rent-Charge in Fee out of my Land upon Condition, there if the Condition be broken the Rent shall be extint in my Land, because I (that am in Possession of the Land) need make no Claim upon the Land, and therefore the Law shall adjudge the Rent void without any Claim. Co. Litt. 218. a.

7. If a Man make a Feoffment unto me in Fee, upon Condition to pay him 20l. at a Day &c. before the Day I let unto him the Land for Years, reserving a Rent, and after I fall of Payment, the Feebote shall retain the Land to him and his Heirs, and the Rent is determined and extint, for that the Feebote could not enter, nor need not claim upon the Land; for that he himself was in Possession, and the Condition being collateral is not superseded by the Lease; otherwise it is of a Rent referred. Co. Litt. 218. a. b.

8. If H. grants an Advowson to B. and his Heirs, upon Condition that if A. &c. pay 20l. on such a Day &c. the State of B. shall cease; or be utterly void; though A. pays the Money, yet the State is not revêiled in A. before a Claim, and that Claim must be at the Church. So it is of a Reversion or Remainder of a Rent, or Common, or the like, there must be a Claim before the State can be revêiled in the Grantor by Force of the Condition, and that Claim must be made upon the Land. Co. Litt. 218. a.

9. If a Man bargain and sell Land by Deed indented and inwelled with a Proviso, that if the Bargainor pay &c. the State shall cease and be void. If he pays the Money the State is not revêiled in the Bargainor before Re-entry. Co. Litt. 218. a.

10. So it is if a Bargain and Sale be made of a Reversion, Remainder, Advowson, Rent, Common, &c. Co. Litt. 218. a.
(S. d) Entry. Barr'd by what.

1. If a Man incoffs another upon Condition to re-incoff him within 40 Days, there if the Feeofer makes no Request within the 40 Days, the Feoofer shall retain the Land for ever. Br. Conditions, pl. 55. cites 19 H. 6. 67. 72. 76. Per Newton.

2. If the Condition be broken for Non-payment of the Rent, yet if the Feeofer brings an Affife for the Rent due at that Time, he shall never enter for the Condition broken, because he affirms the Rent to have a Continuance, and thereby waives the Condition. Co. Litt. 211. b.

3. So it is if the Rent had had a Clause of Disturbance annexed unto it, if the Feoofer had distrained for the Rent, for the Non-payment whereof the Condition was broken, he should never enter for the Condition broken. Co. Litt. 211. b.

4. But he may receive the Rent, and acquit the same, and yet enter for the Condition broken. Co. Litt. 211. b.

5. But if he accepts Rent due at a Day after, he shall not enter for the Condition broken, because he thereby affirms the Leaf to have a Continuance. Co. Litt. 211. b.

(T. d) What shall be said a Condition to enlarge or encrease the Estate.

1. ASSISE by R. F. where it was found that M. leafed the Tenements to the Plaintiff for 11 Years, and in Surety of it made a Charter upon Condition, that if he was disturbed of his Term that he should have the Tenements in Fee, which Charter was delivered to keep, and delivered according to the Condition, and delivered Seisin of this Charter, and Glait, that M. sold within the Term, and for the Disturbance C. delivered the Charter to the Plaintiff, and Livery of Seisin was upon the one Charter and the other, viz. upon the Sale also, as it seems, by which it was awarded that the Plaintiff recover; The Reason seems to be, in as much as the Seisin was upon the Charter to the Termor, for otherwise the Condition had come too late, as it appears in * Pleasington's Case, 6 R. 2. Tit. Quod Juris clamat in Fitzh. 29. Br. Conditions, pl. 101. cites 10 Att. 15.

2. If a Man leaves for Life upon Condition, that if the Donor aliens in Fee, that the Leefe shall have Fee, it is a good Condition, by reason that the Fee is in the Leefe; Per Frowike. But Brook says Quare, because it seems that the Law is contrary. Br. Conditions, pl. 83. cites 21 H. 7. 11.

3. And by Frowike, if I leave for Years upon Condition, that if I enter upon him then he shall have for Life, it is a good Condition. Ibid.

4 N
4. Where an Estate is to increase by Force of a Condition, the particular Estate must continue in the Lessor or Grantee till the Increase happens. Pl. C. 423. b. Mich. 17 & 18 Eliz. in Case of Nichols v. Nichols.

5. Queen Eliz. sealed of the Resumption of an Estate Tail, granted the same to T. in Tail, and further, on Condition that if T. or his Heirs pay at the Escheater 20 s. that then he should have the said Resumption in Fee-Simple, T. paid the 20 s. Resolved by per tot. Cur. that the Grant is good, and that such Grant with Condition precedent may be as well of Things lying in Grant, as of Land which lies in Livery, and may be annexed to an Estate Tail, which cannot be merged, as to an Estate for Life or Years, which may be merged by Acceptance of a greater Estate. 8 Rep. 73. b. 75. a. Trin. 7 Jac. Lord Stafford's Case.

6. Where two Jointtenants are upon Condition to have Fee, and they make Partition, they shall not have Fee on the Performance of the Condition. Arg. 2 Roll Rep. 402. Mich. 21 Jac.

(U. d) Declaration. And in what Cases Performance must be aver'd.

1. ASSISE of Rent upon a Grant made perciipient apud W. and if the Rent be arrear, it should be lawful for the Plaintiff to disjoin all his Lands in W. M. and R. and the Aisle was brought in W. only, and the Land in W. only put in View, and M. and R. were in another County, and yet good; for De, apud, in, vel de tall Tenemento are good Words of Charge, and the Writ was awarded good; by which the Defendant said, that the Grant is, that the Plaintiff shall chann in the Church of W. pro Animabus &c. or elsewhere, and said, that the Plaintiff has not chanoned according to the Form of the Charter; and the Plaintiff said, that he bad chanoned according to the Form of the Charter, and good, without showing in what Place. Br. Aisle, pl. 359. cites 41 Alit. 3.

2. Where a Man is retained to go to Rome, or to serve in other Service, he shall show how he has done it; The Reason seems to be, in as much as these Things are Executory. Br. Count, pl. 5. cites 3 H. 6. 33.

3. But contra of Things Executed; As if a Man counts of a Horfe fold, he need not say that the Defendant has the Horfe, for this is executed, and alters the Property immediately. Ibid.

4. Where Condition is comprised in an Obligation or Recognizance before the Inquisition Reel, or the End of it, and this gives Cause of Action to the Oblige, there in Debt he ought to count of the Condition performed; Per Wantford, Prior, Littleton, Needham and Alliton. Br. Count, pl. 52. cites 36 H. 6. 3.

5. But
5. But where the Condition is indorsed upon the Obligation, or written under the Obligation, or the Recognizance, he shall count simply upon the Obligation or Recognizance, and shall not lay any Thing of the Condition; Nota the Diversit.

6. In Debt, if the Plaintiff counts upon Condition contained in the Obligation, as of 22 l. to be paid when the Obligee has brought one hundred Loads of Hay to the Houfe of the Obligee in D. there the Obligee ought to count in his Count, that the Condition is performed, and the certain, because it is in his Advantage; Contra if it be in his DisAdvantage, or be contained in the Back, and not in the Obligation; Per Vavilor, Quod non negatur. Br. Count, pl. 69. cites 21 E. 4. 36.

7. Debe upon Obligation, with Condition contained in the Obligation, and not indorsed upon it; As where it is to have harmlefs a Sereity in another Bond, there the Count is good generally, without saying that the Defendant has not discharged him, nor saved himself. Br. Count, pl. 73. cites 22 E. 4. 42.

8. For where the Condition is contained in the Obligation, and to be performed by the Obligee: As if A. be bound to B. to pay him 10 l. if B. gives to A. such a Horse, there B. ought to count that he has given the Horse &c. and otherwise ill. Ibid.

9. But where the Condition is to be performed by the Obligee, and contained in the Obligation, there the Obligee may count generally without saying that the Defendant has not performed the Condition; Note the Diversity. Ibid.

10. Where the Condition is comprised in the Obligation, and not indorsed, he shall count that he has performed it if it be to be done of the Part of the Obligee; Contra if it be to be done of the Part of the Obligee, there the Plaintiff shall not count of it. Br. Conditions, pl. 184. cites 22 E. 4. 42.

12. Debe upon an Obligation upon Condition, that if Obligee delivers This is mistake a Ball to the Obligee by such a Day that then the Obligation shall be good, and otherwise void; and, per Car. except Shelly, the Plaintiff ought to sue in his Count that he has delivered the Ball, and this because the Condition arises on his Part to make the Obligation good, quod non. Br. Obligation, pl. 1. cites 26 H. 8. 8.

13. The Difference is between a Precedent and Subsequent Condition; 7 Rep. 10. 2. in the first Case there ought to be Averment of Performance, but not in the other; for the Estate &c. is vested. Jenk. 200. pl. 59.

14. Where a Condition consists of two Parts, and one Part is possible to S. P. Arg. be performed, and the other impossible, it is sufficient to allege the Performance of that which is possible; Per Clench and Popham. Cro. E. 780. pl. 44 Mich. 42 & 43 Eliz. B. R. Wigley v. Blackwall.

15. He that pleads a Disputatio to hold in Commendam, confirmed by the King's Charter, must aver the Performance of the Conditions contained in it. Heath's Max. 37. cites Hob. 141, 142. [Mich. 10. Jac. in the Case of Colt and Glover v. Coventry (Bishop) &c.]

16. Allinpit &c. in which the Plaintiff declared, that there was an Vent. 214. Agreement between them, that the Plaintiff should pull down two Walls and
Condition.

Car. 2. S. C. and Hale
Ch. J. was now of Opinion that the Plaintiff's saying Paratus fuli & obduriti to do the Work, though he did not lay (and the other refused) yet it was a sufficient Averment after a Verdict; wherefore, though they would not agree in the other Matter, yet Judgment was given for the Plaintiff:—2 Lev. 23. Opus v. Peters S. C. and though Hale Ch. J. and Twifden J. differed as to the other Matter, yet as to the last all the Court agreed, for that otherwise the Jury would not have found for the Plaintiff, and gave Judgment for the Plaintiff:—2 Saund. 370. S. C. accordingly, and Judgment for the Plaintiff.

S Mod. 42. S. C. cited in Cafe of Lock v. Wright.

17. B. agreed to pay 20 l. six Months after the Bargain, A. transferring Stock. A. at the same gave a Note to B. to transfer the Stock, the Defendant paying &c. If a fues upon this Agreement, A. must avert and prove a Transfer or Tender and the other a Payment or Tender; and though there are mutual Promises, yet if one Thing be the Consideration of the other there a Performance is necessary to be aversed, unless a certain Day be appointed for Performance; Per Holt, Ch. J. 1 Salk. 112. pl. 1. Trin. 2 Anna, at Nifi Prius at Guildhall. Callonell v. Briggs

(W. d) Pleadings in the Negative or Affirmative.

1. DebT upon Obligation to discharge a Sheriff; it was held clearly, that the Defendant may say that he has discharged him without flowing bow; for he cannot shew a special Discharge where he was not charged, but it is said elsewhere that Nov damnificatus est is a good Plea. Br. Conditions, pl. 143. cites 5 E. 4. 8.

2. Convict is where he is bound to be not satisfied of all Actions against the Plaintiff, there he shall shew the Record in certain; for this is his own Act. Ibid.

3. The Indenture is that he shall force the Plaintiff by 10 Years, five Abjuration, nisi per Specieam Licentiam querentis; and he said that he had served by ten Years five Abjurations, nisi per Specieam Licentiam querentis, and did not shew at what Time he licenced him; and the Court held the Plea in this good, because it infuses the Words of the Indenture, and it may be that he licenced him several Times. Br. Conditions, pl. 144. cites 6. E. 4. 1.

4. Where a Man is bound to give all the Money in his Purse, and he says that he gave him no Money, it is good, without saying what Money he had in his Purse; otherwise it is where he pleads in the Affirmative, that he gave but 10 l. which was not all, this is not good; for he ought to say what Money he had in his Purse. Br. Conditions, pl. 133. cites 17 E. 4. 4.

5. If a Man be bound to give to J. N. all the Money which is in his Purse, or to seize him of all the Land which is defended to him from the Port of his Father, he ought to shew how much Money and how much Land &c. cites 17 E. 4. 5.

6. In
6. In Error, an Abbot granted a Convey to W. S. and shewed what &c. to be of good Conversation, and to do such Services as N. who had it before did; and he said that he was of good Conversation from the Time of the Grant aforesaid &c. For the Law intends that every one is of good Conversation till the contrary be shewn; and therefore it he be otherwise, the other shall shew it, and therefore good by all the Justices. Br. Conditions, pl. 168. cites 22 E. 4, 28.

7. And to the other Point he said, that he had done all such Services as N. had done, and did not shew what Services, and yet good by the best Opinion; for the Condition is general, and not certain, and shall not shew what Services N. did. Ibid.

8. But where the Condition is certain, As to perform the Award of J. N. there he shall shew certain what Award J. N. made, and that he has performed it; Nota Diveritatem, per Curiam; for in the Case above it is so uncertain that it cannot well be shewn in Certainty. But the other Party replied, and shewed what he had broken. Ibid.

9. In Debt upon an Obligation with Condition (inter alias) for the Obligor to account; to which the Defendant pleads Conditions performed. The Plaintiff replies, that the Defendant did not account, and ill, because he shews not what he had to account for; and Difference is taken, when the Condition is in the Negative, Not to do a Thing, then it is sufficient to say he did not do it; and when in the Affirmative, to do, as to perform his Office, or to infuse him of all his Land &c. there he must shew what his Office was, and what Lands he had, and that he did infuse &c. Heath's Max. 53. cites Mich. 2 R. 3. fol. 17. Placito 44. & Trin. 4 H. 7. Placito 6.

10. In Debt upon an Obligation the Condition was, that if the Defendant pay the Plaintiff for so many Loaves as shall be delivered to J. N. when he shall be required, then that the Obligation shall be void; The Defendant said that he was never required by the said Plaintiff to pay him any Money for any Bread delivered &c. and because by this Plea, that he was never required to pay for any Bread delivered, in which it is implied that Bread was delivered, he shall not shew the Certainty of the Bread delivered, and therefore it was adjudged per Cur. in Anno 5 H. 7, 8. that the Plea is not good, quod mirum! For by the Reporter the Plea is good; for he has Liberty to say that no Bread was delivered, or to say that he was not required as above; And per Kebbe, because he pleads in the Negative it suffices; Contra if he had said that he had paid for all the Bread &c. there he shall shew how much was delivered, and purifie the Words of the Condition verbatim &c. and the whole Court was against him; quod mirum. Br. Condition, pl. 129. cites 4 H. 7. 12.

11. And per Kebbe there is a Diversio where a Man pleads in the Affirmative, and where in the Negative; for in the Affirmative he ought to plead certainly; as where a Man is bound to keep J. N. without Damage, if he pleads in the Affirmative he ought to plead certainly, how he has kept him without Damage, as by Release, Payment, or the like in certain. Contra where he pleads in the Negative, as Non Damnificatus fuit, there he need not allege Certainty. Ibid.

12. So where a Man is bound to stand to an Arrivirement, Nullum fecit Arbitrium suffices in the Negative; but if he pleads in the Affirmative, that he has performed the Award, he shall shew what the Award was in certain. Ibid.

13. Condition in the Affirmative which implies a Negative shall be Debt upon pleaded performed in the Negative. As where a Man is bound to keep W. N. without Damage against J. S. he may say that J. S. Non Damnificata dictum W. N. Br. Conditions, pl. 245. cites 10 H. 7. 12.

Lands in S. from an annual Rent of 20l. referred upon a Lease thereof made by one J. G. to J. B. The
Condition.

14. Where a Man pleads that he has served him harmless, it is no Plea without shewing how, because he pleads in the Affirmative; Contra where he pleads in the Negative, as non Damnificatus cjt. Note the Diversity. Br. Conditions, pl. 16. cites M. 37. H. 8. per Cur. 15. Debt upon Obligation the Condition was, whereas the Defendant was made Sub-Collector of the Subsidy by the Plaintiff, if he gave a sufficient Account, and faved him harmless of those Receipts against the Queen, and procures a sufficient Acquittance or Discharge out of the Exchequer &c. The Defendant pleaded that he had accounted, and faved harmless the Plaintiff, and had procured him an Acquittance; it was moved that the Plea was not good, for that being in the Affirmative, he had not shewed how. Gavdy. If. said, if the Discharge be to a particular Thing be must shew how, but not when it is to Multiplicity of Things; for there a general Pleading is good, and cited 5. 4. 4. fed adjonatur. Cro. L. 253. pl. 24. Mich. 33 & 34 Eliz. B. R. Atton v. Hill.

16. Debt upon Bond conditioned, that the Defendant should at all Times, upon Request, deliver to the Plaintiff the Fat and Tallow of all Beasts which he, his Servants, or Affigis, killed or drews before such Day. The Defendant pleaded, that upon every Request made to him he delivered to the Plaintiff the Fat and Tallow of all Beasts which were killed by him or his Servants or Affigis before the said Day. Exception was taken that the Plea was too general, but all the Court held it a good Plea; for when the Matter to be pleaded tends to Infinite and Multiplicity, the Law allows of a general Pleading in the Affirmative, and for that Reason allows of the Rule that he who pleads in the Affirmative shall allege Performance of Covenants generally. Cro. E. 749. pl. 3. Patch. 42 Eliz. B. R. Mints v. Bethell.

17. Bond was conditioned not to kill any Pheasants or Partridges &c, in such a Place. The Defendant pleaded that he had not killed; The Plaintiff replied that he had killed a Pheasant, Et hoc paratus est verificare. Sid. 241. in pl. 4. Mich. 19 Car. 2. B. R. Arg. cites it to have been adjudged ill upon Demurrer, for it should have concluded with Petit quod inquiratur per Patriam.

(X. d) Pleadings. In what Cases there must be Pro- fect or Montrans of Deeds.

1. If a Man pleads Condition of Franktenement in Allion real or personal, he shall shew Deed. Br. Condition, pl. 220. cites 4 Eq. 3. 34, 35. 2. In Affile, an Estrate upon Condition was found by Verdict at large, and for the Condition broken the Plaintiff, as Heir of the Donor, entered, and the Entry adjudged good, and yet this was not pleaded, nor Deed flown, but it appears there, that if he who entered had not a Deed to prove the Condition he cannot enter; and it seems also there, that he cannot plead the Condition without shewing Deed thereof; Quod Nata. And so it appears in Littleton, Tr. Estates. Br. Montrans, pl. 59. cites 33 All. 11.
3. In Debt upon an Obligation of 45l. conditioned to pay 5l. the Defendant may plead Payment of the 5l. by Agreement, without shewing any Specialty. Br. Conditions, pl. 23. cites 42 E. 3. 13.

4. Condition may be pleaded of a Contrary, without shewing Deed. Br. Montrans, pl. 149. cites 44 E. 3. 27.

5. Audita Querela upon Defiance by Indenture to make certain Payments, and that then the Eisdem shall be void, and aver the Payments without shewing Acquittance in Writing, and good per Cur. Because the Conditions were comprized in the Indenture, for then the Matter may be aver'd. Br. Montrans, pl. 151. cites 46 E. 3. 33.

6. In Trespass, a Man may plead a Footment upon Condition of Reentry, and may enter for the Condition without shewing Deed; Contrary in Actions Real; The Reason seems to be, as in much as the Franktenement shall not be recovered in Trespass. Br. Montrans, pl. 135. cites 7 H. 6. 7.

7. In Deince of a Deed the Plaintiff may aver, that he delivered the Deed to the Defendant upon certain Conditions to be performed, to deliver it to the Obligee, and otherwise to the Plaintiff, who is Obligor. Br. Montrans, pl. 136. cites 8 H. 6. 26. per Babb. Martin, and Cottetmore.


10. In Trespass the Usage has been, in ancient Time, that a Man may plead Condition of Easte de falso in Actions Personal, as Trespass &c. without shewing Deed, and e contra in Actions Real, for there it was used to shew Deed; but at this Day, and of late Time, it has been used to shew Deed in the one Cafe and in the other; Per the Juities. Br. Montrans, pl. 114. cites 4 E. 4. 34. 35.

11. In Debt, the Defendant shewed a Condition inforced, that if he performed Conditions in certain Indentures &c. that then &c. and flowed he had performed them, and the Plaintiff replied to it, and so to flue, and good without shewing of the Indenture, by reason that the Plaintiff did not demur for the not shewing, but replied to it; and e contra, per Choke, if the Plaintiff had demurred. Br. Montrans, pl. 116. cites 6 E. 4. 1, 2.

He must shew the Indentures, ibid. per Cur.

12. Debt upon Obligation, the Defendant pleaded Condition, that if J. P. served the Plaintiff for one Year &c. and for 7 Years proximo &c. in omnibus Mandatis jus licet, quod tune &c. and that the said J. P. served the Plaintiff lawfully from this Day till such a Day within the 7 Years, at which Day the Plaintiff discharged him from his Service; Judgment &c. And a good Plea without shewing Deed of the Discharge, notwithstanding that it was upon Obligation, in as much as the Condition is Matter in Fact. Br. Conditions, pl. 152. cites 10 E. 4. 15.

13. In Affxe between Feoffee and Feoffor, the Feoffee shewed a Deed-Poll in Pleading; the Feoffor may deny that the Footment was upon Condition, and shew the Performance or Break of it, by which he entered without shewing Counterpart or otherwise, and yet the Deed belonged to the Feoffee, and not to the Feoffor. Br. Montrans, pl. 157. cites Littleton, fol. 90 & 91.

14. There is a Difference between the Pleading of a Condition comprized in a Will and in an Estate or Grant made by a Man by Livery, where
where the Exhibit is executed in his Life; for in the first Case, to plead the Condition to defeat the Exhibit, he need not have any Deed, but in the other he ought. Dy, 227. b, pl. 56. Hill. 2 & 3 P. & M.

15. A Man cannot plead a Condition to defeat a Freehold without shewing a Record or Deed to prove it; but a Condition to defeat the Grant of a Chattel he may. Litt. 5, 265.

16. He that pleads a Deed to defeat a Freehold, ought to shew it to the Court, that the Court may judge whether it have legal Words, and of ancient Time the Court, on View, judge'd it void if raz'd or interlin'd in Places material; but now it is left to be tried by the Jury, whether it were done before Delivery. The Deed itself must be shewn; nor can any Inrollment thereof, or Exemplification under the Great Seal be pleaded; but by Statute a Conflat or Injunctions of Letters Patents made since the 27 H. 8. may be pleaded by the King's Patentees, or any claiming under them, as well against the King as any other. A Conflat &c. can only be of the Inrollment of Records, but not of a Deed or any other Writing that is not of Record; nor can a Deed be inroll'd till duly acknowledged. Hawk. Co. Litt. 311.

17. Those that come in by Act of Law, as Tenant in Dover, Statute-Merchants &c. may plead a Condition without shewing the Deed; but Tenant by Curtesy cannot, for the Law presumes that he had the Possession of his Wife's Deeds, and he may keep them during his Life; nor shall the Lord by Equity, because the Deed belongs to him; nor any claim brought by Conveyance from the Party, or justify as Servants by his Command &c. plead a Condition without shewing the Deed. Hawk. Co. Litt. 311.

18. Tenant in Tail makes a Feoffment on Condition; re-enters, and dies; his Affire being remitted needs not in pleading this special Matter shew the Deed, for he by the Remitter claims above the Condition. Hawk. Co. Litt. 312.

19. Tenant to a Precipice pleads in Abatement of the Writ (for Nastenure) that J. S. infeoff'd him on Condition, and re-enter'd, and was not compell'd to shew the Deed, because the Demandant was a Stranger, nor did the Tenant make himself a Title against him by force of it, and it may be, that on the Re-entry the Deed might be given up to the Feoffor. Hawk. Co. Litt. 312.

20. The Lessee of a Mortgage, evicted by the Mortgagor, may in an Action of Debt for the Rent by Mortgagee, shew the Condition and Re-entry without Deed, for he is no Way privy to it; and if the Feoff after a Re-entry by the Feoffor, for Condition broken, enter and take away the Deed and deriv'd it, the Feoffor in an Affire brought against him shall not be inforced to shew the Deed, for the Feoffee shall take no Benefit of his own Wrong. A Woman may in pleading over a Feoffment, to be Civil Matrimonii praelocatus, albeit she have not any Writing to prove it. Hawk. Co. Litt. 312.

21. If the Deed remain in one Court, it may be pleaded in another without shewing forth Quia LEX non cegit ad Impellibita. Co. Litt. 231. b.

22. In Debt on Bond, Defendant Pleads a Condition for Performance of Covenants, contained in certain Indentures between them. Per Coke, this is a clear Fault and without Defence; for he ought to have pleaded thus, viz. to have shewn the Indenture and to have said His in Cur prolat, and this Exception to the Plea is unsatisfactory (it being therein urged further, viz. that the Defendant is prony to the Indenture) and Judgment accordingly. 2 Bitt. 259, 260. Mich. 12 Jac. Dupor v. Wildgoose.

23. In Debt on Bond Defendant demanded Oyer of the Condition which was to perform Covenants in an Indenture, and then demanded Oyer of the Indenture; Plaintiff gave Oyer omitting an Indorsement which was made
Condition. 329

made before the Execution of the Deed; On this Oyer Defendant pleaded non-performance; the Plaintiff replied, and filed a Plead
and prayed Judgment for the Variance. Per Car. * 1st. The Defendant should have set forth the Indenture himself, being a Party to it, and should have pleaded Performance to all the Covenants therein. 2ndly. The Plaintiff was not obliged to give Oyer of the Indenture, and though he did, yet it being what he need not do, the setting it forth is not at his Peril, as where he is obliged to set it forth; nor is he concluded to say that there is more contained in the Indenture, but is at Liberty as well as if the Defendant himself had set it forth; and the Court held, that as the Defendant was bound to set it forth, so he was bound to supply this Omission and make his Plea compleat, and therefore Judgment for the Plaintiff. 2 Salk. 498. pl. 6. Mich. 3 Anne B. R. Cook v. Remington.

by a conditional Leaf, he may plead the Leaf without the Condition. Arg. Le. 356. in the Case of Carter v. Claypole.

* Kelinw. 71. pl. 72. Per Browne.

(Y. d) Pleadings.

1. A MAN cannot avoid a Statute-Merchant, Obligation, Release or the like, against the Conunise himself named in it, and who shall take Advantage of it, to say that it was upon Condition. Br. Condition, pl. 25. cite 47 E. 3. 27.

2. Contro in Detinue against a third Person, where there is Livery in Br. Conditions, pl. 11. ibid.

3. Debt upon Indenture, which comprehended several Conditions of the Part of the Defendant, and for Non-performance of any of them, that the Defendant should forfeit 40 l. and the Plaintiff counted that all are broken, and the Defendant answered that No; and the Plaintiff showed one certain, and the Plaintiff shall be upon this only by the Opinion of the Court; But Brook says, it seems that this is not the Course of Pleading at this Day; quod vide. Br. Count, pl. 3. H. 6. 8.

4. B. gives Bond to A. Afterwards A. by Indenture grants to J. S. that if J. S. performs certain Conditions, the Bond given by B. shall be void. J. S. and performed the Conditions, yet per optimam Opinionem, B. shall not ditches and plead it in Debt by A. against B. Br. Estranger al Fair, pl. 1. 3 H. 6. 18. 26.

5. If A. be bound to B. to make him a sufficient Estate in such Lands; in an Action brought upon such Obligation it is no Plea to say, that he hath made to him a sufficient Estate &c. but he ought to shew what Estate. Arg. 2 Le. 39. ad Finem, in pl. 52. cites 2H. 6.

6. Debt upon an Obligation of 20 l. to pay 1 l. by a Day, the Defendant said, that he paid it to J. N. by the Day by the Command of the Plaintiff, and no Plea, by which he said, that he paid it to the Plaintiff by S. C. the Hands of J. N. and a good Plea. Br. Conditions, pl. 12. cites 27 H. 6. 6.

7. In Debt the Defendant pleaded Defeasance that where the Plaintiff was indebted to S. H. in 100 l. by Obligation, that if the Defendant shall obtain the same Obligation and deliver it to the Plaintiff, he shall have Acquittance of it, that then &c. and he said that he had discharged him &c. and the Plaintiff demurred, and because he did not shew how he discharged him, therefore no Plea, and the Plaintiff recovered his Debt and Damages

4 P
Condition.


8. In Debt upon an Obligation the Plaintiff declared, that the Obligation was made for such a Duty, and the Defendant said that it was made for another Duty distinct or that it was for this Duty, and the others contra. Br. Obligation, pl. 53. cites 4 E. 4. 30.

9. If it was to insoff the Plaintiff of all Lands contained in a certain Fine, and said that four Acres are in the Fine of which he has insoffed him, this suffices without saying that these are all &c. Br. Conditions, pl. 144. cites 6 E. 4. 1.

10. Contra if it be referred to the Matter in Fail and in Certainty, as to insoff him of all his Lands of which his Father died sejent, or of all his Lands in A. there he shall shew How much the Land is, and that he insoffed him thereof, which are all the Lands and Tenements &c. Ibid.

11. In Debt upon Obligation, the Defendant pleaded a Condition, that if J. P. serve the Plaintiff for one Year &c. and so for seven Years next &c. in various Manners suit Leitis, quod tune &c. and that the said J. P. served the Plaintiff lawfully from that Day to such a Day within the seven Years, when the Plaintiff discharged him of his Service. The Plaintiff said, that such a Day, before the Discharge, he commanded the said J. P. to keep such Goods without Alienation, and the said J. P. attended them to T. N. And the Defendant by Protestation that he did not alien, for Jex faith, that the Plaintiff did not command J. P. to keep the Goods, and a good Rejoinder per tot. Cur. for the Defendant was not Servant to the Plaintiff, and also he is bound that J. P. shall do all the Commandments specially; and therefore this is the very Point of the Condition; but contra if he was bound, that J. P. should be a good and lawful Servant. And where a Man is bound to serve in all Commandments, there he is not bound to serve if he be not commanded. Br. Conditions, pl. 152. cites 10 E. 4. 15.

12. If one be bound to repair such a House, it is not sufficient to say that he has repaired it, but he ought to shew in loco vel in illo. Arg. 2. Le. 39. 40. cites 7 E. 4.

13. If a Man be bound upon Condition that the Plaintiff shall have Licence of one J. N. to carry 20 Load of Wood out of his Wood, it suffices for the Defendant to plead that J. N. at his Request licensed the Plaintiff &c. without saying that the Plaintiff was not disturbed; for he is not bound to plead more than is in his Condition; for if there was Disturbance it shall be of the Part of the Plaintiff by the belt Opinion, and so he did. And so it seems that where a Man is bound to license, he cannot countermand it after; Contra if there was no Bond. And if a Man be bound as above that the Plaintiff shall have Licence, there it he be disturbed by any, the Bond is forfeited. But if it was that J. N. shall give him Licence, which he does, and a Stranger disturbs him, there the Bond is not forfeited; and to see a Divinity between (shall have Licence, and shall give Licence) Br. Conditions, pl. 163. cites 18 E. 4. 18. 29.

14. Where the Defendant is bound to suffer the Plaintiff to enter, and to have all the Edifices in D. he shall shew how many Follows there were. Br. Conditions, pl. 177. cites 21 E. 4. 63.

15. But when he is bound to repair all the Houses in D. it suffices to say that he has repaired all the Houses. Ibid.

16. Where Condition is to do certain Things, the Defendant may shew the Condition certainly, and say that he has performed all the Conditions generally, and if the Plaintiff denies it, he may shew in what Point certainly he has broke the Condition, and from this the Illue shall arise; per Husley and Vavifor, but Saliard contra, and that the Defendant ought to plead certainly how he has performed the Condition, and the Plaintiff shall take Illue thereupon at his Peril, but the Defendant shall not plead generally that he has performed the Condition, but shall shew certainly
Condition.

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certainly how, and so is the Use at this Day. Br. Condition, pl. 183. cites 22 E. 4. 14. 15.

17. But per Hulftey, if I am bound to J. N. to give him bareless &c. I may say generally that I have gave him bareless, and good. But if I am bound to acquit or discharge A, B. against I. S. there he shall shew certain how he has acquit or discharged, and therefore it seems by him that Non Dammifcatus eft is a good Plea. Ibid.

18. Debt upon Obligation of 20 l. upon Condition to pay 10 l. the Defendant said that he paid 5 l. to the Bountiff of the Plaintiff by his Command, pl. 172. cites and [as] to the [other] 5 l. be said that he offered it to the Plaintiff, and because the Plaintiff was indicted to the Defendant in 5 l. he commanded him to retain it in Satisfaction of it, and it is a good Plea, and this notwithstanding that it was not by Writing; for Condition may be avered by Parol to be performed, and e contra of single Obligation. Note a Diversity. Br. Conditions, pl. 181. cites 22 E. 4. 25.

19. Condition of an Obligation to shew a Jufficient Discharge of an Authority, you must plead the Certainty of the Discharge to the Court; The Reason whereof given by Brian and Choke is, that the Plea there contains 2 Parts, one a Tract per Partem, viz. the Writing of the Discharge, the other by the Court, viz. the Sufficiency and Validity of it, which the Jury could not try; for they agree that it the Condition had been to build a House agreeable to the Estate or the Obligee, becaufe it was a Cafe all proper for the Country to try, it might have been pleaded, and then it was a Demurrer, not an Inufe, as it is here. Hob. 194. per Hobart Ch. J. cites 22 E. 4. 42.

20. In Debt upon an Obligation conditioned that the Defendant should repair and do other Things, and also pay his Rent every Day of Payment. He pleaded Performance of all Conditions and Payments generally. The Court at first thought the Plea good, but afterwards on seeing the Books they thought he ought to plead Performance specially. Kelw. 95. b. pl. 3. Mich. 22 H. 7. cites Mich. 1 H. 7.

21. But where the Condition refers to such a Generality, that by Imtenent it is past the Remembrance of Man, as if the Under-Sheriff is bound to discharge his Matter from all Accounts and Returns of Writs within the County, it suffices to plead Performance of the Condition generally. Per Cur. Kelw. 95. b. pl. 3. Mich. 22 H. 7. cites 1 H. 7.

22. Where a Man is direct Party to the Performance of a Condition, he ought to plead specially: As if it be to infeoff the Plaintiff of all his Lands; Agreed. Kelw. 95. b. pl. 3. Mich. 22 H. 7. cites 1 H. 7.

23. Condition of Obligation was, that the Obliger shall not enter nor claim such a House; and the Defendant said that he did not enter nor claim. Per Keble he claim'd, Prit; Per Brian he ought to say that he came to the Land, and claimed the Land, and entered into it, and yet nothing of the Entry shall be traversed, but only the Claim; Quod Nota. Brook says, Quere of this Opinion; for there he alleged both Points of the Condition &c. and also it seems that he ought to say what Year and Day be claimed. Br. Conditions, pl. 130. cites 4 H. 7. 13.

24. In Debt, if the Defendant pleads Condition of the Obligation interrupted, he ought to allege all performed; but the Plaintiff shall shew one only broken, upon which the Issue shall be taken. Br. Conditions, pl. 131. cites 5 H. 7. 7.

25. A is bound to B. in 50 l. to make such Eftate as the Counsel of B. desired; A. pleaded that the Counsel denied Advice, the Plaintiff shall not reply Prit; that they did, but shall shew specially what Device his Counsel made, and who made it, and the Defendant shall rejoin that there was no such Device, print &c. Br. Replication, pl. 36. cites 6 H. 7. 4.

26. In Debt, a Man is bound in 100 l. to make Eftate to J. S. of Land
Condition.

Land or Tenements to the yearly Value of 10l. by such a Day. [The Defendant pleaded] that he, in effect, had the Manor of A. in the County of S. and of the Manor of D in the County of W. before the Day, which are in Value 10l. And per Brian he ought to allege the particular Value of each Manor by itself, by Reason of the Value; for otherwise, if he says that the Manors are not of the Value of 10l. per Ann. it shall not be tried by both Counties; and Townend agreed; by which he said accordingly. And the Plaintiff said that he made Estate of the one Manor before the Day, and good. Br. Conditions, pl. 244. cites 11 H. 7. 14.

27. Debt upon Obligation, the Defendant said that it is insofar with Condition, that if he found S. sufficient Meat, Drink and Apparel, till 21 Years of Age, that then &c. and he said that he had found him sufficient Meat, Drink and Apparel, during the Time at D. and held a good Plea, notwithstanding that he did not show what Meat Drink and Apparel he found. Per Keble said that he did not find sufficient Apparel during the Time aforesaid, and dared not take Issue upon all the Points for the Doubtens, but took Issue upon the whole Time, and good; Per Cur. quod non. Br. Conditions. pl. 138. cites 12 H. 7. 14.

28. If the Condition of an Obligation be to make to the Obedienc a law ful Estate in certain land, it is fair to Plead that he was encei ed him thereof, the which is a lawful Estate, though Ex Rigore Juris it is not necessary, because it appears to be a lawful Estate. Kelw. 95. b. pl. 2. Mich. 22 H. 7.

29. But if the Condition be to build a sufficient House, the Defendant must say, that he has built such a House, and conclude that the same is sufficient. Kelw. 95. b. pl. 2. Mich. 22 H. 7.

30. In Debt upon an Obligation conditioned to deliver all Excedences concerning such Lands, the Defendant must plead that he has delivered such and such Charters which are all the Charters concerning the same land. Kelw. 95. b. pl. 2. Mich. 22 H. 7.

31. A Scire facias issued upon a Recognizance to perform Covennants, whereof one was to permit his Tenants to have Common in the open Fields of D. when they should lie Fallow; and another was, that he would not do, permit or cause to be done, any Act to alter the Course of the Fields in D. into any other Plight than at this Time was used; the Defendant said that he had permitted &c. and that he had not altered the Course &c. The Opinion of the Justices was, that this general Pleading was very good and so it was ruled; But Harper tois Viribus e contra. D. 279. pl. 6. Mich. 10 and 11 Eliz. Anon.

32. The Condition of an Obligation was, that the Defendant, Bailiff of the Plaintiff's Manor, should render an Account before such a Day of all the Rents of the Manor he has received; the Defendant pleaded that before the said Day, he had accounted for all the Rents which he had received, but because he did not shew what he had received, it was adjudged to be ill. Cro. E. 749. in pl. 3. cites Hill. 37 Eliz. B. R. Sands v. Maleverer.

S. C. cited by Ld. Ch. H. Gilbert, Gilb. Equ. Rep. 214 in the Exchequer in Ireland, and says that when the Condition confests of Matters to be done, that lie within his own Knowledge, there though they confest of great Variety, yet he cannot plead generally, but must shew the particular Performances of all Matters in his Plea.

33. In Debt upon an Obligation conditioned for the Payment of 70l. viz. 35 l. at one Day, and 35 l. at another Day, the Defendant pleaded Payment of the 70 l. scituo Forum & hislium Conditions praed. and the Court held it well enough, for reddendo lingula lingulis, 'tis as if he had pleaded the several Payments at the several Days. Cro. E. 281. pl. 1. Trim. 33. Eliz. B. R. Fox v. Lee.

34. In
33. In Deed upon a Bond on Condition to pay 20 l. within a Month Cro. L. 227. after the Oblige had a Son, that did or could speak the Lord's Prayer in 44, 21, Midd. a short time, that he could be understood; the Plaintiff pleaded that he had a Son, qui legit patris Precationem Dominii et intelligit parentis; and Lane v. the Defendant demurred, because it was pleaded he had a Son who could not be known, Anderson Ch. 5. 42 and 43. say, that he is a secret Ability that cannot be known, so that the whole J. and Kingsmill, and Glanville led, held the issue good; but Walmsley held to the contrary, that it is a secret Thing and cannot be tried. Ow. 127. Lane it good and ill and the Plaintiff v. Cotton.

for the Condition being in the Defendant, he may allege the one or the other at his Election, and this power of selecting is shall be proved upon the Evidence by such as heard him recite it; but the most proper Issue had been, that he had a Son who is not fair, and to have tried a Thing certainly done.

35. The Rule is non sunt Longa quaest nihil est quod demere poffit, and therefore the Length of the Defendants Plea is unavoidable, where it is impossible to make it shorter; but where it has as well on the Knowledge of the Plaintiff as the Defendant, there the unnecessary Prolixity is avoided, if the Defendant pleads generally according to the Words of the Condition, and it comes on the Plaintiff's part to Align a Breach. But where there is no such Prolixity in the Defendant's Plea, there he cannot depart from the Rule by flowing a general Performance, according to the Words of the Condition, but he must plead it officially, by flowing in certain how it is performed, or else he does not plead a proper and Substantive Bar, according to the Rule of Law, by which he should confess, and avoid the Plaintiff's Declaration; As if the Condition be, that the Defendant pay the Plaintiff all manner of Costs and Charges that J. S. shall charge the Plaintiff with for carrying on a Suit, the Defendant pleads he did pay all manner of Costs and Charges; this is ill because it relates to one single Point, which may and ought to be fixed in certain, in order that the Plaintiff may take Issue on it. Gilb. Ecu. Rep. 254. 419. [Trin. 4. Jac. Parkes v. Middleton.]

36. Condition was to pay the Plaintiff at his full Age all such Legacies and Gifts, which were given him. In Debt upon this Bond, the Defendant pleads, that he has paid certain tanta legata quas ad tale tempus generally and without fixing in particular, and in certain when, nor what and therefore it was objected that the Plea is void for uncertainty. Williams J. held that he ought to have shewed certainly in his Plea, what he had paid, and when, and also the Time when he came to his full Age specially in his Plea, according to the Condition of the Obligation, and this the clear Opinion of the whole Court. Bullit. 43. 44. Mich. 8 Jac. Stone v. Bliffe.

37. If the Condition of a Bond be to Discharge a Message of all Incumbrances, one may plead generally that he did Discharge it of all Incumbrances, but if it be to Discharge it of such a Lease, then I must shew how. 1 Brownl. 32. Patch. 10 Jac. Anon.

38. Debt on Bond for Payment of Children's Portions tunc cito as they Cro J. 359. should come to the Age of 21 Years; the Defendant pleaded that he pl. 20 Hal. had paid them tunc cito as they came of Age; Doderidge J. said that the payer v. Car. pen, S. C. Time being uncertain, he ought to have shewed in his Plea certainly when they came to the Age of 21 Years, and when he paid the Money, and accordingly, also ought to have shewed who made the Will, and how he had performed the same, so as the same might appear Judicially to the Court; whether well performed or not, and Judgment for the Plaintiff. Bullit. 266. 267. Mich. 12 Jac. B R. Hauflley v. Carpenter.

39. Condition was that the Oblige should enjoy an Estate according to a Grant of Letters Patents, he must not plead it Hier Verba but he must shew the Issue of the Letters Patents and the Enjoying accordingly. Per Hobart Ch J. Hob. 295. Mich. 15 Jac. in Case of Slade v. Drake 4 Q.

40. Condition
Condition.

40. Condition of the Obligation was, that the Obligor should surrender his Copyright Land to the use of the Obliger, and he pleaded that he had surrendered it, and upon that Plea, the Plaintiff demurred, and it was adjudged, upon the opening of the Case, by Warberon and Hutton, being only present in the Court, that Judgment shall be given for the Plaintiff, for the Plea in Bar is not good, because the Defendant had not proved when the Court of the Lord was held. Win. 11. 19 Jac. Lewelling's Case.

41. It is a Man bound to give all the Money in his Purses, or to inform one of all his Lands, he cannot plead that he has given all the Money or Land, but he ought to show certainly what Money or Land he had, and that he had given it. Lat. 16. Paffh. 2 Car. Wilkington's Case.

42. Debt upon Bond to make Satisfaction for all Goods that an Apprentice shall waste; In the Replication the Plaintiff alleged a Breach, that the Apprentice had wasted several Goods, to the Value of 100 L. Exception was taken, that the Replication did not shew what the Goods were; But the Court held it well enough here in Action on the Bond, where Damages are not to be recovered, but the Penalty of the Bond upon any Breach, though otherwise in Covenant, where the Recompence is to be for Damages; and Judgment for the Plaintiff. Lev. 94. Hill 14 & 15. Car. 2. B. R. French v. Pierce.

43. Debt upon Bond condition'd, that the Obligor shall pay from Time of the Mobity of such Money as he shall receive, and give Account. The Defendant pleaded, that he had paid a Moity. Plaintiff demurred. The Court held this a good Plea without shewing the particular Sums, and this for avoiding setting the Rolls with Multiplicity, and Plaintiff cannot take any Advantage but by replying, that the Defendant had received such a Sum, whereof he had not paid the Moity. Sid. 334. pl. 18. Paffh. 19 Car. 2. B. R. Church v. Brownwick.

44. Debtor Bond condition'd to give an Account of all such Monies as should come to his Hands, and to pay them to the Plaintiff. The Defendant pleaded, that no Money came to his Hands. The Plaintiff replied, that 50 l. came to his Hands. The Court held the Replication ill, because it did not set forth any Breach that he refused to account for the Plea is of Matter within the Condition, and therefore it is not sufficient to answer it without alleging a Breach; For perhaps he has paid it, and therefore Plaintiff should have said, that 50 l. came to his Hands, and that he had not accounted or paid it; and Judgment per ter. Cur. ruled against the Plaintiff. Lev. 226. Mich. 19 Car. 2. B. R. Heyman v. Gerard.

45. Debt upon an Obligation to do divers particular Things in the Condition mentioned. The Defendant pleads performance sc. and upon Demurrer held an ill Plea; for the Particulars being expressed in the Condition, he ought to plead particularly to every one distinctly. But where

Sid. 540. pl. 4. Heyman v. Gerard, S. C. adjudged accordingly, Sand. 102. Hayman v. Gerard, S. C. the Court said the Plaintiff delivered their Opinion, that the Replication was ill for not shewing a Breach, and were ready to give Judgment for the Defendant, but at the Instance of the Plaintiff's Counsel, the Matter was referred to the Council, who determined it by their Award, and so Judgment was entered — S. C. cited and denied per Cur. and said, that they of their own Knowledge were satisfied that it was not Law, nor taken to be so at the Bar when the Judgment in that Case was given. Carth. 116. Paffh. 2 W. & M. in B. R. in Case of Meredith v. Allen, which see infra, pl. 91.

Debt on a Bond, after Overdraft of the Condition, it
where the Condition is to perform all Covenants in an Indenture, there he may plead Performanceomnia generally, if to be they be all in the Affirmative, without answering particularly to every Particular. 1 Lev. 303. Mich. 22 Car. 2. B. R. Wimberton v. Holdrip.

between the Plaintiff and Defendant. The Defendant pleads, plead performatifsomnia & fopula ex eis partie &c. and mentions none in particular, and holds the same, for he ought to let them forth. 2 Snow. 66. Hill. 51 & 52 Car. 2. B. R. Paules v. Savage.

46. Debt upon Bond condition'd, that if a Ship going such a Voyage should return, the Parts of the Sea excepted, then the Defendant should pay so much, but if she be lost, then to pay nothing. The Defendant pleaded, that the Ship proceeded in the Voyage, but in her Return was lost. Plaintiff demurr'd, because it was not said that she was lost Per pecuniad Maris, for it might be by his own Negligence; but adjudged, that the Plea being in the very Words of the Condition, it is good. 2 Lev. 7. Palch. 23 Car. 2. B. R. Watton v. Waddington.

47. The Condition of the Bond was, that if the Plaintiff shall fail to the Defendant a good and sufficient Conveyance, in the Law, of his Lands in Jamaica, with usual Covenants, in such Manner as by the Defendant's Counsel shall be advised, then if the Defendant shall thereupon pay unto the Plaintiff such a Sum of Money &c. the Condition should be void. In Debt brought upon this Bond, the Defendant (after Oyer of the Condition) pleads, that Mr. Wade, a Counselor at Law, did advise a Deed of Bargain and Sale from the Plaintiff to the Defendant, with the usual Covenants, of all his Lands in Jamaica, and tendered the Conveyance to the Plaintiff, who refused to seal the same, and so would discharge himself of the Condition, the Money being not to be paid unless the Assurance was made. The Plaintiff demurr'd, it became the Defendant has not flown the Conveyance, and an affirmative Plea ought to be particular, and not so general as this. 2dly, The Matter of the Condition consists both of Law and Fact, and both ought to be set out; The preparing of the Deed is Matter of Fact, and the Reaonableness and Validity thereof is Matter of Law, and therefore they ought to be set forth that the Court may judge thereof. 3dly, The Plea is, that the Indenture had the usual Covenants, but does not set them forth, and for that Cause it is also too general. The whole Court were of Opinion, that this Plea was good; For if the Defendant had set forth the whole Deed Verbatim, yet because the Lands are in Jamaica, and the Covenants are intended such as are usual there, the Court cannot judge of them, but they must be tried by the Jury. He has set forth, that the Conveyance was by a Deed of Bargain and Sale, which is well enough, and so it had been if by Grant, because the Lands lying in Jamaica pass by Grant, and no Livery and Seisin is necessary; If any Covenants were unreasonable and not usual, they are to be shewed on the other Side; And so Judgment was given for the Defendant. 2 Mod. 239, 240. Trin. 29 Car. 2. C. B. Goiffe v. Elkin.

48. Debt upon Bond for Payment of 120 l. on the 4th of January, according to Agreement in Writing. The Defendant pleaded the Agreement, which recited a Controversy concerning the Probate of a Nuncupative Will of A. E. and that the Plaintiff was heir next of Kin, and had entered a Consent, and in Consideration that he would withdraw it, so as the Defendant might prove it, and be found Executor as he was, be consented to pay the Plaintiff 120 l. on the said Day, out of the Personal Estate of the said A. E. which should come to his Hands, in full Satisfaction of all Demands out of the same, according to the Intent of the said Bond, and that after the said Bond bring; No Part of the Personal Estate of the said A. E. came to his Hands to the Value of 120 l., and that he had never any of the said Personal Estate but to the Value of 50 l. Upon Demurrer the Plea was adjudg'd ill, for having certified that he had 50 l. he ought to have paid that, the Meaning of
of this Condition being, that he should pay 122l. or so much thereof as he should receive before the 4th of January out of the Personal Estate, and that it he received none before that Day, then none should be paid; therefore, because he neither pleaded a Payment, or a Tender of the 50l. on the Day, the Plaintiff had Judgment. 2 Jones 218. Pach. 34. Car. 2. B. R. Ogles v. Quintin.

49. In Debt on Bond for Performance of Covenants, whereby a Stranger is to render an Account, the Defendant pleaded Performance generally. The Plea is ill. Show r. Patch 1. 1 W. & M. Fitzpatrick v. Robinson.

50. Debt upon two Bonds, the Condition of the one was, that a Marriage being intended between the Defendant and one A. S. he should permit her to dispose of her Personal Estate, and that the Persons to whom she should dispose should enjoy it, and the Condition of the other was, to permit her to give away 50l. and that the Defendant should pay it within two Months after her Death. The Defendant pleaded to each, Quod Condition Sessilis Scripta munerae infrafacta futurum ad aliquem Temperantius, & hoc parasitum eft verificare. Upon Demurrer it was argued that this Plea was good, and should the Plaintiff to allege a Breach; for the Matter lay not within the Defendant's Notice, whether she had made any Disposal or not, and so could plead no otherwise than thus; but the Court held the Plea ill, and that the Defendant must show her he had performed the Conditions, and that this Manner of pleading was never admitted. 2 Vent. 156. Pach. 2. W. & M. in C. B. Brown v. Rands.

51. Debt upon a Bottomree Bond, the Defendant crah'd Oyer of the Condition, and pleaded that the Ship was lost. The Plaintiff replied, that the Ship was not lost, and concluded to the Country. The Defendant de- nounced, for that the Plaintiff had not offered any Breach in the Replication, and the Condition was for Payment of Money, and now upon Oyer the Condition was become Part of the Declaration, and then upon the Plaintiff's Declaration there is no Cause of Action without Breach of the Condition in the Replication, and cited the Case of Parnell v. Spald, which Dolben said was disapproved at the Time, and not Law, and that Saunders answers it in his Report of it; And Holt Ch. J. said, that the true Difference is, where the Matter pleaded admits and supposes a Non-performance, there is no need to allege a Breach; And to Judgment was given for the Plaintiff. Show. 148. 149. Pach. 2. W. & M. Meredith v. Allen.

52. The Assignment of the Breach of a Condition &c. in the Replication is not necessary, but only in that single Case of Debt on a Bond for Performance of an Award. Carth. 116. Pach. 2. W. & M. in B. R. in Case of Meredith v. Allen.

53. In Debt upon Bond &c. the Defendant pleaded a Letter of Licence from the Plaintiff's Tenant and all his Creditors, provided, that within two Months be would assist and secure all the Rights of the Title to the Rights
Condition.

Realty of S. to the Use of his Creditors, as Counsel should advise, and as B. B. Sir Counsel, did advise a Letter of Attorney to be delivered to one J. S. to demand and receive of one H. Tenant of the Tithe of the said Realty, all Rents and Sums of Money for the Tithe, till the Creditors should be satisfied & c. But because it was not pleaded that H. had any, and what Title, to all the Tithe & c. Judgment was given for the Plaintiff for this Reason. Latw. 675. 679. Hill. 12 W. 3. Plummer v. Adams.

54. Debt upon Bond condition'd, that if such a Ship should safely arrive at M. such a Day, and well and sufficient man'n'd, with A'd, tare'd, and provided for a Voyage from thence to V. then & c. The Defendant pleaded, that the Ship was safe in M. & c. and that she was well man'n'd, with A'd, and tare'd, but by Force of Wind was wholly disabled to complete the said Voyage, and did not say provided, as mention'd in the Condition. The Court said, that it might be true that the Ship was disabled by Force of the Wind, but this might be the Ship was not well provided for, and thereby was unable to rejoin the Wind, and therefore the Plaintiff had Judgment, by the Opinion of the whole Court. Latw. 698. Trin. 12 W. 3. Dottin v. Dowrih.

55. If one be bound to pay Money to J. S. at a certain Time and Place, it is not enough for the Defendant to say, that the Oblige came not, without saying, that he was there ready. Per Holt Ch. J. 1 Salk. 172. pl. 5. Mic. 1 Ann. B. R. in Cafe of Canterbury (Archbishop) v. Willis.

56. The Difference when the Plea is to be in the Words of the Condition, and when not, is this: If there be any Matter in Law & c. to be done that is under the Jurisdiction, and for the Judgment of the Court, you must particularly shew the Performance, and the Pleading in the Words of the Condition is not good. Arg. Holt's Rep. 207. pl. 12. Hill. 5 Ann. in Cafe of Amelly v. Cutter.

57. As if I am bound to make you a sufficient Release, there is no good Plea for you to say, you made a sufficient Release, but you must shew it in particular that the Court may judge of the Validity thereof. Arg. Holt's Rep. 207. in S. C.

58. So is the Reason of Specott's Cafe, 5 Co. 57. Schismatias inovets-ratus was not sufficient being too general, ergo uncertain for the Court to judge; but where the Condition is to do Fall's mercy, the Record is not to be twelled up therewith, and if there be Occasion you may allign a Breach, and cites 3 Bullit. 31. and cites 1 Roll Rep. 173. Arg. Holt's Rep. 207. in Cafe of Amelly v. Cutter.

59. So if the Condition be a Thing which is out of the Jurisdiction of the Court, or is to undergo an aliud Examen, there pleading in the Words of the Condition is good. Arg. Holt's Rep. 207. in S. C.

60. If a Condition be to save one harmless from all Actions pending, you may plead there are no Actions pending being general; Per Holt Ch. J. Holt's Rep. 203. pl. 10. Mic. 5Anne in Cafe of Hackett v. Tilly.

61. But if the Condition be to save you from a certain Action pending, there you are cleft to say, that such an Action is not pending, being particular; Per Holt Ch. J. Holt's Rep. 203. in S. C.

62. In Debt on Bond to exhibit an Inventory into the Ecclesiastical Court before such a Day, it is not enough to plead that no Court was held, but must plead also that he was there ready & c. For he must shew that he has done all that could be done on his Side towards a Performance. Salk.172. pl. 5. Mic. 6. Anne B. R. Canterbury (Archbishop) v. Willis. Defendant pleaded that he had exhibited an Inventory, but that he was not cited to account. The Court was clear, that the Bar was naught, and that he was bound to account before the Lift Day in the Condition, without Citation, at his Peril.
63. Where the Condition refers to a Mutilation of Particulars which may never be brought to Issue by the Parties, there it is sufficient for the Defendant to plead in general, and it lies on the Plaintiff, by way of Replication, to assign a Breach; because for the Defendant in his Plica to defend to that Variety of Particulars, would overcharge the Record to no Purpose, and would tend to intangle the Defendant who would fail if he miitook in Pleading any of them; whereas the Plaintiff, by chusing out of that Variety thatingular Matter by which the Condition is broken, brings it to one proper single Issue; and therefore in this Case the Modern Lawyers have relaxed the ancient Rules of Pleading, which required the Bar to be sufficient and Substantive, and in such Cases the Defendant only required the Condition to follow the Generality of the Words of the Condition, without defending to Particulars. Gilb. Equ. Rep. 232. in Case of Fitzpatrick v. Strong.

64. In Debit of a Bond, the Defendant craves Oyer of the Condition which was, That if we the above bounden J. S. and P. S. or either of us, any or either of our Heirs, Executors or Administrators, do well and truly pay to the above named L. F. his Executors, Administrators and Assigns, all Sums or Sums of Money which shall appear to be due upon a just Account stated on Account of Rent, or Arrears of Rent, due the first Day of May last, at or before the first Day of November next ensuing the Date hereof, then the above Obligation to be void. The Defendants plead, That on the first Day of November then next ensuing the Date of the Obligation, viz. 4th Dec. 1769 at Dublin, in the Parish of St. Michael, in the Ward of St. Michael, they paid to the Defendant all such Sums and Sums of Money which then appeared to be due on a just Account stated, on the Account of Rent, or Arrears of Rent, due the first Day of May in the Year aforesaid. To this the Plaintiff demurs, and shews for special Cause, that the Defendants had not known any particular or certain Sums of Money that they had paid to the Plaintiff, nor what was the Value of the Rent, or Arrears of Rent due the first of May. The Defendants join in Demurrer, & Judicium pro Quer. for there is no proper Issue for the Jury to try; and therefore saying, that at such a Time and such a Place he paid all Sums, is shewing nothing in certain on which the Plaintiff can defend to Issue; and therefore the Obligation stands confessed, since the Defendant does not shew to the Court that it is properly avoided by the alleging the Payment of any other Sum, that by the Condition is to be paid in Discharge of the Obligation, and consequently the Plaintiff's Declaration stands good, and Judgment for the Plaintiff. Gilb. Equ. Rep. Cases in the Exchequer in Ireland, 251. to 254, 255. Fitzpatrick v. Strong & al.

(Z. d) Condition. Qualified. And Relieved in Equity.

1. The Plaintiff leased to the Defendant rendering 3 l. a Year Rent and to re-enter on Default of Payment in twenty Days. Bond by Lessor that Lessor shall quietly enjoy, and for Performance of Covenants. Lessor fails in Payment of his Rent. Lessor enters for Nonpayment. Lessor files Bond and gets Judgment and recovers 21 l. at Law. But this Court ordered Repayment. Charn. Rep. 95. 12 Car. 1. Pope v. Dav. 2. Lands
Condition.

2. *Lands were devised to the Heir at Law after the Death of the Devisor's Wife, but subject to pay Debts and Legacies within two Months after the Wife's Decade. The Heir at Law dies, and his Heir at Law (during the Life of the Wife) sells the Reversion. The Wife dies. The Purchaser pays Debts and Legacies, but does not pay all. The Heir at Law enters for the Forfeiture; but the Purchaser was relieved against it.* Chan. Rep. 161, 1649. Underwood v. Swain.

3. *Covenant in a Lease was, that if Lessor should, without Licence, Lease for more than three Years, unless to his Wife or Children, the Lessor should be void. The Executor aliened it without Licence, but the Allience was relieved, it being sold for Payment of Debts.* Chan. Rep. 170, 1056. Cox v. Brown.

4. *In Case of a Bond for Performance of Covenants the Obligee shall have no more than he is really damalified, and shall recover in a Trial at Law.* Chan. Rep. 199, 12 Car. 2, in Case of Davenport v. Longville.

5. *A Settlement was with Proviso, that the Heir at Law should not attempt to impeach it. There were several Doubts and Ambiguities in it. The Court directed a Trial at Law, and that the Trial should be no Forfeiture.* 2 Chan. Rep. 75, 14 Car. 2. Sterling v. Levingstone.

6. *When a Man takes a Security by a Penalty he lets up his Rest there, and makes himself Judge of what he would have, and he ought to have no more. Arg. Chan. Cafes. 24. Trin. 15 Car. 2. in Case of Crip v. Blake.*

7. *Mortgagee by Will remits Part of the Mortgage-money and all the Interest, if the Arrears are paid in three Years. The Mortgagee, failing to pay within the Time, loses the Benefit of the Request; admitted by Serjeant Fountain. Chan. Cafes. 52. Patch. 16 Car. 2. in Case of Glover v. Portington.*

8. *Money payable according to the Condition of a Bond was moderated, in regard that the Office out of which it was to issue was taken away for some Part of the Time; and decreed the Obligor to pay for so many Years only as the Office continued, and thereupon the Bond to be delivered up.* Chan. Cafes. 72. Hill. 17 & 18 Car. 2. Lawrence v. Brazier.

9. *A left Sun, due by Specialty, was agreed to be accepted instead of a greater Sum due, if paid at such a Day certain. The Question was, if the Debtor fails of Payment at the Day, whether he shall lose the Benefit of such Agreement or not. It was order'd to be made a Case; And the Reporter says it is to be observed that Part of the Consideration of the Agreement was, that one who was not bound by any former Security had paid the Creditor 75 L. and undertook to pay him 40 L. more, and to the Security was better'd.* Chan. Cafes. 110, 111. Trin. 20 Car. 2. Delamere v. Smith.

10. *If Condition be to have Content in Writing, and the Content is see Tit. had without Writing, this Court will help in that Case. Arg. Chan. Marriage Cafes 141. Mich. 21 Car. 2. in the Case of Fry v. Porter.*

11. *Condition of a Recognition was qualified in Equity according to the Equity of the Matter before the Recognition was given.* Chan. Cafes 191. Mich. 22 Car. 2 Holt v. Holt.

12. *As where H, a Citizen of London, seized and possessed of several Horses in London and elsewhere, of a publick Title, devoted 1000 L. to his Daughters, being his only Children and Orphans, to be paid out of his real and personal Estate before any other should have Benefit of his Lands &c. and made A, his Nephew and others his Executors, and died in* 1658.
1638. A. and others, as his Sureties, entered into a Recognizance to the Chamberlain of London for Paym't thereof. By the Reestoration the Houses being of a publick Title reserved to the right Owners, and by the Fire in London the other Houses were burnt down, so that it was to be doubted the whole Estate would not amount to the 1000l. and because if the Chamber of London had taken the Estate into their own Hands, it would have been in no better Plight than now it is, and the Intention of the Security was only that the Executors should not misemploy nor waste the Estate, which they had not done, Lord Keeper, ass't by 4 Judges, decreed that the Recognizance should be made Use of no further than to make good the Value of the Testator's Estate over and above the said Lottes. Chan. Cases 192. Mich. 22 Car. 2. Holt v. Holt.

13. A. grants an Office to B. for 6 Months, and M. and N. by Bond, reciting the said Grant, are obliged for his faithful Performance during all the Time; this extends no further than to the 6 Months recited in the Condition. 2 Saund. 411. 414. Patch. 24 Car. 2. Lord Arlington v. Meyrick.

14. Vendor of Lands takes a Lease of them at such a Rent, with Condition of Re-entry, and gives collateral Security for the Payment of the Rent. The Rent is arrear. Vendee re-enters. Vendor can have no Relief against the collateral Security without Payment of the Arrears of the Rent due before the Re-entry as well as after the Re-entry. The Lands fold were affirmed to be 250l. per Ann. but were worth but 160l. Chan. Cases 261. Trin. 27 Car. 2. Anon.

15. 500l. was devised to the Plaintiff's Wife, if she married with the Consent of certain Trustees, and in Case she did not, then 20l. per Ann. for her Life; She married the Plaintiff without the Consent of the Trustee's, and he preferred his Bill here for the 500l. and it was argued on the Behalf of the Defendant, that this did differ from the common Case of a Devise upon Condition in Terreore; for it has always been held, that where there is a Devise over to a 3d Person for Nonperformance of the Condition, there if the Party marry without Consent &c. all shall go to the 3d Person, because he hath a conditional Interest by the Will, and if there be no Devise over, then it is esteemed only in Terreore, and the Party shall have the Legacy notwithstanding the Breach of the Condition; but here this is tantamount, or as Strong as a Devise over, when the Party himself faith, that if she marry without Consent, the shall have but 20l. per Ann. But to that it was answered by the Lord Chancellor, that this differed not from the Rejoyn of the common Case of a Devise in Terreore, and the Reason he said he had from this Court, that this Court will not make Mews' Wills for them, and give their Estates quite contrary to their Intents) answered, that this Court holds Plea of Legacies, and judges of them by the Rules of the Civil Law, and by that Law any Condition added to refrain Marriage is void; so that where an Interest does not accrue to a 3d Person by the Breach of the Condition, such a Condition is void, and only in Terreore, and so the 500l. was decreed to the Plaintiff. But if it had appeared that any Surprise or Brutes &c. had been used in obtaining a young Maid to marry unfittably, perhaps this Court would order it otherwise. 2 Freem. Rep. 41, 42. pl. 45. Mich. 1678. Hicks v. Pendarvis.

16. Bond to pay the final Condemnation of the Court of Dover if Judgment be in that Court against the Obligor, and he appeals properly, and the Sentence be repeated, the Obligor shall be eased of the Bond. Chan. Cases 306. Hill. 29 & 30 Car. 2. Stock v. Denew.

17. A
Condition.

17. A Feme Covert, having Power by Will to devise Lands, devises them to her Executors to pay 500L. out of them in her Son, provided, that if the Son's Father gives not a sufficient Release of Goods in such a Manner to her Executors, that then the Devise of the 500L. should be void, and go to the Executors. After her Death a Release was rended to the Father, and he refused; But on a Bill brought by the Son against the Executors and the Father, the Father answered that he was now ready to release, tho' for some Reasons he had before refused; whereupon the Ld Chancellor decreed the Payment of the 500L and laid it was the standing Rule of the Court, that a Forfeiture should not bind a Thing may be done after, or a Compensation made for it; As where the Condition is to pay Money &c. and though it is generally binding where there is a Devise over, yet in this Case, the Will laying that it shall go to the Executors, it is no more than the Law implied. 2 Vent. 352.

18. Where there is an Agreement to do a Thing upon a Penalty, the Penalty can never be demanded in Equity, if the Party performs that for the not doing whereof the Security or Penalty is given. Arg. 2 Chan. Cates 83. Patch. 34 Car. 2, in Chancery. Cage v. Ruffel.

19. M. polled off a Lease for Years assigns it to D. on Condition not to alien without Licence. M. without Licence mortgaged the Lease, and then becomes a Bankrupt. Allignee of the Commissioners prays Relief against the Forfeiture; M. by Answer waives the Advantage, if the at all re-500L. which was the Consideration of his Assignment, may be repaid here against him. It was insisted that M. had taken Bond of D. and also that M. had actually come in as a Creditor before the Commissioners, and paid his contribution Money. But Ld Chancellor would not relieve against the Forfeiture without Payment of the 500L. 2 Chan. Cates 177. Mich. Order by his Answer, so as he might be paid the 500L. Ibid.

20. The Baron of Leflee, after his Wife's Death, assigned two Leases, in Consideration whereof, the Assignee gave Bond of 500L. to pay the Baron 20L. per Ann. for Life, and all the Rent to the Lessor; The Assignee brought a Bill to be relieved against this Bond, for that the Leases were forfeited for Non-payment of the Rent. But having had the full Benefit of the Leases, notwithstanding the Forfeiture, he afterwards re-entring an Payment of the Arrears, the Court decreed the Plaintiff to pay the Defendant, the Leflee, all the Arrears of the 20L a Year, and to continue the Payment thereof as it grows due; but it being suggested in the Bill that the Wife, before her Marriage with the Defendant, had assigned the Leases to Trustees for the Use of her Children by her former Husband, it was order'd that the Defendant should first give Security to be approved by the Master to indemnify the Plaintiff against the said Children. Fin. Rep. 49. Pill. 25 Car. 2. Powell v. Morgan.

21. A. devised to C. his younger Son Lands called S. Proviso if C. be binding, he shall have his Lands in B. C. is ex-visited of a Money by a Stranger, without the Privity of the Heir at Law. The Lands in B. are of much greater Value than those called S. Per North K. this is a Condition that lies in Compensation, and decreed to have only a Satisfaction pro tanto out of B. and decreed accordingly. Vern. Rep. 270. pl. 265. Mich. 1634. Tyle v. Tyle.

22. An Indemnity was made to Farmers of the Duty on Sea-Coal, to pay Money if the Duty should determine before such a Time. The Duty in Sicilites might perhaps be laid to determine, yet the Duty being enjoyed by the Injured, or they having made some Composition touching the same, and so not damaged, their Plea that the Duty determined before the Time agreed on was over-ruled, and they order-
Condition.

Robinson v. Burdett.

32. A. the Father makes a voluntary Settlement upon B. his eldest Son in
Title Male, Remainder to C. a second Son &c., in which is a Provision
that if B. did not pay to C. 600l at his Age of 21, then the Estate of
B. both in Law and Equity should cease. A. having afterwards Married
a 2d Wife, by Deed taking Notice of the former Settlement, and that B.
had not paid the Money according to the Provizo, conveys the same Lands
to the Use of his Children by his left Wife. The Plaintiff's Bill was, to
be brought against the Forfeiture for Non-payment at the precise Day;
but in regard the Conveyance was purely Voluntary, and the Father
might have put what Conditions or Restriptions upon his Son he
thought fit, and the Provizo being Special, that for Non-payment at
the Day the Son's Estate both in Law and Equity should cease, the
Court refused to relieve the Plaintiff, and dismissed the Bill; and the
rather for that the Plaintiff had set up a Releafe against his Father,
which was obtained by Surprize; and the Deed in Law was defective,
and amounted only to a Declaration of Truth. Vern. 456. 437. pl. 431.

Fin Rep. 49.
Powell v. Morgan is
not S. C.

33. A Legacy was given on Condition, that Legatee shall not dispute or
intercept her Will; the Legatee contends the Validity of the Will. Per
Carr. There was Proba. that Legatee litigating and was not a Forfeiture

34. A. having 5 Daughters and devised of Land in Fee of 10,000l.
Value,settles it to that in Case his eldest Daughter should within 6
Months after his Decease pay 600l. among his other 4 Daughters, then
the Eldest to have the Land; No Payment was made in the 6 Months,
but within that Time Application was made by her to the Trustees to
join in a Mortgage or Sale to raise the Money, but that not taking
Eldest she brought her Bill and assigned her Interest to the Plaintiff.
In Case of Default by the eldest Daughter the Land was devised over on
the like Condition. Per Commissioners; This being a Power coupled
with an Interest is recoverable, and the Court may enlarge the Time,
and hath usually done it even in Case of a Condition precedent. 2 Vern.
166. pl. 153. Trin. 1690. and Ibid. 222. pl. 202. Pach. 1691. Wood-
man v. Blake.

A. Devised to
his Son, pay-
ing his
Daughter
500l. and
in Default
thereof to the said Daughter and her Heirs. The Son devised it to his Maker for Life, and afterwards to
an Infant and his Heirs. The Mother and Daughter combine together, and the Mother required to pay the
500l. by which Means the Estate would be forfeited to the Daughter, and the Infant defeated. Decreed
that the Mother pay one third Part of the 500l. and that if the refuse, then the Infant paying the Whole,
shall have to him and his Heirs against them both. But if the Mother pays one third, then she to enjoy for her Life. Fin. Rep. 251. Trin. 27 Car. 2. Hayes v. Hayes.

35. When the Person, that is to receive Benefit, by Practice, or
Convenience prevents the Performance of a Condition, Equity will relieve,
Admitted per Lord Somers. 2 Vern. 244. Hill. 1697. in Case of
Carie v. Bertie.

36. A. devise Land to J. S. paying to A's Daughter (who is Heir at
Law to A.) 1000l. J. S. makes Default. The Daughter recovers in
Possession. The Heir of J. S. had Relief on Payment of Principal and
Interest, though in Favour of a voluntary Device, and to the Dis-
v. Fane.

37. 400l. was left in a Purchaser's Hands for 2 Years without Inter-
est, and if the Wife of A. the Vendor released Dever in that Time, then
B. the Vendee was to pay the 400l. at the Further of A. A. died,
his Widow did not release within the 2 Years, but brought her Writ
of Dower though she died before the Recovery of it. But it was infir-
ment that this was not in the Nature of a Penalty but the Terms of an Agree-
ment,
Condition.

ment, and the Measure of the Satisfaction for the contingent Incumbrance of Dowry, and the Court would not have relieved had the released after 2 Years, and Decreed accordingly by Ld. Somers. Ch. Prec. 102. Mich. 1699. Small v. Ld. Fitzwilliams.

38. Lands were devised to J. S. paying the Heir 2000 l. within 20 2 Ver. 192. Years, at 1000 l. per Ann. The Heir entered for Non-payment as pl. 553. S.C. for a Forfeiture, and though it was Urged that Chancery ought not to aid in Dilhurtion of an Heir, yet Ld. C. Cowper Chancellor said, that the Party the Entry of the Heir in this Case was only to enforce the Payment of might be put the Money. As where a Mortgagee enters the Court can give him Inter- est from the Time it became payable, and where ever the Court can give Satisfaction or Composition for a Breach of Condition they can relieve. 1 Salk. 156. pl. 7. in Chancery 1797. 'Grimiton v. Ld. had been literally performed Bruce and Ux'.

Chancery will relieve, though the Letter was not strictly performed as Payment of Money &c. But where the Condition was Collateral and no recompence or value could be put on the Breach of it, there no Relief could be had for the Breach of it. Arg. by Sir Rob. Raymond Ac-counsel. Ch. Prec. 487. said it was laid down as a Rule Per Ld. Somers and cites 5 Ch. Cases 1153. Berrie v. Falkland.——S. P. and C. 12. Mod. 184. Per Ld. Somers.

39. Bill to be relieved against the Condition of a Bottomree Bond &c. it being not performed in some small Circumstances, but denied per Cow- per C. it being a voluntary Undertaking of the Obliger, and no Contract or Consideration that might incline the Court to interpose. Mich. 3 Geo. Canc. Anon.

40. Lease for Life or Years on Condition of Re-entry for a Forfeiture, or that the Lease should be void if Lessor aliens or affings without Licence. In Case of Forfeiture, Chancery will not relieve because 'tis unknown what shall be the Measure of the Damages, for that is only where there can be a Composition in Damages. 9 Mod. 112. Mich. 11 Geo. Wafer v. Macaro.

41. J. S. charged his real Estate with 500 l. to be paid his Sister Alice Herne, within one Month after her Marriage, but fo nevertheless as the married with the Approbation of his Brother Joseph Herne (if ill- ving) and in Cafe the married without his Consent, the 500 l. was not to be raised. Alice Herne married in the Life-time of Joseph Herne, and without his Consent, and the Question was, Whether she was entitled to the 500 l. or not; for here it was said that this was a Condition only in Terreorm, and that the Contra/faction of such Conditions has always been, that where there is no Deive over such Condition is void, wheneover were limited over, and here it is not.

Contra it was Argued that this is a Condition precedent, and no thing arifes or becomes due but upon the marrying with Consent, and that this being a Deive of Money out of Land, or of a Charge upon the Land, it is to be Conferred as a Deive of Land &c. and governed by the same Rules, and then being a plain Condition precedent nothing does arise &c. and for this was cited the Cases of Fry v. Porter. Ber- lie and Faulkland &c.

The Matter of the Rolls said, that the Civil Law makes no Distinction in Personal Legacies, between Conditions precedent and subse- quent, neither does this Court as to meer Personal Legacies given upon Condition of marrying &c. with Consent &c. But this Court differs from the Civil Law in this, that whereas by that Law all Conditions in Restrains of Marriage are void, but this Court says they are not void where the Legacy is given over and another Person, particularly Substituted by the Testator, to have the benefit of it in Case the Condition be not complied with, but this might be a Special Nomination as a Legatee, and therefore a Re- substitutary Legatee or Executor should not have the benefit of such Non-per- formance, and remembered a Case to this Purpose, that where a Legacy given upon such Condition of marrying with Consent, and if not
it should sink into the Residue of Testator's Estate which be give to J. S. &c. It was held that though the Marriage was without the Consent, yet the Legacy was not lost because it would have been the same if Testator had put nothing about its sinking into the Residuum, and therefore was continued only in Terrae. So it is in the Case of a Trust of a Term limited of Lands for raising Portions with such Restriction, this Court governing itself by the same Rules as in Case of a Devise of a Legacy with such Condition, because though the Term be a legal Estate and Interest, yet the Trust of the Term is a Creature of Equity only &c.

But it is otherwise in Case of a Devise of Lands there Conditions precedent, and subsequent take Place &c. and this was Fry and Porter's Case of an Intent bound by Condition, relating to her Marriage being a Condition precedent, and held that the present Cafe being a Charge upon Land is to be governed by the same Rule, and is to be considered as Land, the Will must be attested in the same Manner &c. and this being plainly a Condition precedent, and nothing veiled (as is in Case of a Trust Term where the Term is veiled and the Trust only left open) it is too hard for this Court to Charge the Land contrary to the express Will of the Testator, and to say the Money should be raised when the Testator has said it shall not &c. and held that a Charge on the Land can't arise &c. otherwise than as a Devise of the Land itself, wherefore the Bill was dismissed as to this Point; for Alice the Legatee were cited Salisbury v. Bonnet, 2 Vern. 1 Ch. Ca. 22 Bellatis v. Ermin, and ibid. 58 Fleming v. Waldgrave. But as to this it was said by Mr. Attorney General and agreed by his Honors, that the Legacy there veiled immediately, it being given upon her not marrying without Consent &c. and his Honour remembered a like Case in time of Wright S. C. where the Condition being if she did not marry with Consent &c. and the Legacy was Decreed her immediately, and that to enter into a Recognizance to refund in Cafe the married without Consent &c. Ms. Rep. Mich. 4 Geo. 2 Canc. Reves v. Herne.

For more of Conditions in general, See Accord, Actions of Allmuns, Apportionment, Arbitration, Covenant, Devise, Entry, Grants, Heir, Mortgage, Notice, Obligation, Pleadings, Policy of Insurance, Rent, Resumption, Tender, Time, Temps Pris, and other proper Titles.

Confession.

(A) What shall Amount to it Actions of which Advantage shall be taken. And in what Cafes, and how the Confession must be, or may be.

1. In Writ. Per Marten, if the Defendant confesses Waft in his Protef{ation and pleads no Waft done, the Plaintiff shall have Advantage of the Confession contained in the Protef{ation quad non negatur. By which he pleaded no Waft done, and oufled the Protef{ation out of the Plea. Br. Confession. pl. 60. cites 11. H. 6. 1.

2. In Détine of a Chrift of Charters and of a Charter Special, if the Plaintiff will confess the Action, he ought to confess it as the Plaintiff.
Confession.

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3. If Illue is join'd, and after the Defendant or Tenant pleads Release by Traverse of the Plaintiff after the last Continuance, and he says that Not his Deed per &c. pleads the Plaintiff after the last Continuance, or that he made it before and not after, this 266. cites 12 H. 6. 9.

by some is a Confession of the Deed. Br. Confession, pl. 42. cites 21 in Trespass, the Defendant pleads not Guilty and so to Illue, and Day given till another Term, and meece between these the Plaintiff released to the Defendant &c. and at the Day after Continuance was taken, at which Day the Defendant said that the Plaintiff by the Deed bearing Date before the last Continuance, and prima Lethorat to him after the last Continuance released to him &c. and the Plaintiff said that the Delivery was taken at which Date Abi Aec hoc that it was delivered after the last Continuance, and Per tor. Cor. the Plaintiff shall be harr'd by Confession of the Release after the Action brought and after the Trespass done, but Per Cor. the Plaintiff might have said that he did not deliver the Deed after the last Continuance without paying more. Br. Negativa &c. pl. 53. cites 16 E. 4. 5.

4. The Defendant justified that the Beasts escaped into the Land of the Plaintiff and spoiled his Grafs, and he seftibly re-took, and no Plea, but is a Confession of the Trespass, by which he presumed in the Escope. Br. Trespass, pl. 155. cites 22 H. 6. 36.

5. In Debt the Defendant pleaded Release, and at the Day of Ven. fac. made Default, the Plaintiff prayed Judgment upon the Obligation, and by the Opinion of the Court he shall have it; for this is a Confession of the Obligation as he had pleaded Acquittance. Br. Judgment, pl. 79. cites 5 E. 4. 7.

6. In Trespass the Defendant justified the taking by Licence of the Plaintiff to detain in Pledge for 10 l. which the Plaintiff owed him, and the Defendant demanded; by this the Debt is confessed. Br. Confession, pl. 65. cites 5 H. 7. 1.

7. Contra it seems, if he had taken the Debt by Preademption and demurred upon the Bar. Ibid.

8. In Formedon, per omnes except Hufsey, if the Tenant pleads Warranty with AIssts, which is found for the Demandant upon Traverse of the AIssts, by this the Demandant has conteffed the Warranty, and shall not lay Not his Deed after, for he cannot deny the AIssts without conteffing the Warranty as it is laid there in a Nota; But Brooke says it seems to him, that in this Case the Demandant may lay Preademption, that the Deed is not in the Deed of his Ancefor, and pro Plaftio Nothing by Defendant; and if this Plea be found for him he shall plead Non est factum after. Br. Confession, pl. 62. cites 5 H. 7. 2. 3.

Man pleads Rens paffa by the Debt, he cannot give in Evidence, that Non est factum; because by the pleading the Deed is confessed; Quad Nota & quere. Br. General Illue &c. pl. 79. cites 5 H. 7. 5. Br. Esseppel, pl. 151. cites 5 E. 7. 23. S. P. land so are all the Editions, but it seems misprinted for 5 H. 7. 5. 5. 4. 1. Nota per. Brien, if a.

9. Not Guilty is no Confession of the Tenure; contra of Pleading Rens Appar. Br. Verdict, pl. 56. cites 9 H. 7. 3.

10. Debt upon an Obligation to perform an Arbitrement, the Defendant Brownl. 89. pleads the Plaintiff's Release, Illue is joined upon it, and found with S.C. the Plaintiff. He has Judgment. Affirmed in Error, although the Plaintiff did not allege any Part of the Arbitrement, and a Breach of it in the Defendant. The Law requires that when it is pleaded, that no Arbitrement was made, nor where the Arbitrement and Breach of it are confefled, as in this Case is impliedly done. Jenk. 280. pl. 4. cites Mich. 3 Jac. Jefferi v. Grey.


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Confession.

12. So in an Affidavit, where the Tenant pleads a Release, the Difficult is impliedly confessed. This is the Reason that where not Guilty is pleaded in Trespass, a Release cannot be given in Evidence; for such Evidence and the Defendant's Plea are contrary. A Release implies a Confession of the Trespass, and a Discharge of it by the Release. Jenk. 280. pl. 4.

13. There is a great Difference between a direct Confession of the Party by a bene & cwm &c. and a Nient debar, or a Demurrer; that is, between a direct Confession of the Party against himself, and an Admissitance by Implication, or a Verdict finding it, or the like; As in 2 H. 7. 16. if a Man bring an Action of Trespass against A. good spie final cum B. & C. did the Trespass, and does not sue them all, his Writ shall abate; and if he bring his Action against A. and he pleads the Trespass done by him, and B. and that the Plaintiff released to B. and the Plaintiff traverses the Release, yet his Action shall not abate; So 9 H. 7. 3. if a Man avow for two Rents, and one of his own holding appears not due, the whole Avowry is vicious; otherwife if it were to be found by Verdict; Per Hobart Ch. J. Hob. 184. Mich. 10. Luc. in Cafe of Cole & Glover v. Coventry and Litchfield (Bishop of.)

14. Proof upon the Condition of an Obligation of an Apprentice by Confession or otherwife, touching the embushing his Master's Goods; a voluntary Confession is Good. Jenk. 300. pl. 63.


16. Account against the Defendants as Bailiffs &c. for 132 Bushels of Wheat to the Value of 20l. the Defendant pleaded, that pleno computatis, de pretio 132 Bushels; the Plaintiff replied, that non computatis, upon which they were at Issue, and the Plaintiff had a Verdict and Judgment, that the Defendant compter, and he appearing upon the Capias ad computandum, there were Auditors assigned, who afterwards delivered in the Account, (viz.) that the Defendant had consifed to them the receiving 120 Bushels of light Wheat ad Merhandizandum; but that be, at the Request of the Plaintiff, had mingled ten Bushels with it to make it fit for Sale, and ceased Allowance of it, and of several other Particulars in English; and upon Demurrer the Plaintiff had Judgment to recover for the 132 Bushels of Wheat, for which he had declared, and not ad Valorem; because by this Plea of Pleno computavit, the Defendant confessed he had received 132 Bushels, but that he had fully accounted for so much, when before the Auditors he had only accounted for 120 Bushels, which must be an imperfect Account, and that is the same Thing as if he had refused to account; And the Reporter adds a Nosa, that in such Cases, if the Judgment had been Quod recuperet ad Valorem, it had been wrong. Lutw. 58. 63. Mich. 11 W. 3. Pierce v. Clerke.

(B) By Attorney or Baily, in what Cases.

1. In Affidavit the Bailiff of the Tenant cannot confeis the Difficult. Br. Contelion, pl. 47. cites 22 Aff. 45.

2. In Trespass the Defendant alleged, that the Plaintiff was his Villein, and because the Plaintiff's Attorney could not deny it, the Court awarded that the Plaintiff take nothing by his Writ. The Reporter says, that when this Conufance of Villeinage was received by Attorney all the Justices
tices of the one Bench and the other were present; Quod mirum! Ideo ney, pl. 19.
Quere &c. Hill. 44 E. 3. 1ol. 2. b. pl. 9. Chatewy v. the Bishop of Wincheller.

Accordingly, but says, Quod mirum!—Pith. Villeins, pl. 40. cites Hill. 13. H. 4. S. P.—Keiwi. 153. a. b. pl. 118. S. P. and cites S. C. —Jenck. 32. pl. 100. cites S. C. but says that the Attorney has his Warrant ad

dependum & lamentum; and though this Resolution was in the Presence of the Judges of both Benches, yet it was not their Resolution; For the Power of an Attorney relates to the Matter in Demand, as

appears by his Warrant; but that if a Notice be made, by which he is brought, such a Confession may be received.

Jenck. 38. pl. 12. S. P. as to Villeins; for it is a Final Bar, as a Retraction, which requires a

personal Acknowledgement.

3. In Debt, if a Man is condemned, the Attorney of the Plaintiff cannot

confess the Grec [Satisfaction.] of his Matter after the Year; for after the

Year his Warrant is expired as to confessing Grec [Satisfaction, and he

ought to have a new Warrant.] Br. Satisfaction, pl. 39 H. 6. 49.

(C) The Force and Effect of a Confession, and where

it is contrary to a Verdict.

1. Refpafs done Anno 17. The Defendant pleaded a Religion of all Act.

Br. Confes-

sions Anno the 16. and to any Prefsafs after, Not Guilty; the fion, pl. 48.

Plaintiff said, that the Religion was by Deeds and ill; for by this he con-

fes that it was done Anno the 16. and to his Action tallie, and of his Con-

fession it shall abate. Br. Trefpafs, pl. 243. cites 22 All. 86.

had come by Verdict; Note the Divery.

2. In Affile the Tenant pleaded in Bar, and confessed an Outier; the

Plaintiff made Title, and found for him, and that he was neither feized or
diffiedy when the Title is found for them; For Confes-

sion is stronger than Verdict. Br. Confelion, pl. 49. cites 44 All. 6.

Br. Verdict, pl. 3. cites S. C. —Br.

Non effl Fac-

Obligee.

Oblige getts it before the Indente deliver'd, and fe Non effl Facum, and cites S. C. —

upon the little thereof it is found that it is not his Deed, yet the Plaintiff

shall recover, because he has confessed in Pleading that it is his Deed.

For he has confessed Delivery as a Deed. Br. Confelion, pl. 38. cites

9 H. 6. 37.

4. But otherwise it is if he had faid, that he had deliver'd it as an Es-

crave upon Condition as above, and after this performed to deliver it to the

Oblige as his Deed; Note the Diverity; Confession and Verdict, and the

one contrary to the other; the Confession shall bind, and the Ver-

dict shall be void. Ibid.

5. Where a Man brings a Point Action, and in Pleading by Replica-

tion or otherwise, after several Bars pleaded, be confesses that his Action

is feverd, the Write shall abate; Quere, where each Matter is found by 36 H. 6. 27.

Verdict, there the Plaintiff shall recover, and shall be amerced also;

And to fee that Confession is stronger than Verdict. Br. Confelion, pl.

22. cites 36 H. 6. 30

6. Where it is confessd upon Examination of the Sheriff, that he has re-

turned a Man outlaw'd contrary to a Superfedeats, and has returned the Co-

pies of the Exigents, and not the Writs themselves, there he shall be amerced,

and there needs no Indictment thereof against the Sacrifice to bring him to

Answer,
Confeffion

Antver, and this by reason of his Confeffion; Quod Nota. Br. Confeffion, pl. 32, cites 5 E. 4. 5. per Markham and other Justices.

7. Confedio Fudta in Judicio omni probatione major est. Jenk. 102, pl. 99.

8. At Common Law, where the Defendant or Tenant confeffed the Action, he might have a Writ of Error notwithstanding; for the Record consists of several Things. Upon an Indictment of Felony, and a Confeffion upon it, a Writ of Error lies if the Error be apparent; but the Error ought to be allowed by the Court before the Writ of Error be allowed. Jenk. 134, pl. 73.

(D) Judgment. In what Cases Judgment shall be given upon the Confeffion; And at what Time.

1. In Affic. it was laid for Law, that if a Thing be confessed in Pleading, and the Verdict found contrary, yet Judgment shall be upon the Confeffion &c. Br. Confeffion, pl. 26, cites 28 Atl. 17.

2. But if a Thing be confessed in Pleading, and after the Issue is taken in Affic. or Point of the Affic. or in another Action the General Issue is taken, so that the other Matter is expelled from the Pleading, or is not entered, there the Confeffion is waived, and the Verdict shall take Effect. Ibid.

3. In Affic the Tenant pleaded in Bar and confessed an Issue; the Plaintiff made Title, which Title was found, and that the Plaintiff was not seised, yet the Plaintiff recovered by reason of the Confeffion of the Officer, for he cannot be oust'd if he was not seised; For the Confeffion shall take Effect though the contrary be found by Verdict. Br. Confeffion, pl. 27, cites 28 Atl. 34.

4. Where it is confessed by Implication in Pleading, that the Defendant in Treasures Vi & Armis is a Lord, there, though the Defendant pleads to Issue, and the Verdict passes for the Plaintiff, he shall not recover, because it appears by the Pleading that the Action does not lie Vi & Armis against the Lord. Br. Confeffion, pl. 34, cites 10 E. 4. 7.

5. In Pleading quod reddat against four, three confessed the Affic., and the fourth said, that he held jointly with the two, oblique wise that the third having done bad, Judgment shall not be given upon the Confeffion till the Issue be try'd; For this goes to the whole Writ; Quod Nota. Br. Confeffion, pl. 1, cites 27 H. 8. 30.

6. In Affic and Batey the Defendant pleaded Not Guilty, which was entered, and now he would confess the Action, which the Plaintiff was unwilling to accept, because the Defendant had some Influence over the Sheriff before whom the Inquiry of Damages should be. The Prothoraties all said, they had never known a Confeffion refuted if offered before the Nisi Prius fealed; but however, the Court in their Discretion refused it, as well because the Wounding was grievous as to avoid Error. Hob. 220, pl. 292. Pat. 16 Jac. Clasebrooke v. Livefay.

7. In Debt for an Escape of one in Execution, the Defendant pleaded Nil debet, and after Issue joined thereupon, the Defendant answer'd to confeffs
Confeffion.

(£) Of one, in what Cases it shall bind another. Succeffor &c.

1. IN Error, Shard faid that he saw in the Eyer of Northampton, that an Abbot confefled a Deed, and by this his Succelfor was charged for ever. Br. Confeffion, pl. 29, cites 34 Aff. 7.

2. And per Wich, if an Abbot or Prior be brought into Court by Proces of Law in Præcept quod reddat, and be comes and confefles the Action, this fhall bind the Succelfor, not by reafon of the Confeffion only, but becaufe by this, is to execute the Demand of the Action, and the Succelfor may have Writ of Right. Ibid.

3. Contra of such Confeffion in Writ of Annity; for this goes to the f If an Abbot Perthon, and there does not lie Writ of Right, and therefore there the Confeffion fhall not bind the Succelfor. But as to this Point they were in Doubt, and fo as to this they adjourn'd. Br. Confeffion, pl. 29, cites 34 Aff. 7.

bound for ever; Quod Nota; and no Falsefying fhall serve; Per Car. Br. Confeffion, pl. 2, cites 9 H. 6, 2, 8.

4 U 4 So
Confeilion.

4. So it is of Warranty confessed upon Voucher, where an Abbot comes by
Procefs, and he there confesses the Deed to be the Deed of the War-
ranty of the Abbot or Covert, which is not, yet the Succelion is
bound by this Confeilion. Br. Confeilion, pl. 29. cites 34 Att. 7.

5. But Confeilion of the Baron, or of the Tenant in Tail, shall not bind
the Feme, or Ilue in Tail; For per finch the ilue is in a Manner Par-
chafor, and they were adjourn'd in Doubt of the Cafe of the Annuity.
Ibid.

6. The Confeilion of an Abbot, who comes and confesses before the Jus-
tices, without original Pleading, and without Day in Court, and Procefs
of the Law shall not bind the Succellor; Contra where he comes by

7. Dower against three, the one disfurn'd in the Tenancy, and another
was ready to render Dower, and the third made Default, and the Render
was not accepted because the one made Default; for it may be that he may
come and take the entire Tenancy, by which Grand Cape was awarded

8. If Debt be brought against two as Executors, where the one is not
Executor, nor ever discontinued, and the Executive makes Default, and
the other confesses the A&ion, the Executive has no Remedie but Action
of Decein against him who confessed; for he is Party to the Judgment;

9. In Replevin it was agreed, that it an Abbot confesses Action, the
Succelror shall be bound, and shall not falsify. Br. Confeilion, pl. 53.
cites 10 E. 4. 2.

10. If a Square Impedit were brought against a common Patron and his
Clerk, and the Patron set forth his Title to the Advovfon, and confessed
no Plenarty of this Presentation, and the Clerk on the other Side would
plead that he [was] induced &c. which were fals, yet no Doubt;
the Patron should have a Writ to the Bishop; for theittle Plea of anoth-
er shall not conclude him, the rather because the Patron could not
properly contradict his Co-Defendant's Plea in that Point. Per Cur.
Hob. 193. pl. 245. in Cafe of Wincembe v. Puleitone.

(F) As to one, in what Cases it shall aid another.

1. IN Wafe, a Man may confess Wafe against a Stranger, and bar the
Plaintiff or confess Disliffin to a Stranger, and bar the Plaintiff;
and well; For the Confeilion against a Stranger is no Matter to the

(G) By what Persons. Baron and Feme &c.

1. DOWER by Baron and Feme, the Tenant pleaded Ne unques fife
que Dower &c. and the Defendants confessed it, and were not
suffered by Reafon that the Feme was Covert, by which they acknowled-
ged by Fine, and the Feme was examined; Quad Nata. Quare
upon Confeilion; Note the Diversity. Br Confeilion, pl. 5. cites 44
E. 3. 12.
2. Confession of Baron and Feme covert was taken of a Deed without Impeachment of Wffe. Br. Confeffion, pl. 57. cites 45 E. 4. 11.

3. If the Defendant prays Act, and the Plaintiff [Prayer] comes and offers to join, the Defendant cannot Waive the Act and plead alone; but he may confeff the Aâion in Spight of the Prayer. Br. Confeffion, pl. 57. cites 4 E. 4. 28, 29. per Danby.

4. If Precipe quod reddat be brought against Baron and Feme by the King, it shall be intende that they are feified in Jure Uxorius, and there, if the Baron confeffes the Action, the Feme has no remedy; Per Catalby quod Markam J. conceffit. Br. Confeffion, pl. 33. cites 7 E. 4. 17.

5. But where Tenant for Life is impleaded or makes Default, and the Baron is feied in Jure Uxorius, who has the Reversion, there he shall not be permitted to confeff the Action; for Receipt is to defend the Right, and not to confeff &c. Ibid.

6. If an Infant confeffes the Action, the Confeffion shall not be acceptfed, because he is an Infant. Br. Confeffion, pl. 36. cites 9 E. 4. 34. pl. 55. cites 43 E. 5. 5.

(H) Punished or favoured. How far.

1. WHERF a Man denies his own Deed which is found against him by Verdict, he shall make fine and shall be imprisoned; So if per Confeffion, he pleads a false Deed or Releafe, but if he confeffes the Matter before Verdict, so that Judgment is had upon his Confeffion, in this Case he shall only be aинenced, and shall not make Fine or be imprisoned; And so fee imprisonment, that in some Case a Man's Confeffion shall not be as strong against a Man as a Verdict, Nota. Br. Confeffion, pl. 3. cites 33 H. 6. 54.

2. In Prefsas they were at Issue, and now came the Defendant and made Verifications per ipsum superius pratent, and confeffed the Action, and upon this the Plaintiff relinquished the Damages and that he would not further prosecute Writ of Inquiry of the Damages, and it was prayed that he shall make Fine, and did not. Br. Confeffion, pl. 4. cites 34 H. 6. 43.

(I) Admitted or inforced, in what Cases or Actions.

1. In Attaint, the Tenant would have rendered the Action, and the Court would not receive it without taking the Jury for the Advantage of the King, and also Land is not in Demand by this Writ. Br. Confeffion, pl. 23. cites 6. Aff. 2.

2. And it was said, that in Mortdaucefor render has been accepted, Hele said No, unless the Tenant acknowlædged the Points of the Writ. Ibid.

3. In Affise Jointure was pleaded for Part and Bar for the Rest, and the Plaintiff, because he would not be delayed by the Rest, confeffed the Jointure and prayed the Affise of the Rest, and had it quod nota, and the Writ was not abated in all by the Confeffion of the Plea to part, quod nota. Br. Confeffion, pl. 25. cites 19 Aff. 14.

4. A Man recovered Damages against another, and after the Plaintiff came and would have confeffed his Glee, and prayed to go quit. Belk. said, I have no Day in Court, and therefore we cannot tell if you be the same Person;
Confession.

If a person; and therefore the other, if he has released, may have seisin upon it, or you may sue seisin facias of the Damages, and then you will have Day in Court, and so be aided by the Day in Court. Br. Contellion, pl. 9. cites 50 E. 3. 18.

5. In Appeal the Defendant was assized, and afterwards pleaded Person of the King, and the Plaintiff came in Person and confessed that he would sue no further, by which the Charter was allowed without Day in Court by Process or otherwise given to the Plaintiff to come and confess quod Mirum! that seisin facias had not been awarded. Br. Contellion, pl. 12. cites 11 H. 4. 16.

6. The Defendant was outlawed and taken by Cap. Ultim. in Account and pleaded Misjudgement, the Plaintiff was not suffered to confess it by Reason of the Advantage which the King shall have by the Outlawry. Br. Contellion, pl. 17. cites 21 H. 6. 21, 22.

7. In Præcipe quod reddat against Baron and Feme, if the Baron will confess the Action it may be admitted, but if the Feme will confess the Action, her Contellion shall not be accepted. Br. Contellion, pl. 27. cites 15 E. 4. 23. per Brian.

8. In Accort as Receiver by the Hands of the Plaintiff himself, and of others. The Defendant pleaded Never his Receiver &c. and offered to make his Laco, and as to the Refidue he pleaded to the Country, and at the Day given he would have confessed the Action for Part and made his Laco for the Refidue. The Question was, if he could do it without the Plaintiff’s Assent, and the Court doubted much, but at length all held, praeter Harper, that the Contellion could not be allowed. B. 265. pl. 2. Mich. 9 & 10 Elia. Anon.

9. When an Action is brought for a Thing certain as Debt &c. there the Defendant may confess the Action without the Plaintiff’s Consent; But otherwise if it be for a Thing uncertain, as Trusts or Battery; Per Warburton J. Nov. 31. Pach. 16 Jac. C. B. in Cafe of Livelly v. Glassbrook.

10. If in an Ejectment a man the Plaintiff will not indempnify the Tenant, the Court will fuller him to confess the Action, otherwise not. L. P. R. tit. Contellion cites 12 Nov. 1620. B. S.

11. In Ejectment, the Demise by the Leifor 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 entered into the common Rule to confess Leafe, Entry and Outier. And the Court compelled the Defendant to confess the Leafe, Entry and Outier; otherwise the Plaintiff would have been Non Suit, and then he would have had Judgment against the causal Ejecior; 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. Mich. 8 Will. 3. B. R. Anon.

(K) Writ Abated by Confession or Surmise. In what Cases and where in Part or in all.

1. In Ca in Vita, the Demandant acknowledged that the Tenant entered into Parcel by another, and not by him by whom his Entry is supposed by the Writ, and yet the Writ was adjudged good for the rett. Thel. Dig. 219 Lib. 16. cap. 4. S. 1. cites Mich. 19 E. 2. Brief. 841.

2. In Replein de Aeris is captis, if it appears to the Court by the Confession of the Plaintiff that the Defendant has taken only one Ox, all
Confession.

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all the Writ shall abate; Per Herle, Thel. Dig. 219. Lib. 16. cap. 4. S. 5. cites Pauch. 7 E. 3. 314.

3. In Affise of Rent of 10 d. the Defendant pleaded Release of 3 l. therefor, and the Plaintiff confessed it, and yet the whole Plaint was not abated, for it seems to be in Bar of this Part. Br. Confession, pl. 45. cites 3. Aff. 37.


one named in the Writ had not Discharged him. Ibid. And says See 11 Aff. 9. agreeing.

5. In Trespasses of Trees cut and carried away Vi & Armis, the Defendant justified for Easors to take at his Will &c. To which the Plaintiff said that the Defendant had Reasonable Easors to take there by View and Livery of the Building &c. Upon which the Defendant demanded Judgment of the Writ with Vi et Armis, inasmuch as the Plaintiff has confessed that the Defendant has Right to take the Trees &c. Sed non allocutus because they were not agreed upon the Manner of the taking. Thel. Dig. 219. Lib. 16. cap. 4. S. 5. cites Mich. 8 E. 3. 422. and says, See 5 E. 3. 235.

6. In Affise, the Difefoir pleads Release of the Plaintiff of all the Right, and of all actions Real and Personall, and the Plaintiff confesses it, the Writ shall abate against all. Br. Confession, pl. 44. cites 1. Aff. 9. cites S. C.

7. So it be confesses that any named in the Writ is not a Difefoir, or that any of them was at another Time acquitted. Ibid.

8. In Forfeison the Tenant would have confessed Parcel to be given, and the Demandant would have confessed that Parcel was not given; but which Judgment was given, first that the Demandant should recover the Parcel confessed &c. and afterwards he confessed that the other was not given. Br. Conf. 4. S. 39. cites Pauch. 14 E. 3. Br. 272. that the Demandant would confess, that Part of his Demand was not given, all the Writ should abate; but it being moved, that the Parties were agreed, and confessed that Judgment might be given as above, it was adjudged accordingly.


lib. 16. cap. 4. S. 31.


Plaintiff confessed it and delivered, and yet the Writ was abated, notwithstanding it that was pending the Writ. Brooke says, it seems that it is not Law. Br. Confession, pl. 46. cites 18 Aff. 6.

11. Precipe quod ridetat against two, the one Disclaimed, and the other took the Jointenancy and celled him so who disclaimed, and the Demandant confessed that he who Disclaimed had nothing and counter-pleaded the Recove, and by his Confession the Writ was abated by Award. Br. Confessions, pl. 46. cites 21 E. 3. 33.

12. It is said, that in Trespasses supposed to be done at a certain Year and Day, if the Plaintiff afterwards in pleading confesses the Trespasses to be done at another Year and Day, his Writ shall abate. Thel. Dig. 222. lib. 16. cap. 4. S. 8. cites 22 Aff. 36.

4 X 13. Where
Confeffion.

13. Where the Writ is of Tenements in divers Vills, if the Defendant confefs that none of the Tenements is in one of the Vills, the Writ shall abate. Thel. Dig. 220. lib. 16. cap. 4. S. 11. cites Patch. 25 E. 3. 41. but says the contrary is held Patch. 29 E. 2. 39.

14. In Trefpafs of a Crafte broken, and of Oxen taken Vi & Armis & contra Pasen, the Defendant justified by Commandment of the King out of the Exchequer for a Tax granted to the King &c. And the Plaintiff said that the Place where Sc. is Pared of his Pasenage, and so within Sancuary &c. But because the Plaintiff had contended that the Defendant came by Warrant of the King, the Writ with Vi & Armis was abated; for he ought to sue by Replevin. Thel. Dig. 220. Lib. 16. Cap. 4. S. 11. cites Mich. 26 E. 3. 70. & 27 Aff. 66 & Mich. 28 E. 3. 97.

* Br. Diflef- 

15. In Affife it was pleaded that the Plaintiff himself was fashed &c. and the Plaintiff maintained his Writ by the sourcet Ditrefles of the Ten- 

nant in claiming Seigniory &c. to which the Tenant said that the Land was held of him by Fealty and divers other Services &c. and that he dis- 

trained for the Realty ares &e. And the Plaintiff said that the Land was not held of him &c. Upon which Confession of the Plaintiff it was held that the Plaintiff had abated his own Writ, because Affife does not lie for Sourcet Ditrefles, but [where the] Lord [diftrains]. Thel. 


16. In Writ brought against Jo. Hamond of Cambridge, one Jo. Hamond of Cambridge came, but the Plaintiff said that he, who appeared, is not the same Perfon whom he sued &c. and that he sued against one Jo. Hamond of South-Cambridge, by which the Writ was abated. Thel. Dig. 


17. Trefpafs for a Horse taken; the Defendant justified a Ditrefes for Anwercement for Default in Court Baron &c. and the Plaintiff said that 

the Taking was in the High Street &c. upon which it was held that the Writ should abate, because he ought to have a special Writ. Thel. 


18. In Trefpafs of Goods taken, if it appears by the Confession of the Plaintiff that the Defendant took as Lord within his Fee, for any Service, notwithfanding that no Service be appear, yet the Writ shall abate. But if the Defendant takes them for other Cause, as claiming Property &c. which does not arise from the Seigniory, the Writ shall not abate, notwithstanding the Defendant be Lord. Thel. Digg. 220. Lib. 16. cap. 4. 

S. 15. cites Patch. 44 E. 3. 13.

19. In Reffours, the Defendant said that the Place where &c. was out of the Fee of the Plaintiff, and the Plaintiff said that he would have taken them within his Fee, and the Defendant refused them, and chased them to the Place where &c. the Defendant said to be Hors de fone fee, and be freely pursued them there &c. and the Defendant made Reffours &c. and held a good Replification. Thel. Digg. 220. Lib. 16. cap. 4. S. 16. cites Trin. 44 E. 3. 26.

20. In Affife the Tenant pleaded several Plans, and the Plaintiff con- 

Heffed the one and abridg'd his Plan thereof, and the Writ did not abate for the reft, but had Affife for the Relide. Br. Confession, pl. 56. cites 

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45 Aff. 13.

21. In Debt against two Executors, the one pleaded that he noniques ad- 

 ministryed, and the Plaintiff confessed it; yet the other was put to anwser. Thel. Digg. 219. Lib. 16. cap. 4. S. 2. cites Mich. 34 E. 1. Briel 856.

22. In Replevin, if the Defendant justifies that the Defendant recov'rd
Confeffion.

in such a County a certain Sum of Money against the Plaintiff, and the Defendant as Plaintiff took the Beasts in Execution, and sold them, and deli- ered them to the Buyer, and delivered the Money to him who reco-
ver’d the same &c. the Plaintiff may well plead Matter in Avoidance of the Recovery, notwithstanding that he did not deny the Property suppos’d by the Defendant to be in the Buyer of the Beasts &c. Thel. Dig. 220. lib. 16. cap. 4. S. 17. cites Mich. 7 H 4. 27. and says see Mich. 47 E. 3. 12.

23. In Trefpafs of his Servant taken out of his Service Vi & Armis, the Plaintiff confessed by his Replication, that the Defendant had only pro-
cured the Servant to go out of the Service of the Plaintiff, by which Con-
fession it was held that the Writ should abate, and that the Plaintiff ought to take Writ upon the Statue of Labourers. Thel. Dig. 220. lib. 16. cap. 4. S. 18. cites Mich. 11 H. 4. 23. but says that some held the contrary, and adds Quare.

24. In Debt or Trefpafs, if the Plaintiff confeffes Parcel of his Writ to be false, all shall abate. Thel. Dig. 220. lib. 16. cap. 4. S. 19. cites 11 H. 4. 56. & r H. 5. 7.

25. In Precipe quo dedit against 2, if the Demandant acknowledges that the one has nothing, all the Writ shall abate, Thel. Dig. 220. lib. 16. cap. 4. S. 21. cites Hill. 12 H. 4. 15.

26. Where the Writ is of Tenements in three Villas, if the Demandant confeffes that one is neither Vill nor Hamlet, all shall abate. Thel. Dig. 220. lib. 16. cap. 4. S. 22. cites Trin. 1 H. 5. 7.

27. In Trefpafs of Battery brought within the County of Middlesex, it appeared by the Confeffion of the Plaintiff that the Trefpafs was done within the Palace of Westminster, and fo out of the Jurisdiction of the Sherif of Middlesex, by which it was held that the Writ should abate. Thel. Dig. 220. lib. 16. cap. 4. S. 23. cites Pach. 2 H. 6. 8.

28. In Debt of 10 l. the Defendant, as to Parcel, pleaded Acquittance of Fitch. Brief, that the Plaintiff confeffes, and confeffed the refp, and the Plaintiff prayed Judgment of Trin. 3 H. 6. 47. S.P. that which is confeffed, and had it, and said nothing to the Acquisi-
tance; For if it he had confeffed the Acquittance, all had abated. Thel. Dig. 221. lib. 16. cap. 4. S. 32. cites Trin. 3 H. 6. 49. Brief. 20.

29. Confeffion in Precipe quo dedit against two, that the one has but if he nothing where the one appears and takes the entire Tenancy and pleads in Bar, and the other makes Default, or appears, and says nothing, there it the Demandant confeffes that the one has nothing his Writ shall abate. Br. to this, nor does not de-

30. In Affile, if he confeffes all to be in one of the Vills the Writ shall abate. Thel. Dig. 220. lib. 16. cap. 4. S. 22. cites 8 H. 6. 13.

31. It was laid by June, that Writ false in part shall not abate by the Nient Dredis of the Demandant, as it should do by his Confeffion. Thel. Dig. 220. lib. 16. cap. 4. S. 24. cites Mich. 8 H. 6. 13.

32. If the Demandant confeffes Non-tenure of Parcel pleaded by the Ten-
ant the Writ shall abate for all. Thel. Dig. 220. lib. 16. cap. 4. S. 25. cites Pach. 18 H. 6. 5.

33. And so in Writ against two, if the one accepts the entire Tenancy, and the other says that he has nothing, the Demandant may anser to the Bar of the Tenant without saying any Thing to the other; but if he confeffes that the other has nothing all shall abate. Thel. Dig. 220. lib. 16.
Confirmation.

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34. Waife in a Haufe, and breaking of a Wall or Pale, where it appears that Waife does not lie for the Wall or Pale unless it was covered, the Writ shall not abate in all, As if the Party had confessed that his Writ had not lain in part; for otherwise it is where it comes by Surmise or Writ or Declaration; And to see a Diversity between a Confession of the Plaintiff, and where the Thing comes of the Surmise of the Plaintiff in his Writ or Declaration. Br. Conteflion, pl. 18. cites 22 H. 6. 24.

35. In Trespafs of a Clofe broken against one who pleaded, that the Place where &c. was the Frankeinent of an Ailbot &c, and that he as Servant &c, to which the Plaintiff replied, that he was seized, till by the Defendant dissatisfied to the Use of the Ailbot, to which Difference the Ailbot agreed &c. And it was held that the Writ should abate, because the Plaintiff had confessed that he had Caufe of Action against the Ailbot who is not named &c. Thel. Dig. 221. lib. 16. cap. 4. S. 27. cites Mich. 33 H. 6. 37. Quare.

36. In Debt it was said, that if the Plaintiff confesses the Receipt of Parcel before or after the Writ purchased, all the Writ shall abate. Thel. Dig. 221. lib. 16. cap. 4. S. 28. cites Mich. 34 H. 6. 2. 6 E. 4. 7.

37. In Maintenance against three, if the Plaintiff in his Replication confesses that they severally made several Maintenances, all the Writ shall abate. Thel. Dig. 222. lib. 16. cap. 4. S. 26. cites 36 H. 6. 29.

38. And so it is in Trespafs of Goods taken, or of a Clofe broken against several, if the Plaintiff in his Replication confesses that the one Parcel of the Trespafs, and another another Parcel, the Writ shall abate; and so it is in Forger of false Deed; but it is otherwise if such Matter be upon the General Issue found by Verdict. Thel. Dig. 220. lib. 16. cap. 4. S. 26. cites 36 H. 6. 29. 31. and says fee 11 H. 7. 7.

39. Where a Man brings Action by Joint Title, and in Pleading confesses, that it is by several Titles, the Writ shall abate; Contra if it be found by Verdict and not confessed; Note the Diversity. Br. Conteflion, pl. 51. cites 36 H. 6. 28. per Moile, Prift, and others.

40. In Trespafs, if it appears by the Title of the Plaintiff that another has Cause of Action with him, the Writ shall abate by his Confession. Thel. Dig. 221. lib 16. cap. 4. S. 29. cites patch. 10 E. 4. 7.

For more of Conteflion in General, See Abatement, Evidence, Aient-Dedite, Travercl, and other proper Titles.

Confirmation.

(A) What it is, and the several Sorts.

Confirmation is Conveyance of an Estate or Right in Effe whereby a Voidable Estate is made sure and unavoidable, or whereby a Particular Estate is increased. Co. Litt. 295. b.

which, as far as is in the Conserver's Power, makes it good and valid, so that the Confirmation

Conformation
Confirmation. 357

formation doth not regularly create an Estate, but yet such Words may be mingled in the Confirmation, as may create and enlarge an Estate, but that is by the Force of such Words that are foreign to the Business of Confirmation, and by their own Force and Power tend to create the Estate. Gilb. Treat. Ten. 69.

2. Every Confirmation is either Perfelling, Enlarging, or diminishing. Co. Lit. Perfecting; as if Feoffee on Condition makes a Feoffment over, and the
and fines them
this for does not make Tranmutation of the Estate, but corroborates cited per and perfeits it, and makes it simple and absolute where it was conditional. Hobart Ch.
formal before, and with this accords 7 H. 6. 7. b. So if Diffelee con-

Confirmation.

William, allied to his Ancestor, and the Donor, but the Acceptance of the Rent and the Remainder of his Ancestor pending the Writ, and is estopped by the same. The Opinion is a good Replication; Quere, for it was not pleaded before Judgment in Ceiling. Bar. Barre, pl. 29, cites 21 E. 3. 18.

4. If an Ancestor is at the right Hand, and has Issue by her, and makes a Lease for Life, rendering Rent, and he and his Wife die, in this Case the Issue has the same Right on the Part of his Mother, and yet he accepts the Rent, and makes an Acceptance, this shall estop him and his Heirs to avoid the said Lease, because he accepted the Remainder. 8 Rep. 54. b. Mich. 6 Jac. and says, that this agrees with the New.

Where Tenant in Tail makes a Lease, referring in Modification, cannot be estopped by Acceptance. [Note: The text is incomplete and difficult to interpret due to missing or unclear content.]

Tenant in Tail, the Remainder over, leases for Years, rendering Rent, and dies without Issue, and he in Remainder accepts the Rent, this shall not bind him. The Reason is, because when the Tail is determined, all that is comprised within it is determined, and so the Lease void, and he in Remainder does not claim by the Lessee. Br. Acceptance, pl. 19, cites 1 E. 6.

6. If Tenant in Deser leases for Years, rendering Rent and dies, the Lease is void, and Acceptance by the Heir of the Rent will not make the Lease good, for it was void before; Contra of voidable Leases, per Fritz-James and Englefield J. Br. Acceptance, pl. 14, cites 22 H. 8.

7. If a Devisee makes a Lease for Life, referring Rent, and afterwards grants the Reversion to the Devisee, and he accepts the Rent of the Lessee, he shall not oust the Lessee, Quod fuit confessum per quodam. Hill. 28 H. 8. D. 30. b. pl. 227. Canc. in Case of Compton v. Brent.

8. If Tenant in Tail leases his Land for 20 Years, rendering Rent, and dies, and the Lessee leases it over to another for 10 Years, and the Life accepts the Rent of the second Lessee, this is no Affirmation of the Lease, for there is no Priority between the second Lessee and him; Contra if he pays it as Bailiff of the first Lessee, and if the first Lessee had leased over all his Term in Parcel of the Land leased, and the Assignee pay the Rent to the Issue in Tail, it seems that this affirms the entire Lease; and Rent upon a Lease for Years is not apportionable. Br. Acceptance, pl. 13, cites 32 H. 8.

9. Tenant in Tail by Gift of the King made a Lease for Years and died, his Son and Heir accepted the Rent, and afterwards was attained of Trelowon, and executed leaving a Son. It was adjudged, that the Acceptance of the Rent did not make the Lease good, for that the Estate Tail was determined by the Attainer. D. 115. a. b. pl. 65, 66, Patch. 2 & 3 P. & M. Sir Thomas Wrot's Cae.

The Reason why the Lease was void notwithstanding the Acceptance of the Rent by the new

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10. A Lease for Years was made by the Provost of W. and confirmed by the Dean and Chapter, but not by the Patron. Afterwards the Donor was dispossessed, and a new one created, to which the Provostship was united, and in consequence vacate coutinggeter. The Provost died, and the Dean accepted the Rent, and afterwards made a Lease for Years to another, which was confirmed by the Bishop, Dean, and Chapter. It was adjudged, that the first Lease was void by the Death of the Provost, and so her help
Confirmation.

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ed by the Acceptance of the Rent. D. 239. pl. 40. &c. Trin. 7 Eliz. Dean, was, because he was a new
Hodgekins v. Tucker.

S. C. cited Arg. 3. Le. 118. in pl. 205.

11. Tenant in Tail lesed for Years rendering 20 s. Rent, and afterwards
released 19 s. thereof and died, and his Issue accepted the 12 d. The
Question was, Whether he might distrain for the 19 s.? The Court
were equally divided in their Opinions, and the Book leaves it a Que-

12. Lands were given to a Parson and his Successors to find Lights &c.
The Parson made a Leafe thereof for Life, reserving a Rent, and after the Dis-
solution of Chanteries &c. he accepted the Rent. Afterwards the Queen
granted the Lands to another. The Parson died, and the Patentee enter-
ed. The Court were of Opinion the Entry was lawful, and that the
Acceptance of the Rent by the Parson was void, because he then had no

13. Acceptance of Rent before the Lease commences, and so before any
Rent is due, is no Acceptance. Finch. 810. 69.

S. P.

14. The Master and Fellows of M. College granted Lands to the Queen,
rendering Rent, upon Condition to grant them over to B. and his Heirs,
which was done, and B. the Grantee leaved a Fine, and afterwards grant-
et them to another. The Master died, and his Successors received the S. C. ad-
rent, and made an Acquittance without Seal to the last Grantee, and
after that re-entered. It was resolved, that this Acceptance of the
Rent, especially as it was without Seal, did not bar the College of
their Re-entry, being a Body aggregate, and not to be devested of
their Right by the Master's single Act. 11 Rep. 66. b. to 79. Pash.
13 Jac. Magdalen College's Cafe.

15. Acceptance of Rent by a Successor Dean, or other Head of a Body
aggregate, will not make good a Demise made by the Predecessor, and
which was not otherwise good, especially where the Acceptance is with-
out Deed. 11 Rep. 79. a. Pashch. 13 Jac. in Magdalen College's Cafe.

(B) What A Is shall be a Confirmation of a Leafe.

1. If a Man leaves for Life, referring Rent, upon a Condition of;
Re-entry, if after the Condition is broke by Non-payment of
the Rent, the Lessee distrains for the Laid Rent, this Act shall be a
Confirmation of the Leafe, so that he cannot enter for the Condi-
tion broke. 14 C. 3. Entry Conscjable 41. Issue upon it, and ad-
judged.

Solved accordingly; for after the Leafe is determined he cannot distrain, and cites 4 Ait 11 accord-
ingly. ——— Co. Lit. 211. b. S. P. ——— Pl C. 153. b. Arg. cites 14 Ait. S. P. for by the Dittoes
he affirms the Continuance of the Term. And ibid. 156. a. S. C. cited on the other Side and ad-
mitted.

2. So
Confirmation.

2. So if the Rent be Arrear for two Years, being demanded, and after the Tenant disclaims for the Rent of the first Year, this hath affirmed the Lease, for the taking of the Distress attains the Lease to have Continuance at the Time of the Distress taken, for otherwise he could not disclaim. Contra 14 C. 5. Entry conveys 42. admitted by the Law.

3. If Lessor for Years, rending Rent, upon Condition of Non-payment to be void; if the Rent be demanded at the Day, and not paid, the Lease is absolutely void, so that it cannot be confirmed by Acceptance of Rent after. B. 32, 33 El. B. R. between Sir Mort Finch and Throgmorton, adjudged.

Cro. E. 220, pl. 10, in the Exchequer S.C. and all the Bacons agreed that the Lease was void immediately upon the Non-payment, and Judgment for the Plaintiff. A Note is added that a Writ of Error was brought in Cam Scacc. and Error alleged in the Matter of Law, and the Judgment was affirmed, Mich. 36 & 37 Eliz. 523, pl. 514 S.C. and resolved by the greater Part of the Judges that the Proviso tends to the Limitation of the Lease, and that it cannot be made good before Entry or Office, whether it be in the Case of the King or a common Person, whereupon the Chief Justices delivered the Opinion accordingly to the Lord Keeper and Lord Treasurer, and they affirmed the Judgment in Mich. 36 & 37 Eliz. 523. No. 201. pl. 449 S.C. adjudged in the Exchequer, and affirmed in Error; but says the Judges differed much in Opinion a long Time; but at last, by the Resolution of the greater Part, after the Death of Manwood and Gent (who joined in the Judgment before) the Judgment was affirmed.

Cro. E. 220, 231 S.C. adjudged, and Judgment affirmed. And Manwood said that the Patentee immediately upon the Non-payment was no longer a Tenant, nor the Tenant at Will, nor at Sufferance, but only as a Bailiff or Tenant of the Proctor for Port, and then all the Acceptance after cannot make a void Lease good — And 523, pl. 514 S. C. adjudged, and Judgment affirmed; and resolved by the greater Part of the Judges that this Proviso tended to the Limitation of the Lease, and by Breach thereof, in this Case of the Queen, without Demand, Office, or any other Circumstance, the Lease and Estate is to be determined, that it cannot by Acceptance of the Rent before Entry or Office, be made good, be it in the Case of the King or a common Person — Paphe. 25 to 29. Finch v. Ridley. S.C. argued. And 523. S.C. adjudged; for the Proviso shall be taken as a Limitation to determine the Estate, and not as a Condition to undo [defeat] the Estate, which cannot be defeated in Case of a common Person but by Entry, and in the King's Case but by Office; and this Judgment affirmed. ——2 Le. 134 to 146. S.C.

5. If Tenant for Life grants a Rent, and after surrenders, and then the Lessor confirms the Grant in the Life of the Tenant, who surrenders, and after the Tenant dies, the Rent remains by reason of the Confirmation; Per Saxon. Br. Grants, pl. 73. cites 26 All. 38.

6. If a Mortgage leaves for Years, and the Mortgagor confirms it, and after the Condition is performed, the Lease shall not be avoided. 7 Rep. 14. a. Mich. 33 & 34 Eliz. in Scacc. Englefield's Case.

7. Lease for Years, with Condition upon Non-payment of Rent at a Day certain to be void, no Subsequent Acceptance will make such a Lease good; for there Lessor has made his Election by demanding his Rent, without which the Lease had not been void; and since by his own Act, viz. the Demand, he has made the Lease void, there is no Reason, that after, by another contrary Act, he should make it good. Arg. 12 Mod. 363. in Case of Pullen v. Purbeck. cites 3 Rep. Pennant's Case, which he said he agreed.

8. If the Lessor brings AFFIS for the Rent, he waives the Benefit of his Re-entry, though it be for Rent due at the same Day; but he re-enters first, then he may have Action of Debt for the Rent arrear; per the Reporter, 3 Rep. 65. a. in a Note, and says this appears by Littleton, Tit. Conditions, fol. 79. a.

(C) In
Confirmation.

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(C) In what Cases an Acceptance of Rent or Service shall be a Confirmation.

[After Forfeiture &c.]

1. If a Copyholder commits a Forfeiture in cutting down of Trees, Cro. J. 166. and after the Lord, not having Notice thereof, accepts the Rent from him, yet this shall not affinit the Lease, but he may tell after about it. 3 Jac. 2. R. between Mantell and Washington, per Curiam, agreed.

Crooke J. held accordingly. Arg. Bullt. 192. — Golds 37. pl. 58. Mich. 23 & 29 Eliz. B. R. the S. P. was in Quetlton, and Coke said the Lord was not concluded by this Acceptance; for it is not as the Case 45. E. 5. where a Lease is made upon Condition that the Leafe shall not do Haste, and he commits Haste, and then the Leafe accepts the Rent, there he cannot enter; but otherwise it is a Copyhold, for there is a Condition in Lage, and here an rent; and a Condition on Faith may save the Land by an Acceptance, but a Condition in Law cannot; for by the Condition in Law broken the Estate of the Accepter is merely void; and the Court agreed that when such a Forfeiture is presented, it is not to trouble the Lord, but to give him Notice; for the Copyhold is in him by the Forfeiture presently, without any Preament.

2. If a Man leaves for Years, rending Rent, upon Condition that if the Leafee aligns it without Licence of the Leifer, the Leafe shall be void, and after the Leafee assigns the Term to B. from whom the Leifer accepts Rent after due, having Knowledge of the Alignment, yet this does not make the Leafe good, as much as the Leafe, by the Condition, was absolutely void, and not voidable only. 9 Ch. 14. B. R. between Oneytacle and Aires, adjudged, per Curiam, in a Case of Error upon a Judgment in Ireland, upon a special Petition there, and the Judgment given to the contrary revers'd accordingly. Intra Arc. 9. 13. Ch. Rot. 312. for more than three Years, the Leafe (which was for 21 Years) should be void, and the Leifer to re-enter. The Leefe led for 5 Years, and from 5 Years to 2 Years, during the Term of 21 Years, if he so long lived. The Leifer accepted the Rent of the Allyme, and afterwards re-entered. Resolved that it was a plain Breach of the Condition, and that the Acceptance after could not dispence therewith, the Condition being that it should be void, and so it was absolutely determined; and to the Judgment in Ireland was reversed.

3. If a Parson leaves for Life, rending Rent, and dies, and the Successor receives Fealty, the Leafe is affirmed; per Stone; and he charged to the Jury of it for Law. Br. Acceptance, pl. 15. cites 11 E. 3. Fitzh. — S. P. Abbe 9. & Juris Utrum 3.

4. And in Juris Utrum the Defendant pleaded a Leafe for Life by R. S. Predecessor of the Plaintiff, rending Rent, and that the Plaintiff had accepted the Rent, and a good Plea by the Opinion of the Court; And it does not appear in the Book whether the Leifer was Parson, Vicar, or Prebendary, but it is all one as it seems, and agreed with F. N. B. H. J. 58. Br. Acceptance, pl. 15. cites 11 E. 3. Fitzh. Abbe 9. & Juris U. 2. Bullt. 47. and said that the Difference is between a Leafe for Years and a Leafe for Life — Br. Leafes, pl. 19. cites 24. H. 8. by First James Ch. 1. Englefield J. and several others, that a Leafe for Years in such Case is void; but Brooke says, it seems, that Contracts of a Leafe for Life made by Parson, rending Rent, and the Succesor accepts the Rent, this affirms the Leafe for Life, but contrary of a Leafe for Years; for when this is void by Death of the Leifer, it cannot be perturb'd by any Acceptance. — Br. N. C. pl. 54. Amo. 21. H. 8. S. C. accordingly. — S. P. a to a Leafe for Years by Parson who dies. Br. Acceptance, pl. 15. cites M. 2. H. 4. 41. — S. C. of a Prebendary's Leafe. Ibid. cites 11. H. 4. 15. — S. P. a to a Leafe for Years by Parson, Vicar, or Prebendary; but contrary of such Leafe by Bishop, Abbbe, &c. because it was voidable only. 5 Rep. 65. 2, and some Cases cited per Car. But the Reporter says 4 Z.
Confirmation.

Note Reader it is true, that in Case of a Lease for Life, if the Lessor accepts the same Rent which was demanded, he thereby makes the Lease; for he cannot receive it due upon any Contract, as in Case of a Lease for Years, but he must receive it as his Rent, and then he has afforded the Lease to continue; for when he has accepted the Rent, he cannot have Action of Debt for it: but his Remedy then is by Affidavit, if he had Seized, or by Distress; And it is to be observed in this Case, that the Acceptance of the Rent will bar him of his Re-entry.

Br. Acceptance.

5. If the Lord avows in a Court of Record, and the Tenant disclaims, the Lord may have Writ of Right upon Dilectamin; but if he accepts the Rent after, he shall be concluded in a Writ of Right upon Dilectamin.


S. P. of a Prior, and

6. Acceptance of a Rent by Successor of Prior, who leased for Years, affirms and perfects the Lease; contra where a Parson leases for Years, rendering Rent, and dies, and the Successor receives the Rent. Br. Acceptance; pl. 9. cites 37 H. 6. 3. 4.

But if a

Lease for Years be

7. In Waite, a Man leased Land at Will, rendering Rent, and died;

The Heir accepted the Rent; this does not make the Lease good, because Acceptance cannot make a void Lease good, nor make a Lease determined by a Re-entry &c. to be good; per Rowe Serjeant; Quod non negotiar.

Br. Acceptance, pl. 7. cites 114 H. 8. 11.

and the Lessor of Rent for the Renter in which the Waite is due, this shall not bar his Entry; but if he accepts of a 2d Payment then it is otherwise. God. 47. pl. 58. Nisb. 28 & 29 Eliz. Anon.

—that if the Lease be upon Condition that the Easie shall not lose on Waife does, there no Acceptance of the Rent by the Lessor can make it good. Id. 2.

8. A Man seised in Flee leased for 10 Years, and took a Flee, and there-

of conveyed Easie to him and his Flee, and to the Heirs of the Baron, and after the Baron and Flee leased to another for 20 Years, rendering Rent. The Baron died, the Flee accepted the Rent during the 10 Years, and by this the 2d Lease for 20 Years is not affirmed; but after the 10 Years ended the may enter; for Acceptance before the Lease commenced cannot make it perfect.


Mo. 284.

pl 626.

Harvey v. Obiwood &c Part thereof without Affent of the Lessor &c. The Lessor granted Part of the Rent without his Affent, and afterwards the Lessor accepted all the Rent from the Lessor, but he did not then know that the Condition was broken; and adjudged on Demurrer for the Plaintiff, that the Condition being collateral, the Acceptance of the Rent should not make the Re-entry void; for Notice in this Case is material. 3 Rep. 64. a. Trin. 38 Eliz.

9. A Lease for Years was made for ten Years rendering Rent upon Condition of Re-entry, if the Lessor &c. granted or assigned the same or any

Bir, though the Condition was collateral; Per Gaudy and Popham.—Cra. E. 557. pl. 4. Pach 29 Eliz. S. C. and

Couch and Popham being only in Court, Couch held the Entry not convertible, but Popham contra; but Popham said, that if the Condition be of such a Nature that the Performance or Non-performance thereof has in the Consequence as well of the Lessor as of the Lessee, it is otherwise; &c. adjournment.—ibid. 372. pl. 12. Trin. 29 Eliz. S. C. adjudged for the Plaintiff by Popham, Gaudy and Popham; but Popham said, if the Lessor had not agreed the Rent from the Alienor, that would have affirmed the Lease, for thereby he took Notice of the Alienation. ———S. C. cited Mo. 284, in pl. 594. ———S. C. cited by the Name of Harvey v. Tanner, 2 And. 90, in pl. 54. ———But Godd. 47. pl. 18. Mich. 28 & 29 Eliz. B. R. it was said (per Cur at it seems) that a Man made a Lease for Years upon Condition that he should not alienate over his Lease, and it was referring Rent; and after he did alienate, and then the Lessor accepted the Rent, there he shall not enter for the Condition broken. ———Where the Lessor accepted Rent by the Hand of the Executrix of the Affiant, all the Court held that this Acceptance shall bar him of his Entry; for it being accepted by his own Hands it shall be intended that he had Notice the Way to pay it, and the Alienation by the Executrix by Way of Scents to follow; and if the Lessor had no Notice the Lessor ought to shew it on his Part; And Judgment accordant. ———Cra. J. 398. pl 4. Pach. 14 fo.
Confirmation.

1. In 8 B. R. Whitecoat v. Fox. —— Roll Rep. 70 pl 12. Mich 13. Jac. Hitchcock v. Fox S.C. Coke thought the entry not to be ineffectual, and therefore not well alleged, but perhaps the other had con- 

fessed it and to make the plea good; Adjourn. —— Ibid 390 pl. 19. Trin. 14 Jac. 16. identified by the 

Council Arg that this was the manner overruled by the Court at a Day before, that Scott was good, 

and therefore he did not rely upon it. —— 2. Ibid. 290. S.C. adjudged.

10. But per Cur. there is a Difference between a Lease for Life and for Years; for in the first Case, the Conclusion of a Condition annexed to the Rent (or the collateral Act) be, that then the Lease shall be void, there (because the Estate of Freehold being created by Livery cannot be determined before Entry) the Acceptance of Rent due at a Day after 

shall bar the Leesor of his Entry; for this voidable Lease may well be 

confirmed by Acceptance of the Rent. 3 Rep. 64. b. 65. a. Trin. 38 Eliz. B. R. in Penumta's Case.

11. A Lease for Years of a Melfage and 20 Acres of Land, with a 2. And 42. 

Proves that the Leesor should not Phrase out any of the Lands from the House, pl. 28. S.C. 

Afterwards the Leesee demised the House and ten Acres for a Year, and 

held the 

Entry was 

the Condition broken. It was held by Anderon and Beaumount, contrary gone and des- 

so Walmsley J. that the Acceptance of the Rent had barred the Leesor's 

Entry, for thereby he had thrown his Election to continue the Lease and 

to waive the Entry. Mo. 425. pl. 594. Hill. 28 Eliz. Marth v. Cur- 

reis.

Says, that three Judges held that this Acceptance should not hinder, but that he might enter and avoid 

the Lease; for it might be that the Leesor had no Notice of the Breach of the Condition, and if is 

would be hard to conclude him, and by such Means any Man might be defrauded of the Benefit of his 

Condition. —— Cro. E. 328. pl. 57. S.C. that Anderon and Beaumount held the Acceptance should 

for him of his Entry, for he accepted it as Rent due to him by the Leesor, which cannot be if the 

Estate be undone by an Act precedent, but Walmsley J. contra; it was afterwards adjudged for the Plaintiff 

the Leesor) —— Nov. 73. S.C. —— Rep. 65. a. cites S. C. as adjudged by Ander- 

son, Ch. J. and Walmsley J. and all the Court, that though the Leesor accepted the Rent of the 

Leesor, yet as he had no Notice of the Allignment the Acceptance should not conclude him of his Entry. 

— Nay. S. C. and the Entry adjudged lawful; and that the Acceptance does not take it away; for 

that the Condition is for a Collateral Thing, but otherwise it is of a Condition to re-enter for Non payment of 

Rent according to Penumpta's Case in Coke's Reports.

12. Debt against an Administrator for Rent, who pleaded, that before Mo. 600. pl. 

it incurred he had assigned the Tons to a Stranger, and of whom the Leesor 529. S.C. 

had accepted Rent, knowing of the Allignment; it was held clearly, that 

by the Acceptance the Administrator was not chargeable afterwards. 


the Plaintiff 

shall be bar- 


as adjudged accordingly.

13. If one enters into my Land and claims for 20 Years, though he is a 

Dissolute and cannot qualify his own Wrong, yet the Dissolute may admit 

him to be Tenant for Years if he accepts the Rent or brings Waite, as Carret 

said, 14 H. 4. But has only for Years in respect of his Claim; but by 

accepting the Rent, or bringing the Action of Waite, he is concluded; 


(D) What
(D) What shall be a sufficient Acceptance to make a Confirmation,
[And by whom. Successor &c.

Cro. C. 95. 96. S. C. cited as adjudged in C. H. and Crooke says, that the Copy of the Record was brought to him, whereby he knew that Judgment was given upon the

1. If a Bishop leaves for Life certain Land [ parcel of the Manor of D. referring Rent, and dies, and another Bishop is made, and the Bailiff of the Manor comes to him, and shews him in a general Manner, that there are certain Rents of the said Manor arrear; upon which the Bishop commands him to receive the said Rents, and he receives them accordingly, and amongst them receives the said Rent referred upon the said Leafe, and after delivers over all the said Rents to the Bishop, without giving him Notice of the said Leafe. This is a Confirmation of the said Leafe; for the Bishop of himself ought to take Notice of the Leases made by his Predecessor. Hill. 5. Inc. between Wheeler and Danby, per Curiam, abjudged.

Verdict for the Defendant; but he makes a Quaere, whether it was for this Cause alleged, or for that the Plaintiff’s Leafe, by which he claimed from the Bishop, and whereas he brought ejectment, was not warranted by the Statue of Eliz.

2. If Lands are given to Baron and Feme and the Heirs of the Body of the Baron, and the Baron leaves for forty Years, and dies, and the Illustre Tail accepts the Rent in the Life of the Feme &c. This is no Confirmation to as to bind the Issue after the Death of the Feme; nor at the Time of the Acceptance no Rent was in effect, or due to him. 3 Co. 64. b. Per Curiam, Trin. 38 Eliz. B. R. cites Br. Acceptance [pl. 13.] 32 H. 8.

3. A Bishop made a Leafe for Years to H. and G. which was not confirmed, and afterwards he made another Leafe to G. which was confirmed by the Dean and Chapter, and died. It was held by several, that the first Leafe was void, and yet they agreed the Abbot or Bishop, or such have Estate of Inheritance, may make Leafe for Years rendering Rent, and by their Death the Leafe is only voidable at the Pleasure of the Successors, for if they accept the Rent the Leafe is good; but that here the Power of the Successor, to make the first Leafe good by Acceptance of the Rent, is restrained by the Leafe made by the Predecessor and the Chapter. The Case was moved in Bank, and the Justices doubted: For some said, that the Leafe was surrendered for the Money, and remained only for the Refiduum; But the Reporter says, Quaere Legem bene, for the Parties submitted it to an Arbitrement. D. 46. a. b. Mich. 32 H. 8. Herreyong v. Goddard.

Cro. E. 5. pl. 6. Hill p. 24. Eliz. B. R. the S. C. that two Days after the Demand the Leffer received the Rent and made the Leffe an Acquittance by the Name of his Partner; and it was clearly resolved, that the bare Receipt of the Rent after the Day was no bar, for it was a Duty to him, but a Discharge for the Rent, or a Receipt of the Rent due at another Day, was a Bar, for that Act to affect
Confirmation. 365

from the Leafe to have lawful Possession; So if he make him an Acquaintance with a Recital that he is his Tenant, and in this Case by calling him his Farmer, this is a full Declaration of his Meaning to continue him his Tenant; and it was adjudged, that the Entry was not lawful.

5. Acceptance of Rent on a void Leafe shall not bind the Successor Br. Accep-
where the Leafe is void on the Statutes, but otherwise at Common Law.

upon a Leafe voidable. — S. P. by Bridgman Ch. J. Cart. 16. Mich. 16 Car. 2. C. B. in the Dean and
Chapter of Wemminster's Cafe.

6. Bargain and Sale by Baron and Feint of the Wife's Land reserving S. P. Br. Ac-
a Rent; if after the Death of the Baron the Feint accepts the Rent, it will
Jac. B. R.

leaves by Land and dies, and the iffe in Tail accepts the Rent, the Leafe is affirmed good.

(E) What shall be a Leafe or Grant confirmable. [And what shall be a sufficient Confirmation in respect of
the Persons making it. Things Spiritual.]

1. To make a Parsonage chargeable, three Things are necessary, The Parson,
viz. That the Charge be made by the Parson, Patron, and Ordinary. 14 Q. 18. b.

his Successor. Br. Dean and Chapter &c. pl. 6. cites S. C. — If Parson leaves for Years, or charges the Church, and the Patron or Ordinary confirm it, this shall bind the Successor. Br. Leafe, pl. 64. cites 53. H. 8.

2. [As] If upon a Suit for Tythes by a Parson, which he claims by Prescription, the Parties submit themselves to the Award of the
Committee, who awards, That the Defendant shall pay an Annuity to
the Parson for the Tythes, which Award is confirmed by the Ordinary,
but not by the Patron; This shall not bind the Successor. 14 H. 4. 18. b.
Br. Dean and Chapter &c. pl. 6. cites S. C. but neither Brooke, nor the Year-
book, takes Notice of any Confirmation by the Ordinary, or any other; and there it is held, that Arbitrement cannot
give Franktenement without Deed.

3. If a Parson grants an Annuity in Fee, though this is determinable by his Death, yet if the Patron and Ordinary confirm it, it shall bind perpetually. * * 26 Att. 38. per Norton, 16 C. 3. 24. admitted.

ring the Time limited by the Parson, if the Patron and Ordinary confirm it. — Br. Grants, pl. 73.

4. Confirmation of a Rent or Seigniory is not good, but in Respect of
a former Estate or Deed; and therefore if the first Deed be lost, or be before Time of Memory, the Confirmation is not good; Per Hull & Skrene, & non negatur. Br. Confirmation, pl. 24. cites 12 H. 4. 23.

5. If a Bishop grants Fee to the Steward for Term of Life, or leaves Land for Term of Life, and dies, and the Successor confirms it, this is good; for the Leafe was not void, but voidable; per Danby Ch. J. but per Molye and Choke J. it is void by the Death of the Bishop, Leffer, quod
5 A Con.
Confirmation.

Contrariam eft, as it seems; for Bishop, Dean, and Prebend have Fee; but contra of a Patron, for there the Fee is in Abeyance. Br. Confirmation, pl. 17. citus 5 E. 4. 107.

6. A Patron makes a Leafe for Years, or grants a Rent-charge to begin after his Death. The Patron and Ordinary confirmed it. It seems good to bind the Succeeded, because it is granted and charged immedi-


7. In Trespafts, the Defendant pleaded in Bar, that the Plaintiff within Age made a Rent-charge in Fee of the Lands to the Father of the Defendant rendering Rent, and that afterwards the Plaintiff confirmed the Premises to the Defendant's Father, Habendum to him and his Heirs, and that his said Father died seized, and the Lands descended to him as Son and Heir, but Judgment for the Plaintiff; For it was not aver'd in Fact that his Father was seized in Fee at the Time of the Confirmation, and if he was not then the Confirmation is void, and in this Case the Land could not pass by the Confirmation, unless it ensued upon a Privi-


8. A Bishop made a Lease for Years, which was confirmed by the Dean and Chapter, and afterwards he let the same Land to another for 20 Years, to commence after the first 20 Years, and then, before any Confirmation of it, he let the same Land to a third Person for 60 Years, to commence immediately. The last Lease was first confirmed, and after the Lease in Reversion was confirmed also. Resolved, by 3 Justices, contra Browne, that the Lease was good, and the Confirmation good, notwithstanding the last Lease was first confirmed, for the Lease is not to have any Interest by the Confirmation, but only to make it perdurable and effectual. Mo. 66. pl. 180. Trin. 6 Eliz. Anon.

9. A. B. and C. were Leaves at Will. A. died. Afterwards the Less-

or, reciting A's Death and the former Lease, and that B. and C. had surrendered the Lease, granted them a new Estate, Habendum eis & He-

reditus eis, but there was no Warrant of Attorney to make Livery. The Court were of Opinion, that the Estate at Will was determined, so that the second Grant could not ensue as a Confirmation to give a Fee-
simple to B. and C, as it might have done if they had been Tenants at Will. D. 269. b. pl. 20. Hill. 10 Eliz.

10. The Grant of an Annuity made by a Prebendarry before his Inaugu-

ration and Inducement is void to charge the Prebend; By the Opinion of all the Justices. Pl. C. 429. b. Trin. 20 Eliz. Hare v. Bickley.

(F) Who shall be a sufficient Person to make a Confirmation.

[Or, what shall be a Leafe or Grant confirmable in re-

spect of the Lessor or Grantor.]
Confirmation.

his Fenchise, which is confirmed by the Patron and Ordinary, and as
Winder,
the Incumbent is deprived, because he was a mere Life-Patron, let the Lease be good; for he was Parson de Fato for the Time, and the Lease not void, and therefore well enough confirmed. Trin. 42 Eliz. B. R. between Caffett and Wintour adjudged, which Interpretted by Popham and
Fenner, but Gwydy et contra, and they refused to have it adjudged accordingly, Gawdy allowing, and Clench absente; but for other Defects the Judgment was stay'd. — Mo. 6. 6. pl. 526. Collard v. Wintour, S. C. agreed, that a Parson being a Layman ought to be deprived, or otherwise all his Acts shall be good as lawful Parson till Deprivation.

2. If a Parson makes a Lease or Grant, or such like, and this is confirmed by the Patron and Ordinary, and after the Parson is deprived for a Pre-contrast, (this was when Priests could not marry) yet the Grant shall be good. 9 H. 6. 33. b. for he was a lawful Parson at the Confirmation.

It was held, that the Grant of such a Parson or Abbot shall bind, because he was Abbot or Parson in Possession. (But mentions nothing of the Confirmation which seems admitted.) — Br. Abbot, pl. 19, cites S. C. that the Grant of such is good. — Bishops not consecrated are not Bishops, and therefore a Lease for Years by such, and confirmed by the Dean and Chapter, shall not bind the Successor, because they never were Bishops; but ex contras of bishops deprived who were Bishops de jure at the Time of the Lease, and Confirmation made. Note the Divinity. Br. Lesley, pl. 62. cites 2 M. 1. — Br. N. C. 2 M. pl. 453. S. C.

3. If the Church be full of a Parson, and after another is made Parson, and induced by the Ordinary, and he makes a Grant, which is confirmed by the Patron and Ordinary, yet the Grant is void, because he was not Parson at the Time of the Grant. 9 H. 6. 34.

It was held, that the Grant of such a Parson or Abbot shall bind, because he was Abbot or Parson in Possession. (But mentions nothing of the Confirmation which seems admitted.) — Br. Abbot, pl. 19, cites S. C. that the Grant of such is good. — Bishops not consecrated are not Bishops, and therefore a Lease for Years by such, and confirmed by the Dean and Chapter, shall not bind the Successor, because they never were Bishops; but ex contras of bishops deprived who were Bishops de jure at the Time of the Lease, and Confirmation made. Note the Divinity. Br. Lesley, pl. 62. cites 2 M. 1. — Br. N. C. 2 M. pl. 453. S. C.

4. If a Church be void, and one enters and occupies of his own. Br. Non est factum, and makes a Grant, which is confirmed by the Patron, and Ordinary, yet this is void, because the Grantor was not Patron. 9 H. 6. 34. Citation. One cannot be Patron without a Presentation or Collation. 10 H. 6. 11.

† Br. Dean and Chapter, pl. 24, cites S. C. that by his Entry he cannot be Vicar; but ex contras of Presentation and Induction, and that the Patron of the Vicar is charged. — Fitzh. Brief, pl. 63. cites 10 H. 6. 12. S. C.

5. Where the Bishop de Facto made a Lease, which was confirmed by the Dean and Chapter, and after the Bishop de Jure died in the Life of the Bishop de Facto, It was resolved, that he not being lawful Bishop, and this Lease being to charge the Possessions of the Bishoprick, it is void, although all judicial Acts, as Admissions, Institutions, Certificates &c. shall be good; but not such voluntary Acts as tend to the Depopulation of the Succesor, and so affirmed a Judgment given in B. R. in Ireland. Cro. J. 552. 554. pl. 15. Mich. 17 Jac. B. R. Rouan Obrian & all v. Knivan.

6. A Parson made a Lease of his Rectory for 60 Years, which was confirmed by the succeeding Bishop, and the succeeding Patron, neither of them being Bishop or Patron at the Time when the Lease was made, yet adjudged per tot. Cur. that it was good. Cro. C. 38. pl. 3. Tim. 2 Car. C. B, Banister's Cafe.
(G) In what Cases the Confirmation of the Patron and Ordinary is necessary.

1. If a Prior and a Parson, upon a Debate of the Patronage of the Patronage, submit themselves to the Ordinary, who ordains, that the Prior shall give to the Parson certain Tithes, and the Parson grants to the Prior an Annuity, with the Allent of the Ordinary, and after the Parson dies, and the Successor takes the Tithes, he may be charged with the Annuity, though the Patron never confirmed it; for in as much as he is seized of the Tithes, he hath quid pro quo. 16 Ed. 3. 24. adjudged.

2. If a Parson charges with Leave of the Patron and Ordinary, this is not good after the Death of the Parson; for there ought to have been a Confirmation of the Patron and Ordinary; Per Hill, but Rickhill contra, by which Rickhill awarded the Party to answer to such Grant made by the Parson with Leave of the Patron and Ordinary; But Brooke makes a Quare of this Award. Br. Confirmation, pl. 30. cites 7 H. 4. 15, 16. S. C. cited Lane 38.

3. If Parson or Vicar makes a Lease for 3 Lives, or 21 Years, of Lands accustomably letten, reserving the accustomed Rent, it must be also confirmed by the Patron and Ordinary, because it is excepted out of the 32 H. 8. and not restrained by the Stat. 13 Eliz. Co. Litt. 44 b.

4. There is a Diversity between a sole Corporation, as Parson, Prelate, Vicar, and the like, that have not the absolute Fee in them, for to their Grants the Patron must give his Consent. But if there be a Corporation aggregate of many, as Dean and Chapter, Master Fellows and Scholars of a College, Abbot, or Prior and Convent, and the like, or any sole Corporation that has the absolute Fee, as a Bishop with Consent of the Dean and Chapter, they may by the Common Law make any Grant of or out of their Professions, without their Founder or Patron, albeit the Abbot or Prior &c. were presentable; and so it is of a Bishop, because the whole Estate and Right of the Land was in them, and they may respectively maintain a Writ of Right. Co. Litt. 305 b.
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(H) By the Dean and Chapter [or others] of the Grant of the Bishop.

1. By the Feudal Law, the Bishop Non potest dare in Feodum, a thing that had used to be given in Feodium, without the Assent of the Chapter. Antonii Corni methodus 32. It is there laid that this is a great Question.

2. By the Law of Scotland, Episcop us jejus Abates possunt de Terris suis aliquam partem donare ad remanuenta lien attenda & confirmationem Dominie Regis quam coronam Barone sunt de electusina Dominii Regis, & Antecedentium suorum. Skene Regiam Bases, 43. 1. 2.

3. A Grant by the Bishop of Death in Ireland by the Assent of his Clergy, he not having any Dean and Chapter, is a good Grant without other Confirmation. Davies's Case of Proctor. 1. admitted.

4. If a Bishop hath two Chapters which used to confirm Grants made by him, as the Bishop of Coventry and Lichfield had, the Prior and Convent of Coventry, and the Dean and Chapter of Lichfield, and a Grant of the Bishop is confirmed by the Prior and Convent only, and not by the Dean and Chapter, this is no good Confirmation to bind the Successor. Temp. R. 2. fol. 104. D. 11 Cl. 282. 27. Statham. Att. 50 Cd. 3. but it is not in the Book in Print.

5. If the Dean and Chapter of Christ-church and St Patrick used a D. 282. b. Tempore &c. to confirm the Grants made by the Archbishops of Dublin, and yet Christ-Church is known to be the eldest Chapter to the See, and the Dean and Chapter of St Patrick, by their Chapter-Secret, gave and surrendered to the King in Fee all their land, Church, House, Lands and Possessions, but without the Licence, Will or Consent of their Bishop, being their chief Ordinary, and Patron, for the said Part, of all the Prebends; and after a Lease made by the Dean and Chapter and Bishop is confirmed only by the Dean and Chapter of Christchurch; admitted, because the Surrender was by Act of Parliament, and one part of the Archbishops. D. 11 Cl. 283. 27.

Chapter remained.—Co. Litt. 301. a. in principio. S. P.

6. If the Prior of Bath, and Dean and Chapter of Wells, have used (4) de Tempore &c. to confirm Grants made by the Bishop of Bath and Wells; and after by the Statute of the 31 H. 8. the Priory of Bath is dissolved, and a Lease made by the Bishop is confirmed by the Dean and Chapter of Wells only, the other Chapter being dissolved by the Statute; it seems this Confirmation shall bind the Successor-Bishop. D. 37 H. 8. 58. 7. Muter; but 34 H. 8. cap. 15. an Act of Parliament is required, that it was a great Doubt whether it was a good Confirmation, and therefore it is enacted, that all the said Confirmations, and all after to be made by the Dean and Chapter, should be good in Law.

7. If a Bishop makes a Lease for Years to the King, and before In- l. 31. remission of the Lease the Dean and Chapter confirms it, and after the 1612. 53.

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8. If the Chapter confirms the Grant of the Bishop after his Death it is void; for it ought to have Perfection in the Bishop's Life. Arg. Godb. 25. cites 31 E. 3. pl. 20. & 33 E. 3. Confirmation 20.

9. If the Chapter confirms the Lease of the Bishop after his Death, in Time of Vacation, this Confirmation shall not bar the Successor. Fitzm. Confirmation, pl. 22. cites Hill. 33 E. 3,


10. If the Bishop be Patron and Ordinary, and confirms [a Lease for Years] there must be the Confirmation of the Dean and Chapter also; for the Bishop, as Ordinary, does nothing by his Confirmation but a judicial Act, and as Patron he has the Inheritance thereof in True Ecclesiastic, which he cannot bind against his Successor without Confirmation by the Dean and Chapter. Br Leaves, pl. 64. cites 33 H. 8.

11. In Debt the Plaintiff declared that the Predecessor of the Bishop granted to him the Office of Keeper of the Bishop's Mansion-House of D., for the Term of his Life, with the Fee of 2d. per Diem; to be incurring and paid out of the Profits of the Rents and Farm of D., by the Receiver of the Bishop, and also an yearly Rents, which Grant was confirmed by the Dean and Chapter, that the Bishop died, and the Defendant was elected Bishop, and for Arrearages of the Money and Rents for 8 Years the Plaintiff brought his Action against the Successor Bishop, who pleaded that the Plaintiff did not execute the said Office. The Jury found for the Plaintiff, and he had Judgment to recover the Rents and Arrearages, and the Arrearages incurred as well before as after the bringing the Original. No. 58. pl. 220. Hill. 10 Eliz. Howle v. Ely (Bishop of).

12. The Bishop of Chelster, after the Statute 1 Eliz. did grant to G. B. an Annuity of 5 Marks per Annum Pro Confeito impiando & impendendo, which was confirmed by the Dean and Chapter; and then the Bishop died, and B. brought a Writ of Annuity against the Successor, and in his Count did aver, that the Predecessors of the said Bishop had granted reasonable Fees (but did not aver that this Fee had been granted before) and did aver that he was Homo Consiliarius and in lege peritus; and the Opinion of the Court was against the Plaintiff, but there it was resolved, that although the said Bishoprick was founded out of late Times, to wit, in the Time of H. 8, yet a Grant of an Office of Neciosity to one in Possession, with reasonable Fees (the Reasoblencrest whereof is to be decided by the Court of Justice, wherein the same doth depend) is good, and is restrained out of the general Words of the said Act. Bridgm. 31. cites Trin. 30 Eliz. Boulton v. the Bishop of Chelster.

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13. The Dean and Chapter of Fernes in Ireland consisted of 11 Persons and the Dean; and 3 of these, with the Commissary or Proctor of the Dean confirmed, and after wards 3 other of the Prebendaries subscribed their Names to the Confirmation at several Days, and the Leaf was held void because the Dean could not make a Substitude, and the major Part of the Corporation ought to be con denting to this, and that simul & femel, and not scatt eringly; but they are not confined to the Chapter-House, but they may assemble and do their Acts elsewhere, Dav. 47, 48. Patch.

5 Jac. B. R. The Dean and Chapter of Fernes's Cafe.

14. If a Dean of Y. be made a Bishop of L. and by a Dispenfation is continued Dean as before, with a power severa omnia quae ad Decanum pertinent in tam ampliss Modo & Forma, as if he was not promoted to the said Bishops New obfolute any Statute, Canon general or local to the contrary, and afterwards is made Bishop of B. but before his Confirmation the King makes another Dispenfation to retain the Deann as before, and make between the two Dispenfations the Dean's Leaf for 21 Years, which the Dean confirmed. Per tot. Cur. The Dispenfations continued him Dean as before per Vim Prioris Tituli to all Purposes, so that he may confirm, make Leaves, or do any Act as Dean, as if he never had been Bishop. And all agreed that the 2d Dispenfation on his Election to B. was made in Time convenient, and that he continued Dean by Force thereof. But Jones J. held that had he been a mere Commendatory Dean only, the Confirmation had not been good, to which Hides attented, but Doderidge feem'd e contra, and Whitlock J. said nothing. Jo. 155. Trin. 3 Car. B. R. Evans v. Askwith.

Psalm 45. S. C. ad judg'd; but says it was all, that a mere Con- commendatory cannot con- firm—Lrt. 375. S. C. in to- tidem Ver. 39. Nov. 95. Perfoits Substitutus, as to the principal Point—Wait Comp. Incumb. Svo. 355. cap. 44. has a Quere, who con firma Bishop's Grants and Leaves, where there is a mere commendatory Dean, if not the Clergy of the Diocce, as in Cafe when there is no Dean and Chapter.

(I) By the Bishop, Dean and Chapter, what shall be said a good Confirmation.


2. C. a Prelaty of the Cathedral Church of Chichefter, made Leaf by Indenture, that be with the Assent of R. Bishop of Chichefter, and of the Dean and Chapter of the fame Church, without naming the Names of the Dean, and the Deed concluded thus, viz. In Witness whereof the said Parties to these present Indentures have interchangeably set their Seals, and the Seal and Name of the Prebendary, and the Seal of the Bishop and the Chapter was put to it; Quere, if without any Words of Confirmation or Assent mentioned by them, if this be a good Leaf to bind the Success- for. D. 106. b. pl. 21. 1 & 2 P. & M. Champion's Cafe.

(K) Confirma.
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(K) Confirmation of the Grant of the Dean.

What shall be a good Confirmation.

D. 49 b. pl. 1. If a Dean leases any of his possessions, of which he is sole seised, with the Assent of the Chapter, this is a good Confirmation, because the Dean only had the Estate. D. 29 H. 8. 40 b. 72, and the Writ de Sine Assentu Capitolii will prove, that there needs be but one Assent.

2. [Sc. L] If a Dean is sole seised, and not with the Chapter, of certain possessions, and leaves it by such Words in the Deed, quod De canus ex affinitatibus Capituli dimittit, and the Seal of the Chapter is annexed to the Deed; this is a good Confirmation, for it is a good Assent. D. 29 H. 8. 40 b. 72.


D. 40 b. pl. 1. Chafin’s Case. S. P. became the Chapter are Parcel of the Corporation, and seised with the Dean, and shall impale and be impaled with him. Br. Faits, pl. 45. cites 14 H. 6. 16.

4. [But] if a Dean and Chapter are jointly seised, and the Dean leases with the Assent of the Chapter, and annexes the Seal of the Chapter to the Deed, this is void, and shall not bind the Chapter, because they have an Estate in them, as well as the Dean hath in him, and may make a Grant. D. 29 H. 8. 40 b. 72. Patch. 10 Jac. 3 between Tomlinsan and Coke, agreed.

5. The Dean of Wells may pass his Possessions with the Assent of the Chapter without any Confirmation of the Bishop, and after this Deanery is surrendered and dissolved, and this Dissolution confirmed by Parliament, and a new Deanery executed by the Act, and the Nomination by Letters Patent of the new Dean and his Successors given to the King and his Successors; and it is enacted alike, That the new Dean, and his Successors, may grant, demise and depurate with their Possessions, in the same Manner and Form as the Ancient Deans might and used to do; in this Case there needs no Confirmation from the Bishop of the Grant made by the new Dean, because his Confirmation was not necessary to the Grants of the old Dean; nor is the Confirmation of the King of the Grant of the new Dean necessary, because this is not a mere Donative, but is made of the same Nature as the old Dean was, D. 10 Eliz. 273. 37. per Curiam.

6. Dean seised in Right of himself and his Chapter makes Leafe for Years. Chapter by themselves confirm it; it is not good, because their Deeds being seised are to no Purpose, it being a Body entire, otherwise if after the Leafe they both confirm, because it amounts to a new Leafe, D. 49 b. 1. in Marg. cites 14 H. 6. 16, [but I do not observe this very Point in that Case in the Year-book.]

7. An Archdeacon, having a Patronage appertaining to his Archdeaconry, made a Leafe of the Patronage before the Statute 13 Eliz. for forty Years, and which was confirmed after the Statute; adjudged a good Leafe and Confirmation for the forty Years. Mo. 459. pl. 636. Mich. 38 & 39 Eliz. Arkingfall v. Denny.

(L) Confirmation.
Conformation.

(L) Conformations by Parson, Patron, and Ordinary.

What shall be said sufficient.

1. If the Bishop of Sarum be Patron of the Church Presented of S. Cro. E. 8, which lies within his Diocess, and this is the Body of a Prebend in the Church of Sarum, and the Bishop of Sarum is Patron also of the Church of D. which is also Presented, and this lies in the Diocess of the Bishop of Winton; and after the Church of D. is annexed and united lawfully, by the Allent of the Bishops, Deans and Chapters of both Diocceses, to the Prebend of S. and after the Bishop of Sarum collates J. S. to the said Prebend, which now by the Union consists of both Churches, and inducts him in the Cathedral of the Church of Sarum; and after the Prebendary makes a Lease for Years before the Statute of the 13 Eliz. and not warrantable by the Statute of the 32 H. 8. and this is confirmed by the Bishop, Dean and Chapter of Sarum, and not by the Bishop of Winton, yet this is a good Conformation; for by the Union the Bishop of Winton hath annexed it to the Prebend of S., and hath called him of his Power of Conformation as Ordinary; For after the Union, the Prebendary is invested in both Churches by his Induction without any other Prebension, Admission, Institution, or Induction, in the Church of D. or S. Patch. 12. Stat. 25. R. between Leigh and Helsby; resolved per Curiam, upon Evidence upon a Trial at Bar for Part of the Possessions of the Church of Husband-Curant in the County of Southampon, which was annexed to the Prebend of Burbridge in the County of Wiltz, this being a Prebend in the Cathedral Church of Sarum.

2. A Parson made a Lease for Years, P. who was the Patron in the Recension before the Statute 13 Eliz. confirmed it, and after the Statute, viz. the 14 Eliz. the Ordinary confirmed it, and 23 Eliz. he which had the Patronage for Life confirmed it. It was the Opinion of the Justices, that all the Conformations by the Ordinary and Patrons were good; for the Statute speaks of Alienations by Incumbents, but doth not make void Conformations made before the Statute. Cro. E. 18. pl. 5. Patch. 25 Eliz.

C. B. Higgins v. Grant.

3. A Prebendary of Salisbury, Annu. E. 6. made a Lease to P. for 99 Years 2. Kerb. 18. of the Reversions, and of K. and T. in Com. Devon to commence after a Lease then. Jay pl. 80. Jay Rider, in being, which last Lease was confirmed by the Bishop of Sarum and Dean and Chapter there and enjoyed accordingly. The Court held this a good and was doubled Lease, though not confirmed by the Bishop of Exeter in whose Diocess these Reversions were; for though they are not within the Diocess of Salisbury, yet because by Grant of H. 2. and of the Bishop of Exeter, they are annexed to the Canony of Salisbury and made Part of the Prebend there, Chapter and therefore though they are inducted by the Bishop of Exeter, yet they are intituted by the Bishop of Salisbury, and take an Oath of Canonical Obedience to him, and Lapsie &c. shall not incur to the Bishop of Exeter.


is Ordinary, be good without Confirmation by D. but that afterwards it was ruled to be good.

4. If there be a Composition confirmed between a Parson and his Parishioner, by which the Parishioner is to pay 51. in lieu of his Tythes for 10 Years, and afterwards another Composition is made, whereby the Parishioner agrees to pay 61. for the same 10 Years; this 2d is good without a Composition, because it is an Enlargement of the former, and more cond Com. for Partition will
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not affect the Parson’s Advantage than the first was. Arg. Hard. 385. Mich. 16 Car. 2. in Case of Ingoldsby v. Wivell and Ullisthorne, and therefore the Parson is not bound by it. See ibid. 387.

(M) Confirmation by the Patron and Ordinary. Patron. Who shall be sufficient to make it.

1. If a Dean and Chapter are Patron, a Confirmation by the President or Commissary (who is a Deputy) is not good without the Confirmation of the Dean, because the President can do nothing to charge the Church. * 11 H. 4. 84 b. Davis 1. 48 b. [47 b.]

2. If a Bishop be Patron of a Prebendary, and he confirms a Leafe made by the Prebend, this is not good without the Confirmation of the Dean and Chapter; for this Patronage is Part of the Settlements of the Bishoprick, of which he cannot bind his Successor without the Dean and Chapter. P. & C. 15 Jac. 2. B. between Smith and Bowles this was so agreed.

3. But it seems that such a Confirmation made by the Bishop shall bind the Bishop himself during his Time, and all those who come under him; for the Confirmation of the Dean and Chapter, is requisite, that the Bishop may not prejudice his Successor. Patch, 9 T. N. 15 Jac. Smith and Bowles it was a Question.

But Br. 60. S. C. says it was urged and agreed by all that this Confirmation by the Arch Bishop Patron, without the Dean and Chapter is good, and shall bind the Successor, and for this was cited 33 H. 8. Coke’s Cases, Pol. 46. pl. 202. Pl C. 538. in Case of Here v. Brickley, and 19 Eliz. D. 557. — Cro. J. 458. pl. 5. S. C. but S. P. does not appear. — But Br. N. C. fol. 46. pl. 203 is, viz. If a Bishop be Patron, and the Parson makes a Leafe, or Grant by Deed, then the Bishop Patron and the Ordinary, and the Dean and Chapter ought to Confirm, if the Grant or Leafe shall be true. Centra where a Layman is Patron in Fel, and he and the Ordinary Confer, this suffices without the Dean and Chapter. For in the first Case the Bishop Patron has Interest in the Inheritance to the Bishoprick, but in the other Case he has only a Judicial Power, therefore it suffices that he who has the Power at the Time &c. confirms; for this is a Judicial Act, but in the other Case it binds the Inheritance, which he has in Jure Ecclesiæ, which he cannot do against his Successor without Confirmation by the Dean and Chapter. — Br. Confirmation, pl. 1. cites S. C. in toto, and Verbs, Br. Leases, pl. 64. cites S. C. and S. P. accordingly, and for the same Reasons. — Br. Charge, pl. 40. cites 11 H. 6. 9. S. P. and cites 33 H. 8. accordingly.

The Case in Dyer is, viz. A Parson of a Church made a Leafe for 40 Years, the Bishop of London being Patron and Ordinary confirmed it without the Dean and Chapter, the Incumbent died, the Bishop ceded another Man a new Leafe which is well confirmed; the Bishop is translated; the Resolution of the Judges was certified to the Counsels, that the first Leafe stood good and not the 2d. during both Lives of the Bishop and Successor Incumbent, who found the Church charged. D. 367. pl. 42. Patch 19 Eliz. Anon. — S. C. cited Le. 213. in pl. 517. — S. P. admitted, as to binding the Bishop during his own Time. Ca. Litt. 300 b.

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4. A Bishop feil'd of Land in Right of his Bishopprick made Lease to Fears, Leflee entered, and afterwards Leffor by Indenture dated, con- cept & confirm'd the Land to the Leflee in Fee rendring to the Bishop and his Successors 10 l. Rent, with a Letter of Attorney to make Livery of the same to the Dean and Chapter, and delivered the Deed himself to the Leflee, and Livery was made ac- cordingly; and all this was confirmed by the Dean and Chapter in the Life of the Bishop, the Dean being absent in remittus, but the President of the Dean was present whom the Dean had constituted by Parol only to the Tenant tenement fium, & traditid Claves fias una cum Authority to Vociis & Attitus Decani, and this was entered in the Register according- ing to ancient Custom. Afterwards the same Bishop also granted and released the fame Rent to the Leflee and his Heirs, and this also con- firmed as above, both Dean and President being absent, but the Substitu- tute or Deputy of the President being only present; and whether the Successor might avoid these Alienations or either of them was moved before the Justices at Serjant’s Inn by Command of the Lord Chancellor. D. 145. b. pl. 65. Patch. 3 & 4. P. & M. Litchfield (Bilhop) v. Filler.

Rep. 47. that if Commisary confirms the Lease of the Bishop it is good; whereupon Jones & Bid said that Davis’s Reports are not Canonical; and Doderidge J. added that they were made for the Meridian of Ireland only, and said that D. 145 it is a Quare. — Ibid. 479. S. C. cited accordingly by Doderidge.—Lat. 253. by Jones and Doderidge. S. P.

5. A Parson of D. is Patron of the Church of S. as belonging to his Church, and presents B. who by Consent of A. and of the Ordinary grants a Rent Charge out of the Glebe; this is not good to make the Rent Charge perpetual, without the Assent of the Patron of A. no more than the Affent of the Bishop who is Patron without the Dean and Chapter, or no more than the Affent of the Patron being Tenant in Tail or for Life, as Littleton says. Co. Litt. 300. b.

(N) Who in Respect of his Estate. [may confirm a Grant. Things Spiritual.]

1. If Baron and Feme are Patrons in the Right of the Feme, if they confirn by Deed the Lease of the Patron, this is not good a- gainst the Feme and her Heirs, but only during Coverture; for the Deed of the Feme is void. Vide this, D. 3. 4. Pla. 133. 1.

the Lease, and that the Incumbent Leffor was deprived for Marriage, and the Baron and his Wife having granted the next Avoidance before the Deprivation, the Grantee presented his Clerk, who entered upon the Leflee to avoid the Leafe. The Reporter says, Quare; because it seems the Entry capable. But nothing is said as to binding the Feme and her Heirs during the Coverture only.


agreed by Coke Ch. 1. and Doderidge. — 2 Roll. Rep. 8 S. C. adjoitur.— Bridg. 92 to 100. Mande v. French. S. C. argued, and it was infilted among other Things that the Confirmation was utterly defeated and avoided by the Reminder.— And Patch. 16 Jac. without any Argument by the Judges it was agreed for the Plaintiff, and therefore Judgment was given accordingly for the Plaintiff. — Le. 234. in pl. 517. Coke Arg. cites 51 E. 5. Grants. 61. That fact Act of the Patron shall bind only according to the Effece of the Patron, as if Tenant in Tail confirm the fame it shall ret bind the Presence of the Illue. — Litt. S. 128. and Co. Litt. 350 b. S. P. But if the Patron’s Tenant, in Tail and discontinue the Effece Tail, the Leafe shall stand good during the Discontinuance or if the Effece be barred it shall stand good for ever.

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3. [So] If the Chaplain of a Chantry or free Chapel, which is a Donative, makes a Lease for Years before the 22 H. 8. and the Patron of the Chapel being seised of the Patronage in Tail confirms it; this shall not bind the Chaplain of the whole. D. 8 Eliz. 27. 95. admitted. But here the Question was, the Patronage came to the King by the Statute of Chantries, before any Site by the Site and Donor and his Heirs excepted [taking the Leases and Interests of all other, except the Patrons and Donors, and their Heirs] and yet it was held the King should avoid it; but after it appeared, that the Donor had leased a Fine after the Confirmation, by which the Site was barred to avoid it, and then the King might not avoid it.

4. If the Incumbent of an Usurer makes a Grant and this is confirmed by the Usurer and Ordinary; and after in a Quaere impedit the true Patron recovers, and removes the Incumbent. The Grant by this is defeated, because here was not any Patron and Patron in Right. 9 Hen. 6. 33.

5. If A. be seised of an Advowson in Fee, which is full of B. the Incumbent, and after A. grants the next Avoidance to C. and after B. grants a Lease of the Rectory for Years, and this is confirmed by A. and the Ordinary before the Statute of 13 Eliz. and after B. dies, and C. presents E. who is instituted and indentured, and enters into the Rectory, and after dies, and A. presents F. who is instituted and indentured; F. shall hold this Church discharged of the Lease, because this Lease was totally avoided by the Entry of E. who came in by the Presentation of C. which was not subject to the Confirmation of A. the Patron in Fee; for C. by his Institution and Induction was seised of the Fee in the Right of his Church, as fully as any could be. Patch. 16 Car. 2 B. between Sir Edmund Plowden and Oldfield, adjudged, per termi Curiam, in a Writ of Error upon such Judgment in Banco, upon a Special Verdict for Land. Parcel of the Rectory of Taffant in the County of Southampton. Intrate in B. R. 12th. 15 Car. 20. 36. and the Judgment affirmed accordingly.

6. A. a Parson made a Lease for 40 Years, which was confirmed by the Treasurer of York Cathedral, who was Patron as in Right of his Treasurership, and after the Patron and the Bishop of Winton, who was Ordinary, confirmed the Lease in the Life of the Lessee, and before the Confirmation the Treasurer granted the next Avoidance to another pro illa vice. A died. He that had the next Avoidance presented B. who was admitted and indentured, and then the said Treasurer, with Affent of the Bishop of York, and the Dean and Chapter, altered the Patronage in Fee. The Question was, Whether the new incumbent shall avoid the Residue of the Term? Quere; And note, the Alienation was after the Death of the Lessee; Ideo quere bene. D. 72. 5 pl. 5. Mich. 6. E. 6. 15.
Confirmation.

and 7. S. presents W. R. who is admitted, instituted and inducled and dies, such Leafe was avoided in toto absolutely, and therefore cannot stand against the 2d Successor. Per Cur. 7 Rep. 8 a. Mich. 26 and 29 Eliz. in the Court of Ward, in the Earl of Bedford's Case.—Co. Litt. 46. a. S. P. and because the 2d Incumbent, who had the whole Estate in him, avoided the Leafe, it shall not reTH some text

7. A. sealed of Adyvon in Fee, grants to B. and his Heirs, that at whatever Time the Church becomes void, that B. and his Heirs shall nominate a Clerk to A. and his Heirs, and that A. and his Heirs shall present him over to the Ordinary, if the Patron makes Leafe or Grant of Rent-charge, this ought to be confirmed by both, but in Writ of Annuity Aid is only grantable of him that has the Presentation, for this is in the Right. Mo. 49. pl. 147. Patch. 5 Eliz. Anon.

8. Patron makes a Leafe for Years, which is confirmed by the Ordinary and by one of the Patrons, (there being 2 Patrons of this Church.) The Patron dies; the Ordinary collates by Laple; Adjudged that this was well confirmed and that the Collate shall not avoid this Leafe. D. Gament. Le. 72. b. Marg. pl. 5. says the Case was long and well argued. Trin. 235. pl. 516. Mich. 52 & 53 Eliz.


(O) Confirmation by the Patron and Ordinary. What Act [is sufficient.]

1. If an Abbot makes a Deed by such Words, Sciant Pretentes Br. Fains. I me Abbatem of such a Place, ex affenti Conventus dedisse, or pl. 37. cites dimiss. This is good, though the Convent did not grant, but S. C. and Affent. 14. D. 6. 17.

Reason seems to be that the Convent are dead Persons in Law, and are not sided, nor shall they implead or be impeded, but the Abbot only. See (K) pl. 5. S. P. and the Notes there.

2. If the Patron and Ordinary give Licence [by Deed, as it seems to be intended] to the Patron, to grant an Annuity etc. This is a sufficient Confirmation by them. 7. D. 4. 16. the Patron granting it accordingly.

Charge the Church, by which Rickhill awarded it good, and the Defendant to Answer over, good nons bene. Br. Dean and Chapter. pl. 52. cites 7 H. 4. 15. Co. Litt. 300. b. says it was held that a Licence by Patron and Ordinary to the Patron by Deed to grant a Rent Charge out of the Globe is good, and that such Grant shall bind the Successor, though there be no Confirmation subsequent. Patron Leases for Years or Charges the Church, and the Patron and Ordinary confirm it, this shall bind the Successor. Br. Leases. pl. 64. cites 5 H. 8. Bridg. 94. Hill. 15 Jac. in the Case of Mandev Lucas. it is said that the Affent of the Patron ought to be by Deed, otherwise it cannot be good.

3. # Lit. 144. If the Patron grants a Rent with the Affent of the S. P. by Patron and Ordinary, this is a good Confirmation. Ayliif and

Clich J. admitted; for there the Patron is the principal Grantor, and the others have not any express Interest in the Land charged.

# Robart says that thought Littleton seems to be of Opinion that the Patron has not the Right of Fee-Simple, he expounds himself as to the bringing a Writ of Right [See Lit. S. 644. at the End] but otherwise the Act of the Patron is it which charges or gives; and it suffices that the Patron or Ordinary do either licence or affcit. Hob. 7. pl. 15.
Confirmation.

4. If the Confirmation be made and delivered before the Grant of the Patron, this is no good Confirmation, though the Grant be after made by the Patron. *8 Pl. 6. 6. Vide Tit. 8 Jac. Sac.etc.

5. So in this Case, if after the Grant the Confirmation be delivered again, yet it is no good Confirmation, because by the first Delivery it is a Deed, and this second Delivery will not amount to an Allent, because the Allent ought to be by Deed. Contra 8 Pl. 6. 6. b. because the first Delivery was void.

6. If the Patron accepts a Lease for Years from the Patron, this is not any Confirmation by the Patron. Co. 5. Newcomen 15. admitted.

7. But if the Patron after Acceptance grants it over, this is a good Confirmation. Co. 5. * Newcomen 15. 12 B. Reports. 14 Jac. a. cites 15. b. cites 10. c. Maund against French.

8. A Dean seised in the Right of him and his Chapter makes a Lease for Years, and the Chapter by themselves confirm the said Lease; this is not good; For their Deeds being sever'd have no Effect, because they are all but one intire Body; But otherwise it is if after the Lease they both confirm, because this amounts to a new Lease. D. 40. b. Marg. pl. 1. and refers to 14 H. 6. 16. [b. 17. a. which is only a similar Point.]

9. If a Patron makes a Lease for Years, and the Patron and Ordinary put their Hands and Seals to it, this is a good Lease to bind the Successor. D. 40. b. Marg. pl. 1. cites it as adjudged 2 Jac. Banister's Cafe, though S. P. does not appear there exactly, and it seems, that (2 Jac. in D.) should be (2 Car.)

(P) Confirmation by the Bishop and Chapter. In what Cases it is requisite.

* See (M) pl. 2. 5 S. C. and the Notes there.
Confiruation.

2. But this shall bind the Bishop, and all those Prebendaries who come under him. Patch. 3 Trin. 15 Jac. 2. R. between Smith and Bowles clearly held by the better Opinion, because the Confirmation of the Dean is required only, for that the Possessions shall not be aliened in Prejudice of the Successor. D. 19 Eliz. 357.
3. If a Prebendary leaves for Beasts, and the Dean and Chapter confirm him without the Bishop, this shall not bind the Successor, because the Bishop is Patron and Ordinary thereof. D. 36 H. 8. 61. Alluat.

(Q) Confirmation by the Bishop, Dean, and Chapter.
In what Cases it is necessary.

1. If an Appropriation be made to an Abbot, Patron of the Church, by the Aisent of the King and Bishop, this is sufficient, without the Confirmation of the Dean and Chapter, and this shall bind the Successor Bishop; for the Bishop gives nothing by his Aisent, nor hath any Right as Patron, but only as Ordinary. Contra 46 Att. 4. Brooke Dean and Chapter 18.

2. If a Parson grants a Rent, the Confirmation of the Patron and Bishop is sufficient without the Dean and Chapter, and shall be good against the Successor Bishop, for he makes this Confirmation but as Ordinary, and the Bishop only is compleat Ordinary. Ego.
3. Treasurer of a Cathedral Church brought Affile of his Possession for a Leaf by vered from the Chapter; Release of the Dean and Chapter is no Plea; Treasurer for it is his several Right, and that he cannot make Leaf but for his own Time without Confirmation of the Dean and Chapter. Br. Dean &c. pl. 15. cites 17 Att. 29. said to have been so adjudged. Cro. E. 350. pl. 27. —— Lev. 112. in a Note, cites it as so laid by Penner in Cro. E. 350.

4. A Prebendary made a Leaf for Years of Part of his Prebend, and Adjudged on this was confirmed by the Dean and Chapter. It seemed to divers, that a Special Verdict, this should not bind the Successor without the Aisent of the Bishop, because the Bishop is Patron and Ordinary of every Prebend. But the Re-the by a Prebendar- porter lays Quære; for the common Usage is to the contrary. D. 61. b. pl. 30. Patch. 38 H. 8. 8. Anon.

the Stat. 32 H. 8. but only Parsons and Vicars, and being not excepted, he is as Bishops. But Popham said, that in Dr. Dalt's Cafe, for a House near Paul's it was so adjudged, and that it had been so twice adjudged in his Experience. Cro. E. 350. pl 27. Mich. 36 & 57 Eliz. B. R. Watkinson v. Man.
Confirmation.

Sid. 138, pl. 5. A Lease by Chancellor of a Cathedral Church shall bind without Confirmation; Per rot. Cur. for he is a Prebendary and more; for he has a Prebend, and besides this a Dignity, and is feudal in Fee in Right of his Church within the Words of the Stat. 32 H. 8. and they would not permit it to be found specially, though desired by the Attorney General; for they said they would not have it made a Lease. Lev. 112, and per Cur. this being an Impropriation cannot be annexed as appendant to the Office of Chancellor, but only in Right of his Prebendary, and therefore his Lease is good against the Successor without Confirmation of the Dean and Chapter.

See Co. Litt. 1. The Grants made by Donatives ought to be confirmed by the Patrons of them, or otherwise they are not good against their Successors. D. 10 Eliz. 273.

See (K) pl. 5. S. C. 2. The Deanry of Wells was surrendered and dissolved, and this Disallowment confirmed by Parliament, and a new Dean erected by the Act, and the Nomination of the new Dean and his Successors by Letters Patent given to the King and his Successors; And it is further enacted, that they shall pass their Possessions in the same Manner as the ancient Deans might; the new Dean may (*) grant his Possessions as the old Dean might with the Affent of the Chapter, without the Confirmation of the King, though he comes in by the Letters of the King, for the special Words of the Statute. D. 10 Eliz. 273. 37.

(S) Who may confirm in respect of his Estate.

Per Markham, in the Act of Elynsion's Cafe, Good meno negavit; and therefore it seems that Confirmation made by the Son, without Warranty in the Time of the Father Is not good against the Son, after the Death of the Father. Br. Confirmation. pl. 10. cites S. C.

Hob. 45. pl. 48. Wivel's Cafe. S. C. adjudged; because the Son had nothing in the Advowson, neither in Possession nor Right, nor in actual Possibility at the Time of the Grant;

Here-
3. In Affidavit, where the Father granted a Rent-charge for Life, and the Son confirmed it, and the Father died, and the Grantee brought Affidavit of the Rent, and the Issue was taken upon the Suffer of the Son, at the Time of the Confirmation made; and so it seems that he who confirms without Warranty, where he had nothing at the Time of the Confirmation made, as the Son in the Life of the Father &c. that in this Case the Confirmation shall not bind the Son after the Death of the Father, but he may say that he had nothing at the Time of the Confirmation. By Confirmation, pl. 14. cites 14. Art. 14.

4. Where my Entry is lawful, there my Confirmation is good. Br. Confirmation, pl. 32. cites 11 H. 7. 28.

5. As if my Devisor grants a Rent-charge, and I confirm it, this is good. Ibid.

6. And if I interpose another upon Condition, and after the Condition is broken, and I confirm his Estate, this is a good Confirmation. Ibid. 7. But if the Confirmation had been made before the Condition had been broken, Nihil operatur. Ibid.

S. C cited Arg. 1 Rep. 147. a. and ibid. per Car. 148 a.


9. If a Man grants a Rent-charge out of his Land to another for Term Co. Litt. of his Life, and after he confirms his Estate in the said Rent, to have and hold a a days to hold to him in Fee Tail or in Fee Simple, this Confirmation is void as to enlarge his Estate, because he that confirms has not any Reversion in the Rent. Litt. S. 543.

10. But if a Man be seised in Fee of a Rent Service or Rent-Charge, Co. Litt. and he grants the Rent to another for Life, and the Tenant assigns, and 30 bays after he confirms his Estate of the Grantee in Fee Tail, or in Fee Simple, this Confirmation is good, to as to enlarge his Estate according to the Words of the Confirmation, for that he which confirmed at the Time of Confirmation had a Reversion of the Rent. Litt. S. 549.

11. If Baron and Feme are Tenants in Special Tail, Remainder to the Baron and his Heirs, and the Baron levies a Fine with Proclaimations, to the Life of J. S. and his Heirs, and dies, and the Wife enters; and J. S. Dixie reciting the Gift in Tail, and that the Wife was seised in Tail by Force of Beautifully heereth, confirms her Estate Hakind to her and the Heirs of the Body of her late Husband and self &c. the Confirmation is void, & nihil operatur. For if the Remainderman had been in a Stranger, and the Wife enters, no thing is left in the Conunee but a Possibility which does not pass by the Confirmation, and though the Conunee has the Remainder by the Fine, nothing can be extracted out of the Fee by the Confirmation; For the old Estate Tail is bar'd as to the Issues, and cannot be delcend, but the Feme is seised of the whole old Estate, and no new Estate is created by the Confirmation, but only the old Estate confirmed, and consequently cannot delcend; nor can a Confirmation add a delcendable Quality to him.

5 E
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Court before him who is disabled to take by Defeunt. Adjudge i. 9 Co. 138. &c. the Argument of Jones and the Ch. Justice, the Matter was compromised, and to their Argument spared: but Jones held against the Revolution; for admitting that the Feme was Tenant in Tail, and her 'Iffies barred by Pains of the Faron, and that a 'defendible Quality cannot be given to the said Estate Tail, yet the Person of the Feme was not disabled by the Stat. 4 H. 7, and 25 H. 8 but only her Estate, and consequently the, as well as a Stranger, may take a new Estate in Remainder, which shall be 'defendible to her 'Iffies, and her 'Iffies shall make Title upon this Gift in Remainder, and an Estate of the Domes in Remainder, and not by the ancient and first Estate Tail which was barred by the Paine, and he thought this a plain Case.—Cgo. C. 476. pl. 5. Baker v. Willis S.C according to Jo.

(T) Confirmation by way of Enlargement. Who may confirm in respect of his Estate. [In Temporal Matters.]

1. HE that hath but a Right in Reversion cannot enlarge the Estate of the Lees. 3 H. 4. 10.
2. If the 'Iffee and a Stranger 'Iffee the 'Hair of the 'Iffee, and the 'Iffee confirms the Estate of his Companion, this shall not extinguish his Right that was 'fupended; lo as if the 'Hair of the 'Iffee re-enters, the Right of the 'Iffee is revived. Co. Litt. 298. b.
3. So it is if the Grantee of a Rent-charge and an Etranger 'Iffees the 'Tenant of the Land, and the Grantee confirms the Estate of his Companion, the Tenant of the Land re-enters, the Rent is revived; for the Confirmation extended to the Rent 'fupended; otherwise it is of a Re-lease in both Cases. Co. Litt. 298. b.

(U) To askom it may be. [In Temporal or Spiritual Matters.]

But where Leesor con-venanted with Leesee for Years, that he and a Stranger should have for Life; and there because the Stranger could not take in Posses-sion, the Justices made such Construction, that it should enure as a Confirmation of the Leesee's Estate, and Remainder over to the Stranger for the Benefit of the Stranger. Palm. 31. cites it to have been resolved 24 Eliz. at Hartford.

2. If a Man leaves to J. N. for Term of Years, and the Leesor confirms to the Leesee and his Feme for Term of Life, they have Franktenement by this. Br. Confirmation, pl. 26. cites 8 All. 20. per Wilby.
3. And by 2 E. 3. if the Baron be Tenant by Elegit, and the Conrour confirms to him and his Feme for Term of Life, that they have Franktenement. Contra 40 E. 2. 23. and 18 All. 3.
4. One made a Lease to a Man for Term of his Life, and took Feme, and the Leesor granted and confirmed to the Baron and Feme for their Lives, and per Cur. this shall not extend to the Feme, because she had nothing in
Confirmation.


5. A Chaplain enters into a Benefice where the King is intitled to present, and the King confirms his Estate, this is a good Bar in Quare Impedit. brought by the King, if the Chaplain be in as Incumbent; but contra if he be in as Intruder in the Life-time of the other Incumbent. Br. Confirmation, pl. 6. cites 7 H. 4. 30.

6. But per Skene, if he enters as Spoliator, [Intruder] and after the Incumbent upon whom he enters dies, and now the King confirms, this is good. Quare inde. Ibid.

7. An Alien born parochial Lands in Fee, and before Office found the Seat, by Letters Patents, made him a Donor, and confirmed his Estate. The Question was, Whether the Confirmation was good? Anderson thought it good, but Rhodes e contra; and Shuttleworth being afterwards asked the Question by divers Barristers, he said his Opinion was, that the Lands were not in the Queen before Office found, and that therefore the Confirmation is good. Goldsb. 29. pl. 4. Mich. 29 & 29 Eliz. Anon.

8. A leafed to B. at Will, and afterwards leafed to him for Yeares, Remainder to J. S. in Fee. This is good, though no Livery be made; for Pollution countervalis Livery. D. 209. b. 20. in Marg. cites 39 Eliz. C. B. Cooper v. Callambil. 9. Nov exist Confirmatio, nisi ille, cui Confirmatio sit, fit in Possessione. Co. Litt. 295. b.

10. If Diffeiior makes a Leave for Yeares, and Difeeise confirms the Estate, this is good and effectual. Litt. S. 518. Michaelmas next the Confirmation is void, because the Tenor has only an Intercffe Termini, and no Estate in him whereupon a Confirmation may enure. Co. Litt. 296. b.

11. A sealed of Land grants and incoffs B. of the Premisses by Deed sealed and delivered, but no Livery and Seifis. About a Year after A. pl. 68 Deeds and confirms the Premisses to B. at which Time, and before, A. and B. lived together in the Houfe open it. A. kept Houfe, and paid Parliam. Duties. Per Cur. such living together in the House is sufficient Entry and Pollution to enable B. to take Confirmation; For the Law will adjudge the Pollution in him that had the Right, which was B. unless it had been proved that A. had determined his Will alter the Feeoffice, and before the Confirmation. Sid. 385. pl. 16. Mich. 20 Car. 2. B. R. Lord Kinoul v. Whitchcot.

(U. 2) At what Time it may be.

[In Temporal or Spiritual Matters.]

1. Confirmation bore Date before the Date of the Deed of Grant, and yet good, because it was aver'd to be Primo delinitum after the first Deed; Quod Nota. Br. Confirmation, pl. 25. cites 1 H. 6. 8.

2. If
Confirmation.

2. If a Parson grants an Annuity, and resigns, and the Patron and Ordinary confirms it, the Annuity is determined, and the Confirmation comes too late. Br. Annuity, pl. 26, cites 21 H. 7. 1. per Butler.

3. A Tenant for Life leaves to A. for Years, and afterwards leaves the same Lands to B. for Years, and he in Reversion confirms the first Lease, and afterwards confirms the first Lease, yet this Confirmation does not make it effectual, because B. the second Leeree had an Interest before the Confirmation of him in the Reversion; Per Dyer, Welton, and Carus; but Brown pleased contra. D. 67. in pl. 155. Trin. 6 Eliz.

Years to A. and afterwards Leesor and Leesor for Life joined in a Lease for 60 Years to B which Lease for 60 Years Leesses confirmed, and afterwards he confirmed the Leese for 30 Years, and then within the 30 Years Leesses for Life died. It was adjudged, that the Leese to A. for 30 Years was determined by the Death of Leeree for Life, and that it might enter; for though its Leese was later in Time, yet it was of more Force in Law; because the Leessor, who had Power to confirm which he pleased, did confirm the second Leese first. Cites it as in the Time of Q. Eliz. U. well v. Lodge.

4. If a Bishop makes a Lease on the 2d of May, and the Dean and Chapter confirms it on the 10th of May, this Leese is good after the Bishop's Death; Per Catlin and Southcothe. But Wray asked, How a Leese can be confirmed before it is made? To which Catlin and Southcothe answered, That the Aflent before is a good Confirmation after. Osw. 33. Hill. 8 Eliz. Anon.

Confirmation by a Bishop's Leese by Dean and Chapter may be before the Leese as well as after, because the Dean and Chapter have no Interest in the Land, but only a Power to assist, and an Aflent places no Interest any more than an Appointment; Per Mainwood Ch. 8. Lain 64. Trin. 7 Jac. II. Edward Dummock's Cae.

5. Aflent of Dean and Chapter to a Leese in Reversion made by the Bishop is good either before or after Appointment, but in Cae of a Translation of the Bishop to another Bishoprick Appointment after is void. 3 Le. 17. pl. 40. Nich. 14. Eliz. Anon.

The Bishop of Rochester's Cae, S. C. in totdem Verbis.

6. Prebendary grants a Leese; the Bishop, who was Patron as well as Ordinary, grants the next Afliciency of the Prebend to J. S. The Dean and Chapter confirm the Grant. Then the Bishop and the Dean and Chapter confirmed the Leese. This Confirmation is too late and not good against a Successor preferred by the Grantee of the next Afliciency. Hob. 7. pl. 15. Trin. 11 Jac. Spendlovs v. Barket.

7. There is a Diversity between a Confirmation of an Esfate and a Confirmation of a Deed; for if the Disseser makes a Charter of Feoffment to A. with a Letter of Attorney, and before Livery the Disseser confirms the Esfate of A. or the Deed made to A. this is clearly void though Livery be made after. Co. Litt. 301. a.

8. The like Law is of a Confirmation of a Deed of Grant of a Reversion before Appointment. In the same Manner it is if a Bishop at the Common Law had granted Lands to the King in Fee by Deed, and the Dean and Chapter by their Deed confirm the Deed of the Bishop, and after the Deed of the Bishop is inrolled, this is good albeit the Confirmation of the Dean and Chapter be not inrolled, for the Aflent upon the Matter is made to the Bishop. Co. Litt. 301. a.

9. But if a Bishop had made a Charter of Feoffment with a Letter of Attorney, and the Dean and Chapter before Livery confirm the Deed, this is a good Confirmation and Livery made afterwards is good, and it has been adjudged. Co. Litt. 301. a.
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(X) What Conveyance [or Words in a Conveyance] shall end the to a Confirmation.

1. If a Man makes a Charter of Feoffment to a Man who is feised of the Frehold by these Words, Dedi concetti and confirms, this shall end the way of Confirmation. 19 H. 6. 45.

Be Confirmation, 16 9 cites S. C. — Fifth Confirmation, pl 2 cites S. C. — So by the Words Dedi or Conxi., this is a good Confirmation; Quere of the Word Dimis viz. Confirmation, pl 25. cites Lit. Confirmation, 16. — So of Dedi or Conxi., but Quere of the Word Dimis. Br. Confirmation, pl 51. cites Lit. [S. 311.] This Word (Dimis) will amount to a Confirmation, Co. Litt. 501. b.

2. If there be Leisue for Years, the Reversion for Life, the Remainder in Fee, and he in the Reversion in Fee makes a Charter of Feoffment in Fee and Liberry to Leisue for Years, admitting this to be void for the mean Estate for Life, this shall end the way of Confirmation. 11. to Leisue to enlarge his Estate. 90. 41 Ch. B. R. be Knutsford and Eaton, per Curtiam.

3. If there be Tenant in Tail, the Remainder in Fee, and Tenant in Tail grants a Rent in Fee to him in the Remainder, and after he in the Remainder grants over residuary Predicament; this shall be a Confirmation of the Rent, so that the Remainder shall be charged with it after the Death of Tenant in Tail without Issue. 9. 15 Jac. B. R. between Dalton and Ingbam, it was a Question, for Boughton refused that it should not be a Confirmation, but Montague held the contro, and the others did not speak to it upon their last Agreement; granting the Rent over this was a Confirmation, and Montague said, that it was a Confirmation during the Estate Tail, and shall enure as a new Grant afterwards.

4. A seised of Land in Fee grants by Deed Rent out of this Land to B. for Life, the Remainder of the said Rent to B. for Life, and afterwards by another Deed releases to C. and his Heirs all the Right which he has in the Rent; and if it shall happen that the said Rent shall be in Arrear, that it may be well and lawful to C. and his Heirs to distrain for it in the said Land. Resolved that this is a good Remainder of a Rent newly created, and that C. has a Rent-charge in Fee; for the same Rent in this Cale, in Confirmation of Law, signifies the Life Rent. Adjudged and affirmed in Error. Jenk. 39. pl. 55. cites 26 Af. pl. 58.

5. So a grants a Rent-charge out of his Land to B. for Life, and A. afterwards confirms the Estate of the said B. in the said Rent to B. and his Heirs; B. has only an Easement for Life. The Word of Confirmation doth not amount to the Word Grant. Proprietares Verborum sunt obser-vanda. Jenk. 39. pl. 55. cites 26 Af. pl. 58.

6. A Man made Feoffment in Fee upon Condition to reissof him in Tail, the Remainder over, and after re-entered claiming Nothing of the one Estates or of the other, and the next Day the Feoffee made Feoffment to him, object to the Hereditia de Corpore fund, the Remainder over as above, and it was held a good Gift and Remainder, and not a Confirmation; and yet he delivered the Deed to him without Livery, and a good Gift in Tail, and a good Remainder. It seems that it was upon the Land, and then the Receipt of the fee reissof him, and by the Livery of the Deed upon the Land this shall enure as a Gift within the View, and then it amounts to a Liberty. Br. Confirmation, pl 27. cites 40 Af. 10. F.
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7. Avowry bequeath his Father was feased in Fee, and gave in Feild to J. and E. his Sons, vending 22 Years &c, and afterwards 40 s. per Ann. and showed Debt prevented thereof, and showed that the 22 Years are past, and conveyed the Feild to the Plaintiff by Deed, and for 41. for two Years assigned upon the Plaintiff as upon his Tenant by the Manner. Norton said, You yourselves confirmed the Estate to us, Habendum to us and our Heirs by the Deed which here is, Tenendum by 8s. after the 22 Years passed, and demanded Judgment if for more Services may he avow. Skrene said, At the Time of the Confirmation you had nothing in the Land, and demanded Judgment and prayed Return, and after the Court would not Record that the Plaintiff pleaded it by Way of Confirmation, but by Way of Grant to hold by Ies Rent; for the Deed willed Nove-rities me, the Avowant, convey & confirm the whole Tenors & Tenements to the Plaintiff, Hereditus & Allignati suis imperperum redendo inde Annuitati mihi, & Hereditus meis 8 s. for 42 Years pro omnibus redivitibus &c. and well to plead it by or Grant; for Confirmation of ESTATE is not good but to him who is in Possession. Br. Avowry, pl. 48. cites 14 H. 4. 37, 38.

8. If two tenants are feased of certain Land, the one cannot in-footh the other, for he cannot make Livery by Reason that the other is feased; but such Feoffment shall enure by Way of Confirmation. Br. Confirmation, pl. 11. cites 22 H. 6. 42, 43.

S. C. cited Arg. 4. Mod. 130. S. P. and says it must be pleaded as a Confirmation and not literally as the Deed is worded.

9. If one Consecutor infeas his Companion by Deed by Dedi & Conceis, this shall enure by Confirmation without Livery; for it countervalues remiti & confirmavi, Per Littleton. Br. Confirmation, pl. 18. cites 10 E. 4. 3.

10. A Leafe to B. for Years, and after A. by Deed indented Bargains and sells the same Lands to B. and his Heirs, without any Word of give or grant express'd in the Deed; Per omnes Jult. nothing passes by the Deed without Inrollment, and it is no Confirmation. Mo. 34. pl. 113. Trin. 4 Eliz. C. B. Anon.

11. Tenant in Tail leaves for Years, and after Leffer covrantants and grants to Leeffee that he shall have and hold the Land to him and others during the Life of Leffor. By the Opinion of 3 Justices, this is neither Surrender nor Confirmation to enlarge his Effeate, and is only a Covenant without effecting the Word grant; but Welton J. said, me it contra, by reason of the Word Grant. D. 272. pl. 34. Pash. 10 Eliz. Cardinal v. Sackford.

12. A Grant and Demise of the Land to Tenant at Will to hold for Life rendering the ancient Rent is a Confirmation; Per Cur. 3 Le. 15. pl. 35. Mich. 14 Eliz. Anon.

Agreed by all the Justices, that he may take it by the Way or the other, and that the Law suspends and expects till he has declared his Pleasure. Goldsb. 25. pl. 6. Trin. 28 Eliz. Lennard's Cafe.

13. A seised made a Lease for Years to J. S. the Defendant, and afterwards, by his Deed, containing Dedi, Conceis & Confirmavi, gave it to J. S. and his Heirs, with a Letter of Attorney to make Livery. It was objected that this was not a Feoffment, but a Confirmation only, because of the Word Confirmavi; but Anderson Ch. J. said that the Leeffee may take it either as a Feoffment or a Confirmation; and the Court held it a Feoffment. Goldsb. 25. pl. 6. Trin. 28 Eliz. Lennox's Cafe.

14. A.
Confirmation.

14. A. by Indenture, in Consideration of Love which he bare to his Son, and for natural Affection unto him, bargained and sold, gave granted and confirmed certain Lands unto him and his Heirs. This Deed was sealed; the Question was, whether this Land should pass, and it was held it should not, unless Money had been paid, or State were executed; for the Life shall not pass; but because the Son was then in Possession, it was held to ensure by way of Confirmation. Cro. J. 127. pl. 17. Trin. 4 Jac. B. R. Osborne and Bradshaw v. Churchman.

15. In some Case this Verb Dedi or Concessi shall enure to the same In- tent, as this Verb Confirmavit; As if I be divested of a Carve of Land, and I make such a Deed Seant prelantes &c. or Quod concessit to the Dif- feree for the said Carve &c. and I deliver only the Deed to him, without cells, that any Livery of Seisin of the Land, this is a good Confirmation, and as strong in Law as if there had been in the Deed this Verb Confirmavit.

Litt. S. 534.

a Grant of the Right to the Person in Possession; and if he has my Right, I can never after impeach his Estate. Gibb. Treat. Ten. 75.

16. Leave to A. for Years, and after by his Deed the Leesor Voluit quod haberet & teneret terram pro termino Vite fuit, this is adjudged by this Verb (volo) to be a good Confirmation for Term of his Life.

Co. Litt. 304. b.

17. He to whom such a Deed, comprehending Dedi &c. is made, may plead it as a Grant, as a Releas'd, or as a Confirmation at his Ex- lection. Co. Litt. 304. b.

that the Pleading must be as the Deed doth enure and operate, and not as the Words are in the Deed itself.

18. If the Differee and the Heir of the Differee join in a Feoffment by Deed, this is the Feoffment of the Heir, and the Confirmation of the Differee; for the Lands always pass from him that has the Estate in him. Litt. S. 334. as abridg'd by Hawk. 395, 396.

and the Differee the Right of Propriety; for every one grants what he lawfully may. Gibb. Treat. Ten. 75.

(X. 2) What amounts to a Grant and to a Confirmation too at the same Time.

1. In Aisle it was said if Tenant for Life grants a Rent-charge in Fee, So if the and dies, and he in Reversion enters and confirms the Charge, with Clause of Differee, this is good, and the Reason seems to be be- cause of the Clause of Differee, which makes it to be as a new Rent; for if Differee clearly is determined, which was granted by the Tenant for Life. Br. Grants, pl. 67, cites 14 Ann. 14.

Grant, with Clause of Differee, it is good. Br. Charge, pl. 44 cites S C. — And if there be Lord and Tenant, the Tenant holds by Fealty and 10 s Rent, and the Lord grants 2s. of the Rent to a Stran- ger, and the Tenant confirms the same Grant with Clause of Differee, it is good. Br. Charge, pl. 44. cites S C.

2. The
Confirmation.

And 23. pl 36 S. C. adjoined accordingly, but that it is no Grant of the Reversion, and so it seems that the Rent remains to the Abbot during the Life of J. S. Queere.—Bentl. 169. pl 277. S. C. and that it is a Grant of an Estate to J. S. for Life, but that it is no Grant of the Reversion to the Stranger.

As it Perfon [* & Ordinary makes a Lease for Years to the Patron, and afterwards the Patron grants over the same to J. S. this Grant over by the Patron of the said Lease imports itself as well a Grant of the Term as a Confirmation of the same Term. 5 Rep. 15. a. cites Trin. 30 Eliz. in the Exchequer. Hodges v Newcomen.—S. C. cited by Coke Ch. J. and Dalchamp. East Rep. 361.*

Co. Litt. 501. b. 502 a. S. P.

4. So if Tenant for Life grants a Rent-charge to him in Reversion in Fee, and the Reversioner by Deed grants it over to another, this is a good Grant and Confirmation also to make the Rent good for ever. 5 Rep. 15. a. in Cafe of Hodges & Newcomen cited there.

5. B. Tenant for Life of C. and he in the Remainder or Reversion in Fee, having several Estates in the one and the same Land, join in a Lease for Years by Deed indented, this Deed shall work in this Sort viz. during the Life of C. it is the Lease of B. and Confirmation of him in the Reversion or Remainder, and after the Decease of C. it is the Lease of him in the Reversion or Remainder, and the Confirmation of B. For seeing the Leases have several Estates, the Law shall confirm the Lease to work out of both their Estates respectively, and every one to let that which he lawfully may let, and not to be the Lease only of Tenant for Life, and the Confirmation of him in the Remainder or Reversion. Co. Litt. 45 a.

6. If the Disposee grants a Rent to the Disposee, and be by his Deed grants it over, and after re-enters, one and the same Words do amount both to a Grant and to a Confirmation in Judgment in Law of one and the same Thing, no Res peraret. Co. Litt. 302 a.

7. If a Disposee makes a Lease for Life, or a Gift in Tail, the Remainder to the Disposee in Fee, and the Disposee by his Deed grants over the Remainder, and the particular Tenant attains, the Disposee shall not enter upon the Tenant for Life or in Tail, for then he should avoid his own Grant, which amounts to a Grant of the Estate and a Confirmation. Co. Litt. 302 a.

8. If I lease to a Feme sole for Life, whoever takes Husband, and I confirm the Estate of the Husband and Wife, Habend for their two Lives, they do not hold jointly, but he holds in her Right for her Life, yet it shall more to him for his Life by way of Remainder if he survives her. Litt. S. 525.

9. But
Confirmation.

9. But if the Lease to her had been for Years, then by such Confirmation they would have a Joint-Estate in the Freehold of the Land, because the Wife had no Franchise before &c. Litt. S. 526.

Lease for Years to a Female; for her Estate of Freehold cannot be altered by the Confirmation made to her Husband and her, as the Term for Years may, whereas her Husband may make Division at his Pleasure. Co. Litt. 200. a. — In other Cases of Lease for Years or Life to her, this amounts to a new Grant of the Term for the Life of the Husband; for I cannot confirm the old Term, but create a new one, since the Words import more than a Confirmation of the old Term; for in that the Husband has nothing in his own Right. Gilb. Treat. Ten. 73; ch. Litt. S. 525, 526.

10. If a Man hath Common of Pasture in other Land, if he confirms the Estate of the Tenant of the Land, nothing shall pass from him of his Common; but notwithstanding this, the Common shall remain to him as it was before. Litt. S. 337.

11. If a Jointtenant confirms the Land to the other, this makes no Alteration, nor he confirms the Estate in the same Manner as it is; But if it be to have and to hold such Lands to such Jointtenant only he has a sole Estate, for then he expresses a Design of confirming the Possession to him alone, for that the Confirmation goes to the Possession itself by the explanatory Words in the Habendum, and not to the Manner of posessing, and the Words of the Habendum make the Confirmation entire as a new Grant of such his Moiety. Gilb. Treat. Ten. 72.

(Y) In what Cases it shall be good. Confirmation of a void Thing.

I. If a Man be attained of Treason, and the King reverses it by Pardon, his Letters Patents, this void, because he cannot do it without a legal Proceeding; and after the Parliament revoking the Patent, If the King ratifies, confirms, and approves it, and that he shall be restored to his Land or; this Act of Parliament is a sufficient Reversal of the Judgment, because it revokes the Patent, and gives Title to the Patent which was void. 29 C. 3. 25. adjudged.

confirmed by Parliament, it is a good Grant. Brooke says Quod Mirum! for there was such a Grant, for Confirmation, pl. 12. cites 38 H. 6. 54. 57. But per Prin. where the King grants a Manor to hold only an Advowson which is in prof. the Grant is void as to the Advowson, and there if this be confirmed by Parliament the Confirmation does not make the Grant good, because the Advowson was not expressed in the Grant, but in the Habendum, and therefore a Confirmation of the Grant cannot make it good of that which is not contained in the Grant. —— Brooke says, Quere if he had confirmed all that which is contained in the Patent, it seems all one; for Confirmation cannot make a void Thing good. Ibid.

2. If Tenant in Tail grants a Rent-charge and dies, and the Issue in Tail enters and pays the Rent, and after ratifies and confirms the same Rent, this is good, and the Grantee shall have Allife; Per Norton, which Brooke says is not Law; For the Grant was void by the Death of the Tenant in Tail, and the Entry of the Issue; and then the Confirmation of a void Rent is also void. br. Grants, pl. 73. cites 26 Aff. 38.

3. The Incumbent pleaded, that be entered by the Provost of the Pope, and after the King confirmed his Estate in the Prebend; Judgment. The King said, that he entered by Spoliation [Intrusion] in the Time of another Incumbent and he confirmed, and so the Confirmation void, in as much as he was in as 5 G Spooner.
Confirmation

Spoller [Intruder] and not as Incumbent, and to ilieve. Br. Quare
Impedt, pl. 47, cites 7 H. 4. 25. 37.

If a Man takes away my Villain in Gross, and I confirm his Estate in
the Villain, the Confirmation is void; for of the Person of a Man there
can be no Possession without a Right; But I may give him by the Words
Dedi & Concell to him that took him away, or to any other, notwithstanding such wrongful Taking; Per Hobart Ch. J. Hob. 99. Trin.
7 Jac. cites Litt.
this pulls nothing; because this is in incorporeal Right, which cannot be devested out of me, and the
mer Confimation, where a Man has no Right, is really nothing; for this which is not, cannot be confirmed; but if there are the Words Dedi & Concell it pulls the Right. Gilb. Treat. Ten. 74, 75. —— Co. Litt. 356. b. 357. a.

5. A Confirmation may make a voidable or defeasible Estate good, but be a Rule, it cannot strengthen a void Estate. Co. Litt. 295. b.

If a Man has collates to a Prebend, and dies before Induction, and
after the King before Induction confirms to him for his Life, yet
this is not good, because he hath not any Possession upon which the
Confirmation may enure at the Time of the Confirmation. 11 H. 4. 7. Comm. 528. b. [S. C. cited by Pinwood.]

In Quare
Impedt, the
Incumbent
placates Colla-
tion to the
Prebend by
the Bishop,
by which he
was indited, and the King confirmed to him for Term of his Life, and the King said, that he
was not indited at the Time of the Confirmation, and so to ilieve; and to note, that he had not Possession
before Induction, and Confirmation is not good without the Possession; Good Nota. Br. Confirmation, pl.
Judices.

2. Confirmation of Rent or Seigniory is not good but in respect of a
former Estate or Deed, and therefore if the first Deed be lost, or be before
Time of Memory, the Confirmation is not good; Per Huls and Skrene,

If Lord and Tenant are, and the Tenant is diisposed, and the Lord con-
firm's the Estate of the Diisposed to hold by les Services, this is not good;
for Confirmation is not good, unless he to whom the Confirmation is
made has the Possession or Seizin at the Time of the making of the

But contra of Release or Grant; for these are good in respect of the
Seigniory, because he is Tenant as to the Auwry. Br. Confirmation, pl.
8. cites 14 H. 4. 37.

4. Where Tenant in Tail dies every time and dies, and the Donor releases
or grants to the Ilieve in Tail to hold quiet, or by les Services, though he has not
Confirmation.

4: 37. But where there is Lord, Mefue, and Tenant, and the Lord confirms the Estate of the Mefue to hold by left Services this is good; for he is Tenant in PoHesseion of Mefuilty, and there is no other PoHesseion; note the Diversity. Br. Confirmation, pl. 8. cites 14 H. 4. 37.
8. In Quare Impedit by the King, the Defendant pleaded Confirmation made to him by the King by the Words, Dedimus et Confirmans to him then Tenant of the Land, and Ad vocans Appellant to it &c. and therefore well and not double; and so it seems that he who pleads Confirmation ought to plead it made to him then Tenant of the Land, for otherwise a Confirmation or a Releaf cannot enure. Br. Confirmation, pl. 2. cites 9 H. 6. 22.
9. If a Parson grants an Annuity in Fee, and resigns, and after the Patron and Ordinary confirm the Grant, the Confirmation is not good; for the Annuity was void before by the Resignation which was before the Confirmation. Br. Confirmation, pl. 12. cites 21 H. 7. 1.
10. A. aifcribed upon the Patronage of one of the King's Churches divers Times, and had several Clerks successively Admitted, Instituted and In-ducted, and for many Years respectively they were Incumbents of this R. The Church A. has not gained the Patronage by it; the King may grant King v. this Patronage to any one, for he is in PoHesseion, and the Patronage is Champion in him. The King confirms this Patronage to this A. it is void, for A. S.P. and has no any Patronage. If the King confirms to the Incumbent of A's. S.C. ad-Prentance his Incumbency is good, for he is Incumbent de facto; judged ac- and the King cannot remove him without a Quare Impedit by the contendly, and so to a Statutes of 25 E. 3. and 13 R. 2. Judged and affirmed in Error. The Judgment in King cannot either do Wrong, nor suffer Wrong. Jenk. 132. pl. 96. C. B. re-verfed, Penne confe- tiences, Sed Hafiranter. Yelv. 92. The King v. Matthew. S. C. and Judgment in C. B. re-verfed by 4 Juifices, but Penne ccontra. Brownl. 160. S. C. but seems to be only a Transla-tion of Yelv.
11. If a Difeffee make a Leafe for Years to begin at Michaelmas, and the Difeffee confirms his Eflate, this is void because he has but Intrebbe Termini and no Eflate in him, whereupon a Confirmation may enure. Co. Litt. 296. b.
12. Tenant for Life of 20 Acres grants his Eflate in one Acre to J. S. and he in Reversion confirms the Estate of Tenant for Life to him and his Heirs in all the 20 Acres, this is a Confirmation but of 19 Acres, and though J. S. atto:n, yet his Acre can't pass by way of Grant of the Reversion. Arg. Litt. R. 248. Pach. 5 Car. C. B. (A. a) [In what Cases] A Confirmation shall [or shall] not enlarge an Eflate.
1. If Lefsee for Life grants a Rent to another for his Life, and the Br. Confirma-tion, pl. 16 cites Life of the Grantee, though bare by Limitation of Law it ought to have determined by the Death of the Lefsee. 45 All. 13. Br. Rent. S. C. that a Man was seized of a Carve of Land, and leased 2 Parts thereof to a Feme for Life; the Hoo an
Confirmation.

took Baron; the Baron granted to s. Rent out of it to W. N. for Life; the Feoffor afterwards confirmed the said Grant by Deed, and by a Clause therein granted further 20s. Rent of his own. Part in his own Hands. The Baron and Feoffor died, and the Grantor brought Affidavit of 29th. Rent. Doubt whether the Deed of Confirmation shall be taken as of a new Rent, or only of the first Rent: Quere; For non adjudicatur.

Litt. S. 249. 2. So if Feoffor for Life grants a Rent in Fee to another, and he in his Suit for Rent cites the Deed, this is a good indefeasible Rent in Fee. Co. Litt. 301. S. if the Deed of Confirmation was in Fee of the Tenant. J. Fenfee and C. Kent made Affidavits that the Deed to the Tenant is null and void, and the Tenant grants the Land to the Land. J. Fenfee and Fenfee and C. Kent confirmed in the Deed, and when it is implied in Law; For when Tenant for Life grants a Rent in Fee, this by Law is determined by the Life of the Tenant, and yet a Confirmation of the Grant by him in the Deed makes that Grant good for ever, without Words of Enlargement, or Clause of Distresses, which would amount to a new Grant. But if the Tenant for Life had granted a Rent to another and his Heirs by express Words, during the Life of the Grantor, and the Feoffee had confirmed that Grant; that Grant should determine by the Death of Tenant for Life. Co. Litt. 301. a. * 1 Rep. 147. b. S. P. Arg., cites Litt. and 26 Aff. 58: and 45 Aff. 15. accordingly.

S. P. if he in the Deed
Reversion
Confirmed it
in the Life of the Feoffor.
Confirmed by the
Confirmation.

Br. Grants.

4. Confirmation may enlarge Rent, As where a Man leaves Land rendervt Rent, and the Feoffor grants the Rent to a Stranger, and after confirms the State of Grants, and grants over by the same Deed, if the Rent be Arrear be may Distress, and the Tenant for Term of Life dies, yet the Rent remains. Br. Confirmation, pl. 15. cites 26 Aff. 58.

5. Contra it should be if the Confirmation with Clause of Distresses had not been. Ibid.

6. Lease for Life rendering Rent, the Feoffor granted the Rent over, and the Tenant attorns, and after the Confirmation confirmed the Grant to the Grantee, and that if the Rent be Arrear he may Distress, the Tenant for Term of Life died, and yet the Rent remained; for it was enlarged by the Distresses and Confirmation, quad nota. Br. Rents, pl. 14. cites 26 Aff. 38. Quinnin's Cafe.

7. If a Man leaves for Life rendering Rent, and the Feoffor confirms to the Tenant in Fee or in Tail rendering the Rent, this enlarges the Estate of the Rent, and yet at the Commencement the Rent was determinable upon the Death of the Feoffor. Br. Rents, pl. 14. cites 26 Aff. 38. Quinnin's Cafe.

8. If a Man leaves his Land to J. S. for Term of Life rendering 25. per Annun, and after grants to another 25. out of the Land which J. S. holds of him for Term of Life, to the Grantor and his Heirs during the Life of the Grantor, this shall be taken a Grant of a new Rent by him in Reversion, and the Grantee shall have the Rent though J. S. die; Per Shard and Fincher. Br. Rents, pl. 24. cites 34 Aff. 14.

9. Tenant for Life grants a Rent to W. N. for Life, if he in Reversion confirms the Grant, and the Tenant for Life dies; yet the Rent shall remain during the Life of W. N. by reason of the Confirmation, contrary if there was no Confirmation. Br. Grant, pl. 29. cites 47 Aff. 13.

10. When the Estate of him to whom Confirmation is made is upon an Express Condition, there the Confirmation made to him will not take away the Condition. But if such a Feoffee upon Condition makes a Feoffment over, to that his Estate is only subject to a Condition contained in another Conveyance, but no Condition is expressed or annexed by the Feoffor to his Estate, there the Confirmation of his Estate, which he had by absolute Words, shall extinguish the Condition which was annexed to the Estate of the first Feoffee. 1 Rep. 147. a. b. Arg. Hill. 35 Eliz. in Anne Mayow's Cafe.

11. 15
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11. If a Lease be made to A. for the Life of J. S. and this is afterwards confirmed to him for his own Life; this is good to him now for his own Life, because that his own Life is greater; but if the Lease were made unto him for his own Life, and afterwards confirmed to him for the Life of another, this Confirmation is merely void, by Crooke J. Built. 136.

12. If a Man leases Land to J. S. or Life, and after confirms his Estate Gilb. Treat. to hold to him and his Heirs, this Confirmation as to his Heirs is void; 172, cites S. for his Heirs cannot have his ESTATE which was not but for Life. But if C. and says, he confirms his ESTATE by these Words, to have the same Land to him and that by the his Heirs, this Confirmation makes a Fee Simple, for the Words To have to him and to hold &c. goeth to the Land and not to the ESTATE. Litt. S. 324.

other Intent than merely to confirm the ESTATE, viz. to enlarge it to him and his Heirs; and taking the Grant Brongeth against the Grantor, it null nulls away the Fee Simple. — Jenk. 39. pl. 58. the Word Confirmation does not amount to a Grant.

13. If I let Land for Years, by Force whereof Leesee is in Possession. The Words &c. and after I make a Deed to him &c. Quod dedi & concexxi &c. the said Land to have for his Life, and I deliver him the Deed &c. present-lie ly he hath an ESTATE in the Land for his Life. Litt. S. 332.

Litt. S. 331. —— Gilb. Treat. of Ten 73, cites S C & S. P. because it amounts to a Grant of the Right to the Person in Possession; and if I have my Right I can never impeach him afterwards.

14. And if I say in the Deed to have and to hold to him and to his Heirs of his Body ingenio, he hath an ESTATE in Fee Tail. And if I say in the Deed, To have and to hold to him and to his Heirs, he hath an ESTATE in Fee Simple, for this shall enure to him by Force of the Confirmation to enlarge his ESTATE. Litt. S. 513.

15. If a Man be seised in Fee of a Rent-service, or Rent-charge, grants the Rent to another for Life, and the Tenant Attornets, and after he confirms the ESTATE of the Grantee in Fee Tail, or in Fee Simple, this Confirmation is good as to enlarge his ESTATE according to the Words of the Confirmation, because he who confirmed at the Time of the Confirmation had a Reversion of the Rent. Litt. S. 549.

16. But where he grants a Rent-charge to another for Life, if he by cancelling wills that the Grantee should have an ESTATE in Tail, or Fee, the Deed of his Deed, of Grant of the Rent-charge for Life must be surrendered or cancelled, and then to make a new Deed of the like Rent-charge, to have and perceive only in Grant, cease as well as he the Surrender; and the Reason why the Deed should be surrendered or cancelled is, left the Grantee should be duly charged, viz. with the old Grant for Life, or with the new Grant in Fee. Co. Litt. 550. b.

17. If a Man grants a Rent-charge issuing out of his Land to another Here the for Term of his Life, and after he confirms his ESTATE in the said Rent, Diversify is have and to hold to him in Fee Tail, or in Fee Simple, this Confirmation is void as to enlarge his ESTATE, because he that confirmeth hath not any Reversion in the Rent. Litt. S. 549.

But, note, Littleton intends his Deed of Confirmation not to contain any Clause of Diversify; for otherwise, as to the Confirmation, the Deed is void, but the Clause of Diversify amounts to a new Grant, Co. Litt. 308 a.

18. A. grants a Lease for 28 Years and a Half to B. and suffers a Recovery, and reciting that he had granted a Lease to B. for 29 Years declares, that the Recovery should be to the Use of B. for 29 Years. This was
Confirmation.

was held to be a Confirmation for the 28 Years and a Half, and the other half Year an Addition only. Arg. Litt. R. 281. Trin. 5 Car. cites it as a Case in the Court of Wards of Willoughby v. Barker.

(B. a) The Effect thereof as to altering the Quality of the Estate.

7. A Confirmation of the Estate of Tenant in Dower, to hold to her for her Life, does not enlarge her Estate, and therefore cannot take away the defensible Quality to the Heir of having Admission of Waste against her after an Allignment made by her of her Estate; Per Cur. 9 Rep. 142. a. Pach. 10 Jac. cites 38 E. 3. 23. a. b.

2. The Lord by his Confirmation by Dods Commiss & Confirm'd to the Tenant in Possession, to hold at Common Law, shall change the ancient Devise into Frank-fee; Per Belknap clearly. Br. Confirmation, pl. 5. cites 40 E. 3. 7, 8

3. And so fee that the Lord by Confirmation may change his Seigniory, but he cannot change the Possession of the Land, which appears, tit. Confirmation, in * Littleton, where the Estate is upon Condition or charged with Rent &c. Confirmation cannot alter it, but Confirmation to a particular Estate may enlarge it by Words of Habendum &c. Ibid.

Br. Waffe, pl. 71. cites S. C. but cites it as by Aflham that he shall be charged in Waffe, for now he is in of other Estate, and the greater Estate shall determine the less which is the Term.—Roll Rep. 183; cites 5 E. 3. 9. (according to the Opinions of Loddington and Babbington) that he shall be charged in Waffe, but this nothing of Aflham [as to which Brooke terms misprinted; his Opinion being e contra.]—8 Rep. 76 a. b. S. C. cited by Coke Ch. J.

Br. Quare Impedit, pl. 112. cites 58 H. 6. 53. S. C.

Br. Quare Impedit, pl. 112. cites 58 H. 6. 53. S. C.

3. Where the King granted Advowson to three in Fee ad efferendum, then they grant over to the Nuns of Siom of the Foundation of the King, and they pleaded that they granted it to the Abbess of Siom and her Successors in Fee, and did not say, if they were of the Foundation of the King or not, and therefore ill; for this Word (Efferendum) is a Condition by all the Justices, Br. Confirmation, pl. 13. cites 38 H. 6. 34. 37.

6. By which he pleaded Confirmation of this Grant to three by Act of Parliament to prove it to be without Condition, and to his Intent the Confirmation tolls and takes away the Condition, and all the Justices were e contra; for the Confirmation perfects the Grant in such Form as it is, so that if it be conditional it remains conditional, and the Ettate is not changed by the Confirmation. Conta of the Parliament had made a new Act. Ibid.

7. If Lease for Years, without Impeachment of Waffe, accepts a Confirmation of the Land to him for his Life, the Privilege is destroyed. 11 Rep. 93. b. in Lewis Bowles's Case, cites 28 H. 8. D. 10. b.

8. A. Intrafe B. upon Condition. A. and B. by Deed granted a Rent-charge to C. The Condition is broken. A re-enters. C. disclaimed, and A. brought Replevin. Adjudged that the Confirmation was good, and especially as the Grant and Confirmation are both by one and the same Deed, so that the Rent never was subject to any Condition, and by all
the Justice, the Rent remains good. 1 Rep. 146. b. Hill. 35 Eliz. shall enure to C. by way of Confir-

Confirmation.

9. If a Fee Simple upon Condition makes a Fee Simple over, and the first Fee-

Simple, as above, according to the Opinion of Gawdy, but Poph that it makes

him denied this, as it appeareth by Littleton, Tit. Deedants, because the Estate

he hath his Estate subject to the same Condition, and in the same Manner

where it was to be

and therefore the Confirmation shall not discharge the Condition, but is

only to bind the Right of him who made it, in the Possession of him to

whom it is made, but not upon Condition. Poph. 51. Pach. 36 Eliz.

in the Court of Kettle v. Malin and Effterby.

10. If a Man leaves Land to the Husband and Wife, to have and to hold of

Wards, the one Moety takes the Husband for his Life, and the other Moety to the Wife

for her Life, and the Lessor confirms the Estate of them both in the Land, to

have and to hold in and their Heirs; By this Confirmation, as to the

Moety of the Husband, it enureth only to the Husband and his

Heirs, for the Wife had nothing in that Moety; but as to the Moety of the Wife, they are Jointenants, as hath been said, for the Husband

hath such an Estate in his Wife's Moety in her Right as is capable of

Confirmation. Co. Litt. 299. b.

11. But if such a Lease for Life be made to two Men by several Moie-
ties, and the Lessor confirms their Estates in Land, to have and to hold to

to them and to their Heirs, they are Tenants in Common of the Inheritance;

for regularly the Confirmation shall enure according to the Quality and Nature of the Estate which it doth enlarge and encrease. Co.

Litt. 299. b.

12. A Confirmation cannot add a descendible Quality to one that is dis-
abled to take by Defect; Per Cur. 9 Rep. 141. b. Patch. 10 Jac. in the

Court of Wards, in Beaumont's Cafe.

13. As if Lord and Tenant are of a Carve of Land, and the Tenant

has Issue, and is attaint of Felony, and the King pardons him, and afterwards the Lord confirms this Estate of the Tenant, and the Tenant dies. The Lord shall have the Land against his own Confirmation, because the Confirmation cannot add to the Estate of the Tenant a Quality descendible to him who was disabled to take the Land by Defect; Per Cur. 9 Rep. 141. b. Patch. 10 Jac. in the Court of Wards, in Beaumont's Cafe.

14. J. B. and his Wife being seized in Special Tail, Remainder to J. B. in Fee, be alone seized a Fine to E. 6. 7. 8. which Estate came to the

Earl of Huntington in Fee. B. having Issue died, His Wife entred. The Earl of Huntington confirmed the Estate in the Wife, Helendina to her and the Heirs of the Body of her and her Husband; And it was ruled, that the Confirmation wrought nothing, because the good as great an Estate before; and alike, the Issues could not be made inheritable which were before bar'd by their Father's Fine, and the Estate Tail as against them lawfully given to another; Per Hobart Ch. 1. Hob. 257. in pl. 340. Trin. 15 Jac. cites 9 Rep. 140. Beaumont's Cafe.

15. If my * Diffeftor, or my Tenant for Life, charge the Land with a * Lit. S. Rent-charge in Fee, and I confirm it, I shall for ever afterwards hold it, because I have assented to the ESTATE which has a Being from S. Lit. S. such Diffeftor Tenant for Life, and therefore I cannot afterwards de-

troy it. Gilb. Treat. Ten 73.

(C. a)
(C. a) Where a Confirmation to one shall enure to another.

1. If Baron makes a Gift in Tail of his Wife's Land, rendering Rent, and afterwards they both grant the Reversion by Fine, this bars the Fee of the whole; but if they had granted the Rent only by the Fine, then the Feme might enter after the Baron's Death; Per Carli; as Brown and Walmifley vouch'd it. Mo. 91. pl. 224. Trin. 10 Eliz. Anon.

Le. 243 pl. 229. Geo. v. Coles, S. C. It was conceived that the Acceptance of the Remainder of J. the Lessee for Life, affirms the Lease also in Remainder, cites Litt. S. 521, and says, that such was the Opinion of Gavdy and Fenner J.

2. A Tenant for Life, the Remainder to B. in Tail, join in a Lease to J. S. for Life, the Remainder to J. D. for Life. A. dies. B. accepts the Rent of J. S. and dies. The Hire of B. accepts the Rent of J. S. and after enters, and leaves a Fine to J. N. J. S. re-enters, and dies. J. D. as in his Remainder enters. The Point was, if J. N. the Purchasor might avoid this Lease in the Remainder, or if the Acceptance of the Rent of J. S. from A. made the Lease good to J. D. in the Remainder? It was adjudged, that the Estate in Remainder was good, and not to be avoided by J. N. the Purchasor. Cro. E. 252. pl. 22. Nich. 33 & 34 Eliz. B. R. Jeffrey v. Coyte.

3. If a Lease be made to two, and the Issue in Tail accepts the Rent of one of them, and faith he will accept him only for his Tenants, yet it is good for both; Per Gavdy. Cro. E. 253. pl. 22. Nich. 33 & 34 Eliz. B. R. in Case of Jeffrey v. Coyte.

4. If the Diffeifer informs A. and B. and the Heirs of B and the Diffeifer confirms the Estate of B. for his Life, this shall not only extend to his Companion, but to his whole Fee-simple; because to many Purposes he had the whole Fee-simple in him, and the Confirmation shall be taken most strongly against him that made it. Co. Litt. 297. b.

If a Man releases to Tenant for Life all his Right, this enures to him in the Remainder, because he parts with his whole; and he that has but an Estate for Life, by the Feudal Conveyance cannot have the whole Fee, as is said; but if a Man confirms the Estate for Life it is an Approbation and Affent to that Estate only, and therefore the Affent being no further than to the Estate for Life, it cannot be carried to strengthen the Remainder; but it he had confirmed the Remainder, that had confirmed the Estate for Life by Implication, because the Remainder cannot be without the particular Estate to support it, therefore the Confirmation of the Remainder must imply an Affent to all Means necessary to support it. Gibb. Treat. Ten. 71.

5. If the Diffeifer makes a Lease for Life to A. and B. and the Diffeifer confirms the Estate of A. B. shall take Advantage thereof; for the Estate of A. which was confirmed was joint with B. and in that Case the Diffeifer shall not enter into the Land, and devit the Molyet of B. Co. Litt. 297. a. b.

If a Man confirms the Estate to one of the Diffeisers, he only has the Estate as he formerly had it, which was jointly with the other Diffeiser; but if he confirms the Estate of one Diffeiser in the Lands to have and to hold the Lands, or his Right to hold and to his Heirs, then such Diffeifer shall hold an Affent; for such Habendum explains the Manner of his Confirmation, viz. that he should not hold the Estate merely so it is, but in a Manner more beneficial for him, that is, that he should hold the Possession that he has per my & per tour to him only; for the Habendum explains the Affent, viz. That he should hold the Possession solely, so that the Possession in the whole being confirmed to him only, he has the total Right to such Possession, and therefore may hold out his Companion. Gibb. Treat. Ten. 71, 72.

6. So if there be two Diffeisers, and the Diffeifer confirms the Estate of the one without more paying in the Deed, some say that he shall not hold his Companion out, but shall hold jointly with him, for that nothing was confirmed but his Estate, which was joint &c. Litt. S. 522.

7. If
Confirmation.

7. If a Diffusor make a Lease for Life, reserving the Reversion to himself, and the Diffusor confirms the Estate of the Diflusor, by the Confirmation made to him in the Reversion, all the Right of him that confirms is gone, as well as when he makes it to him in Remainder, and he cannot by his Entry avoid the Estate of the Lessor for Life without avoiding the Estate of the Lessor, which against his own Confirmation he cannot do; and it has been adjudged that if a Diffusor make a Lease for Life, and after levy a Fine on the Reversion, with Proclamations, and the 5 Years past, so as the Diffusor is for the Reversion harr'd, he shall not enter upon the Leased for Life. Co Litt. 298. a.

(D. a) Where a Confirmation of Part of the Estate shall be a good Confirmation of the Whole.

1. A Parson made a Lease of his Rectory for 40 Years. The Patron Winch. 95, and Ordinary confirmed the same for 20 Years immediately ensuing the Commencement of the Term, and annexed the same in a Schedule to the Indenture. Some held this good, but more e contra. D. 52. b. pl. 4 cites S.C. Thm. 34 H. 8.

Confirmation shall stretch for the whole Time.

2. A Prebendary made a Lease for 70 Years, and the Bishop Patron of the said Prebendary, and the Dean and Chapter, by their several Instruments under their common Seal (reciting the said Lease) confirmed Dimiflionem praefidiam in forma praefidio jactum for the Term of 51 Years, Et non ultra. Adjudg'd that the Confirmation, as this Café is, extended to the whole Term, and the Words (for 51 Years & non ultra) came too late, after such Confirmation as aforesaid; and the Demife being for 70 Years, it is repugnant to confirm Dimiflionem praefidiam for 51 Years, it being all one as if they had confirmed the Demife and Term of 70 Years for 51 Years. 5 Rep. 81. a. Patch. 37 Eliz.

C. B. Foord's Café.

Years only, for they might confirm for all or Part, and the Confirmation shall not be taken larger than they have made it, but had they confirmed the Demife, and not for what Time, it would be the same Terms; but when they lay for 51 Years & non ultra, that very well qualifies what goes before, and it shall not be confirmed larger: see adjoining. — Ind. 472. (b) pl. 34. Patch. 38 Eliz. C. B. Bofford v. Foord, S. C. resolved that the Confirmation goes to the whole Term, and cannot be abridged by the following Words, and Judgment accordingly. — And. 47. pl. 119. cites S.C. & S.P. as adjudged accordingly by all the Juftices. — Benetl. 238. pl. 205. S. C. Patch. 16 Eliz. where it was adjudged that the Confirmations were good for 51 Years at leaft, and not void, because the said Bishop and Dean and Chapter might not make their several Confirmations at their Will specially. A Prebendary of Sarum's Café. — And. 47. pl. 119. S.C. adjudged good Confirmations, and that they may severally confirm, and for Parcel of the said Term. — D. 378. b. 339. a. pl. 47. Mich. 16 & 17 Eliz. S. C. adjudged good as to the 51 Years, but as to the Restidue the Court doubted, but Goffe thought the Confirmation clearly void in 100. — Het. 73 Hill. 3 Car. C. B. Tomlinson's Café. Hutton J. thought the Confirmation good only for the lesser Number of Years, but Richardson held e contra.

3. But if the Bishop and Dean and Chapter, reciting the Lease, had Some Differences confirmed the Land for 51 Years, this had been good enough, if the same had not be any such Repugnancy in the Confirmation.

5 Rep. 81. a. Patch. 37 Eliz. in Foord's Café.

C. B. in Tomlinson's Café, and agreed by Crooke and all the Servants at the Bar, and Hutton said it was a good Café to be considered and to be mov'd again.

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4. So if a Lease be made of 20 Acres, they may confirm as to Part of the Land, viz. as for one or more Acres. 5 Rep. 81. b. Pach. 37 Eliz. in Foord's Case.

5. So they may confirm Part or all upon Condition. 5 Rep. 81. b. Pach. 37 Eliz. in Foord's Case.

6. And as to the Points above, Nota a Diversity between a naked Assertion, without any Right or Interest; For there the Tenant who is to perfect a Grant by his Attornment cannot allow for a Time, nor upon Condition, nor for Part of the Thing granted, but it shall ensue to the Whole absolutely, because there is only a naked Allent, which cannot be qualified or apportioned; But the Bishop, who is Patron, and the Dean and Chapter have an Interest in the Prebend and every Part thereof; for the Patron has his Conferendi, and a Release to the Patron of an Annuity in the Time of Vacation is good. 5 Rep. 81. a. b. Pach. 37 Eliz. in Foord's Case.

An Estate of Freehold cannot be confirmed for Part of the Estate, for that the Estate is entire, and not divided as Years be. Co. Litt. 257. a. S. P.

7. Another Diversity was taken between a Lease for Years and a Lease for Life; Gift in Tail, or Feoffment in Fee. For if Prebendary makes Lease for Years, Confirmation may be of the Land (as before is said) for a less Number of Years, because the Years are sever, though the Demise or Term is one. But if he makes Lease for Life, or Gift in Tail, or Feoffment in Fee, and Confirmation is made of the Land to the Lessee, Donee or Feoffee for an Hour, it is good for ever; For Estate of Frankenement or Inheritance is intire. 5 Rep. 81. b. Pach. 37 Eliz. in Foord's Case.

8. And therefore if be who has Frankenement or Inheritance be disfigured, and confirms the Estate to the Diffeile for an Hour, it is good for ever. 5 Rep. 81. b. Pach. 37 Eliz in Foord's Case.

S. P. but then it must be by apt Words, for he must not confirm the Leafe, or Demise, or Estate of the Leafee; for then the Whole.

9. If Diffeile makes Lease for Years of 20 Acres, the Diffeile may confirm all or any Part of the Land to the Leafee, for all or some of the Years, and that upon or without Condition; for though the Term or Demise be one, and therefore if the Term or Demise be confirmed for an Hour, it is good for ever, yet the Years and Acres are sever, and therefore the Confirmation may extend to Part of them; Pari ratios if my Tenant for Life makes a Lease for Years, I may confirm the Land for fewer Years. 5 Rep. 81. b. 82. a. Pach. 37 Eliz. in Foord's Case.

Addition for Parcel of the Term should be repugnant when the Whole was confirmed before, but the Confirmation must be of the Land for Part of the Term; so the Confirmation may be of Part of the Land, as it it be of 20 Acres, he may confirm 20 &c. So if Tenant for Life makes a Lease for 100 Years, the Leafeor may confirm either for Part of the Term, or for Part of the Land. Co. Litt. 257. a.

If he confirm the Term of the Leafee of the Diffeile for some Part of the Years, he cannot defeat it during the whole Term, because the Term is confirmed; and the last Words being derogatory from his own Grant must be rejected; but if he confirms the Land to the Tenant for Part of the Term and no longer, this is good because the Party that had Right did not thereby suffer by express Words, as he did in the 2 former Cases; for if he did, no derogatory Clauses from such Allent could be admitted; but his Allent was originally but partial, and not to the whole Estate, and therefore it cannot, contrary to the express Words, be carried any farther. Gilb. Treat. Tenn. 70.

10. So if Tenant in Tail makes a Lease for 40 Years and dies, the Issue in Tail may confirm all the Term or Part &c. for fewer Years. And the same Law of a Feme after the Coverture. 5 Rep. 82. a. Pach. 37 Eliz. in Foord's Case.

11. When the Estate is divided, as if an Estate be for Life, Remainder over, the Confirmation may be to either of them. So if Leafee of Diffeile
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feitor for 20 Years makes a Lease for 10 Years, the Diffeifee may confirm it to either of them, and not to the other. Per Walmsley. Cro. E. 472. (bis) pl. 34. Patch. 38 Eliz. C. B. in Case of Betford v. Ford.

12. If the Diffeifee make a Gift in Tail, and the Diffeifee confirms S. P. fo of a Lease to the whole Estate Tail; For a Confirmation can make no Fraction of any Estate to extend but to Part of the Estate only. Co. Litt. 296. b.

Leffe or Donee for an Hour, this will confirm their whole Estate, but shall not entitle to the Remainder or Reversion, because he confirms the Land to the Leffe or Donee only, and the Estate for Life or in Tail, and the Remainder or Reversion are several distinct Estates. 3 Rep. St. b. in Fond's Case.—Litt. S. 320.

13. If a Diffeifee makes a Confirmation to the Diffeisor in Tail, or for any particular Estate, this is a good Confirmation for ever; for the Diffeifee had a Fee Simple, and the Confirmation cannot make a Fee Simple to extend to Part of it only. Co. Litt. 296. b.

14. If the Person makes a Lease for 100 Years, the Patron and Ordinary may confirm 30 of the Years, for they have an Interest and may charge in Time of Vacation. Co. Litt. 297. a.

15. If the Differior makes a Gift in Tail, the Remainder to the right Heirs of Tenant in Tail, it the Diffeifee confirm the Estate in Tail it soon extend to the Fee Simple. Co. Litt. 297. a.

16. So if the Differior had made a Gift in Tail, the Remainder for Life, the Remainder to the right Heirs of Tenant in Tail, this extends only to the Estate Tail and not to the Remainder for Life, nor to the Remainder in Fee. Co. Litt. 297. a.

17. If a Man confirms the Differior's Estate for an Hour, this passes the Litt. S. 319. Fee even without the Words Heirs, because the Differior has the Fee; 322. and when that Estate is allent to, the Diffeifee can never afterwards destroy it. Gilb. Treat. Ten. 70.

(E. a) Where a Privity is requisite in a Confirmation.


2. Where a Confirmation shall enlarge an Estate, there Privity is requisite, as well as in the Case of the Release. Co. Litt. 296. And where it abridges Services, Privity is requisite Regularly. Co. Litt. 305. b.

3. If there are Lord's and Tenant, the Lord cannot confirm the Estate of Tenant to hold of him by such Services, because there is no Privity between them, and a Confirmation cannot make such an Alteration of Tenures. Co. Litt. 305. b.

But where there is Le. Mefne and Tenant and Le. confirms the Estate of the Mefne to hold by such Services, this is good; for he is in Possession of the Mefnealty, and there is no other Possession. Br. Confirmation. pl. S. cites 14 H. 4. 37.

4. If Tenant in Tail makes a Fee Simple in Fee to the Use of himself in Fee, and after leaves it for Years rendering Rent and dies, the Use being remitted by the Defec of the Reversion before Entry, the Estate for Years...
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Years is also changed into a Tenancy at Sufferance, because there is not any Privity between this Estate and the Leafe, and therefore no Acceptance of the Rent can confirm it. See 2 Roll. Remitter. (K) pl. 8. and the Notes there.

(F. a) In what Cases it shall alter the Tenures or Services.

1. If I lease Land for Life, and after confirm the Estate to the Tenant in Fee, or in Tail, rendering the same Rent, now the Estate in the Rent is enlarged, because the Estate in the Land is enlarged to the Tenant. Per Thorp. J. Br. Grants. pl. 73. cites 26 Aff. 38.

2. The Lord may diminish and abridge his Services by Confirmation made to his Tenant, but he cannot increase a Rent or Services, or refuse him by Confirmation. Br. Confirmation. pl. 1. cites 9. H. 6. 9. per Babbington and Patton.

3. And by them, if a Man holds to Acres of his Lord by 12 d. and one Acre by 1 d. by several Tenures, and he confirms the Estate of the Tenant in both to hold by 4 d. this cannot make one and the same Joint entire Tenure which was two Tenures before, and if shall enure it shall be by Gift of 2 d. out of the 10 Acres, and 2 d. out of the one Acre, out of which only suffused 1 d. before, therefore Quere inde; and Quere if it cannot enure to have 1 d. out of the one Acre and 3 d. of the whole 4 d. out of the other 10 Acres. Ibid.

4. If the Lord confirms the Estate which the Tenant has in the Tenements, yet the Seigniory remains intire to the Lord as it was before. Litt. S. 535.

The Lord by confirming the Estate doth not give his Right to the Seigniory, because the Confirmation or Affort to that Estate cannot be interpreted to pass that other definite Rights, which is in him, since the Affort to one Estate is no Reason to conclude that he has parted with the Other; but if he had released all his Right, he had extinguished his Seigniory, because by such remitting his Right, he could not have demanded anything. Gilb. Treat. Ten. 74.

Co. Litt. 505, a. says that some do infer from thee 2 Sections the next following, that a Man cannot abridge a Rent charge or Common of Fulture by a Confirmation, as he may do a Rent Service in respect of the Privity between the Lord and Tenant, so as (they say) a Teneure may be abridged by a Confirmation, but not a Rent-charge or Common.

5. By Confirmation of the Tenants Estate, a Rent Charge issueing out of the Land or Common of Fulture in other Land remain as before. Litt. S. 536. 537.

6. If Tenant holds of the Lord by Fealty, and 20s. Rent, and the Lord by Deed confirms the Estate of the Tenant to hold by 12 d. or 1 d. &c. the Tenant is hereby discharged of all other Services. Litt. S. 538.


7. The Lord upon a Confirmation to the Tenant cannot referee new Services, as a Hawk instead of Rent, or Rent in lieu of a Hawk, & Co. Litt. 306. a. 8 P. Sic de similibus. 9 Rep. 142. a. b. Pauch. 10 Jac. in the Court of Ward, per Cur. in Beaumont's Cafe.

that he cannot referee new Services upon the Confirmation, so long as the former Estate in the Tenancy continues. The Lord may abridge the Services of his Tenant by his Confirmation, but he cannot enure them or create new Services; for when he has confirmed the Estate by lesser Services, he has granted to the Tenant the Services that are over and above what was specified in the Confirmation; because
Conquest.

(A) The Effect thereof.

1. Franchise are extinguished immediately on the Conquest, but not the Laws of the Land without Proclamation; And so William the Conqueror extinguished all Franchises in England but of Churches, which the Pope would not permit him to take, for which Reason they stand as before the Conquest. Arg. Mo. 679. pl. 918. Mich. 43 & 44 E- riz. B. R.

2. It was agreed, that according to Calvin's Case, 7 Rep. 17. up. In the Case on the Conquest of an Infidel Country, all the old Laws are derogated ex
essentia, and the King imposes what Laws he pleases; and in Case of the Conquest of a Christian Country, he may change them at Pleasure, and ap- point such as he thinks fit; though Coke quotes no Authority for it, yet it was agreed, that this might be consonant to Reason. Show. Park. Co. 31. in Case of Howel v. Dutton. God, and in such Case, where the Laws are rejected or silent, the conquered Country shall be governed according to the Rule of natural Equity, held per Cur. 2 Salk. 412. pl. 1. Trin. 5 W. & M. in B. R. Blankard v. Gandy.

3. Where the King of England conquers a Country, it is of a different Consideration from a new and uninhabited Country being found out by English Subjects; For in the first Case the Conqueror, by saving the Lives of the People conquered, gains a Right and Property in such People, and consequently may impose upon them what Laws he pleases. 2 Wms's Rep. 75. cites it as said by the Master of the Rolls, 9 August, 1722, to have been so determined by the Lords of the Privy Council, upon Appeal from the foreign Plantations.

4. But till such Laws given by the conquering Prince, the Laws and Customs of the conquered Country shall hold Place, unless where these are contrary to our Religion, or cannot any Thing that is Malum in se, or are silent; for in all such Cases the Laws of the conquering Country shall prevail. Ibid.

For more of Conquest in General, See other Proper Titles.
Consent.

(A) The Force thereof.

1. In all Cases when any thing executory is created by Deed, it may, by Consent of all Persons that were Parties to the Creation of it by their Deed, be defeated and annulled, and therefore it was said, that Warranties, Recognizances, Rents, Charges, Annuities, Covenants, Leases for Years, Uses at Common Law &c. may, by a Defeasance made with the mutual Consent of all that were Parties to the Creation of them by Deed, be annulled, discharged, and defeated. 1 Rep. 113. Hill. 23 Eliz. in Albany's Case.

2. A Consent expresso falso is not of any Signification; for it cannot be had for Things which cannot be otherwise; Per Vaughan Ch. J. Mod. 312. Parf. 22 Car. 2. in Canc. in Case of Fry v. Porter.


But though it binds himself it shall not bind, or put a Bargain on another. Arg. Ibid.


But whether Remainder-man in Tail on such Consent should be decreed to confirm, Lord Chancellor would advise. Ibid.

5. Consent to a Trial of a Title to Land in another County than where the Land lies will not help, it being an Error, though such Consent be of Record; agreed per Cur. 2 Show. 98. pl. 97. Parf. 32 Car. 2. B. R. Ld. Clare v. Reach.

But all, that the Trial was well had.

6. A Burgess of a Corporation consenting to be turned out from his Burgess's Place, and the Common Council of the Corporation removing him accordingly does not amount to a Resignation, and a peremptory Mandamus was granted to restore him. Holt's Rep. 450. Hill. 8 Anne B. R. The Queen v. Mayor of Gloucester.

For more of Consent in General, See Authority, Conditions, Powers, Trial, (S. a. 2) and other Proper Titles; And see MAXIMS, beginning with the Word CONSENSUS.
Consequential Losses or Damages.

(A) Actions. In what Cases Actions lie for consequential Losses or Damages.

1. If I have a Pond, I cannot so let it out that it shall drown my Neighbour's Land. Arg. Heat. 119. cites 6 E. 4. 6. A Man may lawfully make a Dam on his own Ground; but if by making it the Water overflows his Neighbour's Ground, an Action on the Cattle lies against him; Per Curiam. 8 Mod. 275. Trin. 10 Geo. 1. in Case of Reynolds v. Clerk.

2. If a Stranger drives my Cattle upon your Land, whereby they are dislodged from it; the Stranger is the Trespasser, and not I that am the Owner; So if I am carried by Force into the Land of B, I am not the Trespasser, but he that carried me; Per Roll J. S. 65. Mich. 16 Car. B. R. Smith v. Stone.

3. Action lies for calling one Bastard whose Grandfather had Lands in Tail, though the Plaintiff was youngest Son of the Father; yet being offered a Sum of Money by a Purchaser to join in the Sale, and afterwards the Purchaser refusing to give him any Thing by reason of the S. C. thole Words. It was held, though he has no present Title, yet it appeared per pears he is, by a Possibility, inheritable to thole Lands, and being of the Money for that Possibility to join in the Assurance, but it being afterwards refused to be given him by reason of thole Words, is a present Damage, and he may receive Prejudice thereby in futuro in Case he were to claim any Land by Defect. Affirmed in Error. Cro. J. 213. pl. 6. Mich. 6 Jac. B. R. Vaughan v. Ellis.

4. A Smith pricks the Horse of a Servant being on his Journey to pay Money for his Master to save the Penalty of a Bond, both the Master and Servant may have their several Actions on the Case for the several Wrongs they have thereby sustained; Per Coke Ch. J. 2 Buls. 334. Hill. 12 Jac. in Case of Everard v. Hopkins.

5. Where one is Party to a Fraud, all which follows by reason of that Fraud, shall be laid as done by him. Arg. Cro. J. 469. Hill. 15 Jac. B. R. in Case of Southern v. How.

6. Action lies for threatening Workmen to maim and prosecute them, whereby the Master lost the selling of his Goods, the Men not daring to go on with their Work. Cro. J. 567. pl. 4. Pach. 18 Jac. B. R. Garrett v. Taylor.

7. A contratls with B. to make an Estate of Bl. Acre at Mich. to B. If C. enters into Bl. Acre, A. may have an Action on the Case against C. for the special Damage which may happen to him by reason that he is disabled to perform his Contract, by reason of C's Entry, and he shall declare Centra Pacem, but not Vi & Armis, Per Doderidge J. Godb. 426. pl. 492. Trin. 21 Jac. B. R.

8. A.
Consequential Losses or Damages.

8. *A breaks the house* of B. by which *Cattle get into C's. Ground*, C. shall have *Cafe against A.* but not *Trespass.* Per *Roll. St. 151.*

9. *Though a Man does a lawful Thing, yet if any Damage do thereby betal another, he shall answer if he could have avoided it,* and *this holds in all Civil Cases.* As if a Man *sets a Tree* and the Beagles fall upon another *Ipol in it,* yet an *Aktion lies.* So if a Man *shoots at Butts* and hurt another inunaware. So if I have Land through which a River runs to your Mill, and I *lop the Sallows growing on the River side* which accidentally *fop the Water so as your Mill is hindered.* So if I am building my own House, and a *Piece of Timber falls on my Neighbors House* and breaks part of it. So if a Man *attacks me,* and I *lift up my staff to defend myself and strike another* in hitting it up; but *this otherwise in Criminal Cases,* for *there Aetus non tacti reum nisi mens sit rea.* Per *Raymond J. Arg. Raym. 422. 423.*


11. *It that makes a Fire in his Field* must *fee that it does no harm,* and *answer the Damage if it does;* but if a sudden Storm had *riven* which he could not *stop it was Matter of Evidence,* and he should have *flawed it.* 1 *Salk.* 13. pl. 4. *Mich. 9 W. 3. B. R. Turbervill v. *Carth. 435.*

12. *A. contracled with B. to bring Timber in A's. Cart and deliver it in B's. Yard,* it was brought in a *cold Day;* B. related to come and *unload it,* whereby the *Horses got Cold and 2 died;* A. brought *Aktion* but could not *obtain Judgment;* cited per *Holt Ch. J. Cumb. 451.*

13. *If a Consecutive places a Dragoon where tis unlawful for him to do,* he must *make Satisfaction* for the *Consequent Damages,* as *letting Drink about the Cellar &c.* For since the placing him there is *unlawful,* it shall *be taken as* if the *Contable had put him there on purpose to do an unlawful Aktion.* Per *Holt Ch. J. 5 Mod. 430.*

14. *Aktion on Cafe for stopping a Wayleading to his Colliery,* by which he *lost his Customers,* lies *not without special Damages.* *Cumb. 450.*

15. *After a Recovery of Damages in Assuant, Battery &c.* no *Aktion will lie* for Consequent Damages, *as that he was afterwards forced to be trepanned and had a Bone taken out of his Skull.* 12. *Mod. 542.*

16. *If A. enters into my Grounds, and breaks down my Wall, which keeps out the Sea;* and I *bring my Trelsps, and recover Damages, and I re-build my Wall, but by reason of the Neew's thereof it is broke down by a new Storm,* which the old Wall would have withstood. Per *Cur.* the *Plaintiff* shall recover for the overflowing of his Lands, and
Consideration.

(A) What it is; and where Necessary. See Action
(of Allamp- [of] (U) to
1. A Consideration is a Cause or Occasion meritorious, requiring a (Z) — Uses
mutual Recompence in Deed or in Law. Arg. See D 336. b. (G. 4)
Trin. 16 Eliz. in Calthorp's Café.

5 L

2. An

3. A Consideration is necessary to create a Debt, otherwise it is Nudum Paçtum. Jenk. 290. in pl. 27.

But a Promiseto forbear a Suit
Paululum
Temporum
is no Consideration to maintain an Assumpsit, for it may be the next Minute; but Promissotoforbear for a reasonable Time is a good Consideration, for it is left to the Court to judge of it. Jenk. 501. pl. 71.

4. Where Debt is brought for Money due, without any Circumstance of Forbearance of Suit by the Plaintiff for a Time, a particular Consideration ought to be shown in the Declaration. Jenk. 292. pl. 37.

But see the Nudum Paçtum (A) pl. 7. Negus v. Fettiplace.

5. A Bond implies a Consideration in itself, and therefore it was held by the Court, that a Man was not bound to discover what was the Consideration. Hard. 200. Trin. 13 Car. 2. in the Exchequer, Turner v. Bilton.

6. But see the Nudum Paçtum will not raise an Use, nor can a Use be raised without a Consideration; Agreed. Arg. Cart. 141. Mich. 18 Car. 2. C. B.

7. If Lease for Life or Years assigns his Estate, there needs no Consideration, because the Assignee is subject to the ancient Forfeitures and to Payment of the Rent, and that a Loan is sufficient to vest an Use in him; but otherwise in Case of a Fee Simple; Per North Ch. J. Mod. 263. pl. 15. Trin. 29 Car. 2. C. B. in the Case of Barker v. Keate.

8. A Lease for a Term upon no other Consideration than reserving a Peppercorn, if it be demanded, is a sufficient Consideration to raise a Use and shall operate as a Bargain and Sale, and so make the Lease capable of a Releas.e. 2 Vent. 35. Pach. 32 Car. 2. C. B. Barker v. Keate.

9. A voluntary Settlement may be surrounded without Consideration, and such Surrender may be induced in a Court of Equity, and an Agreement to do will be decreed; Per Lord Sommers. Ch. Prec. 69. pl. 62. Hill. 1696. Wentworth v. Deveryngy.

(B) Good and Valuable.

1. Argand and Sale, Proviso you pay to me at a future Day 100 l. This, though set down in Form of a Condition, is as effectual as if formally expressed in the usual Terms. Arg. Le. 6. pl. 10. Mich. 25 & 26 Eliz. B. R. in Case of Stonely v. Bracebridge.

2. Love is not a Consideration on which an Action may be grounded on a Promissotopay Money, and the fame of Friendship; Per Cur. 2 Le. 30 pl. 35. Trin. 30 Eliz. B. R. Harford v. Gardiner.

3. A Bargain and Sale was pleaded of Land, without saying Pro quodam Pecunia Summa, and Exception being taken thereto the Court doubled of it, and demanded of the Prothonotaries what is their Form of Pleading; and by Nellon Ch. Prothonotary these Words Pro quodam Pecunia Summa ought to be in the Pleading. Scot Prothonotary contra.

And where Anderdon conceived it was either Way good, but Pro quodam Pecunia Summa is the belt; so Leonard Custos Brevium conceived. And the Opinion of the Justices was, that a Bargain and Sale for divers Cauñas and Considerations is not good without a Sum of Money. And by Windham Bargain and Sale Pro quodam Pecunia Summa, although no Money be
**Consideration.**

be paid, is enough, for the Payment or no Payment is not traversable; and by Periam, if pro quodam Pecuniae Summa be not in the Indenture of Money, and by Periam, if pro quodam Pecuniae Summa be not in the Indenture, yet the Payment thereof is traversable; and for this

13. In
13. In Consideration that one was bound for him for Money owing, he did Bargain and Sell; this is no good Consideration. But per Hale Ch. J. if there be a Covenant in Consideration of Money to convey, and a Bargain and Sale pursuant to that Covenant, that will be a good Consideration. Freem. Rep. 344 pl. 427. Trin. 1075. B. R. Tuttftill v. Roberts.

14. In Purchases the Question is not, whether the Consideration be adequate, but whether it is salutable; For it be such a Consideration as will make a Defendant a Purchaser within the Statute of Queen Eliz. and bring him within the Protection of that Law, he ought not to be impeached in Equity; Per Finch K. Tim. Rep. 104. Hill. 25 Car. 2. in Cafe of Ballet v. Noteworthy.

15. If one sells a Releafe, or other Assurance, to one in Possession for never to unequal Consideration, it shall not be relieved because of a new Title discovered, unless there be some special Fraud; Per Lt. Keeper. 2 Chan. Cales 161. Patch. 22 Car. 2. Hobert v. Hobert.

16. A Pepper Corn (in a Leafe for a Year) if demanded, is Consideration sufficient for a Bargain and Sale to make the Lefsee capable of a Releafe, and such Releavage is sufficient Consideration to raise a Use, as by Bargain and Sale. 2 Vent. 35. Patch. 32 Car. 2. C. B. Barker v. Keate.


17. Where there are several Considerations, and one is good, that will support the whole Deed at Law; but it is not so in Chancery. Arg. Ch. Pirc. 105, 106. Mich. 1699.

18. If an Annuity is granted by one to his House-keeper, with a Bond for Payment of it, and the Bond is left, Equity will decree Payment of the Annuity; for Service is a Consideration, and no Turpis Contrahens shall be presumed, unless proved. Abr. Equ. Cales 24. pl. 7. Hill. 1700. Lightborne v. Wecdon.

19. Though a Sum of Money is mentioned in a Deed as the Consideration of the Grant, a Court of Equity will not supply any Defect in such, if no Money was paid or secured. See Ch. Pirc. 475. pl. 298. Mich. 1717. Furfaker v. Robinbon.

20. Bill for Discovery of the Consideration of a Promissory Note for 275 l. suggesting that it was given ex turpi Causa to smother and make up a Felony &c. Defendant by his Answer says that he left such a Sum of Money, and verily believes that it came to the Plaintiff's Hands, and that was the real Consideration of giving the Note &c. Per Cowper C. the Bill must be dismissed, for there is no Equity against the Defendant, since he has sworn, and it is not disproved, that he left such a Sum of Money, and verily believes that it came to the Plaintiff's Hands, that is a sufficient Consideration to support the Note. Bill dismissed with Costs. MS Rep. Mich. 4 Geo. in Can.. Guiborn v. Fellows & al'.

(C) To
(C) To what it shall extend.


2. Covenant in Consideration of Marriage of his eldest Son, and a Marriage Portion, to settle on him in Tail the Remainder to the 2d Son. 1755. S. C. —

The Consideration extends to the Remainder to the 2d Son, and the Conveyance as to the 2d Son is not fraudulent against Creditors. 2 Lev. 155. Trin. 26 Car. 2. B. R. White v. Stringer.

accordingly —— S. P. by Lord C. Macclesfield. And he said that the Reason is, because it may be very well intended that the Husband or his Parents would not have come into this Settlement, unless all the Parties thereto had agreed to the Limitation to the Brother. 2 Wm's Rep. 175. Trin. 1725. in Cafe of Edwards v. Lady Warwick.

Where there is a Marriage Portion and a Settlement, that Part of the Settlement only which belongs to the Wife, and Children by that Wife, can be esteemed to be founded upon the Consideration of that Marriage; for it is absurd to imagine that the Friends of the Wife should be supposed as at all concerned about the remote Uses of the Settlement upon Portions to whom they are entire Strangers; And as for the Cafe of Jenkins v. Ermitt, the Meaning thereof is no more than this. That a Father, when he makes a marriage Settlement upon one Son, has such a proper, fair, and justifiable Opportunity offered him of providing for his other Children, as that if he thinks fit to lay hold upon it, by inserting in the Settlement Provisions for them, such Provision shall never be esteemed as fraudulent, and as such for slide in favour of Creditors. Per Parker C. to Mod. 524, 555. Mich. 11 Geo. 1. in Cafe of Ojgood and Stroud. —— And his Lordship cited the Cafe of Jenkins v. Keymis, and said, it could not well be intended to have been made to cheat a Creditor, unless the Person making it was then in Debt, and that the very Remonstrance of the Limitation to a Brother, or to the Issue of an after taken Wife was evident, that such Limitation was not intended to cheat Creditors. 2 Wm's Rep. 255. S. C.

3. The Wife joins in opening her Jointure to let in an Incumbrance, and bar the Estate Tail to their Heirs Male by Fine, and declare the Uses for securing the Money borrowed, then to the Husband for Life, then to the Wife for her Jointure, then to the Sons of them two in Tail, then to the Daughters in Tail. Per Ld Somers, the Consideration of the Mother's joining to bar her Jointure, and letting in an Incumbrance, might have extended to the Daughters and made them Purchasers, had it been so expressed in the Deed; but for want of that, it is only a voluntary Gift of the Wife to the Husband, and the Estate to the Daughters voluntary, and so a Judgment Creditor be let in before them. Ch. Prec. 115. Trin. 1709. Ball v. Burford.

4. In a Marriage Settlement made by the Father on the Marriage of B. So it is in his eldest Son, the estate was limited to be to the eldest Son, and the Heirs of his Body, in Consideration of the Marriage of A. (and Marriage Portion) Remannder to C. the 2d Son and the Heirs of his Body, Remainder ever. This Consideration extends not to the 2d Son to make him a Purchaser. Chan. Prec. 224. pl. 183. Trin. 1709. Stapelhill v. Bully. cited

5. A Cefy an Trust of Lands in Fee, on a Treaty of Marriage between This Cause C. then eldest Son of A. (the 1st Son being dead) and M. in Consideration of the said intended Marriage, and 660l. articed to cause the same to feer 60l. a Year to M. for her Life, and 50l. a Year to A. for Life, his Life, and subject thereto to the Use of C. for Life, Remainder to his Dec. 1715. ibid. 217. 1st Ee. Son of that Marriage in Tail Male, then to provide Portions for Daughters, Remannder to D. a Grandson of A. and Son of another deceased Son of A. in Tail Male (since dead without Issue, Remainder to E. accordingly another Grandson in Tail Male, Remannder to his own right Heirs. M. by Ld C. Macclesfield.

The Rest was re-heard, and by the Party of the Life Articialted to cause the same to seer 60l. a Year to M. for her Life, and 50l. a Year to A. for Life, his Life, and subject thereto to the Use of C. for Life, Remainder to his Dec. 1715, ibid. 217.

10 Mrd. 155. S. C.

Accordingly another Grandson in Tail Male, Remannder to his own right Heirs. M. by Ld C. Macclesfield.

If A. had the whole Interest in the Plots, 5 M


Confederation.

and C. B. had nothing, he did not see with whom he could contract uncles with M. and her Friends, which would only make a good Con-

Consideration, and to D. and E. to be equally divided between them. Afterwards by Mar-

riage Articles between C. and M. it was agreed that M. should convey the Inheritance of Lands in 5. to C. and M. to Life, Remainder to the 1st &c. Son in Tail Male, Remainder to C. in Ec. In Consideration where-

of C. covenanted to purchase and settle 250 l. a Year on himself and M. for Life, Remainder to the 1st &c. Son in Tail Male &c. Remainder to D. for Life, Remainder to the 1st &c. Son of D. Remainder to E. as before to D. The Marriage took Effect. C. died without issue Male, and without having made any Settlement, and devolved all his real and per-

sonal Estate to M. (whom he made Executor) charging the same with Portions for his Daughters. On a Bill by D. and E. for a specific Execu-

tion, Lord C. King decreed the same, there being no Creditor to be hurt, and Affets being admitted, and would not put them to bring Co-

venant in the Trustees Names for Recovery of Damages, it being uncer-

tain who would be the Person intituled to them. And his Lordship ob-

served that C. might be induced to covenant as before, to make A-

mends to D. and E. for what was intended them by B.'s Will, but could not take Place, being a void Limitation. 2 Wms's Rep. (594.) Trin. [1730] 1731. Vernon v. Vernon.

8. A. in Consideration of 6000 l. Portion with M. by Marriage Arti-

cles, covenanted with Trustees to lay out within one Year after the Mar-

riage the said 6000 l. and to make it up 30,000 l. in the Purchase of Lands to be settled on A. for Life, Remainder to Trustees to preserve &c. Re-

mainder for so much as would amount to 5000 l. a Year to M. for a Jour-

Consideration.

two, Remainder of the whole to the first &c. Son of the Marriage in Tail Male &c. Remainder to Trustees for 500 Years to raise Daughters Portions, Remainder to A. his Heirs and Assigns for ever. But if no Daughters, then the Term to cease for the Benefit of A. his Heirs and Assigns for ever. It was implied for Defendant, that Plaintiff was not prior to any of the Considerations in the Covenant, and so could not compel M. to lay the 30,000l. out for his Benefit. But if he could, that the 1800l. a Year Lands defended to him, ought to be taken as a full Satisfaction. But this Point was decreed at the Rolls for the Plaintiff; and Lord C. Talbot, upon the Case coming on before him, said that the Intent seemed to be, that the 30,000l. should at all Events be laid out in Land, the Produce whereof was to be secured to the Issue of the Marriage, who in this Case must have taken as Purchasers; But as to the Remainder in Fee he did not think that the Looking upon A. either as a Purchaser of it or not will vary the Case; since, had the Covenant been silent, the Remainder must have returned to the Person from whom the Estate moved; and thought it quite the same whether he is considered as a Purchaser or as a Volunteer, the Dispute not being between the Heir and a 3d Person, but between the 2 Representatives of A. the one of his real, and the other of his personal Estate, the Heir’s being but a Volunteer, in regard to his Ancestor, will not exclude him from the Aid of this Court. And decreed the 30,000l. to be as real Estate, and the Plaintiff, though only a collateral Heir, to have the Benefit of it. Sel. Ch. Cases, in Ld Talbot’s Time. 80. 89, 90. Pafch. 1735. Lechmere v. Lady Lechmere.

(D) Where there are several which shall be preferred.

1. A Covenant to stand feised was in Consideration of Marriage and D. 146. 8. Money the Consideration of Marriage shall be preferred; Per pl. 68 Patch. Plowden. Mo. 93. in pl 231. Pafch. 12 Eliz. cites it as laid by 4 & 5 P. & M. Villers referred to be adjudged in Villers’s Case, but said it was per
Ignem.

pl. 72. S. C. — If an Ufe be declared on a Covenant to stand feised on Consideration of Marriage and Money, no Ufe shall arise without Marriage though the Money was paid; because the Marriage is the principal Consideration in the Intention of the Parties, and the Money is accessory only, which attends the Marriage; per Cur. Mo. 102. pl. 247. Mich. 16 & 17 Eliz. — Cro. J. 644. pl. 7. Mich. 19. Jac. B. R. Arg. S. P. & Ibid 624. cites a Case to resolve, and Decree made accordingly in the Court of Wards, 36 Eliz. in a Case of Smith and Littleton.

2. Where there are two Considerations, and one is good and one is not good; if that which is good be proved it is sufficient, and though he fails in the Proof of the other it is not material, because it was in vain to allege it, and it is as if it had not been alleged, Cro. J. 127. pl 19. Trin. 1 Jac. B. R. Crip v. Gainel.

3. If there be a double Consideration alleged for a Promise, if one is good and the other not, yet an Action will lie on the Promise that is broken which was grounded upon these Considerations. Sty. 280. Trin. 1651. B. R. in a Case of Shan v. Bilby.

For more of Consideration in General, See Actions (Q) (U. 2) to (X) titles (G. 4) &c. and other Proper Titles.”

Con-
Conspiracy.

(A) What is.

1. Conspiracy against Baron and Feme and a third Person, because they did not insofar them by their Land, by which he was taken and imprisoned, and acquitted; and because this Matter is no Conspiracy (for then every Man of the Law who gives Counsel should be a Conspirator, and also it is doubted if the Baron and Feme may conspire) the Writ was abated. Br. Conspiracy, pl. 14, cites 38 El. 3-3.

2. In Afflxe against two who pleaded severally, the one took the Tenancy of one Parcel to himself, and challenged a jury, and his Challenge found and he ouitred; and the other said, that he did not challenge him, and prayed that he might be sworn, and the Court relaid it; for by this Means they shall take divers Afflxs upon one Original, which they cannot; Per Gaffe, if he be who challenges and the Plaintiff are of one Affent to ouit the other of his Advantages this might be in Case adjudged a Conspiracy; Quere, How &c. 39 All. 41.

3. One only cannot be a Conspirator; Per Gaffeig in the written Book. Bro. Conspiracy, pl. 12, cites 8 H 4. 13.

4. Conspiracy against two, that they the Monday &c. conspired to insofar the Plaintiff, by which he was indicted and arraigned and lawfully acquitted &c. and the one said that the Wednesday &c. he was Juror at the Sessions to inquire for the King, and informed his Company that the Plaintiff had done Felonies, and after, before Verdict, he was removed away, and they proceeded and insofar the Plaintiff &c. Judgment &c &c. For Conspiracy does not lie against the Indicitors, but against the Procurers, and the best Opinion was that it was a good Plea; for though he was dischargred before Verdict, yet it was well to inform the Company, and the Act of the Court shall not Prejudice the Party, and also he nebe to traverse the Day as above. Br. Conspiracy, pl. 1, cites 20 H. 6. 5.

5. Conspiracy against two by which the Plaintiff was insofar of the Murder of J. N. the one of the Defendant's said, that he the Plaintiff kill the said J. N. such a Day; and after the same Day that the Conspiracy is supposed the Defendant came to E. where the Sessions of the Peace was held, and informed such a Justice of Peace of the Matter, and because he was Lay be required such a Clerk to write his Information, who did it; which Information is the same Conspiracy &c. Judgment &c &c, and held no Plea, because it was pleaded by one, where the Conspiracy supposed by two cannot be a Conspiracy by one only, nor cetera by which he pleaded it for both the Defendants; and the best Opinion was that the Plea

F. N. B. 116 (L) a Man shall have Writ of Conspiracy for in- dicting him of Felony against Husband and Wife, because they are but one Person; but against Husband and Wife and a third Person it will lie.

Conspiracy.

Plea is not good, for it is no Conspiracy, for he did but his Duty; for, F. N. B. Men are sworn to the King in Leets to discover Felonies and Treatons, and in every Seclions Proclamation is made to make Information of Felonies and Treatons, and also Conspiracy is by Communication between two or more to op- poses. Roberts and in the Notes there of the Matter to have the Party indicted which is of a Will prepar- ed, and here was not any such Communication, but Information made to the Justices. Br. Conspiracy, pl. 4 cites 35 H. 6. 14. 19. 55 H. 8. 15.

6. Conspiracy is a Confidtuation and Agreement between two or more to op- tens or influ; an Innocent falsely and maliciously of Felony, whom accor- dingly they cause to be indicted and appealed; and afterward the Party is conclusively acquitted by the Verdict of twelve Men. 3 Init. 143.

the Accuracy of that Description of Conspiracy, and gives his Reasons to the Contrary.

7. A Conspiracy ought to be falsely & maliciously otherwise it will not be a Conspiracy; and such Malice ought to be proved; For if A. travelling on the Highway be robbed by B. and he knows not B. it afterwards A. ac- ceives J. S. who is found Not Guilty, Action of Conspiracy will not lie against A. For though J. S. was falsely accused he was not maliciously accussed, and may be he took J. S. to be the Robber, because he was like B. Per Coke Ch. J. and the Lord Chancellor. Godb. 206 pl. 293. Mich. 11 Jac. in the Star-Chamber, Miller v. Reynolds and Bailiff.

8. Conspiracy (to speak properly) lies only for procuring a Man to be in- dicted of Treason or Felony, where Life was in Danger; Per Holt Ch. J. Ld. Raym. Rep 379. Mich. 10 W. 3. in Cafe of Savil v. Roberts.

9. Several People may lawfully meet and consult to prosecute a guilty Person; otherwise, if two charge one that is innocent, Right or Wrong, for that is indictable, and though nothing be done in Prosecution of it, it is a complete and consummate Offence of itself; and whether the Conspiracy the Party be to charge a Temporal or Ecclesiastical Offence on an innocent Person, it conspiring is the same Thing; Agreed per Cur. 1 Salk. 174. Trin. 3 Anne B. R. the Queen v. Beil & al.'

Ibid. Gys. Ch J was of the same Opinon in
C. B.

Mod. 157. S. C. and per Cur. that is indictable, and

for

the Party is acquitted of it; but Cafe lies not till Acquittal, and the Indictment in

that Cafe being for charging a child, the Court said that it was an offence so frequent to be punished upon a Motion, and that they would no more quash it than they would for Bartery or keeping a Bawdy-house.

(B) In what Cases it lies.

1. If two or more conspire against another, and afterwards the Conspiri- Bridgen. diors are sworn upon the Jury, and they, with others, find a Bill Arg. against him against whom they conspired, no Writ of Conspiracy lies against them, because it cannot be intended maliciously, because they do not agree, it upon their Oaths and that with others besides themselves. Stanford White, cites Pleas of the Crown, 1733. (b) lib. 3. cap. 12. cites Pache. 21 E. 3. 18. S. C. Mich. 7 H. 4. 27. Mich. 8 H. 4. 6 & 27 Aff. Fitzh. Conspiracy, 15.

2. J. and T. were indicted, because they by false Alliance and Conspiracy between them procured divers Persons to indict H. of the Death of W. and were thereof arranged, and the one said, that this H. who killed W. justified the left term and went quit, and the said J. and T. who were indicted and arranged went quit by Judgment, notwithstanding that H. justified; for there it appeared that H. did the Fact, viz. Killed W. and it

N
Conspiracy.

is not for J. and T. to know if it was lawfully done or not; otherwise it is where the Party is acquitted that he did not do the Fact; but otherwise it is here, quodNota. Br. Conspiracy, pl. 26. cites 22 Att. 77.

3. And also where a Man kills another Se defending it shall be not inquired of the Actors; for it was lawful to procure him to be indicted, for he did the Fact. Ibid.

4. And to see where a Man kills a Man Se defending and, is so acquitted, or kills the Thib in arresting him, and justifies it upon Arraignment upon Indictment, and so goes quit, such Person shall not have Writ of Conspiracy; for he did the Act, and it is not incumbent on the other to content in Judgment, if it be Felony or not; but where the Party is acquitted, that he did not do the Act, there Conspiracy lies, and to see a Diversity where he did the Act and where not. Ibid.

5. A Man shall not have Writ of Conspiracy against Husband and Wife for indicting him of Felony, because they are but one Person; but against Husband and Wife and a third Person it will lies. F. N. B. 116. (E) cites Stamf. 174. and 38 E. 3. 3.

6. Conspiracy was brought, because the Defendant such a Day, Year and Place, by Conspiration, caused certain Persons to present, that 20 Acres were given to the Plaintiff, Prior of S. and his Successors, to find a Priest to chant in such a Place, which they did not do, by which the Land was falsified in the Hands of the King by the Ehecbator such a Day and Year, and remained in his Hands till the Plaintiff tried it out &c. to the Damage of 300l. The Defendant demanded Oyer of the Record of the Indictment, & non allocatur. And there it was said, that it is a good Plea to say that the Mayor was not seized &c. and there by the bet Opinison this is no Caufe for the King to lite; for it is not found that it is held of the King, and also the Donor may have Celfivate, and nothing is mentioned there of Mortmain; for it may be before the Statute, and there by the bet Opinion because the King had title 1 without Caufe, this Action does not lie. Br. Conspiracy, pl. 8. cites 47 E. 3. 15.

7. Where the Plaintiff is non-suited after Declaration in Appeal, the Defendant shall be arraigned upon the Appeal, and therefore there if he be acquitted he shall not have Conspiracy; for there the Accusation was upon the Appeal, and not upon the Indictment. Br. Conspiracy, pl. 2. cites 33 H. 6. [1] & 34 H. 6. 9.

8. But where he is non-suited before Declaration, there the Party shall be arraigned upon the Indictment, and therefore there if he be acquitted he shall have Conspiracy; note the Diversity. Br. Conspiracy, pl. 2. cites 33 H. 6. [1] & 34 H. 6. 9.

9. And by the bet Opinison, where the Defendant betakes himself to his Clergy after the Inquest charged and before the Verdict, or, betakes him to his Clergy at the Commencement he shall not have Conspiracy; for mention of the Clergy shall be made in the Record, and then he does not suffer Verdict upon his Arraignment; by the bet Opinison, and therefore it seems that Conspiracy does not lie but where Verdict has been given upon the Principal; and it was held that the Writ was not good, because there is no mention that the Principal was Imprisoned, quodNota. Br. Conspiracy, pl. 2. cites 33 H. 6. [1] and 34 H. 6. 9.

10. In divers Cases a Man shall make another to be indicted, and yet Conspiracy does not lie. Br. Conspiracy, pl. 4. cites 35 H. 14. per Privile.

11. As where a Man is robbed, and the Vill adjoining, by Reason of the Hue and Cry, makes pursuit and takes a Man, and carries him to God by which
Conspiracy.

415

which be is Indicted, Conspiracy does not lie. Br. Conspiracy pl. 4. cites 35 H. 6. 14 per Prich.

12. To where a Coroner for Superstitious Corporis & it cannot be found who killed the Man, there it shall be enquired of the first Finders, and they shall be taken by it, and if they say that l. N. did the Murder, by favour or which be is Indicted and after acquitted, Conspiracy does not lie; for its Banter, those Persons were compelled by the Law, Quare inde. Ibid.


13. If two conspire to indict me, and do not indict me Action of Conspiracy does not lie. Br. Chanperrv, pl. 9. cites 9 H. 7. 18. per Kebbe.

14. If a Felon be pardoned by Parliament, and he pleads not Guilty he shall not have Writ of Conspiracy; for the Felony was gone before by the Parliam. Br. Corone. pl. 204. cites F. N. B. Conspiracy.

15. A Writ of Conspiracy lieeth where 2, 3, or more Persons of Ma.; Inf. 143. Iice and Covin do conspire and devise to indict any Person falsely, and afterwards be who is so inditlled is acquitted, now he shall have this S. P. if the Writ of Conspiracy against them who fo indicted him. F. N. B. (D) Party is lawfully acquited by the Verdict of 12 Men.—But Sergeant Hawkins in his Pleas of the Crown 1 Lib. 139, 140. cap. 72. very much Questions in being require that there be a lawful Acquittal, and says that it is certain that an Acquittal for not always necessary to maintain such a Writ, for it appears by the Registrar itself, that where one brought such a Writ in the usual Form, having it in the Words Quaecessum acquitatus suisset &c. against one who had been Nonfitted in a malicious Appeal of Felony brought against him, his Writ was refused because such a Nonfitted could not make good the Words quaecessum acquitatus suisset, and yet he afterwards brought a new Writ because he said the Words quiusque revertere, instead of Quaecessum acquitatus suisset, and recovered; And why may not a new Writ as well be formed in any other Case, which is as much within the Mitchief of the Statute as this. Hawk. Pl. C. 190. cap. 72. S. 2.

16. But the Writ liech against two Persons at the least who do so conspire; For if one Person of Malice and false Imagination do labour, and cause another falsely to be indicted, the Party who is so indicted shall not have a Writ of Conspiracy &c. but an Action upon the Cafe a- gaunt him who fo caused him falsely to be indicted. F. N. B. 114. to be in- dicted of Felony, Re- solved, an Action upon the Cafe well lies against one of them; although it was held that for Conspiracy the Action ought to be brought against two, nor one cannot Conspire. Cro. C. 259. pl. 22. Mich. 7 Car. in B. R. Mills v. Mills.

17. If two conspire to cause a Man to sue an Appeal against another of Ibad, in Felony or Murder, without any Indictment taken or found thereof, and of the Merger or the Defendant is acquited by Verdict, he shall not have a Writ Egalit Ed of Conspiracy against those who conspire to Appeal him, because that new cites by the Statute Whom. 2. cap. 12. Quia multi per malitiam &c. it shall be in-quired of Abettors, if he be not indicted thereof; and if they be acquitted 22. and 13 E. 3. Conspiracy. where he is acquitted, to answer him his Damages. F. N. B. 114. 25. and says that the Ab- better shall not be inquire of but where the Abetment is found by Inquest. 19 H. 6. 19. and 4 H. 6. 25. Not till Record is a good Reply in Conspiracy.

18. And so if he be Nonfitted in any such Appeal, where there is not nor shall any Indictment, the Defendant shall have a Writ of Conspiracy after the Nonfit or after the Acquittal. F. N. B. 114. (G.) Conspiracy if he be in- dicted or appealed, and enjoigned and acquited on the Appeal. 53 H. 6. 2. No note; 2 Monk c. 2d of Appeal Ribbery and Acquited; he and his Abettor shall have a Writ of Conspiracy though he was acquitted by Verdict.
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Verdict &c. 24 E. 3. 73. The Reason is, for though the Abettor, though not Party, shall have a Sine fas in for the Default of the Party on the Original: F. N. B. 114. (F.) in the new Note there (a) Ibid. In the new Notes there (b) 25 E. 3. Conspiracy, 25. 17 E. 3. ibid. 26. Ratio. because the Writ is given on a Nonuit in Appeal, and for that there is an Inquiry of the Abettors.

19. If the Action be brought against divers, and all but one are acquitted, the Action fails. 23 Aff. 12. So it all but one are discharged by Matter in Law. F. N. B. 114. (D.) in the Marg.

20. He who comes into Court, and discovers Felonies, and is shown to give Evidence to the Jury, is not chargeable in Conspiracy. F. N. B. 115. (E.)

Ibid in the new Note there (a) cites 27 Aff. 12. 27 H. 3.

21. A Man shall have a Writ of Conspiracy upon an Indictment be fore any Mayor, Bailiff of any City or Borough, who have Goal delivery within the City or Borough, if he be acquitted before them &c. For that Acquittal discharges him of the Felony. But a Writ of Conspiracy does not lie against the Indictors (themselves) &c. F. N. B. 115. (B.) (C).

22 Conspiracy against two, one is Attainted, the other makes Default. Judgment shall be against him. 24 E. 3. 34. but Queere by Stanlend 174. for 27 E. 3. it is holden that one shall not Answer without the other. F. N. B. 115. (F.) Marg.

It seems sufficient if the Writ be delivered to the Sheriff, who opens it and reads it to the Justices, but if they have no Notice it is clearly no Plea. Ibid in the new Note there (b).

23. The Justices of Goal delivery arraigned a Prisoner within the Year, where an Appeal is depending against the same Prisoner for the same Murder, which they know, is shown to them, and yet they proceed and acquit him, he shall have Conspiracy, although he was not acquitted nor discharged of the Appeal. F. N. B. 115. (H.)

24. If a Man be indicted or appealed of Treason or Felony, or a Trespass done in a foreign County &c. if he be acquitted thereof, he shall have a Conspiracy against him who procured him to be indicted or appealed, and shall recover treble Damages by the Writ upon the Statute of 8 H. 6. cap. 10. F. N. B. 115. (I.)

that he would have Advantage upon this Statute, ought to have Action on his Cafe on the same Statute; for such Action is expressly given thereby.

25. If a Man be indicted of Felony or Treason where there is not any such Place within the County, he shall have Conspiracy, and recover his Damages against the Abettors, or Procurers, or Conspirators, by the Statute of 18 H. 6. cap. 12. F. N. B. 115. (K.)

26. There are divers Writs of Conspiracy grounded upon Defeat, and Trespass done unto the Party, which are properly Actions of Trespass upon the Cafe; As if two Men do conspire to indict another Man because he did not arrest a Felon, who passed by the Town of N. and [for this] they cauht him to be indicted and amerced in the Leet of R. and F. and took and imprisoned him that Anerement until he be acquitted in the said Leet. F. N. B. 116. (A.)

27. And if Men say and affirm unto A. that he has Right unto such Land, and procure him to sue against B. who is Tenant of that Land by B. &c. by which B. is compelled to sell other Lands for the Defence of this Land &c. now he shall have an Action against those who procured or conspired to cause A. to bring his Action &c. F. N. B. 116. (B.)

Fitch. 506. cap. 15. S. P.

28. And if Men say and affirm unto A. that he has Right unto such Land, and procure him to sue against B. who is Tenant of that Land &c. by which B. is compelled to sell other Lands for the Defence of this Land &c. now he shall have an Action against those who procured or conspired to cause A. to bring his Action &c. F. N. B. 116. (B.)
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23. And if 2 Men procure one to be indicted for hunting in another's Finch 596. Park, for which he is taken, imprisoned, and put to Charges, until he has acquitted himself of the Trepass, he shall have a Conspiracy against him. F. N. B. 116. (C).

29. Conspiracy shall be maintainable against those who conspire to forge false Deeds which are given in Evidence, by which his Land is lost. F. N. B. 116. (D).

30. Conspiracy shall be maintainable against those who conspire to bring an Affiain in the Name of the Plaintiff against a Defendant, and make one a Writ of Process in the Name of the Plaintiff, in which Affiain the Plaintiff was found Viliain &c. now he may bring his Writ of Conspiracy. F. N. B. 116. (E).

31. Conspiracy shall be maintainable, because the Defendant made one to present in the Name of the Plaintiff unto an Adovowson, and for that prefenting unto the Bishop who is admitted and instituted &c. F. N. B. 116. (G).

32. A Writ of Conspiracy for inducing him of Felony does not lie but against two Persons at the least, but a Writ of Conspiracy for inducing one of Trepass, or other Pallicky made, as in the Cases aforefaid, lies agaife one Person only. F. N. B. 116. (K).

33. W. being robbed, accedel Stone, a Poulterer, to be the Party who robbed him, but afterwards withdrew his Accusation, saying that he was mistaken; for one Man may be like another. Stone not satisfied with this, bought an Action upon the Writ whereupon W. accused him again of the Felony, and he was bound over to the Affiain, where W. Poulterers swore directly that S. was the Party who robbed him, and several Poulterers to charge S. (who had married the Widow of the accused Person) with the Felony, whereupon it was found out by the Judges, that such Conspirators were punishable by Law, and Inditement, although an Action upon the Cafe did not lie for the Party. and the De.

Mo. 813. pl. 1101. Mich. 8 Jac. in the Star-chamber, Stone v. Wals.

ters.

34. If Felony be done, and one hath Suspicion upon probable Matter that B is Guilty of it, because that he bad Part of the Goods, and is illustrious Cafe three and of evil Fame, or if the Party be indicted, or if a Murder be committed, and one is seen near the Place, or coming with a Sword &c. bloody, or that he was in Company of Felon, or had carried the Goods stolen to obfere Places &c. there are good Caues of Suspicion, and by Reason done. 26dy, thereof he may arrest the Party so suspected, to the End that he may subjeft him to Justice. 12 Rep. 91. Mich. 9 Jac. in Sir Anthony Alh.

ley's Cafe.

Caufes, which may be pleaded, and is traversable. 5dy, That he himself, who hath the Suspicion, arrest the Party; for he cannot command another to do it; because Suspicion is a Thing Individual *and Personal, and cannot extend to another than to him that hath it. 12 Rep. 91. Mich. 9 Jac. Sir Anthony Alhley's Cafe.

* S. P. by Coke Ch. J. Mo. 817. pl. 1115. in a Note at the End of S. C.

35. If you will charge one solely upon Suspicion, without other Probabilitie to warrant it, this is a clear Conspiracy; but otherwife where there are good and ensuing Probabilitie, they should not say that he is a Man in the same Party, for if it prove not so, then it is plain Malice; or if it be not another
Conspiracy.

Upon Probabilities, and the Party
Indicted be
acquitted, an Action of Conspiracy will not lie; the Sufficiency must be shown, and not the Sufficiency but Judgment was not given, because the Court was not full, and the Parties were upon agreeing. Ibid. Wale v. Hill.

36. Articles were entred into between A. and C. in Trust for J. S. where-
in C. conveanted to procure Witnesses to couzt A. of being poisoned one R.
16 Years before, and that C. should have a sixth Part of what should be for-
fotten by A. and the rest was to be in Trust for J. S. and the Widow of the
said R. who were to favor, that be, being A.'s Servant, first him put Poision in
a Cup of Liquor, and commanded the said J. S. to carry it to R. which he
did, and that R. drank it, and died immediately; and it was proved, that
B. offered J. S. to get his Pardon, if he would accuse A. and himself also.
This for this Conspiracy B. was fined 1000 L. and imprisoned, and some
of the Defendants were sentenced to the Pillory, and to be burnt in each Cheek with the Letters F. and C. signifying a False Con-
spirator, and some were fin'd, pillory'd, and imprisoned, and the Lord
Chancellor cited several Precedents of Cenures, and said, that the Ma-
liece and Corruption in these Accusations ought to be apparent, and tho' an
Ignoramus is found, yet the Party is hable for such Conspiracies, and
To he is it the Bill is found, though the Defendant be Legitme Ac-
quiescutus. Mo. 816. pl. 1105. Mich. 9 Jac. in the Star-chamber, Sir
Anthony Ashley's Cafe.

37. A bare Conspiracy to do a lawful Act to an unmalicious End is a
Crime, though no Act was done in Conformance thereto; Per Cur.

(C) Actions for it.

A. Man cannot have Action upon the Statute of Procurement of
falsc Indictments till he be Legitimo modo Acquitesatus by the
Statute of Wolf. 2 cap. 36, which speaks of Procurements of such In-
dictments against a Man who dwells in another County for Vexation.
Br. Action for le Statutes, pl. 44. cites 8 E. 4. 5.

2. Conspiracy against two for causing the Plaintiff to be falsely indicted
in a foreign County contrary to the Statute of 8 H. 6. [10] And per Fair-
fax J. this Action upon this Statute may be brought against one alone, and
so of Writ of Conspiracy founded upon Writ of Trespas; but upon
Indictment of Felony Conspiracy shall be brought against two at least,
for this is an Action founded at Common Law. Br. Conspiracy, pl. 38.
cites 11 H. 7. 25.

3. Where two conspire to induce one falsely, and the Party is not in-
dicted, because the Jury had not sufficient Evidence, but return'd an
Ignoramus upon the Bill, no Conspiracy lies, because he never was in-
dicted
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dicted nor acquitted, yet he may be indicted upon Conspiracy at the Common Law; so it any commit Perjury, which is not punishable by the Statute of 5 Eliz. yet be may well be indicted thereof, and punished by Fine and Imprisonment. Cro. J. 8. pl. 9. cited by Popham as resolved by all the Judges 16 Eliz. Sydenham v Keilaway.

4. Action upon the Case in Nature of a Conspiracy lies not against any who prefers an Indictment and swears it to be true; for it is for the King and the Common Wealth, and if it should be allowed no Indictment would be preferred. Cro. E. 7. 24. pl. 57. Mich. 41 & 42 Eliz. B. R. Sherrington v. Ward.

5. Conspiracies punishable by Law before they are executed must have Mo. St. pl. four Incidents; 1st. They must be declared by some Manner of Prooee. in the Star- tion, or by making Bonds or Promises to one another. 2dly, They must be malicious, As for unjust Revenge &c. 3dly, They must be false but S. P. against an innocent Person. 4thly. They must be out of Court voluntia. does not appear; In a Note of the Reporter. 9 Rep. 57. a. Mich. 8 Jac. in the Poulterer's Case, alias Stone v. Walters & al'

Mich. 9 Jac. in the Star Chamber, says, Note, 1st. That in these Accusations there ought to appear apparent Malice or Corruption. 2dly. That though an Ignoramus be found, yet the Conspiracy is finable here. 3dly. That though he be Legitime Acquittatus, yet he is finable in the Star-Chamber.

6. A Conspiracy of any Kind is illegal, though the Matter, about which they conspired, might have been lawful for them to do if they but not conspired to do it. 8 Mod. 11. Mich. 7 Geo. in Case of the King v. Journeymen Taylors of Cambridge.

(D) Conspiracy. In what Cases Accessory shall have Conspiracy.

1. WO were indicted the one as Principal the other as Accessory, and the Principal was arraigned and acquitted, by which the F. N. B. Accessory brought Writ of Conspiracy, and it was doubted if he shall reco- ver, because his Life was never in Jeopardy; for by the Acquittal of the that the Ac- Principal the Accessory is acquitted and shall not be arraigned; but be-cessary shall caufe he is Legitime Modo Acquitsatus by the Acquittal of the Principal, therefore he shall recover his Damages, quod nota per Judicium; racy. for his Life was in Jeopardy in this Manner. For if the Principal had been found Guilty they ought to have inquired further of the Accessory if he had appeared. Br. Conspiracy, pl. 2 cites 33 H. 6. [1] & 34. H. 6. 9.

2. But if the Principal dies before he be attainted or outlawed, or has a Charter of Pardon before his Attainder, the Accessory shall not F. N. B. have Conspiracy, for his Life was never in Jeopardy; for his Principal 115. (A) in was never arraigned. Ibid.

3. If a Man caufe one as Principal to be appealed of Felony or Mur- der, and another as Accessory to him, and afterwards is nonsuit in his (P) S. P. Appeal, the Accessory shall have a Writ of Conspiracy as well as the Principal. F. N. B. 115. (A).

(E) Writ
Conspiracy.

(E) Writ and Count.

1. In Writ of Conspiracy brought against Defendants for forging of a false Release, by Caue of which Release given in Evidence, a Verdict passed against the Plaintiff, so that he left a Ward &c. but he did suppose by the Writ that Judgment was given against him upon this Verdict, but he caused it in his Count; yet the Writ abated. Thel. Dig. 87. lib. 9. cap. 7. S. 26. cites Pauch. 39 E. 3. 16.

2. In Conspiracy against Baron and Feme and others, notwithstanding that the Feme cannot conspire with her Baron, and that the Writ ought to abate for this Caufe against them, yet it shall stand against the others. Thel. Dig. 236. lib. 16. cap. 10. S. 26. cites Pauch. 40 E. 3. 19. Quare.

3. In Conspiracy the Writ was, that the Defendants procured one W. to unfit the Plaintiff of his Land, and to injure one B. therefore, against whom one E. ought to have sued a Sure Facias &c. and held good enough, and purplish, notwithstanding that it comprehended quasi two Procurements. Thel. Dig. 106. lib. 10. cap. 15. S. 11. cites Hill. 42 E. 3. 19.

4. And a Man may have several Matters in Writ of Conspiracy. Thel. Dig. 106. lib. 10. cap. 15. S. 11. cites 47 E. 3. 15.

5. In Writ of Conspiracy, for that the Defendant caused by Conspiracy a Prejument to be made that certain Land was given to find a Chapel in such a Chappel annually, which had been done by ten Years &c. where the Record of the Prejument was to find a perpetual Chantry &c. yet the Writ was adjudged good. Thel. Dig. 77. lib. 9. cap. 1. S. 9. cites Mich. 47 E. 3. 15.

6. Tho' several Matters are in Writ of Conspiracy, and one of them be false, yet the Writ is good enough for the others. Thel. Dig. 238. lib. 16. cap. 10. S. 66. cites Mich. 47 E. 3. 15.

7. In Conspiracy [the Plaintiff] declared that the Defendants conspired such a Day in C. and S. and the Defendants were awarded to answer; so a Man may conspire in two Villis at one and the same Day, by which the Defendants were compelled to answer. Br. Conspiracy, lib. 20. cites 22. H. 6. 49.

8. In Conspiracy by the Accesory, where the Principal was acquittet, no Mention was made in the Writ that the Principal was imprisoned, and held a good Exception. Thel. Dig. 95. lib. 10. cap. 6. S. 18. cites Hill. 33 H. 6. 2.

9. Conspiracy that the Plaintiff was indicted and acquitted at D. before such Judges; The Defendant pleaded to the Writ, because he did not say at D. in the same County, &c. and the Defendant was acquitted, for it shall be intended to be in the same County, unless the contrary be shewn. And in Trefpass Quare Clauiam freget apud D. he need not say apud D. in the same County; for it shall be intended to be in the same County. Br. Conspiracy, lib. 37. cites 35 H. 6. 46.

10. If the Principal and one, who is Accesory, be indicted of Felony, and be taken and arrested, the Principal is indicted and acquitted, now by that the Accesory is discharged, and the Accesory thereupon shall have a Writ of Conspiracy against those who conspired to indict him, and the
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the Writ in the End shall say "Conspiracy idem (the Principal) secundum legis &c. acquiescer jussit & idem (the Accessory) quiescit. F. N. B. 115. (A)."

in the End shall say "Conspiracy idem Quæreant per Considerationem Curia nostra inde quiescit."

11. If a Writ of Conspiracy be brought against two, it shall be laid properly a Writ of Conspiracy; but if it be brought against one Person only, then it is but an Action upon the Case upon the Falsity and Deceit done; because one Person cannot conspire with himself. F. N. B. 116. (L).

12. The Writ ought to be brought in the County where the Conspiracy was made, and not where the Indictment was, or where the Deed was done &c. F. N. B. 116. (M).

13. In Conspiracy the Matter must be laid to be falsely & malitiously; per Richardson Ch. J. Godb. 445. pl. 511. Mich. 4 Car. in the Star-Chamber. Taylor v. Towlin.

(F) Pleadings.

1. If two conspire to indict another, and after they are of the Jurors, F. N. B. 115, and indict him, it is a good Plea in Conspiracy that they were two (E) in the of his Indictors; And per Green it is a good Replication that they conformed before, and afterwards were of the Inquest by their own Procurement and indicted him. Quære, for it was not adjudget. Br. Conspiracy, pl. 15. cites 21 E. 3. 17.

2. Conspiracy against several, where the Plaintiff was by their Labour indicted of Felony &c, and after was acquitted, one said that he was Justice by Commission, and informed the Inquest, above he that he was guilty before, and another said that he was one of his Indictors, and a Max. 107. good Plea without Traverse, and another said that he was sworn to in the Inquest, and to indict him, and no Plea. Br. Conspiracy, pl. 27. cites 27 Aff. 12.

pl. 171. cites 12. (but it should be 27 Aff. 12. and so are the other Editions.) 115. (E) S. P. and the new Notes there (d) cites b. G.

3. Conspiracy against four, three pleaded to Issue, and the fourth pleaded Matter in Law, and after the three were acquitted, by which the fourth pray'd to go quit, because one alone cannot conspire, by which he went quit; Quod Nota. Br. Conspiracy, pl. 29. cites 29 Aff. 12.

4. In Writ of Conspiracy it is a good Plea that the Defendants were F. N. B 115. Indictors of the Plaintiff, and that which they did was by force of their (E) S. P. Oneb. Judgment &c. And if this be found by the Record of the Indictment they shall go quit; Quod Nota. Br. Conspiracy, pl. 30. cites 30 Aff. 21.

5. Conspiracy against three, supposing that the three procured one of the three to suing the Plaintiff, and the Defendant R. against whom B. found for Some Facts of a prior Right, so that the Plaintiff should lose his Warrant, Bilk demanded Judgment of the Writ; for it is that the three procured one of them, and yet non Allocatur; For the two may pro-
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cure the third, and so well, by which he pleaded Not Guilty. Br. Conspiracy, pl. 5. cites 42 E. 3. 1.

6. And sec 43 E. 3. 9. that the procuring to quit the Plaintiff and the Defendant R. and that B. should sue Sigre Pachas &c. which are two Matters, is not vicious; for the one is not Cuipter alone by itself, and the one is accersarly to the otner, by which he pleaded to the Writ, because though he left in Sigre Pachas, yet he may have Writ of Right, therefore Judgment of the Writ, &c. and non allocatur. But Quere it the Writ lies, because though the Defendant procured as above, yet if the Act was not done the Action does not lie. Br. Conspiracy, pl. 5. cites 42 E. 3. 1.

7. Conspiracy against three, because they conspired to indict the Plaintiff of a Rape of N. P. and taking her Goods to the Value of 10l. till he was acquitted &c. Tank demanded Judgment of the Writ, because he did not knew what Goods they were. &c. non allocatur; for it was according to the Indictment, and as to one he said that he was one of the Indictors, and to another that he was Hundreder of the Hundred, and before him the Indictment was taken, and so as Judge &c. non allocatur, unless he was Judge by Commission. Belk said they conspired before the Indictment, and yet held that it does not lie against them; Quere. Br. Conspiracy, pl. 9. cites 47 E. 3. 16.

8. Conspiracy against several, one justified as Bailiff to return Pannel, and after was sworn to say what he knew of the Matter; Judgment &c. and the others said that they were sworn upon the Indictment, and held that the Juror is excused though the Plea of the Bailiff be not good, yet one only cannot be a Conspirator; per Gafcoigne clearly in the written Book. Br. Conspiracy, pl. 12. cites 8 H. 4. 12, 13.

9. In Conspiracy the Defendant said that he was one of the Plaintiff's Indictors, and sworn before the Jusltices of Peace, and they'd ask &c. before whom he was indicted &c. Judgment n' Attoio, and a good Plea, by which the other said that no such Record, and the Defendant failed of the Record at the Day &c. Br. Conspiracy, pl. 22. cites 4 H. 6. 23.

10. Conspiracy against three of inducing the Plaintiff, Gore said the Day, Year and Place in the Declaration, the Inquest was charged before the Jusltices for the King and E. D. Defendant was there with his Eye out, and his Tongue cut, and the Jusltices swore him to give Evidence for the King, and be demanded Counsel of the other two what to do, and they counselled him to do according to the Command of the Jusltices, and he did it, which is the fame Conspiracy &c. Judgment &c. Quere. Br. Conspiracy, pl. 16. cites 7 H. 6. 13.

11. It was agreed, that in Conspiracy of an Indictment, it is a good Plea that nulli tel Record of Indictmenit quod nota. Br. Conspiracy, pl. 36. cites 9 H. 6. 26.

12. In Conspiracy it is a good Plea that the Defendant was one of his Indictors, and pleads certain, Judgment n' Attoio; and a good Replication that no such Record. Br. Conspiracy, pl. 17. cites 19 H. 6. 19.

13. In Conspiracy the Writ was Tcript for cipiffiet, and yet well. Br. Conspiracy, pl. 18. cites 19 H. 6. 34.

14. And if one Writ of Conspiracy be purchased pending another Writ of the same Conspiracy, yet it shall not abate; for several Conspiracies may be in one and the same Day, and therefore he pleaded Not Guilty. Br. Thibid.

15. In Conspiracy the Defendant justified at another Day, and the Opinion was, that he shall lay; Abjure hoc that he is Guilty of any Conspiracy before or after; but it was not adjudged. Br. Traverse per &c. pl. 315. cites 20 H. 6. 5. 33.

Traverse per &c. pl. 561. cites S. C. —— Heath's Max. 106. cap. 5. cites S. C. —— But in 12 E. 4. 18. The Defendant justified as a Jusltice of the Peace, and instructed the Jury at another Day abique hoc that he was Guilty before. Br. Traverse, per &c. pl. 315.
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16. If a Man be indicted, and the Party sues Appeal, and he is arraigned upon the Appeal, and the Defendant is acquitted he shall not have Conspicacy, nor shall recover any Damages against the Plaintiff; because where the Defendant is acquitted the Jury upon the Appeal shall not inquire of Abettors, Per Danby, quod tota Curia concelebit; for the Acquitect was upon the Appeal and not upon the Indictment. Br. Conspiracy, pl. 2. cites 33 H. 6 & 34 H. 6. 9.

17. In Conspiracy, the one pleaded Not Guilty and the other justified, and transferred assigns to, that he was Guilty after such a Day, nota. Br. Conspiracy, pl. 3. cites 34 H. 6. 14.

18. It was agreed, that to say that he who was killed was his Confin or Servant, or that the common Cause was that the Plaintiff killed him, are good Matters of Plea in Conspicacy. Br. Conspiracy, pl. 4. cites 35 H. 6. 14.

19. Conspiracy in B. R. the one of the Defendant's demanded Judgment of the Writ; for he said, that where the Plaintiff has suppos'd that he conspired to indite him of certain Felony, he said, that there is a Record of Indictment in which the Plaintiff and R. D. and J. C. are indited of the said Felony, abide how that there is any Record of Indictment which supposes that the Plaintiff only did the Felony, and yet the Writ was awarded good; for it was said, that Felony is several and not joint, and the Indictment is in itself a several Indictment against every one of them. Br. Conspiracy, pl. 32. cites 6 E. 4. 4.

20. Where a Man is indicted and the Indictment is insufficient, and he does not take Advantage of it, but pleads Not Guilty and is acquitted, and brings Writ of Conspicacy, it is a good Bar to say, that the Indictment was not sufficient, so that he was duly arraigned. Br. Conspiracy, pl. 23. cites 9 E. 4. 12. Per Littleton, quod non negatur.

21. If twenty are indicted, and one of them brings Writ of Conspicacy, supposing that the Defendants conspired to indite him, it is no Plea that there is a Record that he and others are indicted, and not that he only is indicted; Quod nota. Br. Conspiracy, pl. 24. cites 9 E. 4. 23.

22. Conspiracy against J. Jenny and others of Conspicacy made the fifth Day of August, by which he was indited the 4th Day of August before J. Jenny and other Justices of Peace; and that after he was acquitted, and for J. Jenny it was said, that this same J. Jenny Defendant, and J. Jenny Justice of Peace was one Perfum and not divers. And, per Billing, you ought to show how he was meddled as Justice of Peace; by which he said, that the Bill was delivered to him, and he read it to the Jury, and commanded them, if it be true, to find it, and otherwise not, abide how that he is Guilty of any Conspicacy before the said 4th Day of August, 14 Ad. junctorum. Br. Conspiracy, pl. 33. cites 12 E. 4. 18.

23. Conspiracy against two, one cause and pleaded the Death of the other pending the Writ, and no Plea per Cur. for it may be found that he and he other conspired, and then well. Br. Conspiracy, pl. 34. cites 13 E. 4. 1.

24. In a Conspiracy against two, one pleaded to the Writ, and the other the Matter in Law, which is adjudged for him, and the Plea unto the Writ found by Verdict against him who pleaded unto the Writ, the Plaintiff shall have Judgment against him who pleaded to the Writ. F. N. B. 115. C. (E).

25. But if both had pleaded Not Guilty, and one had been found Guilty and the other not, there the Plaintiff shall not recover, for then he did not conspire as is suppos'd by the Writ. But it may be that they did not conspire in the Case aforesaid, although the Matter in Law be adjudged for the Defendant. F. N. B. 115. (F).

26. Con-
25. Conspiracy; the Defendant pleaded his Goods were feloniously Stolen, and be found them in the Possession of the Plaintiff, for which he indicted him, and gave Evidence against him, and upon the Trial the Plaintiff was acquitted, and traversed that he conspired after vel alio modo. Adjourned a good Justification, because the finding of the Goods in his Possession was a sufficient cause of Supplication. Mo. 620. pl. 828. Pauch. 36 Eliz. Varvel v. Willen.

26. In an Action upon the Case in the Nature of a Conspiracy for procuring him to be indicted for supposed robbing of him the Defendant justified, and in this his Justification accused how that he was rolled by Persons to him unknown, and that one of them was upon a brown Horse, and had a white Cloke, and was like unto the Plaintiff, and upon this he complained unto Gawdy J. who, upon his Examination, finding Cause to suspect him, did commit him and bind him over &c. and he did likewise bind the Defendant for to prosecute against him, the which he accordingly did and the Jury did acquit him, and so justified. To this Justification the Plaintiff demurred in Law, and this was ruled to be a good Justification. Bullt. 152. Arg. cites 42 Eliz. B. R. Paine v. Rochester.

27. S. C. thus, viz. Two Perions were robbed, and afterward one of them seeing J. S. suspected him to be one of the Robbery who was on a brown Mare, and upon acquainting the other of it he suspected him also, and thereupon got a Warrant to bring J. S. and examine him, but he hearing of it absented himself, but afterwards was taken and committed to Gaol by Justice Gawdy, who advised them to indict J. S. of the Robbery; J. S. was indicted and acquitted, and brought Action of Conspiracy against the two; but the Court held that the Causes of Supplication and J. S. his absenting himself are Causes sufficient. Cro. E. 871. pl. 7. Hill. 44 Eliz. B. R. Paine and Rochester v. Whitfield.

(G) Where the Indictes &c. shall be said Legitimo modo Acquiesatus.

1. H. B. brought Writ of Conspiracy against the Ld. of T. E. D. and others, because they conspired to indict him at B. in the County of W. of the Death of J. P. by which he was indicted of it at H. in the County of H. before certain Justices &c. by which he was taken and imprisoned till he was arraigned upon it and lawfully acquitted at H. in the County of H. before certain Justices &c. and the Defendant protested that he did not conspire, pro plaeto dictis, that the same Day that the Plaintiff was arraigned upon the same Indictment, A. who was the Feme of this same J. P. came before A. B. Justices of Gaol Delivery, before whom the Plaintiff was arraigned within the Year after the Death of her Baron, and delivered to one B. Sheriff of the same County Writ of Appeal brought by her of the Death of her Husband, which R. notified and read the Writ to the same Justices, and notwithstanding this, the said Plaintiff was arraigned and acquitted, Judgment &c. and there it was agreed, that by the delivery of Habeas Corpus, Certiorari or Superleades the Court shall intervene. And per Newton and Palton Justices, this is not sufficient notice; for the Writ is directed to the Sheriff, and he broke it, and showed it to the Justices, and they did not see it Sealed, so that it is not but an Errow to them, and therefore they did well to arraign the Defendant; but if they had sufficient Notice, they ought not to have arraigned him at the Suit of the King pending the Appeal, contra where they have not Notice; and then no Plea, by which the Defendant pleaded Not Guilty. Br. Conspiracy, pl 19. H. 6. 25.
(H) Indictment, or Information.

1. **H.** killed W. in taking him in Arrest for Felony, because W. stood to his Defence and would not render himself to the Peace, and I. and T. procured H. to be indicted of the Death of this same W. by which he was apprehended and arraigned of it and justified as above and went out, but the said I. and T. who caused him to be indicted, shall not be punished as Conspirators, because H. did the Act, viz. killed W. and it is not as to I. and T. adjudged if this be Felony or not, quod nota. Br. Corone. pl. 89. citis 22 All. 77.

2. Indictment of Conspiracy wanted the Year, Day and Place where it was done, and was of Imprisonment of certain Persons till they should make Fine &c. where this founds in Oppression and not in Conspiracy, and because they condemned him it was reverted by Writ of Error. Br. Office del &c. pl. 5. citis 24 E. 3. 74.

3. If an Indictment of Conspiracy be laid for a Rape, it must be laid that there was Recens Procuratio of it, otherwise it will argue a Contest, and because the Rape was concealed for half a Year, an Indictment brought afterwards is false and malicious. Per Richardson Ch. J. Gedd. 444. pl. 511. Mich. 4 Car. in the Star Chamber. Tailor v. Towlin.

4. An Indictment for conspiring to charge another with being the Father of a Bastard Child is good. For per Cur. though the Offence (as was objected) is Spiritual, yet this Court has Cognizance of every unlawful Act, by which Damages may happen to the Party as here they may by his being liable to maintain the Child. Sid. 68. pl. 3 Hill. 13 North, S. C. and the 14 Car. 2. B. R. Timberley v. Child.


5. Indictment against the Defendant at the Sessions for the County of Devon, for that he being an evil Man &c. and conspiring to aggrieve one Laud, pretended he bad broke his Arm, and accordingly counterfeited the same; and upon that pretence refused to seek his living by any Labour, and exhibited a Complaint against him to the Justices of the Peace &c. and it was quashed upon Motion, as a Matter not Indictable. 2 Show. 456. pl. 421. Mich. 1. Jac. 2. B. R. the King v. Salter.

6. A Conspiracy that none [of them] should buy Coffee of B. was said Arg. not to be indictable if nothing more be done; but Holt Ch. J. denied it. 6 Mod. 99. Hill. 2 Ann. B. R.

7. And so it was said Arg. that a Confederacy to way-lay a Man and kill him or rob him, would not bear an Indictment; but Holt Ch. J. denied it. 6 Mod. 99. Hill. 2 Ann. B. R.

8. A Confederacy fallty to charge another with a Thing that is a Crime by any Law is indictable, and the Confederacy is the Gift of the Indictment. Per tro. Cur. 6 Mod. 187. Trin. 3 Ann. B. R.

9. Several Journey-men Tailors where indicted for a Conspiracy among themselves to raise their Wages. The Court held that this Indictment need not conclude Contra Formam Statutis, though by Stat. 7 Geo. 1. cap 13 Journey-men Tailors are prohibited to enter into any such Contract or Agreement, because the Indictment was for a Conspiracy which
Conspiracy.

which is an Offence at Common Law; 'tis true the Indictment set forth that
they resorted to work under such Wages as they demanded; but though this
might be more than directed by the Statute, yet it is not for the De-
nial &c. but for the Conspiracy that they were indicted, which in it-
self is illegal whether the Matter be lawful or not. And judgment
confirmed per rot. Cur. 8 Mod. 10. Mich. 7 Geo. 1. The King v.
the Journey-men Taylors of Cambridge.

10. Indictments for Conspiracy are never quashed. Per Cur. Mod.

11. A Conspiracy to let Lands of 10 l. per Annu. value to a poor Man,
in order to get him a Settlement, or to make a Certificate Man a Parish Offi-
cer, or a Conspiracy to send a Woman beg of a Belfast Child into another
Parish to be Delivered there, and so to charge that Parish with the Child;
certainly there are Crimes indictable. 8 Mod. 321. Mich. 11 Geo.
The King v. Edwards and al'.

12. The Defendants were indicted, for that they Per Conspirationem
inter eos habitam, gave the Husband Money to marry a poor helpless Wo-
man, who was an Inhabitant in the Parish of B. and incapable of Mar-
riage, on Purposo to get a Settlement for her in the Parish of A. where
the Man was attainted; and now it was moved to quash this Indictment,
because it is no Crime to marry a Woman and give her a Portion, and
the Judges are not proper Judges what Woman is capable of a Husb-
band's; Judgment was given for the Defendant, because it was not a-
swered in the Indictment, that the Woman was left legally settled in the Par-
ish of B. but only that she was an Inhabitant there. 8 Mod. 320.
Mich. 11 Geo. the King v. Edwards & al'.

13. Suits have Jurisdiction of Conspiracies; Per Cur. 8 Mod. 321.
Mich. 11 Geo. in Case of the King v. Edwards.

(I) Judgment. Error.

S. P. Br Verdich, pl. 88. cites 24
E 3 73

1. In Conspiracy against several, one appeared and pleaded Not Guilty,
and was found Guilty with another who did not appear, and the
Plaintiff recovered by Judgment, and he brought Error because he was con-
demned and none of the others, and one only cannot conspire, and yet the
Judgment was affirmed; For it is found that he and another conspired,
therefore it shall bind the Defendant, but it shall not bind the other
who did not appear and plead, but it is sufficient against the Defendant;

2. Two Men were attainted of Conspiracy by Verdich, by which it was
awarded that they left their free Lives, to the Intent that they should not
thereafter be put in Furies, nor in Affwse, nor otherwise in Testimony of
the Truth, and if they have to do in the King's Court, that they should
make their Attorney, and that their Lands, Goods, and Chattles should
be seised into the Hands of the King, and waited if they could not have
better Grace, and their Trees gembl'd up, and their Bodies to Prison. Br.
Conspiracy, pl. 28. cites 25 All. 59.

3. An Abbot, and A. his Monk, bring a Writ of Conspiracy against B.
C. and D. and the Writ says, that B. falsely and maliciously conspirat cum
C. and D. & conspiratone pre-antea habitam procured the said A. to be ap-
pealed of a Robbery, for which the said A. was taken and committed to
Newgate,
Newgate, and indited, and thereof acquitted. B. pleads Not-Guilty, then he shall have a venial damages, although none of the other defendants were afterwards attainted of this conspiracy, nor any process, after judgment had against C. or D. judgment was affirmed in R. The reason is, the process was only laid in B. and after libel and judgment B. was fevered from the others, viz. C. and D. and the suit was determined as to B. the abbot had judgment only to recover his damages and costs, he only a defendant and the defendant in this case had not the venial judgment; that is never to be a witness, never to approach the King's Palace, to be imprisoned for life, his house to be pulled down, his wife and children being first cast out of them, his trees cut down, his meadows plowed up, and his lands, goods, chattels, and writings seised into the King's hands. Jenk. 31. pl. 62. cites 27 All. 43 E. 3. 4. 11. 115.

Judgment 220. F. N. B. 114. (D) in the new notes there a. * 2 I. 34. 34. S. P. — 1 Ind. 145. cap. 66. S. P. — Ibid. 222. cap. 102. S. P. But by which shall, such a villainous judgment is only given where the suit is by the king, but at the suit of the party it is not so, but it is only that he shall recover damage. Mich 24. E. 3. 24. b. pl. 34. the abbot of hide v. melcheldine a. — Hawk Pl. C. 193. cap. 72. S. P. says, that a villainous judgment is given by the common law, and do by any statute, and is said generally, in some books, to be the proper judgment upon every conviction of conspiracy at the suit of the King, without any restriction, so as to endanger the life of the party; but he does not find this point any where settled.

4. In conspiracy upon an indictment of treasons the defendant said, that they were accompanied before justice of peace in N. and that which they did was upon their oath; judgment of acetio, and the plaintiff replied, that no such record, and writ awarded to the justices of peace to certify it, and at the day the parties appeared, and the justices did not return the writ, and they had day over, and then the defendant made default, and the plaintiff had writ of inquiry of damages which return'd 40l. and there it was agreed, that conspiracy lies as well upon indictment of treasons as of felony; and because the damages were too high, the plaintiff released 20l. and had judgment of the rest; for the court said, if he would not release part, they would abridge. Br. conspiracy, pl. 13. cites 7 H. 4. 31.

For more of conspiracy in general, see actions on the case (P. c) (Q. c) (R. c) indictment (E) information, and other proper titles.

* Constable.

(A) His Antiquity. And how considered.

1. The constable is the keeper of peace, that is to say, the high constable for the hundred, and the petty-constable in the town. Kitch. of courts 97. cites 12 H. 7. fol. 38.

Mich. 23. Car. 2. B. R in case of waldron v. russevart. —— In some places they have tithings.
Confable.

men and not Constables; Per Hale Ch. J. And Lambard 14 being cited, that the Confable and Tithingman are all one, Hale said, that so it is in some places; that proximities is the proper word for a Constable, and Decemnarius for a Tithingman. Mod. 38. pl. 38. Mich. 22 Car. 2. B. R. in S. C.,

High-Constable was an Officer at Common Law before the Statute of Winton as well as a Petit-Constable, and they are Officers to the Justices of Peace; Per Cap. 1 Salk. 175. in the Case of the Queen v. Wyatt. 2 Ld. Raym. 1194. 1195. Trin. 4 Ann. in Case of the Queen v. Wyatt. Powell J. says, that my Ed. Coke, 4 Inf. 267 says, that a Constable of a Hundred was not an Officer at Common Law, but created by the Statute of Winchester; but Powell J. said, that he was an Officer at Common Law, and the Statute of Winchester only enlarged his Authority in some particulars; and so it was held by my Ed. Ch. J. Hale in the Case of the King v. King, and the Case of the King v. Samuel, Hill. 16 & 17 Jac. cited for it, and the new Authority which was given them by the Statute of Winchester, was what occasioned the Mistake; and so they are Officers of the Peace, and Officers to the Justices of Peace, where no particular Officer is named.

2. At Common Law, before the making of the Statutes, by which Justices of Peace were ordained to keep the Peace. The Ch. J. of England was appointed by the King, and he had Authority, and was ordained to determine Matters touching the Crown, and for Confervation of the Peace throughout the Realm, and he thereby is the Ch. J. of Peace. Also by the Common Law, before there was any Justice of the Peace, Constables of every Town were Keepers of the Peace within their Towns. Kitch. ofCourts 96.

S. C. cited by Holt Ch. 1. 2 Ld. Raym. Rep. 1195, and says, that this Point has been controverted in my Ed. Hale's Time. Mich. 25 Car. 2. and says, that it has been held, that a High-Constable was an Officer at Common Law, and had Power to do all Things which a Petty-Constable can do. —— 3 Kebr. 251. in pl. 47. Mich. 26 Car. S. P. by Hale Ch. J. 2 Hawke. Pl. C 53. cap. S. & S. & P.

3. An High-Constable is not such an Officer or Conservator of the Peace whereof the Common Law takes any Notice; for he is not mentioned in any Book; Per Anderson. Cre. E. 375. pl. 25. Hill. 37 E- 112. in Case of Sharrock v. Harnam.

4. High-Constables were not ab Origine, but came in with Justices of the Peace; Per Twifden J. Mod. 13. pl. 26. Mich. 21 Car. 2. B. R. B. R. in the Case of the King v. King, Hale Ch. J. said, that contrary to 4 Inf. it hath been held, that a High-Constable was an Officer at Common Law.

5. As to the Antiquity of the Office of a Constable, it seems to be the better Opinion, that both Constables of Hundreds, which are commonly called High-Constables, and also Constables of Tithings, which are at this Day commonly called Petit-Constables, or Tithingmen, and were anciently called Chief Pledges, were by the Common Law, and not first ordained by the Statute of Winchester, cap. 6. as it is held by some that they were; for that Statute does not say there shall be such Officers constituted, but clearly seems to suppose that there were such before the making of it. 2 Hawke. Pl. C 61. cap. 19. S. 33.

(B) By whom made, and removed.

1. NOTE, that a Sheriff, Confable, and Headborough, were Conservators of the Peace at Common Law, and yet are Conservators of the Peace. Br. Peace. pl. 13. cites 12 H. 7. 17. per Finex Ch. J.

2. A
2. A *Writ of Resignation* does not lie to reform a *Constable*, but an Order by the Rule of Court was made for the reforming, placing, and settling him in his Place again, he being chose by the *Vill*, and approved by the *Lord*, and sworn; in which Case the *Justices of Peace* of him may have no Power; Per Williams J. to which the whole Court agreed. *Bull.* 174. *Trin. 9 Jac.* the *Constable of Stepney's* *Cafe*.

3. *Constable* elected at the Leet was discharged at the *Sessions*, because he was a *Master of Arts &c.* He was not sworn, but they elect and swear another. *The King's Bench* may, upon Complaint, grant a *Writ* to discharge the last, and swear the other; For the Election of a *Constable* belongs properly to the Leet, unless a reasonable Cause be to the contrary. See Courts (I. a) pl. 1. and the Notes there. And (U. a) pl. 10. *Car. B. R.* *Herfon's* *Cafe*.

4 13 & 14 *Car. 2.* cap. 12. *S. 15.* If *Constables*, *Headboroughs*, or *Churches* die, or go out of a *Parish*, two *Justices of Peace* may swear new *Constables*, to the *Lord of the Manor* hold a *Court-leet*, or till the next *Quarter Sessions*, who shall approve of them, or appoint others; And if any *Officers* continue above a Year, the *Justices* of *Peace*, at their *Quarter-Sessions*, may discharge them, and put in others, to the *Lord of the Manor* hold a *Court*.

5. *Johnson* prayed a *Certiorari* to remove an *Order of Sessions* to remove a *Constable* chosen *Constable* in the Leet by *Spleen*, which the Court granted; But whether the *Justices* may or not, they will here remove such Person being unfitting, as in *Alderman Tredell's Cafe*. And if the new one be not duly chosen, the old one must serve. *Keb.* 439. pl. 27. *Hill*. 14 15 *Car. 2.* *R.* *The King v. Wright*.

6. *The Book of Villars* in the *Exchequer* sets out all the *Vills*, and there can't be a *Constable* created at this Day; per *Moreton*. *Mod.* 13. pl. 36. *Mich.* 21 *Car. 2.* *R.* *Anon*.

7. On a *Motion* to quash an *Order of the Justices* for one to serve as *Constable* of *H. Moriston*. *J. said*, If a *Leet* neglects to choose a *Constable*, upon Complaint to the *Justices of Peace*, they shall by the *Statute* appoint a *Constable*. And *Twifden* *J. said* that in this *Cafe* there are *difficulties* that there never was any *Constable* there; and he cannot tell whether or not the *Justices of Peace* can erect a *Constable* where never any was before; if he will not be sworn, let them indit him for not executing the Office, and let him travel there that never was any such Office there. *Keeling* bid him go and be sworn, or if the *Justices of Peace* commit you, bring your *Action of false Imprisonment*. *Mod.* 13. pl. 36. *Mich.* 21 *Car. 2.* *R.* *Anon*.

8. *If there be a Court-Leet that has the Choice of a Petty *Constable*, the *Justices of Peace* cannot choose there; and if it be in the Hundred, *Tweedal* *J. said* he doubted whether the *Justices of Peace* can make more *Constables* than were before. *Mod.* 13. in pl. 36. *Mich.* 21 *Car. 2.* *R.* *Anon*.

9. *Information* against *K.* for refusing *to take the Oath* of a *Constable* of the Hundred being chosen in the *Leet*. The *Defendant* pleads that *W.* is an *ancient Borough*, and that they have a *Leet* there, and used to choose their own *Officers* &c. within the Borough. The *Question* was whether the *living* within the *Jurisdiction* of an *inferior Leet* should exempt a *Man* from being chose *High Constable* in the *Leet* of the Hundred. *Hale* *Ch.* *J.* of *Constable* of *Norton* *said*, The *Cafe* will be very different of this be really a *Borough*, and if it be an *Upland Town*, for formerly in England every Hundred used to send their *Jury*, and every *Borough* used to send 4 *Men* of their own, and *Constables* were before the *Statute*, but that gives them *View of Armes* that had a

*But the Lord who appro'd of the Choice said, just Cause, remove him; that the Sheriff or Steward having Power to place a *Constable* in his Office, have by Consequence a Power to remove him.*

**Constable.**
Constable.

Leet, viz. Wincanton, and he pleaded, that he being Quitted, and refused in the Leet of
Armour; and he said that the Superior Leet shall not meddle in the In-
ferior of Matters inquirable there, unless it be in Cæfe of Omission; but
he said, a Conffable of an Hundred was an Article that the Inferior
Court could not meddle in, because it is an Office that extends beyond
their Jurisdiction; and no Judgment was against the Defendant Niffi,

The inquifition of the Bœnings, ought not to do the Office of Conffable of the Hundred, but Judgment was given against him; and it was said that if there were a special Comm un to be discharged, it might be good. 3 Ceb. 197, 270, 271. Trin. & Mich. 25 Car. 2. B. R. The King v. King.

A Special Verdict found, that within the Manor of the Hundred of Farnham there are several other Matters belonging to divers Lords, the Inhabitants whereof used to be elected for the said Hundred; They find also, that there is the Mayor of the Town of Farnham within the Manor of the said Hundred, in which there is a Court-Leet, and that the Defendant is an Inhabitant within the said Town of Farn-
ham, wéi are aliés; and that no Inhabitant of the Town of Farnham ever served as High Conffable for the Hundred of Farnham. The Question arising upon the Special Verdict was, Whether the Defendant, being in a particular Leet, is excepted from serving as High Conffable of the Hundred? And on Debate the Court held, that he is not excepted. 11 Mod. 215. pl. 5. Patch. 8 Amb. & R. The Queen v. Jen-
nings. —— 1 Salk. 583, pl. 55. The Queen v. Jennings is a different Caefe.

The before the 17 & 14 Car. 2 the Juftices of Peace could not make Conffables, yet they could swear them. Per Holt Ch 12
Mod. 88. Hill. 7 W 3; in Cæfe of Fletcher v. Ingram.

If there is no Leet at all, then you must go to the Sheriff’s Court. How can Juftices
Peace make a Conffable who is an Officer at Common Law, and they only by Statute, only there may have been such an Ulage from the Neglect of those to whom it properly belonged; perhaps there may have been some old Statute for it, which is loft. Per Holt. 12 Mod. 186. Hill. 9 W. 3. The King v. Hewson.

10. S. was presented Conffable by the Homage of a Leet in Effex, the
Steward refused to swear him, and nominated and swore in his Place one R.
The Juftices of Peace at the Quarter Sessions, upon an Examination into
this Matter, ordered that S. should serve the Office, and swear him accordingly; This Order was removed by a Certiorari, and Exception was taken to it, that the Juftices had intermeddled in a Matter of which they had no Connoissance; for the Appointment and Swearing of a Con-
ffable did properly belong to the Lord of the Leet. Per Cur, the Ex-
ception of a Conffable properly belongs to the Homage, and though the
Juftices of the Peace have not originally the making of a Conffable, yet
this is a Matter of the Peace within their general Jurisdiction, and they
have power to examine this Matter at the Sessions, and to the Swear-
ing of a Conffable, any Single Juftice of the Peace may do it; and the
Order was confirmed. 2 Jones 212. Trin. 34 Car. 2. B. R. The King v. Stephens.

11. Sessions may chuse a Conffable, and the Order here appointing
him to take the Oaths is an Election of him &c. Per ton Cur. He may
be a Person not living within any Leet. And per Holloway J. They
might have compelled him to take the Oaths by increasing his Fine.
Camb. 20. Trin. 2 Jac. B. R. Anon.

But after
Adjudgment
the Steward has no Au-
thority. 12
Mod. 88.
S. C. —
Ld Raym.

12. The Steward of the Leet usuallj certifies under his Hand what
Person is chosé, which Certificate is carry’d to a Juftice of Peace, and
if the Parry reluje, the Juftice sends his Warrant to compel him, but
Steward may, during the Court, swear the Conffable as well as a Juftice
of Peace after. 5 Mod. 128. Mich. 7 W. 3. in Cæfe of Fletcher v. Ingram.

13. At Common Law all Conffables were chosen at the Leet, and where
there is no Leet, at the Town, but * whether by the Steward or the Ho-
mage has been a great Question; but without Question a Corporation of
common Right cannot elect a Conffable; by Caffion they may, but then
they must preferibe for it. Per Holt. 2 Salk. 502. pl. 2. Mich. 8 W.

12 Mod.
115. S. C.
 accordingly.
— Salk. 660, pl 6.
S. C. the Court feem-
ed accord-
ingly, led adjournatur —— Ld Raym. Rep. 73. S. C. & S. P. per Cur. —— Where there is no Leet
Constable.

he must be chos at the Tourn, yet his Power would be restrained to the particular Hundred. Per Holt Ch. J. 14 Mod. 2. 15. Poch. 8 Ann. B. R. in Caf. of the Queen v. Jennings.

* S. P. by Holt Ch. J. 12. Mod. 88. Hill. 7 W. 5; in Caf. of Fletcher v. Ingram.

14. The Village of C. having no Constable, the Judges by Order of 12 Mod. Seffions appointed one to serve there; And per Holt Ch. J. the Judges have all along exercised this Power, and the Court will intend they have a sufficient Authority for it; but the 13 & 14 Car. 2. Cap. 12. gives v. Hewfon them Authority to do it only in particular Cases. 1 Salk. 175, 175. & G. Holt pl. 2. Trin. 11 W. 3 B. R. The Village of Chorley's Cafe.

Accordingly I. said his Opinion was, that the Judges of Peace could not create a Constable where none was before, though he had heard it said in Lt Ch. J. Keeling's Time, that if a Town be newly built, and they want a Constable, that the Judges of Peace may; and it being in this Case contested whether there was a Constable before, it was ordered to be tried.

15. High Constables are removable as well at Petty Constables, and the Judges of Peace at Sessions are the best Judges of that Matter; per Cur. 1 Salk. 150. pl. 19. Poch. 4 Ann. B. R. in Caf. of the Queen v. White.

are chose by them, if there be good Cause of Removal. Bull. 174. Trin. 9 Jac. in the Constable of Steney's Cafe.——— But if it be in a Minor, and the Constable is chosen and sworn in the Court-Leet, the Judges of Peace have no Power or Authority to discharge him. Ibid.

16. The Mayor of A. set up a Caffion that the Court-Leet there ought to make a Lift every Year of 5 Persons to be presented to the Mayor, and that he ought to choose one out of them for Constable, and that the Jury should choose the other out of the remaining 4. Now this Year the Jury had made no Lift, but the Parishioners chose the Constables themفسelves. Upon the Mayor's applying to the Sessions, they made an Order of Discharge of one of the Constables, and that the Mayor's Constable, whom be nominated in Default of the Jury's giving him a Lift, should be confirmed. The Court now qualified this Order; for they said the only Statute, that gives the Judges Power at all in Relation to Constables, is the Statute of 13 & 1. Car. 2. cap. 13. [S] 15. and that Act only gives Judges Power to put in Constables in Default of the Court-Leet; but does not empower them to discharge Constables already put in. Accordingly the Order was qualified. Barnard. Rep. in B. R. 51. Pocht. 1 Geo. 2. The King v. Burden and Wakeford.

(C) Punished for refusing the Office; and who may be chosn Constable.

1. A Master of Arts may be elected Constable, and this is no Cause to discharge him. See Court (I. a) pl. 1. Herfon's Cafe.

2. An Attorney shall have a Writ of Privilege for all Offices that require his personal Attendance, as Constable &c. Agreed per tot. Cur. Mar. 30. pl. 65. Trin. 15 Car. Anon.

in the public Courts. Mod. 22. in pl. 59.—— 2 Hawk. Pl. C. 63. cap. 10. S. 39. S. P. and says, that they shall have this Privilege even when they are choosen by a particular Caffon, in respect of their Ephasis in another; for that no such Caffon shall be intended more ancient than the Ulges of those Courts, and therefore shall give way to them; and that upon the like Reasons he finds it taken for granted that praetifing Barristers at Law have the same Privilege, but he knows not of any Resolution to this Purport.

3. If
3. If a Man be choen a Headborough at a Leet, he may be indi\nicted for not taking his Oath, but then he ought to be warned to go before a jus\ncc of Peace to take his Oath &c. And upon a Motion a Writ was
granted, directed to one Prigg, who was choen an Headborough, com-
manding him to go before some Justice to take his Oath &c. Allen 78,

4. Custom that every Watchman of the Custom-House should be free from
serving was disallowed because there being several Watchmen in that
Parish there might be a Failure of Persons to perform the Office, and a
Judgment was affirmed. Sid. 272. pl. 28. Trin. 17 Car. 2. B. R. the
King v. Clark.

Keb. 935.

5. A Custom in a Vill is good, where there are several Houses, that every
one shall be Customable in Turn; for though it shall happen to the Turn of
a Widow, she may hire one to serve, and then he who so serves is sworn,
and he is the Constable and not a Deputy; Agreed. 1 Syd. 355. Hill,
19 & 20 Car. 2. in Vanc's Cafe.

2 Keb. 273

6. A practicing Physician in London was choen Constable in a Parish, and
on a Motion for a Writ of Privilege it was denied, and a Difference
made between an Attorney or Barrister at Law and a Physician; that the
Privilege of the former is, because of their Attendance in publick Courts
and not on Account of any private Business in their Chambers; but a
Physician is a private Calling, and therefore they would not introduce
new Precedents. Mod. 22. pl. 59. Mich. 21 Car. 2. B. R. Dr. Pordage's

2 To. 46.

7. The Privilege of Exemption from being sworn Constable extends to a
Parliament Man's Servant; agreed and admitted by Twisden J. but he
said he did not think it extended to his Tenant. Mod. 13. pl. 36.
Mich. 21 Car. 2. B. R. Anon.

8. A was actually Constable of the Hundred of B. and lived at W. with
in the Hundred of B. in Essex, and being choen Collector for the Poor in
Cornhill in London where he first lived, a Writ of Privilege was moved
for and granted. 3 Keb. 627. pl. 16. Patch. 28 Car. 2. B. R. the King
v. Rice.

2 Show. 75.

9. A Tenant in ancient Demesne is liable to the Office of Constable;
pl. 59. Trin. 31 Car. 2.
B. R. the King v. Betelfworth, seems to be S. C. and Judgment pro Rege.

Comb. 350.

10. Replevin.; the Defendant justified as Bailiff &c. in a Court-leet,
by a Custom there to choen a Constable and impose a Penalty of 40 s.
upon him if he refused. The Jury declred the Plaintiff under the Penalty,
&c. &c. No Titnition behinf, but did not execute the Office, which being pre-
vented at the next Court &c. the Defendant disstrained. Per Holt, Fines
and Amencements being by common Right may be levied by Duftets,
but this is a customary Penalty contrary to Common Right; for it is taxed
before
before Refusal, and so not to be disquieted for, without alleging a Raym. Rep. 
Custom for so doing, and the Notitia non habuit is too general; for it 59. S. C. adv.
ought to have been shown that he was summoned within a convenient time to fudge.

take the Oath before a Justice of Peace as usually done; and, per Rook-
by, the Defendant has failed in not alleging a Custom for the Ditrefes; 
Judicium pro Quer. 12 Mod. 87. Hill. 7 W. 3. Fletcher v. Ingram.

1. Steward of a Lease may impose a Fine upon a Person elected by the Suppref- 
son of Homage and refufing to be sworn, if he be prefent in Court; but if not 
refented, the Steward cannot fine him, but he may be arrested which must 
be praetened at the next Court and afcerted, and after the Court a Jury 
of Peace may give him the Oath. But the Party ought to be fum-up electe 
the mon, and Time and Place appointed under a Penalty when and where Conftable, 
he shall come, and before whom, to take the Oath, and it is not enough 
to fay Notitia non habuit generally, Per Cur. 5 Mod. 130. Mich. 7 W. 3. Homage do, 
Fletcher v. Ingram.

by the Homage by Caflom, where of Common Right his Election belonged to the Steward, refufes in Court, yet the 
Steward may impose a Fine upon him if prefent; Per Holt Ch. J. 12 Mod. 88. S. C. — Comb. 
Hawk. Pl. C. 64. cap. 10. S. S6. S. F, and fays, that it also feems that in either Cafe he may be indicfled 
either in the Sessions of the Peace or before Judges of Oyer and Terminer.

12. The Lord or Steward of a Lease may refufe a Conftable for good Caffes, 
and the Judges of Peace have done the fame; Arg. Ld. Raym. Rep. 138. 
Hill. 8 & 9 W. 3.

13. An Order for making a Conftable was quaffed abfente Holt, for that 
it did not appear by the Order that he was an Inhabitant of the Liberty 

14. The late Conftable is not dicharged till the new is sworn, becaufe the 
Parifi cannot be without an Officer, 12 Mod. 156. Mich. 10 W. 3. 
Anon.

15. No Man that keeps a publick Houfe ought to be a Conftable; Per 
Holt Ch. J. 6 Mod. 42. Mich. 2 Anne B. R. Anon.

16. The Surgeons of London are exempt from bearing the Office of Con- 
stable by Stat. 3 H. 6. cap. 6, and the Act likewise extends to Barber-
Surgeons approved and admitted according to the Statute of 3 H. 8. cap. 
11. So that they exceed not the Number of twelve Perfons. 

11. A Surgeon was indicfled for refusing to serve the Office of Conftable, whereupon a Noli Prosequi 
was moved for and granted Nifi; and the Reporter fays, that no Conftable was known, as ever he heard 

17. Where a Conftable is chosen at a Leas and refufes to offic, whether the Seffions 
he is indicfled at Seffions, or amerciable only at the Leas? Several Caffes cannot im-
were cited against the Power of the Seffions, and Time was given to the 
Refulal, Conulf of the other Side to anfwer the Objeftions. Gibb. 192. Hill. 4 but he 
ought to be indicfled; 

Quod Curia concfsit. 12 Mod. 190. Hill. 9 W. 3. the King v. Hewfon.

(D) Favored or punished.

1. C W A S indicfled for that a Burglary was committed in the Night 
by Perfons unknown, and J. S. gave Notice to him being Con-
ftable, and required him to make Hie and Cry, and he refufed, but becaufe 
he did not fhow the Notice the Party was dicharged. Cro. E. 
654 pl. 16. Hill. 41 Eliz. B. R. Crowther's Cafe.

2. Another
2. Another Exception was taken to the Matter of the Indictment, because it has been adjudged, that an Hundred shall not be charged with a Robbery committed in the Night, for they be not bound to give Attendance; no more ought a Constable to do it in the Night. But all the Court held the Indictment to be good notwithstanding; for it is not like to the Cafe of an Hundred; because it is the Constables Duty, upon Notice given unto him, presently to pursuie. Cro. E. 16. 17. pl. 16. Hill. 41 Elyz. Crouchcr's Cafe.

3. Several Constables were indicted for refusing to execute the Warrant of a Justice of Peace directed to en approbation one for a Contempt, and the Indictment was allowed. 2 Roll. Rep. 78. Hill. 16 Jac. B. R. Coleman's Cafe.


5. The Defendant being a Constable, was indicted for that he contemnuously and voluntarily neglected to execute diversa Warrants directed to him by Justices of Peace under their Hands and Seals; But it was quashed, because it did not set forth the Nature and Tenor of the Warrants, for unless the Constable can know what particularly he is charged with, he cannot tell how to make his Defence. Vent. 305. Hill. 28 and 29 Car. 2. B. R. Burrough's Cafe.

6. In an Habeas Corpus and Certiorari for the Body of J. S. who had been imprisoned for not paying a Fine of 20l. for the Quartlet Sessions, the Return was, that he, being Constable and demanded by the Court to present an Highway, which was sworn before him by two Witnesses to be out of Repair, laid in Contempt of the Court, that he would not present it; for which and certain other contemptuous Words, a Fine was set on him. The Court where of Opinion, that the Fine was not well set; for Constables are to present upon their Knowledge, and the two Witnesses should have been carried to the Grand Jury; for the Constable was not obliged to present upon their Testimony. Vent. 336. Patch. 31 Car. 2. B. R. Anon.

7. Moved to Quash an Indictment against diverse Inhabitants in Derby, for refusing to meet and make a Rate upon the several Parishes in Derby to pay the Constables Tax; first, because they are not compellable, but the Statute only lays that they may, so they have their Election and no Coercion shall be fed non Allocutor; for may in the Cafe of a Publick Officer is tantamount to shall, and if he does not do it, he shall be punished upon an Information, and though he may be commanded by a Writ, this is but in Aggravation of his Contempt; but the Court refused to Quash it. Skin. 370. pl. 17. Mich. 5 W. and M. in B. R. the King v. the Inhabitants of Derby.

8. If a Justice of the Peace adjudge that to be an Offence which is no Offence, the inferior Officer shall anwer; as if one be adjudged the putative Father of a Ballad, where after it appears to be Born in Matrimony, this is void, & coram non Judge &c. Per Holt Ch. J. Skin. 445. Trin. 6 W. and M. in B. R. in Cafe of Crump v. Holford.

9. A Lect may set a Fine on a Constable but the Sessions cannot. 5 Mod. 96. Trin. 7 W. 3. in a Nota at the End of the Cafe of the King v. Harpur.

10. False Imprisonment against a Constable for Executing a Warrant of Sir James Butler, after he was out of the Commision of the Peace. Per Holt, Constable at his Petil is to take Notice that his Warrant is by one in Commision; but all the Favour we can do is, since it was a Warrant executed a Day or two after Sir James was out of Commision, that if he...

2 Salk. 609. pl. 1. the King &c. v. Barlow. S. C. where a Statute directs the doing a Thing for the sake of Justice or the Publick Good, the Word (may) is the same with the Word (shall) Per Car.—— Carth. 293. S. C. accordingly.
he has behaved himself benevolently and scrupulously, to be mild to him; and he said, the Constable ought to be tried for the Justice of Peace's Commission, though the libel he for bad Character would be enough; and the Constable coming out of his own Parish to execute the Warrant, betrays his Official dignity. 12 Mod. 347. Mich. i. W. 3. Normand v. Mills.

11. A Constable was indicted, for that one Nath was convicted of 1 Mod. 47. 

Dier Stating, upon the Statute 1 and 4 Will. 3. cap. 10. and that the 8 Ann. B. Defendant being a Constable, the Justice directed his Warrant to him to make the S.C. levy the Penalty, which he did, but had not returned the Warrant, or Exception was taken that there ought to have been a True Warrant, because, as at Common Law a Constable was subordinate to the Justices of the Peace, so he is now a proper Officer to the Justices; and that where an Officer neglects a Duty incumbent upon him, either by the Common Law, or Statute, he is indictable and further that the Constable need not return the Warrant it self; because it may be necessary for him to keep in his own Defence; but he must return the Warrant to either return that or certify what he has done upon it; For otherwise the Justice cannot command the End of his Prosecution, and the Defendant cannot be discharged. 1 Salk. 350. pl. 28. 2 Ann. B. R. the Queen Travel over England to find them.

But Judgment was given against the Defendant, Differentiae Holt Ch. J. not but that he said it was an Offence; but he said that in all Proces there ought to be a Place and Time for the Return,—— 2 Ed. Raym. Rep. 119. S. C. adjudged for the Queen by 3 Justices. —— If an Officer be negligent in doing his Office it is an Offence at Common Law, and upon the 4th and 5th. W. and M. cap. 10. an high Constable was indicted for not returning his Warrant, and these Points were resolved, that a Constable was an Officer at Common Law, and per Powell, so was an High Constable, contra to the Opinion of Coke in his 4th. Julicutes, and he is a Subordinate Officer to a Justice of Peace, and when ever a Justice of Peace is commanded to do any Thing, he is the Person who is to put this in Execution, for the Justice cannot Command the Sheriff, or the Party, unless there be express Words of an Act of Parliament for it, and Matters being left so indifferent, if the Constable doth not do his Duty, he is punishable at Common Law. 2. That the Indictment reciting the Record of Conviction, need not to Conclude patet per Recordum, for this is but matter of Inducement, and where Nulli Recordum cannot be pleaded, there needs not Proof per Recordum. 3dly. Here is a great Offence, for the Warrant says, that the Officer ought to return the Warrant, because by the Act the Justice is to do some Thing afterwards, in Cafe there be not Goods out of which the Penalty can be levied; and though no Place is mentioned where the Warrant is to be returned it is well enough, for the Officer is to find out the Justice, and to give him an Account what he has done upon his Warrant, as the Justice may require him to do; and upon Not Guilty pleaded, the Officer may prove that he went to seek the Justice but could not find him, and this will be a good Excuse, Per 3 Justices as to this last Point, against the Ch Justice, who thought, that both a Place where, and the Time when the Return ought to be mentioned. 4thly. If the Officer have but 50l. worth of Goods, and the Sum to levied is 100 l. the Officer cannot levy the 50l. only. The Act doth not require that the Justices must divide the Money themselves, but the Officer may well do it, as the Act directs. If there be 3 several Convictions, and the Offender hath no more Goods than will answer 2 of those Convictions, he may pay the 2, and find in the Pillory for the other; The Money cannot be levied by Parcels. So it is in Cave there be but 2 Convictions, and the Offender hath only Goods to answer one of them, he may be Pilloried for the other. 5thly. That though the Indictment were that he did never return the Warrant, nor caufe it to be returned, yet this was well enough, for the Neglect was the Offence. 6thly. That the Justice must make a Warrant to levy the Penalty, and that the Justice cannot do this himself. The Queen v. Wyatt.

12. Constable is the proper Officer to the Justice of Peace, and indigible for neglecting or neglecting Duty required by Common Law or Statute. 1 Salk. 330. pl. 28. 2 Ann. B. R. the Queen v. Wyatt.

13. An Indictment against P. for not executing a Warrant of a Justice of Peace upon a common Baker, for exercising his Trade on a Sunday, contrary to the Act. Exception was to the Indictment, that it does not appear the Conviction was within 10 Days after the Fact, which is the Time limited by the Act; the Indictment laid only debito Motu convexit. Holt Ch. J. was of Opinion, that since 'twas said that he was Con- violent, it shall be taken for a good Conviction in all Respects, and the Defendant
Defendant should have taken Advantage of the contrary, by seeing it in Evidence upon the Trial. 11 Mod. 14. Patch. 6 Ann. B. R. the Queen v. Pawlext.

14. In false Imprisonment, the Case was that the Lt. Ch. J. of B. R. having in the late Reign signed a Warrant for apprehending the Plaintiff, the Defendant being a Constable arrested him upon the same after the late King's Demise, and thereupon the Justices of Sessions granted a Warrant for his Commitment; Ex per Eyre Ch. J. The Warrant of the Lt. Ch. J. became ineffectual and void by his late Majesty's Demise, so that the Imprisonment having been upon a void Process the Action lies. Gibb. 8o. Trin. 2 and 3 Geo. 2. at Nifi Prius in Middlesex. Anon.

(E) His Power and Authority as Constable without a Warrant.

1. If any be threatened upon Complaint to the Constable, he may inforce the Party to put in a Surety, and if he do not he may commits him to Prison till he has found a Surety. Kitch. of Courts 96. cites 4 E. 3. Bar 152.

2. Trespass of Assault and Imprisonment, the Defendant said that he was Constable, and the Plaintiff could have broke the Peace, and the Defendant took, Arrested, and imprisoned him till he should find Surety of the Peace, and the Opinion of all the Justices was that the Constable may take Surety of the Peace, but upon no Pain. Quere in what manner such Surety shall be, it seems to be by Obligation, which cannot be but in some Sum certain Br. Surety. pl. 23. cites 3 H. 4. 9.

3. Constable may arrest one to find Surety of the Peace, and if he will not obey he may take Power to enforce him, and one may justify that comes in Aid of the Constable, to arrest one that makes an Assault. Kitch. of Courts, 96. cites 3 H. 4. fol. 10.


5. In Trespass it was touch'd that Constable was ordain'd to keep the Peace and apprehend Felons, and that Constable may take Surety of the Peace by Obligation, if he finds one making an Affray. Br. Surety, pl. 26. cites 10 E. 4. 18.

6. Constable may arrest one which makes a Fray, and carry him to the next Goal till he finds Surety for the Peace; but not imprison him in his House, or put him in the Stocks unless he be in the Night, that he cannot carry him to the Goal for any other reasonable Cause. Kitch. of Courts 98. cites 22 E. 4. fol. 35. Per Eryan.

7. If a Man makes Assault upon the Constable, he may justify to arrest him who made the Assault, and to carry him to Goal for breaking the Peace, though be himself be Party, viz. the Constable upon whom the Assault was made; Quod Nota. Br. Faux Imprisonment, pl. 41. cites 5 H. 7. 6.


8. Con-
8. Contable may search for suspicions Bawdy-Houses where Women of ill Fame are, and may arrest suspected Persons which walk in the Night, and sleep in the Day, or keep suspicions Company, and if he be not of Power to arrest them, he may have Act of his Neighbours by the Law, 3 H. 7. fo. 10. that he may have Aid. Kitch. of Courts 98. cites 13 H. 7. fol. 10. Title Recognition 14 Brooke.

9. A Contable or Sheriff may let to Bail by Bond one arrested for such Felony for which he is bailable, but not by Recognizance. Dal. 11. pl. 9. Patch. E. 6. Anon.

10. If any be strick, and in Peril of Death, the Contable ought to arrest the Offender, and to keep him in Prison till it be known if he will live or die, or till he have found Sureties to appear before the Justices at the Goal-Delivery. Kitch. of Courts 96.

11. 38 H. 8. Tit. Falle Imprisonment 6. It is said that one can not arrest for a Fray after it is done, without a Warrant; but before it be done, or whilst it is doing he may. Kitch. of Courts 98.

12. 3 H. 7. fol. 1. It is held there, that the Contable may take the Peace of the County where there is a Fray, and specially to take Felons. Kitch. of Courts 98.

13. A Contable, going about his Service, is met, and assaulted and abused with divers opprobrious Words, and his Service impeded; The Contable seizes the Man and carries him to the Counter in Woodstreet, to be punished for his Assault and ill Gesture. It was held that he could not justify this; for the Contable cannot carry one to Prison but must first carry him before a Justice of Peace; for a Contable cannot commit any one but to the Stocks, and that only for a Breach of the Peace committed in his Presence. Savil. 97, 98. Trin. 31 Eliz. Fulwood v. Gafcoigne.


15. B. brought a Child of 2 Months old, and laid it in the Parish Le. 327. Church-Yard of A. to the Intent to have destroy'd it, or to charge the Parish with the keeping of it; and the Contable arrested him, and put him in the Stocks, and this was held a good Justification, for it is an ill say that all Practice, and is good Caufe to stay the Plaintiff, and imprison him, and the Justices were of Opinion against the Plaintiff, but would not give Judgment by reason of the ill Example, but left the Parties to compound the Matter. Gawdy J. said it was a great Offence in the Plaintiff, but the time ought to be punished according to Law; but that the Contable cannot imprison but only to stay him, and bring him before a Justice to be examined. And by Wray, if the Defendant had pleaded that he lay'd the Plaintiff upon that Matter to have brought him before a Justice of Peace, it had been a good Plea; and Fenner said that the Justification had been good, if the Defendant had pleaded that the Plaintiff refused to carry away the Child. —— Wray 68. Hill. 21 Eliz. S. C. reported according to Le. 327. —— Mo. 282. pl. 470. Keale v. Carter, Hill. 54 Eliz. S. C. the Defendant imprisoned the Plaintiff till he agreed to re-take the Child, and the Justification adjudged good. —— Poph. 12. Hill. 54 Eliz. Anon. but S. C. Fenner held that what the Contable did was lawful, and Popham Ch. J. of the same Opinion, and it was agreed that the Plaintiff take nothing by his Wr. 16. A Contable after an Affray in or cannot take Sureties of the Ow. 109. Peace, because J. S. Rodd in Fear of his Life, and for want thereof to 3 Eliz. Scart. v. commit.

17. But a Constable may commit a Man for a Breach of the Peace in his View, but not if done out of his Sight. He cannot take an Obligation for the Peace, it broken out of his View; Per Anderson. But Walmley said a Petty Constable may do it, if out of his Sight, upon Information that one intends to make a Battery and disturb the Peace; for by preventing the Occasion of the Breach of the Peace it shall be well preferred. So 44 Eliz. Tit. Barr. he may do it if Information be given of a Breach of the Peace, or that he comes where an Assembly is to break it. But he may not take Sureties by Recognition entred, because he is not a Judge or Officer of Record; but by Obligation he may. But this Obligation must be in his own Name, and not in the Queen's Name, and shall be certified at the Sessions of the Peace, and he cannot take an Obligation but upon View of the Peace broken, or Turmoil made. But by Owen he may take Sureties before as well as after, for otherwise it would be too late. Cro. E. 375. 376. pl. 25. Hill. 37 Eliz. Sharrock v. Hammem.

what Court. But Walmley contra, who said that the Constable might take Security by Bond, though not by Recognition or Bail; And Owen said that the taking the Surety is good. See adjourned.

18. Neither the High or Petty-Constable can take a Man's Oath that he is in fear of his Life; Per Anderson Ch. J. Cro. E. 375. pl. 25. Hill. 37 Eliz.

19. Common Fame is enough to apprehend any Man; but if you arrest a Man poissified of Money, and he dies, you are chargeable with the Money; Per Williams J. cites 2 H. 7, and where in the principal Case the Constable took from the Felon the Money of which he had robbed the Party, and was afterwards robbed of it himself, Trouver and Conversion lies for the Party against the Constable for the Money, but not Trespass. Ow. 124. Mich. 3. Jac. Walgrave v. Skinner.


21. An Action of false Imprisonment brought against a Constable, who pleaded Not Guilty, and showed in Evidence, that he came to search in Time of the Plague for Lodgers in the Town, and found a Stranger, and questioned him which Way he came into the Town? who answered, Over the Bridge; and the Judge conceived this to be a formal Answer to an Officer, and because he had no Bail, but travelled without one, and gave such a formal Answer, the Defendant did offer to apprehend him, and the Plaintiff therewith, being present, said to the Defendant, he shall not go to Prisou, but yet offered to put his Word for his forth-coming, upon which the Defendant did commit the Plaintiff, and it was ruled upon Evidence, that there was good Cause to commit the Plaintiff for opposing the Constable, though he verbally in his Office, who is so ancien to an Officer of the Commonwealth. Clayt. 10. pl. 19. before Davenport Ch. B. Mich. 8 Car. Shellfield's Cafe.

22. A. left Goods, and charges B. with the stealing them. The Constable searches B's House, but finds none of the Goods, yet upon the Charge of A. and at his Request, the Constable may arrest B. though he may in Discretion refuse, he having found no Cause of Suspicion in his Search. Clayt. 44. pl. 69. August. 1636. coron Barkley J. Ward's Cafe.

23. In
(F) His Authority. By Virtue of General Warrants.

1. If a Constable by Warrant of the Peace from a Justice of Peace arrests the Party, and brings him to the Justice, who does not put him to find Surety, Action does not lie against the Constable. Br. Faux Imprisonment, pl. 12. cites 21 H. 7. 22.


3. Constables, by Virtue of a General Warrant, cannot break open a House to take a Person unless in Case of Treason or Felony. 1 Bullit. 146.

4. Assailt and Battery by Husband and Wife against the Defendant a Constable, and two others. The Defendant justified, that the Wife was prevented in the Leet to be a common Scold, and the Steward made a Warrant to the Constable, to punish her according to the Law, and the Defendants went to the Plaintiff's House to execute the Warrant, and the Wife assaulted the Constable, wherefore be commended the other Defendants to lay Hands upon her, which they did Molliter. It was held by the Justices to be a good Jusification, although they neither flew the Day when the Leet was helden, nor that the Plaintiff's House was within the Jurisdiction of the Leet, nor saw the Warrants of the Stewards, for that there were all but Inducements to the Jusification. Mo. 847.

5. In false Imprisonment, the Defendant justified as Deputy to a County, Bullitt. 76, facts, to whom a Justice of Peace had directed his Warrant &c. and S. P. agreed also pleaded the 7 Jac. cap. 5. and resolved that he may plead the General Hlce. Mo. 847. pl. 1147. Hill. 13 Jac. B. R. Cartey's Cafe.

6. Justices of Peace make a Warrant to levy a Poor's Rate upon 7 S. which was directed to the Constables of the Parish of A. J. S. had Lands in A. upon which he had no Chattiers, but his House stood in the adjoining Parish of B. in the same County, in which 7 S. had Goods. The Constables of A levied these Goods by Virtue of the said Warrant, and Holt, Ch. J. rulcd, upon Evidence at the Trial, at Hertford Summer Assizes, 1693.
Constitution.


10. It was ruled by Holt Ch. J. at Westminster, 14 February 1698, that a Constable may execute the Warrant of a Justice of Peace &c. out of his Liberty, but he is not compellable to execute it there. Ld. Raym. Rep. 736. . . . v. Norman & al.

8. A Constable is an Officer but for his own particular Vill, and the other may execute Warrants in any other Part of the County, (as any other Person may) yet he is not compellable to do it, though the contrary is practiced in London by Custum; Per Holt Ch. J. Camb. 446. Trym. 9 W. 3. B. R. Anon.

9. If a Warrant be directed to a Constable by Name, he may execute it * out of his Precinct; Per Holt Ch. J. 1 Salk. 176. Trin. 11 W. 3. B. R. in Cafe of Chorly Vill's Cafe. But if a Warrant is directed to all Constables generally, such Warrant cannot be executed by any Constable out of the Precincts of his own Parish, for he is a Constable no where else. Carth. 508. Hill. 11 W. 3. B. R. in Cafe of The King v. Chandler.

On a Warrant directed to all Constables, it is the same as if directed to each particular Constable, and everyone is bound to execute it to his own particular Jurisdiction, but if one Constable returns, that he has no Difficulties in the County at large; it is ill; Per Holt Ch. J. Mich. 11 W. 3. 12 Mod. 516 the King v. Chaloner. — 2 Hawk. Pl. C. 56. cap. 15. 8. 50. S. P. — 12 Mod. 180. S. P. in Cafe of the King v. Hewston.

10. One might take a Warrant to search a suspicious House upon a Felony committed, but it is at his Peril to execute it in the Time, and at suspected Houses only, and though a Constable may by Virtue of such Warrant search the House, and all other Things that his Warrant doth authorize him to do, yet if he goes beyond his Warrant, by which any Body is damaged, he is answerable for it; Per Holt. 12 Mod. 344. Mich. 11 W. 3. at Nisi Prius.

12. When a Constable has a Warrant, he is tied up to that Warrant to all only as that directs. 11 Mod. 248. Mich. 1799. in Cafe of the Queen v. Tookey.

13. It seems that a Constable both may and ought to execute a general Warrant to bring a Person before the Justice of Peace, to answer such Matters as shall be objected against him on the Part of the King; for that the Officer ought to presume, that the Justice has a Jurisdiction of the Matter which he takes Consequence of, unless the contrary appear, and it may often endanger the Escape of the Party to make known the Crime he is accused of; But it seems to be very questionable, whether a Constable can justify the Execution of a general Warrant to search for Felons or stolen Goods, because such Warrant seems to be illegal in the very Face of it; for that it would be extremely hard to leave it to the Discretion of a common Officer, to arrest what Permons, and to search what Houses he thinks fit; and if a Justice cannot legally grant a blank Warrant for the Arrest of a single Permon, leaving it to the Party to fill it up, surely he cannot grant such a General Warrant which might have the Effect of an Hundred Blank Warrants. 2 Hawk. Pl. C. 81, 82. cap. 13. S. 10.


15. He


(G) Pleadings.

1. FALSE Imprisonment against R. who came Vi & Armis, and beat and imprisoned him; The Defendant said that he was Constable, and the Plaintiff beat R. almost to Death, by which Huc and Cry was heard, and the Defendant would have arrested him, and the Plaintiff refused the Arrest, by which the Constable took Power to arrest him, and the Damage which he had was because he disturbed the Arrest, and to the Imprisonment he said, that because the Plaintiff beat R. almost to Death, he imprisoned him by 4 Days, till be perceived that R. would live, and then he let him at large. Judgment &c. and no more is thereof said, and therefore it seems that it is a good Plea. Br. Faux Imprisonment, pl. 6. cites 38 El. 3. 6. and 38 H. 8. that a Man cannot arrest him after the Affray is over without Warrant; Contra before the Affray, and in the Time of the Affray &c. and fo of a Justice of Peace.

2. In false Imprisonment, the Defendant justified, that he was Constable of B. and appointed the Plaintiff to watch there, and because he refused be put him into the Stocks; but upon Demurrer, because the Defendant did not shew that the Plaintiff was an Inhabitant there, the Court held clearly, that the Plea was not good; for he cannot appoint a Stranger to watch, neither by the Statue of Winchester 13 El. 1. cap. 4. nor of 5 H. 4. cap. 3. and Judgment for the Plaintiff. Cro. E. 204. pl. 37. Mich. 32 & 33 Eliz. B. R. Stretton v. Brown.

3. B. was indicted, for that being Constable of the Hundred of H. he arrested one for Burglary, and after at D. in the same County, let him escape, and because no Place was alleged where the Arrest was, and if he should plead Not Guilty, the Venue should be as well from the Place where the Arrest was made as from the Place the Escape, the Indictment was held void, and the Party was discharged. Cro. E. 200. pl. 25. Mich. 32 & 33 Eliz. B. R. Bouche’s Cafe.

4. P. was indicted, for that he being a Constable arrested 7. S. for Felony, and voluntarily let him go at large. Exception was taken to the Indictment, because he does not shew when the Felony was committed; for the other may traverse it, and cites 8 El. 4. 3. And also, he does not shew when the Felony was committed; for it may be it was before the general Pardon, and then the permitting him to go at large is no Felony; wherefore for these Reasons the Indictment was held to be insufficient by Cleanch and Fenner, cecris abscentibus. Cro. E. 752. pl. 10. Pach. 42 Eliz. B. R. Plowman’s Cafe.

5. Exception to an Indictment for not serving as Constable, according to the Order of the Justices of Selions, was for not alleging any Place where be was requested to take the Oath, and quashed, especially being on
Contempt.

6. In Replevin, the Defendant avows for Disress for Pain afflished in Leet, for not serving there as Constable, nor finding sufficient Deputy, according to the Customs, that he that is elected must serve Per se, or another; and the Premietment is, that the Plaintiff should find a sufficient Person to serve for him, not giving him Liberty to serve himself, for which Caffe Jones for the Plaintiff demurred. Judgment for the Plaintiff, Nifi. Keb. 416. pl. 127. Mich. 14 Car. 2. B. R. Elcourt v. Stokes.
7. It was moved to quash a Prenument, for relating to be sworn Constable of an Hundred, because it did not mention before whom the Sessions was held; and Twidlin said, that the Clerk of the Peace ought to be fined for returning such a Prenument, and the Prenument was quashed accordingly. 1 Mod. 24. pl. 63. Mich. 21 Car. 2. B. R. The King v. Waws.

In all Aliens concerning a Fine or Amencement for verifying to serve the Office of Constable where he is appointed, it is advisable, in all Pleadings in any Action concerning such Fine or Amencement, and in all Indictments for such Refusal, specially and expressly to set forth the Manner of every such Election, Appointment, Notice and Refusal, and before whom the Court was held.

8. H. was indicted, that he being a fir Person &c. was tali die elected to be Constable, and afterwards &c had Notice, but from that Day to the Time of the Indictment nos supectis &c. sed tota alter neglectis &c. Pemberton moved to quash the Indictment, for that he was not summoned to appear before a Justice of the Peace to take the Oath &c. and cited Stig's Case. Allen 78. Per Holt Ch. J. by the new Stat. 13 & 14 Car. 2. two Justices of the Peace may make a Constable in Default of the Leet, but then they should issue their Warrant, signifying that he was elected Constable, and requiring him to take the Oath &c. Quashed Nifi. Comb. 328. Trin. 7 W. 3. B. R. The King v. Halford.

For more of Constable in General, See Mandamus (K) Robbery (M) and other Proper Titles.

Contempt.

(A) What shall be said a Contempt.

1. A Contempt is a Disobedience to the Court, or an Opposing or Dis- plying the Authority, Justice or Dignity thereof. It commonly consists in a Party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the Procefs, Order, or Decree of the Court. Sometimes it arises by one or more, their opposing or dis- turbing the Execution or Service of the Procefs of the Court, or using Force to the Party that serfes it. Sometimes by using Words importign Scorn, Reproach, or Diminution of the Court, its Procefs, Orders, Officers or Ministers, upon executing or serving such Procefs or Orders. It is
also a Contempt to abuse the Process of the Court, by wilfully doing any Wrong in executing it, or making Use of it as a Handle to do Wrong; or to do any Thing under Colour or Pretence of Process or Authority of this Court, without such Process or Authority. Pr. Reg. in Can. 99, 100.

2. T. F. went armed in the Palace, which was shewn to the Coun-

sel of the King, by which he was taken and disarmed before Chief Ju-

dice Shard, and committed to the Prison of the Maryportsea, and could not be baileed till the King had sent his Writ, and yet it was shewn that the Lord of Pt. menacing and assailed him the Night before, and it was at Paul's, &c. non Allocatur; for he shall have Surety against him, and the Lord of T. was made to appear, and commanded that he should not meddle, who promis'd it; QuodNota. Br. Contemps, pl. 6. cites 24 E. 3. 33.

3. If Attorney does not put in his Warrant of Attorney till Judgment or Verdict, this is a Contempt, and therefore he was imprisoned. Br. Con-

tempes, pl. 21. cites 38 E. 3. 8. & 40 E. 3. 1.

4. In Quare Impedit, if Writ is directed to the Bishop, who will not re-

ceive the Predecessor, this is a Contempt to the King, and the Plaintiff shall recover Damages against him. Per Thorp. Br. Contemps, pl. 5. cites 38 E. 3. 12.

5. Process of Contemps issieu against a Prior for not admitting the

Vesal of the King to a Coronet, and he came and travers'd the Patronage of the

King, which was found against him, and his Temporalities were felled into the Hands of the King for the Contemps. Br. Contemps, pl. 18. cites 38 Alf. 22.

6. A Man was pursuing his Business before the Justices of Aids, and one R. assaulted him in the Presence of the Justices in Disturbance of his

Soit, and by Force and Arms took his Fine from him, and carried her away

with his Goods and Chattels, and was found guilty of all, and was com-

mitted to the Ward of the Sheriff, and of the Fine, and of the rest of the

Punishment the Court would have Advice of the Counsell of the

King, if he should lose his Hand or not, Quare idem. Br. Contemps, pl. 9. cites 39 Alf. 1.

7. Steward of a Leet took Indictment of Robbery in a Leet done at D.

where there is no such Vill in this County, but in another County, and also Indictment of the Death of a Man which does not belong to the Leet, and the Party render'd himself, and had Writ of the Chancery to re-

move the Indictments into the Chancery, and from thence into B. R.

and the Lord of the Leet sent the Indictment, and because he had taken Indictment without Warrant, and also of the Death of a Man, which does not belong to the Leet, and so purprised upon the King, Capias issieu against the Lord to attach him to make Fine to the King for him and his Steward for the Contemps, inasmuch he was attainted by his own Return of the Indictment, and he came and made Fine to 40s. Quod


8. Office was found that H. of H. was aiding to O. M. Enemy of the Br. Parlia-

King, and was seised of such Land &c. and after H. came into Parliament recnt. pl. 55.

and deny'd that he was aiding &c. and had Restitution, and Writ to N. to make levy, who return'd that T. S. was disturbed &c. and Plau-

ries & Canfans &c. and writ to answer the King of the Contemps, and he could not excuse himself of the Contemps, by which he made Fine; and it is a good Plea that he had no Notice of the Contemps till such a Day, and then be avoided; For by the Justices he is excusted before Notice, and yet it was by Act of Parliament, by which If he was taken for the King that he occupied after Notice, and he who had Restitution pray'd judgment of the Hues &c. non allocatur; For this is a Writ of Contemps for the King only, and H. is not Party here, but he shall sue
in the Chancery, for this is Matter. Br. Contempts, pl. 13. cites 43
All. 29.

9. A Sheriff returned upon Capiass, that he had taken the Body, and put
him into the Castle of D. and the Abbé of M. took him out of the Castle,
and Capiass alleged against the Abbé; Quod Nota. Br. Contempts, pl.

10. If a Man commences Suit against me in Bank, and after arrests me
in London &c. by which I bring Capias cum Caufa, and am dismissed, if
this Matter may appear, he shall be imprisoned for the Contempt. Br.
Contempts, pl. 17. cites 9 H. 6. 55.

11. If a Suit appears and is challenged, and istroy'd indifferent, and after
makes Default when he should be sworn, it is a Contempt, and he shall
make Fine to the Value of the Land sued for per Annum. Br. Contempts,
pl. 8. cites 36 H. 6. 27.

12. Non Mmobando iffued to the Mayor of Calice, for the Tenants of
Mark and Oye there to go Toll-free, out of Chancery returnable in B. R.
and at the Plur. and Cauflam signified the Mayor could not return
the Writ; and by the Opinion of the Court clearly Attachment shall issue
against the Mayor, directed to the Lieutenant of Calice, and Writ of
Error lies in B. R. of the Judgment given in Calice. Br. Contempts,
pl. 7. cites 21 H. 7. 31.

13. The Attorney was ordered to try Proceedings, but the Defendant
proceeded; Injunction to bring in the Money levied, and to answer the
Contempt. Cary's Rep. 62. cites 2 Eliz. 1ol. 92. Sedgwick v. Red-
man.

14. Walter James made Oath, that he hanged a Subprena on the Door
of one Stacy Barry's Widow; and that the Defendant used to refout
thither, as he heard reported before the Time, who hath not appeared;
therefore an Attachment was awarded. Cary's Rep. 79. cites 18 & 19

15. The Defendant was examined upon Interrogatories upon the Breach of
an Order of this Court, and departed without License, therefore an At-


17. Because the Defendant made Oath that he cannot answer without
Sight of Writings in the Country and then puts in a Demurrer, therefore
an Attachment is awarded against him. P. 21 Eliz. Toth. 77. Farmer v.
Fox.

18. A made Oath for the serving of a Subprena on a Witness to testify
on the Plaintiff's Behalf before certain Commissioners, who hath not to
done; therefore an Attachment is awarded against the Defendant. Ca-

19. A Commination to answer, he returned a Demurrer, therefore Attach-

20. A brought Debt in the Exchequer in the Court of Common Pleas
there, and pending this Action he commenced other Action in B. R. against
the same Party for the same Cause; Per Share this is no Contempt, but
Manwood and Panishon contra, and shewed Precedents. But when a
Plea is removed out of a Bafe Court by Writ of Privilege, and the Party
Plaintiff in the base Court counts in B. R. this is no Contempt, and
is at Liberty to sue where he pleases. Savil. 14. pl. 36. Patch. 23 Eliz.
Anon.

21. W. caused a Leafe to be made by a Stranger to B. of a House for
Years, and then caused B. to bring Epitomé against J. S. whom he
also procured to answer to the Action, and paid the Fees to the Attor-
neys of both Sides, and this was in Order and with an Intent to get W. R.
out of Possession; and because W. refused to answer Interrogatories he
was...
Contempt.

was attached as for a Contempt. It was moved for W. that here was nothing executed, but all related in Intent only; but Manwood Ch. B. held that there was more than Intent, and though there was no Felony to the Party, yet it is an Abuse to the Court, viz. a Practice to play all Parts and to abuse the Officers, and Clerk laid, it ought to be punished severely; whereupon W. was committed to the Fleet and fined, but as to Pillory they would advise. Savil. 31. Mich. 24 & 25 Eliz. pl. 73. White's Cafe.

22. When a Statute imposes a Penalty for a Contempt, as the Contempt is Personal, so is the Penalty. Arg. Lane, 107. Hill. 8 Jac.

23. After an Habeas facias Seizuan awarded, executed, returned and filed, the Defendant re-entered and ou'd the Plaintiff; an Attachment was awarded upon Affidavit. 2 Brownl. 253. Patch. 9 Jac. Gallop's Cafe.

24. This Court directed a Trial, and the Defendant to avoid the Order procures an Injunction out of the Exchequer, the Defendant was committed. Toth. 135. cites Tr. 14 Car. Symmes v. Plowden.

25. A Man was committed for terrifyng a Witness who was to be examined at a Commision. Toth. 102, 103. cites Tr. 15 Car. Partridge v. Partridge.

26. If a Writ of Error to reverse a Judgment in this Court is brought and allowed, and Notice given of it to the Attorney of the other Side, and Bail put in, and the Attorney does not withstonding sue out Execution; this a Contempt to this Court. (Trin. 24 Car. B. R.) But it is no Contempt if Notice be not given to the Attorney of the Writ of Error brought, and Bail put in as the Statute requires. L. P. R. 306. cites Mich. 1649. B. S.


28. No Procesb of Contem'b is to be taken out against a Defendant for Disobedience of an Order, unless he be served with a Writ of Execution of that Order under the Seal of the Court. 3 Chan. Rep. 23. Hill. 1667 Moyer v. Peacock.

29. Defendant caused the Plaintiff to be Arraigned 2 Days before the Commision for Examination of Witnesses and was in Execution ordered to be Discharged, and the Defendant to pay Costs and be at the Charge of a new Commision. 2 Chan. Rep. 22. 20 Car. 2. Smith v. Holman.

30. Where the Original Cause, on which the Procesb is ground, is Matter of which the the Court has no Cognizance, there a Recusai can be no Contem'b. Vent. 1. Mich. 20 Car. 2. B. R. Sparks v. Martin.

31. A Man Arraigned on a Latiat gave a Warrant of Attorney to confes a Judgment, and profidently after snatch'd it out of his Hand, to whom it was delivered, and tore off the Seal; the Court seemed to incline, in Regard it was to confes a Judgment in this Court (B. R.) it was a Contempt on which an Attachment might be granted. Vent. 3. Mich. 20 Car. 2 B. R. Anon.

32. If a Witness will not appear and be examined upon the return of the Subpnea, the Party may take an Attachment against such Witnesses, and it examined on the other Side supr'fes his Deposition. 3 Ch. Rep. 65. per Matter of the Rolls 1670. Anon.

33. One delivered a Copy of Injunction to the Defendant, and thowed him the Writ under Seal, but Defendant desired to compare it with the Original and see how far he was concerned in it, which being denied, Defendant thereupon delivered back the Copy, but disturbed the Plaintiffs Peace. The Server of the Copy fliore he thowed it to the Defendant under Seal. Per Ld. Keeper, it is a Service sufficient to ground

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Contempt.

A Contempt, and that notwithstanding it was irregularly issued it ought to be obeyed. 2 Chan. Cae. 203. Mich. 26 Car. 2. Woodward v. King.

34. Process was mis-served by delivering the Process to a wrong Person, as it appears upon Commission to examine the Contempts complained of. Per Ld. Chan. There is no Realon Defendant should lose her Liberty upon a Mistake of serving Process. 2 Chan. Cae. 100. Patich. 34 Car. 2. Hammond v. Shelly.

35. Though a Process is irregularly issued it may be a Contempt to Disobey it. Proc. Reg. in Conc. 105.

36. Quarter Sessions committed Ld. Preston for refusing to be Sworn to give Evidence to the Grand Jury on a Bill for High Treason. But on a Habeas Corpus the Court bail'd him. Per Holt 'tis a great Contempt, and had he been there he would have fined him, and committed him till he paid the Fine. 1 Salk. 278. pl. 2. Mich. 3 and 4 W. and M. in B. R. The King v. Ld. Preston.

37. Upon a Rule of Reference to Arbitrators they make an Award for the Plaintiff, and a Stranger by Contrivance defeats the Party of the Benefit of this Award. Per Cur. it is a Contempt to the Court and an Attachment shall be granted, for it shall not lie in any one's Power to defeat the Rules of this Court, or render them ineffectual. 2 Salk 596. pl. 1. Mich. 8 W. 3. B. R. Sir James Butler's Case.

38. A Rule was made at Nisi Prius to issue a Matter to the 3 Foremen of the Jury, and that the Plaintiff shall have a Verdict for his security; after the Award made an Attachment lies for not obeying the Rule of Court. 1 Salk. 54. pl. 3. Mich. 11 W. 3. B. R. Hall v. Miller.

39. An Infant brought Appeal of Murder, and D. was admitted as Prochein Amy after the Writ was sued out and before it was returnable. The under Sheriff at the Instance of the Infant and other Relations, but not of the Prochein Amy delivered back the Writ to the Infant and his Relations. This is a Contempt in the Sheriff for which he was fined and committed, notwithstanding his Clerk in Court offered to undertake for the Fine. 1 Salk. 176. 177. 12 W. 3. B. R. Toler's Cafe.

40. Words contra bonus mores spoken of a Mistrate in Court is a Contempt, for which he may be fined. 2 Salk. 698. pl. 1. Hill. 2 Ann. B. R. in Cafe of The Queen v. Langley.

41. A confessed on Interrogatories that a Copy of a Writ being served upon, and the Writ shewed him, and before he knew the Contents of it, or out of what Court it was, he had spoke with Contempts, this was adjudged a Contempt. 6 Mod. 43. Mich. 2 Ann. B. R. The Queen v. Cres.

42. An Infant was inveighed from her Guardian (though he was not attaigned by the Court) and married to W. yet both the said W. and the Payor, and the Agents were all committed by the Matter of the Rolls, and the Order was afterwards confirmed by the Ld. Harecourt. Cited by the Ld. Commissioner Jekyll, 2 Wms's Rep. 112 [and laid in Marg. to be 22 May 12 Ann. Hames v. Waugh.]

43. A Rule was made to flew Caule why an Attachment should not be granted for disobeying a Tolt. 10 Mod. 349. Hill. 3 Geo. 1. B. R. Burgh v. Blunt.

44. The injuring an Advertisement in the News-Papers, offering a Reward of £10. &c. to any who shall discover, and make legal Proof of a Marriage in Question in the Court of Chancery, and which Marriage had been before adjudged good in the Spiritual Court, and also in the Court
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Court of Delegates, and a Verdict given at the Bar of the C. B. in its Favour, was by Ld. C. Parker held to be a Reproach to the Justice of the Nation, and a Thing infamous, and a Contempt of the Court, and that in Justice the Inferior must stand committed. Wms's Rep. 675. Mich. 1720. Pool v. Sacheverel.

45. *Suing the Butl* below, while a Writ of Error is pending in Parliament, is a Contempt and Breach of Privilege. Wms's Rep. 685. Hill. 1720. in the House of Lords, Throgmorton v. Church.

46. Encouraging an Infant Ward of the Court of Chancery to go from his Committees, under whose Care the Court had placed him, is a Contempt. Wms's Rep. 697. Patch. 1721. cites it as Dr. Yalden's Cafe.

47. If in an Indictment the Prosecutor and Defendant enter into a Rule by Consent, that the Master shall take 43 out of the Freeholder's Book, and each Party shall strike out 12 of them, and that the Sheriff shall return the Return of the 48 to try the Cause at the Assizes, and at the Trial the Defendant challenges the Array for want of Hundreders, it is a Contempt, and an Attachment shall be granted. 2 Ld. Raym. Rep. 1364. Patch. to Geo. B. R. The King v. Burridge.

48. Marrying an Infant Ward of the Court is a Contempt, though the Parties concerned in such Marriage had no Notice that the Infant was a Ward of the Court. 3 Wms's Rep. 116. Titn. 1731. Herbert's Cafe.

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(B) Punishment thereof.

1. OR Contempt the Defendant shall be imprisoned, and so it was adjudged there; Quod Nota. Br. Contempts, pl. 2. cites 44.

2. The Original of Commitment for Contempt seems to be derived from the Statute Wel. 2. cap. 39. for since where the Sheriff was to imprison those that retailed the Proces, the Judges that awarded such Process must have the same Authority to vindicate it; hence if any one offers any Contempt to the Proces, either by Word or Deed, he is subject to Commitment during Pleasure, viz. a quæ non deliberentur sine speciali precepto Domini Regis; so that notwithstanding the Statute of Magna Charta, that none are to be imprisoned, nisi per legale Judicium purum forum, vel per Legem Terræ, this is one Part of the Law of the Land to commit for Contempts, and confirmed by this Statute. Gilb. Hist. of C. B. 23. 21.

3. Upon Information that the Defendant disobeyed a Writ of Subpœna brought to be served against her, and that they which had served the said Writ were beaten and wounded, therefore an Attachment was granted against the Defendant, and a Subpœna against him, who made the Mault returnable immediate. Cary's Rep. 54. cites 1 Eliz. fol. 98. & 97. Rove v. Well.


5. Holgate makes Oath, he left an Injunction in the Hands of the Defendant, and that the Defendant, Elizabeth White, Thomas Crimore, and Robert Watkins, have disobeyed the same, therefore an Attachment is awarded against them. Cary's Rep. 82. cites 19 Eliz. Holgate & Uk v. Grantham.

6. The Plaintiff served the Defendant a Writ, but did deliver him neither Note of the Day of his Appearance, neither did the same appear unto
unto him by the Schedule, Label, or any other Paper, and the Defendant appearing found no Bill; it is ordered the Defendant be allowed good Costs, and an Attachment against the Plaintiff for such serving. Cary's Rep. 83. cites 19 Eliz. Brightman v. Powtrell.

7. The Defendant being in Prison, and not in the Fleet, would not make a better Answer, though two Subpoenas were served; My Lt. Keeper said, let that be depofited, and he should be brought up close prisoner in what Prison he was. Toth. 70. 40 Eliz. Bicket v. Walker.

8. A Judgment-Creditor brought a Sci. Fa. against the Principal after the Death of the Bail, who had paid the Debt, and had a Release and Satisfaction acknowledged; The whole Court held, that these Proceedings were undue, and in Contempt of the Court, and therefore an Attachment was granted against the Creditor. 2 Rillt. 68. Pach. 11 Jac. Higgins v. Sommerland.

9. In Ejecution to be tried at the Bar, the Defendant pleaded Insanity on Purpose to put off the Trial, but it was found by sufficient Proofs, and by searching the Register, that the Party was 63 Years old, and thereupon an Attachment was granted against him. 2 Rillt. 67. Mich. 11 Jac. Lord v. Thornton.

10. Label in the Spiritual Court for Tithes, to which the Defendant pleaded a Modus, and thereupon a Prohibition was granted, and afterwards the same Person labelled for Tithes in the Year following. It was agreed by the whole Court, that if the Label had been for the same Tithes after the Prohibition granted, an Attachment should be against him for his Contemp. 2 Rillt. 259. Mich. 12 Jac. B. R. Downes v. Hackley.


12. The Plaintiff, after a Verdict found for him, arrested the Defendant, to the Intent that he might have him in Custody when the Judgment was entered, and for no other Cause; and this appearing to the Court upon his own Contemption an Attachment was granted against him. Sty. 211. Pach. 1649. B. R. Lamb v. Duff.

13. The Defendant was arrested by a Latinat delivered to the Sheriff of Wilts, and thence carried to M., where he was arrested again by a Serveman of that Town by Process out of the Corporation-Court, and the Plaintiff proceeded against him in that Court, and not upon the Latinat, the Court granted an Attachment against him, Nisi &c. and an Habeas Corpus cum Caufa. Sty. 239. Mich. 1650. B. R. Brian v. Stone.

14. A Rule was made to shew Caufe why an Attachment should not go against a Justice of Peace, who proceeded upon an Indictment of forcible Entry after a Certiorari delivered, and fined the Party; upon shewing Caufe the Court ordered that he should be examined upon Interrogatories, and return the Certiorari and restore the Fines. Sty. 359. Mich. 1652. B. R. Staple's Cafe.

15. A Witness, who attended the Court in a Caufe there to be tried, was arrested, whereupon a Superfedeas was granted to discharge him, and a Rule to shew Caufe why there should not be an Attachment against the Person, who arrested him. Sty. 395. Mich. 16. B. R. Cullens Cafe.

16. Proofs of Contemp is not to be taken out against a Defendant for Disobedience of an Order, unless he be served with a Writ of Execution of that Order under the Seal of the Court 3 Ch. R. 23. Hill. 1667.

23. Anon. 17. Plaintiff told the Defendant he was come to serve him with an Order from the Master of the Rolls; whereupon the Defendant said, The Master of the Rolls kifs my Arise. The Master ordered an Attachment for the Familiarity, but said he believed the Lord Keeper would have committed him. 3 Chan. Rep. 41. Hill. 22 Car. 2. Witham v. Witham.
Contempt.

18. In Action for false Imprisonment it was adjudged, that an Order of the Court of Chancery, without a Writ of Attachment, is not a sufficient Warrant to take and imprison a Person for a Contempt, and in such Case the usual Course is to award a Writ. 2 Saund. 182. Mich. 22 Car. S.P. adjudged accordingly.

19. Examination ordered of one in Contempt for suffering Goods, ordered to be sequestred, to be carried away, he being there with others at the Time. 2 Chirn. Cafes, S.2. Hill. 33 & 34 Car. 2 Harvey v. Harvey.

20. If the Defendant hath not appeared this Court cannot decree the Bill pro Confesso, but a Sequestration shall go against his real and personal Estate until he clears his Contempt. 2 Chirn. R. 293. 33 Car. 2. Nokes v. Battle.

21. For any direct and positive Contempt a Party may not only be taken into Custody, but committed to the Fleet during the Pleasure of the Court. But for a bare Contempt in not doing something, then only till he obey and perform; for a Contempt in doing something against the Order of the Court is accounted much greater than omitting to do something which, if obeyed and performed, the holding the Estate and property would not be undone, though its effects may often be made to cease, or Reparation may be made. Pr. Reg. in Canc. 100.

22. Where a Defendant was taken or brought in upon a Commiffion of Rebellion, he was forthwith committed; because he had not yet all the ordinary Proceeds of Contempt. Pr. Reg. in Canc. 101.

23. On a Decree for Payment of Money after a Writ of Execution and Attachment returned, the Court would not give Leave for Defendant to be examined, unless he gives Security to abide the Decree. 2 Vern. 91. pl. 87. Mich. 1688. Roper v. Roper.

24. When a Man is fined for a Contempt to a Rule of Court, the Party griev'd can have but a third Part of the Fine, and it must be returned into the Exchequer before a Levare Facias; Per Holt Ch. J. And though Sir Samuel Aftrey said he had known several Precedents where a Levare Facias for a Fine hath been paid out of the Crown-office, Holt said that had been much questioned. Cumb. 250. Patcl. 6. W. & M. in B. R. The King v. Cadmore.

25. Rule was made to put off a Trial upon the Right to a Levan: but the Costs not being paid, and the Trial put off, the Plaintiff moved for an Attachment but had it not; for the Court said he should have gone on. 1 Salk. 83. pl. 2. Mich. 10 W. 3. B. R. Anon.

26. Sheriff may take Bail on an Attachment of Contempt, but the 12. Mod. 4. S.C. Prosecutors may refuse to accept it. 2 Salk. 698. 13 W. 5. B. R. The King v. Dawes.

27. Attachment was granted for proceeding after a Cartouer delivered. 7 Mod. 38. Trin. 1 Ann. B. R. The Queen v. the Mayor of Carlisle.

28. On a Motion for an Attachment against the Defendant, upon Affidavit made, that he being served with a Rule of Court, he shewd Cause wherein an Information should not be filed against him, said, He did not care a Farthing for the Rule of Court; though it was intituled for him, that he should be first heard to shew Cause against it, yet per rotam Curiam he shal answer in Custody, for it is to no Purpoe to serve him with a 5 Y second
Contempt.


A Motion was made, that one committed for a Contempt might be bailed to answer Interrogatories, but the Motion was not granted for Default of Sureties. And Mr. Mafterman said, that formerly the Party's own Recognizance used to be thought sufficient, but the Court of late Years has always insisted upon Sureties. 2 Barnard. Rep. in B. R. Mich. 6 Geo. 2. B. R. The King v. Clendon.

(C) Attachment stayed. In what Cases.

1. The Plaintiff served one Rolfe with a Subpoena ad Testificandum, and after he was served, before he could be examined, Rolfe was professed for a Soldier. Upon Oath made hereof Attachment was stayed. Cary's Rep. 58. cites Eliz. fol. 3. Humble v. Malbe.

2. If Defendant is in Contempt for not answering, and on Motion he obtains Time to answer, yet it be not expressly ordered, that all Contempts shall be stayed, the Plaintiff may go on, and prosecute the Defendant for not answering. Vern. 104. pl. 91. Mich. 1682. Anon.

3. Upon a Habeas Corpus and Certiorari to the Sessions, the Return was, that it was for contemptuous Words; but per Cur. it is ill, because they should be expressed what, and after filing the Return there can be no Amendment. Vent. 336. Pach. 31 Car. 2. B. R. Anon.

4. Where a Man is arrested upon an Attachment, the Contempt shall hold good, though no Affidavit be filed at the Time of taking forth the Attachment, if an Affidavit be filed before the Return of it. Vern. 172. pl. 166. Trin. 35 Car. 2. Anon.

5. After a Writ of Execution an Attachment issued, and then an Injunction for Pofiession, and afterwards when a Writ of Affiance was moved for, the Defendant, upon Debate, was admitted to appear and be examined. Arg. 2 Vern. 92. Mich. 1688. cites it as the Duke of Norfolk's Cafe.

6. The Question was, whether Defendant could be heard before he had cleared his Contempts, though he offered to pay all Plaintiff's Demands, Principal, Interest, and Costs. Ordered, that the Defendant bring before the Master all that is due for Principal, Interest, and Costs, and then to be at Liberty to move to have his Sequestration discharged, but the Sequestration not suspended in the mean Time. MS. Tab. Feb. 22. 1719. Lord W. v. Osbaldiston.

(D) Attachment and Contempt discharged; By what. And how.

C. was served with a Subpoena by the Name of R. C. and J. W. made Oath, that he served a Subpoena upon R. C. and an Attachment was served upon J. C. and ordered that he should be discharged
ed thereof, and might exhibit his Bill into this Court against the said J. W. and call him in by Process to answer his Perjury. Cary's Rep. 123. cites 20 Eliz. Clegge v. Warberron.

2. An Attachment and other Process of Contemn illiffed out of this Court, for not returning the Defendant's Answer by Commission, is discharged, paying the ordinary Fees, because the Plaintiff named one Commissioner who refused to join with one of the Defendant's Commissioners in taking the Defendant's Answer, and a new Commission is granted to different Commissioners named by the Defendants. Cary's Rep. 113. cites 21 & 22 Eliz. Marshall v. Harwood.

3. G. P. made Oath, that where the Plaintiff served a Subpoena upon him to appear before Commissioners to testify on the Plaintiff's Party, he the said Plaintiff did not give or tender him the said G. any Money for his Charges, and also, that he was sick then, and not able to travel; therefore ordered the said G. be discharged of the Process of Contemn gotten out against him for not being examined. Cary's Rep. 141, 142. cites 22 Eliz. More v. Worchem.

4. The Defendant took out a Commission to take his Answer in the Country, and returned a Demurrer, therefore the Plaintiff took out an Attachment, which this Court liked well, for that the Defendant did not directly answer, yet in regard of an Oath made of the Defendant's Impediment, a new Commission is granted to take his Answer, and discharged of the Attachment, paying the ordinary Fees. Cary's Rep. 142, 143. cites 22 Eliz. Pain & al' v. Carew.

5. A Rule was made to show Cause why an Attachment should not be granted against an Attorney, who was Mayor of N. for illusing out an Execution upon a Judgment obtained there after a Writ of Error delivered to him and allowed; but he proving that he was informed by Counsel, that the Record was not removed thence, by reason of a Defect in the Writ of Error, he was discharged. Sty. 321. Hill. 1651. B. R. Mayor of Newbury's Cafe.

6. Upon a Motion for an Attachment for that the Defendant had put one out of Possession who was put in by Virtue of an Habere Facias Possessionem; It was denied, because it was inflicted on by the Defendant, that he came in by an elder Judgment, and an Extent upon it. Sty. 318. Hill. 1651. B. R. Fortune v. Johnston.

7. 13 Car. 2. 2. 2. Cip. 2. 8. 4. Persons taken upon an Attachment for Contemn, not to be discharged without a lawful Superfetation.

8. Subpoena in nature of a Sci. Fa. to receive a Decree; the Defendant does not answer, but is examined upon Interrogatories to clear his Contemn. 2 Freem. Rep. 128. pl. 153 Trin. 1677. Anon.

9. Proces illified till Proclamation was returned; Then came the general Pardon. The Defendant appeared and demurred. The Plaintiff moved to set aside the Demurrer; for though the Contemn was pardoned, yet the Delay was no less to the Plaintiff. The Lord Keeper said that as to the Contemn, the Defendant stands Reclus in Curia, and consequently all Contemns are likewise pardoned, and therefore ordered them to proceed on Demurrer. Chan. Cases 238. Mich. 26 Car. 2. Anon.


11. Upon a Motion for a Sergeant at Arms, on a Commission of Rebellion returned, the Court held that, by the King's Demise, all Proces of Contemn not executed is determined, so that you must begin again at an Attachment; But where any Proces is executed, and a Cepi Corpus returned, there the Proces stands good. Vern. 300. pl. 295. Hill. 1684. Anon.

executed 3 Days after the King's Demise, but before Notice of his Death, the Court on reading the Cape of Crow
12. If one is arrested upon an Attachment either in Proceeding or in Execution after a Decree, yet in both Cases on his appearing before the Register, he is to be discharged, and to answer the Interrogatories at large, and not in Custody, and upon the Register's Certificate, that the Party has appeared, the Sheriff is to deliver up the Bond. Ch. Prec. 110. Mich. 1699. Danby v. Lawton.

13. If one brought in on Contempt denies all upon Oath, he is of Course discharged of the Contempt; but if he has forsworn himself he shall be prosecuted for the Perjury; Per Cur. 12 Mod. 511. Patch. 13 W. 3. The King v. Sims.


15. If one in Contempt to a Serjeant at Arms for want of an Answer, and then puts in an Answer, and the Clerk in Court accepts the Costs of the Contempt, this purges the Contempt. 2 Wms's Rep. 481. Trin. 1728. at the Rolls. Anon.

16. Mr Mafferman said, that by the Practice of the Court Interrogatories need not be filed against a Man committed for a Contempt till within 4 Days after Security given by the Party to answer them; but the Court held the Party's giving Security not necessary as he is in Custody, and that 4 Days should be computed from the Time of the Party's being sworn to answer them. 2 Barnard. Rep. in B. R. Trin. 5 Geo. 2. Anon.

(E) Where Proceeding must begin De Novo.

1. Defendant was in Contempt, and pardoned, and the Plaintiff was compelled to serve a new Subpoena to do that which was first ordered. Toth. 10. 3. cites Trin. 37 Eliz. Young v. Chamberlain.

2. If after Proceeds of Contempt the Defendant puts in an insufficient Answer, and so reported, the Plaintiff should not begin as formerly with Proceeds at the Subpoena, but shall go on to the Attachment with Proclamation and other Proceeds, as if the Answer had not been put in. Per Lord Keeper. Chan Cales 238. Mich. 26 Car. 2. Anon.

3. One in Contempt to a Serjeant at Arms for want of an Answer, puts in an insufficient Answer, and the Clerk in Court accepts the Costs of the Contempt, and so purges it. In the Proceeds of Contempt for the second Answer the Plaintiff must begin again with an Attachment, and not where he left off. But if neither the Plaintiff nor his Clerk in Court accepts the Costs for want of the first Answer, though tendered, and the first Answer be reported insufficient, the Plaintiff may go on with the Proceeds for the second Answer, where he left off at obtaining the first. And therefore it is usual and proper for the Clerk in Court to refuse the Costs for want of the first Answer, till he is satisfied it is a full Answer. 2 Wms's Rep. 481. pl. 152. Trin. 1728. at the Rolls. Anon.

Abbr. Equ. 
Cales 551. pl. 7. S.P. and says this Distinction was taken by the Solicitor General, and agreed to by the Court as reasonable and agreeable to the printed Orders of the Court. Trin. 1718. between Hallwell and Granger. (And seems to be S.C.)

(F) Plead-
(F) Pleadings.

1. *Attachment upon a Prohibition for sitting in the Spiritual Court, for* Stibes of great Trees against the Statute, he said that he sued of Stibes of Silva Caedus Abique hoc that he sued of other than of Silva Caedus, and no Plea, but shall say Abique hoc that he sued of great Trees. *Br. Traverle, per &c. pl. 311.* cites 5. E. 3 10.

2. In Contempt for not admitting Vrlet of the King to a Corody, it was said that it had been a good Plea for the Prior to the Contempt to have said, that there came but one Writ of Contempt to his Hands, quod nullus negavit. *Br. Contemps, pl. 18.* cites 50. All 6.

3. Attachment upon Prohibition, that he held Plea centra to the Prohibition of the King, and did not count that Prohibition was delivered to the Defendant, and therefore ill, for the Form shall be observed in Matters which are not Travellable as here, and Epleces in Formetion &c. and yet they are not Travellable, and this Default was pleaded to the Count. *Br. Count. pl. 11.* cites 9 H. 6. 61.

4. Certificates out of B. R. to the Mayor of Winton to certify &c. who did not return the Atius or the Plures, by which Attachment upon Contempit ited to the Sheriff, and he returned the Writ. *Quad sept corpus Majoris who prayed that the King count against bow;* and because the Record and the Writ made mention of the Delivery of the Writs &c. therefore by the Judges he need not Count; for the Record comprehends the Day and Place of the Delivery of the Writs, and all the Matter, but by others he shall make Count, and the *Tales have a Count in this Ac- tion;* for the Mayor may *Traverle that no Writ was delivered to him there it is, vis. the Declaration gives a Count in this Case &c.*

5. Bill of Attachment upon Privileg for Goods carried away, was brought by the Warden of the Fleet, who had the Office in Jure Uxoris, the Defendant said that he is Guardian in Jure Uxoris, and is not jo named in the Writ, Judgement of the Writs, and non Allocatur, for he is Officer, which is sufficient to have the Privilege, and the Office infell is not here in Debate, and therefore the Writ awarded good. *Br. At- tachment, pl. 22.* cites 9 E. 4 40.

6. Debt upon the Attachment, the Sheriff returned quod Attachatus eff per Castalla ad Valenciun 40 s. and at this Day the Defendant was &quot;fugatus, and at the Day which he had by the Elloign he made Default, and per rem. Cur. the Elloign of the Goods Attach'd are fixed, notwithstanding the Default after, quod nota. Per Judicium. *Br. Forreis- ture de terres, pl. 67.* cites 21. E. 4. 78.

7. Contemps shall be answered in proper Person and not by Attorney. *Br. Contemps. pl. 15.* cites 22. E. 4. 33. 34.

8. Attachment upon a Prohibition, and counted that he delivered a Prohibition to the Defendant, and yet he proceeded in the Spiritual Court, the Deliveriy of the Prohibition is not travellable, but if he pre- ceeded contrary to the Prohibition of the King or not. *Br. Traverles per &c. pl. 370.* cites 1 H 7. 18. in the end of the Action debated there Arguedo, in the old Reports and therefore Quare.

For more of Contemps in General, See Certiorati, Costs, Evidence, Prohibition, Sequestration, Striking, and other Proper Titles.
Continuance and Discontinuance.

(A) [Of Process] To what Time it may be.

1. UPON an Original, a Term, or two, or three Terms, may be
   Meen between the Tete and the Return; and this shall be
   a good Continuance, for the Defendant is not at any Prejudice by
   it, and the Plaintiff may give a Day to the Defendant beyond the
   Common Day if he will. D. 2 Eliz. 175. 23.

2. A Continuance by Capias ought to be made from Term to Term,
   and there cannot be any mean Term, because the Defendant ought
   not to stay so long in Prison. * 8 C. 4. 13. Per Cumber. **
   D. 2 Eliz. 175. 23.

3. But by Direct, a Continuance may be made with more than


Cro. C. 254. pl. 6. Refer to T. Laxton. S. C. and Judgment
   determined by three Judges, Cooke, Cumber, and T. Laxton, S. C.

4. If a Continuance be made in an inferior Court, ad proximum
   ibidem tenendam, without alleging any Day to which it is adjourned; yet if the Court be to be held by Counters, not at any certain
   Day, as every Week, or be tribus in tres, but the Lutine, when the
   Judges thereof please; this is a good Continuance. P. 8
   Car. B. R. between Lapak and Jeffrey adjudged, and a Judgment
   given in Coveney affirmed in a Writ of Error; this being moved
   for Error.

And James J. said, that all their Proceedings in Wales are adjourned till the next great Sessions, and none knows when the great Sessions shall be held. And it is said that this Error was assigned and ordered to be decided in the Case of Bythel v. Parry.

Fitch. Jour. 5. In Writs of Execution the Judges may give a Day at their Pleasure, S. C. 24 Ed. 3. 31. b.

Fitch. Jour. pl. 9. citas S. C.

Fitch. Jour. 6. As in a Scire Facias to execute a Fine. 24 Ed. 3. 31. b.

* Cro. C. 254. 255. pl. 6. Justin v. T. Laxton. S. C. & S. P. and alleged the Day, otherwise it is not good; And it is not sufficiently to say, ad quain quidem proximum Curiarum, feliciter such a Day

See pl. 4. 8. C. 86 (C) pl. 2. S. C.

This is mlf-printfed and should be D. 262 b. pl. 32. 52. Trin. 9. Eliz. — S. C. citas Cro. E. 105. pl. 16. Trin. 50 Eliz. B. R. in Case of Lutak v. Johnson, in which Case a Judgment was reversed in an inferior Court.
Continuance and Discontinuance. 455

Court for Error, because the *Differs* was awarded returnable at the next Court after setting the Proces,

saw use only a return ought to be as a Day certain, and it may be the Process shall not be fer-

voked within a Year, and the Defendant is to have Day at every Court, otherwise the Process is discon-

tinued, and therefore judgment was reversed. — S. C. cited 2 Bulk. 75. Mich. 10 Jac. in Case of

John v. Smith, which was that J. was arrested on *Proofs* to appear in *Place* Transferring at the

Court of the Master's ad Proctorum Curiam there held, without proving the Day certain, when the

next Court was to be held. Exception was taken that this is too General; for he may be detained

40 Years before any Court may be held, and that the Day when the Court should be held should 

have been shown certain; and though it was object that Prorama Curia here appears well by their

Jurisdiction which is to hold the Court De Die in Diem, and that to the same had been used those

40 Years, without showing the Day certain when the Court was to be held, yet the whole Court was

of Opinion that the Day ought to have been certainly shown, and for Default the Plea the

Plea was held ill, and the Party arrested discharged. — Cro. J. 514 pl. 15. Johns. v. Smith. S. C.


that the Case of Dyer was good enough notwithstanding the Error, but the Judgment was reversed

for other Errors, as appears 1 Roll. Abr. 416. pl. 2. Jullion v. Luxen., fed adiutorium. See Inf. (C)

pl. 3. this Case —- Mod. St. pl. 45. Mich. 22 Car. 2. B. R. Anon. Hale Ch. J. said that when

in an Inferior Court the Writer Faithe is ad Proximo Curtiam it is good; because it is uncertain

when the Court will be kept; but if it be at such a Day at Proxima Curtium it is good. — In falsa

Implication, the Defendant justified by Process out of an Inferior Court, which was to take the

Plaintiff and have him ad Proximo Curtiam: Exception was taken to this, and the Ch. Justice doubted

that the Exception was good and to the Plea ill, because it ought to be on a Day certain; but the

other Justices e contra, and Judgment for the Defendant, 2 Mod. 39. 59. Mich. 27 Car. 2. B. B.

Cromer v. Goodwin.

8. Continuance of a Plea cannot be by one Term or more men, upon

the Prayer of the Defendant. 99. 15 Jac. B. R. between Sho-

both and Leach, per Curiam agreed.

9. But the Continuance of a Plea, upon Advice of the Court, by a

Term or more between, is not good. S. C. cited 1 Car. at Reading-

Term, B. R. between Norris and Johnson in a Writ of Error upon

a Judgment given in Banco, it was adjudged to be a Discontin-

uance, where the Case was, that in Trepas in Banco the Defen-

dant pleaded a Special Plea, upon which the Plaintiff demurred, and

the Court, upon an Advisafe Vult gave Day from Easter-Term to Mi-

chaelmas-Term, intermitting Trinity-Term, and therefore adjudged

to be a Discontinuance, and the Judgment revertered accordingly;

because it this should be allowed, the Court might delay Sen per-

petually, as for as they might interine one Term, they might

interine one Year, or twenty Years. Contea 99. 15 Jac. B. R.

between Shobboth and Leach, per Curiam.

10. If a Man declares in an Action upon the Statute of Homo

pales as the King's Patience of Sope, and after the Defendant in

Easter-Term pleads, that the King did not make any such Letters

Patent, and Hue is joined therewith, and Day given to the Plain-

tiff till Michaelmas-Term, but there is no Continuance between Easter and Trinity-Term, it is a Discontinuance; for though the Court

might give Day to bring in the Letters Patent in Michaelmas-

Term, intermitting Trinity-Term, yet there ought to be a Continuance

between Easter and Trinity-Term by a Curia admissae vult, till 

Trinity-Term, or otherwise it is a Discontinuance. Cr. 1662.

between Friend and Baker adjudged.

11. The Defendant being to go to the Marches of Scotland with the

King to aid him in his War, the King by Writ commanded the Judges to

continue the Plea till his (the King's) Return. The Judges notwith-

standing proceeded to Judgment against the Defendant, and the Judg-

ment was affirmed in Error; for every Continuance must be to a Day cer-

tain, whereas the King's Return is uncertain. Jenk. 7. pl. 10. cites

Mich. 3 Ed. 1. S. 29. [but it should be S. or pl. 24.] Creffly's Cafe.

12. Action in B. R. was not Discontinued, because he had a longer Day for Discon-

tinuance of the common Day; for this is the Delay of the Plaintiff himself. Br. 

R. v. Proces, pl. 25 cites 15 All. 6. and 6 E. 3. accordingly.

3. In S. C.
In Quarter Sessions they were [here from 18th century] of the County Court
and the Court of Common Pleas.

14. In the action of Libel, and the Plaintiff was not without Delays, but Delays given to the Parties by the Judge and the Court, [here from 19th century] and the Defendant was not without Delays, but Delays given to the Parties by the Judge and the Court.

15. In the action of Libel, and the Defendant was not without Delays, but Delays given to the Parties by the Judge and the Court.

14. In the action of Libel, and the Plaintiff was not without Delays, but Delays given to the Parties by the Judge and the Court.

15. In the action of Libel, and the Defendant was not without Delays, but Delays given to the Parties by the Judge and the Court.

14. In the action of Libel, and the Plaintiff was not without Delays, but Delays given to the Parties by the Judge and the Court.

15. In the action of Libel, and the Defendant was not without Delays, but Delays given to the Parties by the Judge and the Court.

14. In the action of Libel, and the Plaintiff was not without Delays, but Delays given to the Parties by the Judge and the Court.

15. In the action of Libel, and the Defendant was not without Delays, but Delays given to the Parties by the Judge and the Court.
23. A judgment in an inferior Court was reversed for Error, because the 
Dissent was awarded returnable at the next Court after the return of 
the Process; whereas every return is to be at a Day certain; and, if 
the Process shall not be served within a Year, the Defendant 
is to have Day at every Court, otherwize the Process is discontinued; 
and Judgment was reversed. Cro. E. 162. pl. 15. Trin. 39. 

24. Error of a Judgment in the Court of H. the Judgment being in S. C. cited 
Debt by Nihil diet; The Error aligned was, that after Imparaline 
Day was given to the Parties till the next Court, and no Day certain, and 
for this Cause it was holden a Discontinuance, and the Judgment re 
7 held Contr 
tra by 3.

Justices, Hale dubitante.

25. In Trefpafs in C. B. after a Plea, Replication and Denitur, the 
Entry was, Curia adversari cult from Hilary Term, to Trinity Term, leav 
ing out Easter Term; it was infilfed, that this might well be done, 
because 'tis the Act of the Court, and they may take so much Time to 
advise before they give their Judgment. But per Doderide J. though a 
particular Continuance by Dies status may be by leaving out a Year, 
because the Plaintiff may delay himself, yet a Term cannot be let out, 
because 'tis in delay of Justices fo the Plaintiff may purchase an Original 
returnable 2 or 3 Terms after, because it is in his own delay; but if he 
was to purchase a Capias it is otherwize, because the other should be 
imprisoned for all the Time and therefo he cannot leave out a Term; 
to which Ley Ch. J. agreed, and said that C. B. cannot give other 
than common Day where the Suit is by Original, but otherwize in B. R. 
for the Suit is by Bill, but if in B. R. the Suit be by Original, yet we 
cannot give other than common Day; and staying a Cause without giving 
a Day when it shall be revived, or if we give a Day too long, viz. 
omitting a Term, this is in delay of Justice; for it may be the Court 
shall be relieved of their Judgment before this Day and yet they cannot 
give it, and fo this is against the Statute of Magna Charta. 2 Roll. 

26. A Latitam may be continued from time to time till the Bill filed to 
prevent the Statute of Limitations, otherwize it is not good, which Contiu 
ances may be made by Attorneys at their Chambers; per Cur. and 
Twifden J. said, that he had known an Action was continued by La 
tiat 5 Years before the Bill filed; and Herne secondary said, that a 
Latitam may be continued 7 Years. Sid. 53. Mich. 13 Car. 2. B. R. in 
Cafe of Daly v. Clinic.

27. Upon an Indictment of Perjury it was said per Cur. that at the * Sep. pl. 7. 
fame Actions the Judges may adjourn to a Day certain; but if there be 
and the 
Notes there. 
a Continuance over to the next Affixes, there must be no Day expressed. But 
inferior Courts cannot make a Continuance ad Proximam Curiam, but 
always to a Day certain. Vent. 131. Hill. 23 and 24 Car. 2. B. R. 
The King v. Serjeant and Annis.

28. Error aligned of a Judgment from C. B. that there was a Mis 
continuance, the Continuance being from one Day to another in the same 
Term, which was urged could not be the Term being but one Day in 
the Term, S. C. Law; but overruled; another Error was that the Time of Imparaline 
says that the Discontinu 
ance infilfed upon was, that the 
Record was 
a Record of Patch. 11 W. 5. and it appears by the Defendant’s Plea, that there was an Imparallne 
of Octabas Hilliari before, and it does appear that there was any Continuance from this Term of 
Error. But the Court being informed that the Declaration was in Mich Term before with an 
Imparallne to Octabas Hilliari, leave was given to amend the Record and to make it agree with the 
Fact of the Case.

6 A 

(A. 2) Continuance
Continuance and Discontinuance.

See (B) (A. 2) Continuance and Discontinuance. In what Cases; How, and When.

1. If a Man appears and imparies, he shall not allege Discontinuance of Process after. Br. Discontinuance de Procesis. pl. 49. cites 38 E. 3. 2.

2. If Replevin be removed out of the County into Bank by Recordare, Discontinuance of Process in the County is no Plea in Bank; for nothing is removed into Bank nor of Record there but the Plaintiff only; quod nota. Per ttor. Car. Br. Discontinuance de Procesis. pl. 45. cites 1 H. 6. 30.

3. If Pone comes to the Sheriff after the County past, yet he may give Day to the Party, though it be not in full County; per Brian, which Catesby agreed, and that if the Plaintiff shall be nonsuited in the County, it shall serve the Pone for it is not in full County as Recordare is. Per Littleton, if the Plaintiff appears it is no Error, as where a Man appears by Copias in an Action, in which Copias does not lie, this is not Error. Br. Jours. pl. 54. cites 12 E. 4. 11.

4. Note, that after the Tenant has vouch'd in Precipite quod reddat, and the Vouchee has entered into the Warranty, no Discontinuance shall be against the Tenant, for he is out of Court and the Vouchee is in his Place, to which Vouchee Day shall be given and not to the Tenant. Br. Discontinuance de Procesis. pl. 40. cites 1 E. 5. 4.

5. A Writ of Error may Sleep several Years without a Discontinuance, for it is only a Commission to the Judges to examine the Record, and the Parties have no Day in Court till the Plaintiff in Error faces a Scire facias ad audiendum Errores, or the Defendant in Error faces a Scire facias quare Executionem habeere non debet. After such Scire Facias the Writ of Error may be discontinued, and Errors may be allig'd upon either of those Scire Facias's. Jenk. 25. pl. 48.

6. In a Qua. Imp. brought by the Queen, she did not prosecute the Suit. Periam said, that after a Year the Defendant may know it discontinued, but that the Queen shall not be Nonuit. And in the Case of a Common Person the Plaintiff may discontinue it within a Year, but the Defendant cannot discontinue it till after the Year. Gouldsb. 53. pl. 3. Trin. 29 Eliz. Anon.

A Man may be Nonuit without leave of the Court, but he cannot discontinue his Suit without their Consent; Agreed, Mar. 24. pl. 54. Patch. 13 Car. Ubtart v. Parham.

Plaintiff prayed leave to discontinue paying Costs though it was after Demurrer

7. In a Replevin the Plaintiff cannot discontinue his Suit without the Privity of the Court; for the Entry is Recordante per Curiam and if he would discontinue without moving the Court, the Defendant may enter the Continuance if he will; Agreed per ttor. Car. Le. 105. pl. 142. Mich. 30 Eliz. C. B. Bear v. Underwood.

8. In Debt on an Obligation against an Executor, Demurrer was joined and argued, and Rule was given to enter Judgment for the Defendant; whereupon the Plaintiff moved that there was not any Continuance entered on the Roll, and therefore prayed that it might be discontinued; But per Cur. the Plaintiff cannot discontinue it without the Courts Direction, and the Defendant may well continue it being for his Advantage.
Continuance and Discontinuance.

9. The Prothonotaries said, that in Trespass the Plaintiff might discontinue his Action within the Year if it be before any Plea pleaded; But the Judges held e contra, because then Costs which are given by the Statute should be lost. Godb. 219. pl. 318. Mich. 11 Jac. C. B. Anon. 35. Trin. 25. Eliz. The Queen v. Leigh.

10. In Debt on an Obligation, the Plaintiff did not sufficiently alledge the Breach, whereupon the Defendant demurred, and Rule was given to enter judgment for the Defendant; but afterwards the Court gave Day to the next Term and leave to the Plaintiff to discontinue his Suit, because Harlow v. otherwise he should be utterly barred of his Bond. Cro. J. 458. pl. 8. Wright. Trin. 16. Jac. B. R. Lee v. Fydghe.

11. In Debt on Bond for quiet Enjoyment it was resolved on a general Demurrer, that the Defendant's Plea was not well set forth, but for a Flaw in the Plaintiff's Replication, for that it did not well alledge the Entry of the Defendant so as it did not appear that he was interrupted by him, the Opinion of the Court was against the Plaintiff; but the next Term, by Leave of the Court, he discontinued his Action. All. 19, 20. Trin. 23 Car. B. R. Coleman v. Painter.

12. It was moved, that the Plaintiff paying Costs might have a Rule to discontinue his Action, because such a Traverse was taken that the Title of the Land in Question could never come to be disputed. Roll Ch. J. said they might do this by the Course of the Court without Motion; but he conceived the Reason of the Motion was because there was a Pembrary Rule of Court to try the Cause the next Term, and so that the Motion was to avoid the Contempt he might fall into for disobeying the Rule if he should not go on to Trial; but said, that paying good Costs be should not discontinue his Action; Quod Nota. Sty. 366. Hill. 1632. Anon.


14. It was said, that if in Debt or Covenant, after a Demurrer joined, the Court lesse Caufe they will give Leave to discontinue, if the Plaintiff through his Negligence is in Danger of losing his Debt, and this several Years after the Action brought; but after the Demurrer argued, they will not give Leave to discontinue, nor where he has brought another Action for the same Caufe, and this is pleaded in Abatement of the first Action. Sid. 84. Pl. 11. Trin. 14 Car. 2. B. R. the Lord Howard's Cafe.

15. Tho' Discontinuances are permitted in Case of Bonds for Payment of Money, yet they never are in Case of Bonds for Performance of Awards, unless upon extraordinary Occasions. Lev. 159, 140. Mich 16 Car. 2. B. R. in Case of Bean v. Newton.

16. In Debt on an Obligation the Defendant traversed an immaterial Fact, whereupon the Court gave Leave to discontinue, whereas there was a Rule of S. C. for Judgment for the Defendant Null &c. Whereupon the Plaintiff prayed for Leave to discontinue, which the Court took Time to consider of, and afterwards because the Defendant would not agree to accept Issue upon the Liberty to Traverse, nor put in Bail upon the original Action, the Court gave Leave to discontinue, and the Action accordingly.
Continuance and Discontinuance.

upon Payment of Costs, the Plaintiff to discontinue notwithstanding the Demurrer had been argued. 


though it was after they had delivered their Judgment. — 6 Keh. 64. pl. 16 S. C. adjournment.

Lev. 105. pl. 29 S. C. adjudged for the Defendant, but the Court gave Leave to discontinuance.

17. In Debt on Bond to account and pay all Monies which should come to his Hands, the Defendant pleaded that no Money came to his Hands; the Plaintiff replied, that Money came to his Hands, but did not (by that he had not accounted or paid, and therefore the Court held it insufficient, and therefore Judgment was ruled to be given against the Plaintiff; but he then prayed Leave to discontinue, which was granted, unless the Parties would submit the Truth of the Matter to their Counsel to be determined by them. Lev. 226, 227. Mich. 19 Car. 2. C. B. Hegman v. Gerard.

but nothing as to the Discontinuance.

18. In a Quo Warranto against the Town of Farnham, for using a Fair and Market, and taking Toll &c. Issue was taken, whether they had Toll by Prescription or not, and it was found that they had; but it was moved in arrest of Judgment, that here was a Discontinuance, because there was no Issue as to the other Liberties claimed by them; (viz.) a Fair and Market, and this Action is not helped by the Statute of Jealities, quod tacit conceinitial; But the Chief Baron said, that they were too soon to urge that, because Judgment was not yet given, and before Judgment there can be no Discontinuance against the King, because the Attorney General may yet proceed, by the King's Prerogative, to take Issue upon the Jetti, or may enter a Nolle Prosequi, but if he will not proceed the Court may make a Rule on him ad replication, and so there may be a special Entry made of it; wherefore non allocatur. Hard. 504. Patch. 21 Car. 2. in the Exchequer, Attorney General v. Farnham Town.

Keeling said, that a Man may discontinue his Action in B. R. before an Action brought in C. B. But if he do begin in C. B. and then they plead another Action depending in B. R. and then they discontinue, he took it that the Attorney ought to be committed for this Practice. Mod. 41. pl. 95. Hill. 21 & 22 Car. 2. B. R. Anon.

20. In Debt on Bond to perform an Award, but in the Replication the Plaintiff mptook the Day of the Tender of the Award, and upon Demurrer Rule was given for Judgment for the Plaintiff; but upon Exception taken the Plaintiff prayed Leave to discontinue on Payment of Costs, and because the Mutilion was in so petit a Matter, and the Plaintiff had a just Deb; the Court gave Leave to discontinue the Action on Payment of Costs. Saund. 73. Patch. 22 Car. 2. Roberts v. Marriot.

21. In Affirmpt for Money due on Accompt stated between Merchants, the Defendant pleaded the Statue of Limitations, but upon Argument it was doubted, whether it appeared sufficiently upon the Declaration that the Account was stated; and after the Plaintiff prayed Leave to discontinue, and it was granted though after Argument. Lev. 298. Mich. 22 Car. 2. B. R. Martin v. Delboe.

22. In Debt upon Obligation for Performance of Covenant, the Court permitted the Plaintiff to discontinue after Argument, and though the Action was brought for the Penalty. 2 Lev. 124. Hill. 25 & 27 Car. 2. Rea v. Barnes.

After Issue joined, on a Verdict given, the Plaintiff cannot discontinue without Leave of the Court, which is never granted but upon Payment of Costs. G. Hist. of C. B. 219.
Continuance and Discontinuance. 461

24. After a Writ of Inquiry returned, the Plaintiff cannot have Leave to discontinuance; Per Eyre J. ablente Hole. Comb. 261. Patch. 6 W. & M.

25. The Plaintiff brought an Action for 400l. for so much Money had; Salk. 177, and received of him by the Defendant, who pleaded an Attainer of High Treason in Abatement; The Plaintiff replied, that after the Attaier there was, and before the Action brought, he was pardoned, made petit Judicium & a Discontinuance for; and upon Demurrer per Cur. the Replication is ill continuance, cited, for the Words Damnum fun should have been left out, and of the Mistake of the Plaintiff was, and therefore Rule was made that he might discontinue without Costs. 3 Mod. 291. Patch. 2 W. & M. in B. R. Biffe v. Harcourt.

26. Discontinuance by Leave of the Court may be after Special Verdict, the Court but not after General Verdict; for in the Case of a General Verdict it doubted if would be the having as many new Trials as the Plaintiff pleads; but a give Leave Special Verdict is not complaisant and final; but even in that Case it is to discontinue great Favour. 1 Salk. 173. Patch. 8 W. 3. B. R. Price v. Parker.

27. In Error, Want of Original was assigned for Error, the Original having been left upon the Death of Plaintiff below's Attorney; upon Adjournment of this Fact the Lord Keeper granted them a new Original, and that the S.P. should be certified, and a Certiorari being brought, and the Original does not being certified, now the Defendant in Error would bring upon the Matter, in order to have his Judgment affirmed, and Costs; And now it was moved that this would be very hard upon the Plaintiff, who at the Calverly Time of the Writ of Error brought good Cause, though that were S.C. and now cured by a new Original; and for this the Case of Raydon and Rapson, about 3 Years before, was cited. But per Cur. the Plaintiff cannot discontinuance his Writ of Error without Leave of the Plea Court; for if you do not align Error we will affirm the Judgment, and there cited, the Court will make no Rule. 12 Mod. 561. Mich. 13 W. 3. Sir Richard Leving v. Lady Calvry.

28. In Debt the Declaration was of Michaelmas Term, and the Plea-Roll of Easter Term, and no Continuances cured; and upon Demurrer this was shown to the Court as a Discontinuance, but they said that the Practice is never to enter Continuances till the Plea-Roll is made up, tho' the Declaration be of 4 or 5 Terms standing. 1 Salk. 179. pl. 7. Patch. 2 Ann. B. R. Cardus v. Padley.

Continuance and Discontinuance.

30. After special Denomoure, Plaintiff had Leave to discontinue on Payment of Costs. 6 Mod. 82. Mich. 2 Ann. B. R. Williams v. Farrow.

31. An Original was 7 Geo. and the Declaration was 9 Geo. and no Continuances entred between the one and the other. This being moved in Error of Judgment given for the Plaintiff, it was answered that the Continuances might be entred at any Time, and that when entred, the Plaintiff is intitled to his Judgment. The Court was of Opinion that the Attorney ought to be punished for making up a second Record, but that the Plaintiff must have his Judgment. 8 Mod. 243. Patch. 10 Geo. 1. Hawker v. Hinton.

(A. 3) Continuance. In what Cases it must be; and how many Days must be given.

1. In Attaint, when the Parties have Day in Court upon Verdict to hear their Judgment, the Judgment shall not be given till the 4th Day, and the Attaint ought to be Telle after the 4th Day of the Judgment, and if not it shall abate. Br. Jours. pl. 42. cites 9 Aff. 21.

2. Quod permittit was brought of the Plaintiff's own Seelin in the Debet & Solie, and counted of being disturbed of his Way, and the Defendant demanded the View and had it; and upon the View he had Day as in Plea of Land, because it is to receive Inheritance; and after Appearance, a Default, a Disturings shall be awarded in Lieu of a Petit Cape, and thereupon he shall have Day, as in Plea of Land. Adjudg'd &c. Fitzh. Tit. Jour. pl. 35. cites Trin. 50 H. 6. 8.

3. Pone was sued by the Defendant in Replication, to remove &c. and the Writ was Et dic praesto quiescit quod fit hic tali Die &c. and there were not 15 Days between the Telle and the Return, and therefore was challenged; Per Littleton it is good; For before the Statute of York, a Man need not have 15 Days in any Case, and the Statute is in Attachment and Diffret's &c. and this Pone is at the Common Law, and (dic. quiescit) is only to give Poenix to the Plaintift; as in London the Tenant vouched a Foreigner, and they gave Day to them in Bank, this need not to have 15 Days. Per Brian (dic) counterwaits a Summons, therefore ought to have 15 Days; but contra in Writ of Error, there is no Proces, but the Proces shall be by Scire Facias atter, and (dic. quiescit) is to give Garnishment to the Plaintiff, and is not like to Foreign Voucher, which Chock agreed. Br. Jours. pl. 54. cites 12 E. 4. 11.

4. Per Jenney, Venire facias to be viewed against an Infant need not have 15 Days. Ibid.

5. And in Aid-Prayer by Baron of the Femes, he need not have 15 Days. Ibid.

6. But Pone sued by the Plaintiff ought to have 15 Days; for this has Summons against the Defendant and others, when 'tis sued by the Defendant; for then 'tis dic. quer, which was agreed by the Clerks. Ibid.

7. If Affise is brought against 4, and Judgment is given against them, whereupon all the 4 bring a Writ of Error, and upon a Scire Facias Quare Execucionem habeo non debet of one them only appears, and the rest make Default, and he that appears offers Errors by himself, and the Defendant in the Writ of Error pleads in Nulla cet erratum, the Writ of Error is discontinued; And in this Case, he that appeared ought to have dray'd Proces ad sequeum finul; and thereupon Judgment of

Seve-
Continuance and Discontinuance.

Severance ought to have ensued; per Popham. Yelv. 3, 4 Trin. 44 ment by Eliz. in Cause of Ld Cromwell v. Andrews. Per 6, with.
our suing a Summons and Severance of the others, is as null and void; and therefore, though the
Writ be good, yet they would award Execution; for the Writ of Saec Facias Quare Executionem
whereof non debet est as a Sure to cause the Plaintiff to allege the Errors; and when it is returned
false fact, and nothing done thereupon (for this Allegement of Errors by himself only is as if nothing
had been done thereupon) Execution shall therefore be awarded; and though there was now a Year
pulled after the Return, and at this Time no Judgment is, that there shall be Execution, nor that
any Continuance was ended, yet it is not material, for there never shall need any other Saec Facias
to be awarded, but Execution shall be taken, when there is an apparent Default in the Plaintiff that
he would not alleged Errors; and therefore the Writ was ended, and Execution awarded.—
Noy. 44. S. C. but S. P. does not appear.

8. Error of a Judgment in C. B. for that the Defendant being then
and now an Infant appeared by Attorney, and not by Guardian; He was
admitted by his Guardian to alleged that for Error; It was moved that
the Writ of Error was discontinued, because the Entry is, ad quem
down predict. Carve per annumatium saeun infra Script. where it ought to
be Pro cedulae saem &c, and three Justices peribus absentibus were of
that Opinion; wherefore the Plaintiff prosecuted a new Writ of Error.

9. Debt was brought upon four Bonds to pay Money; three of the Ac-
tions were tried in London in Trinity Term, and the fourth was tried at
Lent Affises afterwards, and there was not any Continuance from Tri-
inity Term to Lent Affises, which was much intitled upon, yet Judg-
ment was given for the Plaintiff. Cro. J. 329. in pl. 8. cites Pach. 10
Jac. B. R. Rot. 104.

10. It was said by the Prothonotaries, that if a Nihil Dictat is entered
in Trinity Term, and a Writ of Enquiry of Damages affixes the same Term,
that there needs not any Continuance; but if it be in another Term it is
otherwise. The Court said, if it were not the Course of the Court they
would not allow of it, but they would not alter the Course of the
Court. The Words of Continuance were, Quia vicicumes non milit

11. An Eject taken out once may be continued 7 Years; Agreed per

(B) What shall be a Discontinuance.

1. THE Course of the Court of the King's Bench is to enter no
Continuance upon the Roll till after Issue or Demurrer, and
then to enter the Continuance of all upon the Back before Judgment.

2. If a Plurisy Replevin be returned in Michaelmas Term, that the Ma 401. pl.
Defendant claimed Property, and after nothing is done, nor any Ap-
ppearance nor Continuance till Easter Term after, at which Term they
appeared and pleaded, and Judgment was thereupon given, the Ap-
Continuance was between Michaelmas and Easter, yet this is not the
not any Discontinuance, because there is not any Continuance till Plaintiff
Ap-
Continuance and Discontinuance.

may have Appearance; for the Parties have not any express Day in Court, and where there is not any Continuance, there cannot be any Discontinuance. Cr. 38 Eliz. B. R. between Green and Ludlow adjudge.

Cro. C. 276. pl. 17. Ludlow v. Lamb, S. C. and Judgment affirmed; for by the finding the Verdict, that Defendant, against whom it was found, is out of Court, and no Day shall be given to Defendant against whom a Verdict is found; because he has no Day in Court to plead any Thing; but in this Case Day is only given to him who is to plead to the Demurrer.

Lane 81. 86. So, S. C. adjudged, but by Tanfield Ch. B in some Cases a Day should be given by the Judge of Nisi Prius, but that shall not be a new Day, but only the Day within contained, and that only in special Cases, viz. if the Issue be joined, and at the bringing the Evidence there is a Demurrer, in this Case the Judge gives to the Party the Day within contained, as it appears to H. S. Rot. 827; and Hill in H. S. accordingly, in C. B. but Hill. 35 Eliz. Rot. 448. upon Nuisance at the Actor’s no Day given; So if the Party confess the Action; And so if there be a Bill of Exceptions no Day shall be given, cites Hill. 35 Eliz. Rot. 531. in H. B. But perhaps it will be said, that these Authorities do not much with the principal Case, because it is upon a material Plea, yet, he said, it is all one, and therefore in Case of a Release pleaded after the Last Continuance this is recorded, and yet no Day is given, as appears Trin. 20 H. S. Rot. 906. in C. B. and this was upon a new and collateral Matter, as the principal Case is, and cited Trin. 29 H. S. Rot. 247; or 2447. upon an Arbitrement pleaded, and divers other Proceedings upon the same Point.

Roll Rep. col. pl. 46. Pipe v. Alger, S. C. Coke Ch. J. said that, as he remembered, it had been resolved, that there was no need of any Continuance, but Dodridge said, that the Plea is at an end by the first Judgment, but the Clerks said, that they always used to make Continuances after the first Judgment, but some of the Clerks said, that after the Writ of Inquiry is served, it is not usual to make any Continuance. — Bult. 248, 209. S. C. Coke Ch. J. said, that it is good either Way; And all the Clerks of the Court being demanded, answered, that there was no necessity to enter a Continuance after the Writ of Inquiry was ordered; and Judgment affirmed accordingly.

6. But
Continuance and Discontinuance. 465

6. But he needs not in this Case to make any Continuance after the second Judgment. 

7. If a Judgment be given upon Nil Dicte, a Writ of Inquiry of Damages may入库 the same Term, in which the Judgment is given without any Continuance, but not in another Term. 

8. If a judgment be given upon nil dicte, and said to be adjudged, and that the Proceedings are 10. This is the Court be B. R., but in Banco it is otherwise, for whereas this is, that it is a Writ of Inquiry be awarded returnable the next Term, no Idem Dies is given to the Plaintiff; but otherwise it is v. Green, in Banco Regs. 

9. In an Action of Debt in an inferior Court, if the Defendant acknowledges the Action at one Court, and no Judgment is entered at this Court, but at the next Court Judgment is given for the Plaintiff, if there be no Continuance between the said Courts, this is a Discontinuance. B. 11. If a Writ of Inquiry be given returnable the next Term, no Continuance be v. Thorton and Wade, per Cutiam adjudged, and a Judgment given in Bank reverted accordingly. Intracl B. 11 Car. Rot. 318.


11. If Tenant in Precipe quod reddat vouches M. who vouches over N. who comes by Proces, and Day is given upon Efferm between the Demandant, the Tenant, and M. &c. without mentioning of N. this is Discontinuance of Proceeds against N. though he never entered into the Warranty. 

12. Precipe quod reddat, at the Peti Cape the Demandant prayed Seisin of the Land; and the Tenant alleged Discontinuance of Proceeds, in as much as in the Original the Tenant is named J. S. of C. and in the Writ of View C. is left out, by which the Demandant counted against the Tenant, for the Fault appeared in the Record; Quod Non, the Default saved Seisin of the Land. 

13. Censure the Parties are at Issue, and the Tenant is by Attorney, and Br. Effon, the Tenant himself is enquired after the Issue, there this is discontinued, and for the Attorney ought to have been enquired.
Continuance and Discontinuance.

14. In Debt it was agreed, that if he who has made Attorney be enjoined, and his Attorney not removed, it is Discontinuance of the Proces; for the Attorney ought to have been enjoined. Br. Discontinuance de Proces, pl. 6. cites 45 E. 3. 10.

15. If the Pleauntiff in Debt casts esjoyne where he has Attorney in Court, and the Esjoyne is adjourned and adjourned, there the Proces is discontn-rued. Br. Discontinuance de Proces, pl. 56. cites 45 E. 3. 10.

16. By the Causing of a Protection the Day is discontinued, and after the Year and Day, upon Refummons or Reattachment, the Plea shall be recontinued; but the Plea may be revived by Refummons within the Year upon the Repeal of the Protection. Jenk. 26. 27. in pl. 50. cites 3 H. 4. 10.

17. A Man had two Attorneys in Formuot, and the one was esjoyne after Appearance, and the other not, and the Esjoyne was adjourned and ad- djourned, and after this Matter was alleged for Discontinuance; because the one was not esjoyne, and by the bell Opinion it is no Discontinuance, and especially because the Exception was taken before the Esjoyne was adjourned and adjourned, but Quere, for adjournatur. Br. Difcontinuance de Proces, pl. 10. cites 11 H. 4. 53.

18. Asswyry by one in Replacyn against three, and for to issue, and the other two said that they came in Aid of the Assistant; now if the two have not Day and Continuance by the Roll from Day to Day all is discontinued; Nota. Br. Discontinuance de Proces, pl. 22. cites 21 H. 6. 23.

19. Certiorari came into Middlesex to remove Appeals and Indistsments, and an Appeal was remanded into Middlesex because the Defendant ought to have pleaded Not Guilty and challenged twenty, by which the Jury remained for Default of jurors and twenty four, for, and this because the Proces shall not be discontinued, for nothing is recorded in Bank but the Original; quod Nota. Br. Discontinuance de Proces, pl. 52. cites 16 E. 4. 5.

20. At the Venire Facias returned, the Defendant is esjoyne and adjourned, the Habeas Corpore Juratorum shall have the same Day as the Esjoyne has by Adjournment; for otherwise it shall be Discontinuance of Proces against the Jury. Br. Discontinuance de Proces, pl. 53. cites 21 E. 4. 29.

21. In Writ of Error it was in a Manner agreed, that where the Parties are at Issue and intratur, quod jurata inter illas pontur in Respa- buste uique tali Dice &c. which it is not used to give, & when Dies datur eft Paritions predisidis &c. and yet no Discontinuance. Br. Discontinuance de Proces, pl. 41. cites 2 R. 3. 9.

22. In Affizze the Tenant appeared by Bailiff, and Day is given to the Party aforesaid, and not to the Bailiff by Name, he may plead divers Pleas &c. and yet well by all the Justices except Brian; and Judgment given accordingly; for the Tenant is always Party, and may appear by another Bailiff alter, or by Attorney or in Person and plead. Br. Discontinuance de Proces, pl. 34. cites 6 H. 7. 15.

23. In Writ of Error, if the Errors are not affigned, and Scire Facias thereof had the same Term, this is Discontinuance. Br. Discontinuance de Proces, pl. 45. cites F. N. B.

24. No Discontinuance shall be by the Death of a Stranger to the Or- iginal as of the Prefer in Aid, Voulee &c. viz. Death of a Stranger to the Writ between Divisions of the Writ. Br. Discontinuance de Proces, pl. 60.

25. In Affizze the Defendant appeared by Bailiff, and pleaded, and Contin- nuance is taken, Dies datur eft Paritions predisidis &c. &, non Balnce, and well, and no Discontinuance. Br. Discontinuance de Proces, pl. 63.
Continuance and Discontinuance.

26. In a Case Imp' against two at the Pone, the Sheriff returns Nihil. Jenk. 59. as to one of them, and says nothing of the other, this is a Discontinuance in pl. 9. S. P. of Proces. Jenk. 37. in pl. 5.

27. Error of a Judgment in Fojamento was assigned, that no Day was given to the Parties in a Writ of Inquiry of Damages, fed non allocabatur ; the Court for the Defendant is not to have Day, and the Plaintiff is to attend at his of C. B. held Per ill', and for is the Court in C. B. but it is otherwise in B. R. Cro. E. accordingly, and the Error affirmed

28. Proces was served by a Servant at Moe within a Franchise; but because he was not an Officer to B. R. he cannot be examined, and consequently there is a Discontinuance of Proces. Arg. Palm. 103. cites Eliz. Willet v. Crosby.

29. After Judgment in a Court of Pleas under an Action on the Cafe for Words, it was assigned for Error, that a Writ of Inquiry of Damages was awarded, and no Day given to the Plaintiff; and this was held to be Error. Cro. E. 773. pl. 2. Mich. 42 & 43 Eliz. B. R. Howell v. Johns.

30. Judgment in Trover in Shrewsbury Court by Default, and a Writ of Inquiry of Damages was returnable the next Court, at which Day the Plaintiff appeared, and the Writ was returnest for error; but jura in quarto petitio in quarto asignavit Proccam Curiam, and the Day express finely; Judgment continued, and then the Plaintiff appeared again, and the jura in quarto petitio in quarto reversed, to the 12th of June, but the Plaintiff did not appear on that Day, nor had any Day over, and yet jura in quarto petitio in quarto again, to such a Day, at which Day the Jury appeared, and gave 20l. Damages, for which the Plaintiff had Judgment, and likewise for his Costs. It was assigned for Error, that the Plaintiff not having Day at the last Adjournment over, all is discontinued; for by the first Judgment the Defendant is out of Court, but the Plaintiff attends de Die in Diem, his Judgment not being perfect till the Damages are inquired ; so that the Plaintiff having Day to the 10th of June, and he then not appearing, the Court Ex Oicio ought not without Prayer of the Plaintiff to make Continuance of the Jury, for this always ought to be at the Prayer of the Plaintiff; Quod futi consciam. Yelv. 97. Hill. 4 Jac. B. R. Harrington v. Laundifon.

31. Another Discontinuance was assigned, because the Jury was continued over by a loutin in repetulu, which never shall be unlesse upon an Illus to be tried between the Parties; for the Jury, upon a Writ of Inquiry of Damages, is only an Inquest of Office, which has no other Continuance than by a Non milit Breve by the Officer or the Sheriff; Quod futi consciam per tot Cur. and Judgment reversed. Ibid.

32. Want of an Original was assigned for Error in Ireland; The Defendant in Error pleaded that such a Day an Original was filed and concluded to the Country, and thereupon the Judgment was reversed. But this Judgment there was reversed here because the Matter was discontinued; for the Defendant concluding to the Country where the Matter of his Plea should be tried by the Record, viz. whether the Original Write was delivered or not (because that appears of Record) and then the Plaintiff in Error not responding or denying upon the Plea of the Defendant, the Whole was discontinued. Yelv. 117. Mich. 5 Jac. B. R. Scantjohn v. Connyn.

33. A Discontinuance can never be objected Pendente Placito before Judgment,
Continuance and Discontinuance.

...for it may be continued at the Pleasure of the Court; But after Judgment in another Term it may be well rejected, and no Continuance can then be entred; Sic dictum fuit. Cro. J. 211. in pl. 3. Mich.

34. Three Executors recovered in C. B. in Debt by Default. The Defendant brought Error, and assigned a Discontinuance, viz. That the Suit being by three Executors, and at the Day, which they hid by the Roll upon a Continuance, two only appeared; and by the fame Roll Day was given to all three upon another Roll. Per to. Cur. this is a Discontinuance, and cannot be amended; for Credit ought to be given to the Roll, and therefore non Conflat that more than two appeared, and that the third made Default, which is a Non-profecution of the Defendant at that Day, and shall go to all three afterwards, and Judgment was reversed. Yelv. 155. Trin. 7 Jac. B. R. Patton v. Luther.

35. Error of a Judgment in B. R. in Debt. A Scire Faees was awarded Ad unducum Errores returnabae 11 Mai. 18 Jac. and there was not any such Day of Adjournment in the Exchequer-Chamber; therefore it was helden to be a Discontinuance. Cro. J. 620. pl. 6. Mich.

36. When an Issue is found against the Defendant, it is not material whether he has Day given him to appear or not, for he demands nothing but to discharge himself, tho' true it is that sometimes Day has been given, but it is not necessary; but the Plaintiff ought always to appear, and to have Day by the Record. Palm. 333. Hill. 20 Jac. B. R. Rogers v. Allen

Bid. says that according to this is the Cafe of the Recovery in Wade by Default, where, upon the Writ of Inquiry, the Defendant had not any Day in Court. 17 E 3 58.

38. It was assigned for Error of a Judgment in P. that one Day of Continuance between the Plaintiff and the Issue was on a Sunday, and to non Dies Juridicus; fed non allocatur; For per Cur. it is void, and as no Continuance, and so being after a Verdict is aided, and Judgment affirmed Nifi. 2 Keb. 448. pl. 15. Hill. 20 & 21 Car. 2. B. R. Hele v. Davis

39. Error to reverse a Judgment was assigned, that one of the Continuances was to a certain Day of the Month, whereas it ought to be ad proximani Curiain; and Judgment was reversed Nifi. Sty. 70. 71. Mich. 23. Car. B. R. Knife v. Johnfon.

40. A Sci. Fa. issued against several Tenanted; but the Pavol demurred for the Infancy of one. After his Age a Re-fummns issued, but before the Return thereof one of the Tenanted died, who was returned summns'd both upon the Sci. Fa. and upon the Re-fummons. By this all the Proceedings on the Sci. Fa. are discontinued, and the Parties out of Court, and the Death of one Tenanted puts the whole without Day; and Hole Ch. J. cited Kelw. 69. & Fitzh. Abr. Tit. Error. 7. Carth. 230, 251. Mich. 3 W & M. in B. R. Blake & al' v. Gell.

41. Appeal de morte vici carried down to be tried by Nifi Prius; Appellant did not put in the Record; held neither Nonuit nor Discontinuance, but appellant to pay Costs. 12 Mod. 65. Mich. 6 W. & M. Sutton v. Sparrow.
Continuance and Discontinuance.

42. In *Debt* on a Bye Law in the Mayor's Court for refusing to serve as Sheriff, the Plaintiff was levied on the 15th November, and then the Defendant gave *Bill* to appear the next Day, viz. the 16th, and instead of continuing from the 15th to the 16th, *Day* is given from the said 15th *Day* of November to a certain *Day* in June, and then the *Entry* is, that the *Cause* was moved by *Hab. Corp. to C. B. and sent down by *Procedendo*. This was held to be a *Discontinuance*, and not amendable, being upon a *Demurrer*. 12 Mod. 669 to 690. Hill. 13 W. 5. City of London v. Wood.

43. *Copias of Process* must have *Continuance*, and therefore must be from *Term* to *Term*; but *Writs of Execution* need none, and therefore you may have a longer *Return*. Per Cur. 12 Mod. 506. Patch. 13 W. 3. Walker v. Humphry.

44. In an *Information* for a *Libel* called the Observer, the *Venire Facias* was issued in *Trin. Term*, returnable *Die Lune the 1st. Day of Mich. Term* following; but the *Diffring* as before was to *Die Martis the Day following* (id est) the 24th of Nov. whereas it ought to have been the Day of the Return of the *Venire Facias*; and this was held to be a *Discontinuance* and not amendable. Mich. 3 Ann. B. R. 'The Queen v. Tutchin.

45. *Appeal of Murder* against B. he *Demurs to the Bill of Appeal* and pleads over to the *Felony*, upon which *Iffue* is joynt, and a *Venire Facias* is awarded with a *Cesst processius* until the *Demurrer* be determined; it was objected that here was a *Discontinuance* of the *Iffue*, the *Entry* being *Quod ad triandum Exitum praeditum Ceset Processius &c.* whereas the *Venire* should have been continued with a Vicecomes non milit Breve. The Court held this no *Discontinuance*, but that it was the most proper *Way*; for it is vain to proceed to Iffue until the *Demurrer* be determined; for if the Bill abates there is an *End*. 11 Mod. 232. 233. Trin. 8 Ann. B. R. Smith v. Bowen.

(B. 2) What a Discontinuance, and what a Miscontinuance.

1. *SECOND Deliverance* was brought against an *Abbot* and *Canonique*, the Plaintiff did not come, they prayed *Return irrepleviable*; and the Court saw the Original, which was *Abbot* and *Co-Canon*, by which the Court said that he shall commence again to this *Variance*, and so see that this is *Miscontinuance*. *Br. Discontinuance de Procefs*, pl. 17. cites 21 E. 3. 49.

2. If *Copias* be awarded where *Distrefs ought to be awarded*, and the *Defendant* is taken and *amissed* he shall go quit, and the *Process* shall *Iffue* where it first *Iffued* out of the Court, and *Distrefs shall Iffue*; for *tis Miscontinuance* and not *Discontinuance*. *Br. Discontinuance de Procefs*, pl. 37. cites 47 E. 3. 14.

3. *Debt against 3 Executors*, *Proces* continued till the *Pharies Copias forced*, and they made *Default*, the Plaintiff sued *Exigent* against 2, and *Pharies Copia* against the 3d, and the one rendred himself at the *Exigent*, and the others did not come. Per *Hull*, *sue new Exigent* against them all, and make *Amendment* where the *Process* first *Issued* out of the Court. Per *Hanks*, he shall *answer*, for he, who comes in by one *Wirt* where he ought to come by another, shall *answer*. *Br. Discontinuance de Procefs*, pl. 11. cites 12 H. 4. 17.

4. And per *Farning T. 10 E. 3. where Petit Cape *Iffued* for Grand Cape, the Procefs is not *Discontinued*; and so it seems *only Miscontinuance*.
Continuance and Discontinuance.

once because they have Day in Court, and therefore the Executor shall an-
swer as it seems. Ibid.

5. Precipe quod reddat of 120 Acres of Land, the Writ of View was of
100 Acres of Land omitting 20, and therefore by Award he sued new
Writ of View; for the Proces is not discontinued, but miscontinued.
Br. Discontinuance de Proces. pl. 18. cites 7 H. 6. 8.

6. Detinue of Charters, Proces is filed at the Exigent, which was al-
leged for Discontinuance of Proces; for Exigent lies not in this Action,
and it was adjudged Miscontinuance, and not Discontinuance, by
which they commenced where the Proces first filed out of Court.
Quod Nota. Br. Discontinuance de Proces. pl 50 cites 8 H. 6. 29.

7. Detinue of a Box with Charters and Muniments, Defendant came by
the Exigent, and the Plaintiff counted in special of a Charter, by which he ceded
his Father &c. and now because it is of a Charter of Land,
therefore Exigent ought not to have filed, but this did not appear be-
fore the Court, by which it was taken miscontinued, but not miscontinued,
and the Defendant appeared, and pleaded as if be had not came by Exigent,

8. Note, that if Exigent be awarded in a Case where it does not lie; As
in Action upon the Cafe before the Statute of st, the Proces is illly con-
tinued, but is no Discontinuance. Br. Discontinuance de Proces. pl. 61.
cites 10 H. 7. 21.

9. In Trepass, the Defendant joined 2 Issues, the one in L. and the oth-
er in Middlesex, and Venire Facias issued to the Sheriff of Middlesex who
tried both; and by the beit Opinion, this was Miscontinuance of the
other Issue in L. and not Discontinuance; for it shall be intendeid that se-
veral Venire Facias’s issued to try both. Br. Discontinuance de Proces.
pl. 62. cites 11 H. 7. 5.

10. In Precipe quod reddat against Baron and Feme, the Baron made
Default, and the Feme prayed to be and was received and plead in Bar,
and it was found with the Demandant and he prayed his Judgment.
Per Wood J. this is a Miscontinuance, but per Vavilof J. it is a Dis-

11. Precipe quod reddat, the Venire Facias was returned before the com-
mon Day. Per Frowick Ch. J. this is no Discontinuance of Proces but
Miscontinuance of it; for they have Day in Court but not such a Day as
they ought to have. Br. Discontinuance de Proces. pl. 23. cites 21 H.

7. 16.

But if Proces be awarded Terminus Tuint, returnable terms Hillarin, this is Discontinuance of Proces,
because one Term must be omitted, therefore this is Discontinuance, per him. But Brook says Quere
inde; for the Plaintiff may delay himself. Ibid. — And if Exigent be returnable at a Month, this is
Miscontinuance and not Discontinuance, but he ought to have 5 Months and Alet蜩 contrast shall be
granted. Quere, for it seems that the one and the other is Error. — — — Ibid. 144. Arg. cites S. C.

12. There is a Diversity between Discontinuance and Parol without
Day, for the Discontinuance * puts the Party to new Original, but where
the Parcel is without Day this may be revived by a Reinstated or Reat-
tachment; for the Original remains. Br. Discontinuance de Proces.
pl. 43.

13. A Miscontinuance is where the Continuance is made by undue Pro-
cess; but a Discontinuance is where no Continuance is made at all. Jenk.
57. at the End of pl. 5.

* S. P. Ibid. pl. 47. cites
34 H. 6 20.

— Br. N.
C. 116. pl.
529. cites
S. C.

Jenk. 59. in
pl. 11. S. P.
Continuance and Discontinuance.

1. In an Action of Debt in a Borough Court, if Proceedings issue to the
Sorjeant, who returns his Precept served against the Defendant, and
thereupon a Day is given till the next Court for the Plaintiff to de-
clare against the Defendant, and it is not entered, that Idem Dies
datus et Deiendent, this is a Discontinuance. B. 3 Car. between
Culpepper and Vaughan adjudged in a Case of Error, and the Judg-
ment given for the Plaintiff upon his plea in the Borough Court
of Datchampston in Devon, reversed accordingly.

2. If a Plaintiff by entered in an inferior Court that holds Plea by Pre-
scription, and there the Defendant imparts, and thereupon a Day is
given to the Parties till the next Court there to be held, without in-
mitting any Day when the Court shall be held, but it is alleged after in
the Record, at which Court, &c., such a Day, held Secundum Con-
finnendum &c. this is good, and no Discontinuance, because it may
be, that they have not and certain Day, but may hold a Court
when they will, as at the Great Sessions in Wales; and it shall be
so intendeay, when it is said, that at the next Court held Secun-
dum Continuendum &c. Mich. 7. B. R. between Jefion and
Lase, per Curtiam adjudged upon a Mist of Error upon a Judg-
ment given in Covenbury Court, and the Book of Tit. D. 254
den, and said, that there were other apparent Errors for which
the Judgment was reversed.

3. [But] if a Plaintiff be entered in an inferior Court, and the De-
fendant being summoned appears, and the Plaintiff declares, and
thereupon the Defendant imparts till the next Court, and then intends
in Bar, and thereupon the Plaintiff imparts to the next Court to reply, and
there no Day is given to the Defendant, but at the next Court the
Plaintiff demurs, this is a Discontinuance, for Idem Dies ought
that have not and certain Day, and may hold a Court
when they will, as at the Great Sessions in Wales; and it shall be
so intendeay, when it is said, that at the next Court held Secun-
dum Continuendum &c. Mich. 7. B. R. between Aug-
son and Lord Roberts adjudged in a Case of Error, and the Judg-
ment given in the Hundred Court of Pentney in Crowland re-

4. In a Suit Factus upon a Recognizance of the Peace against J. S.
who was bound by it to keep the Peace, the Defendant imparts
and Day is given to him, and Idem Dies * is not given to the Plaintiff,
yet this is not any Discontinuance, because the King is Party to it;
and when the King is Party no Day is given to him, for he is
always present in Court. B. 10. B. R. between The King
and Griffiths, per Curtiam.

5. In Debt, the Plaintiff and Defendant both appeared by their Attor-
nies, and Day was given to both the Parties in Stato quo mans, Salvis Par-
tibus &c. till 8 Hill at which Time the Defendant made Default. Held,
that the Plaintiff should not have Judgment, but he must sue our fur-
ther Proceedings because Dies Datus is as strong as an Imparlance. Mo.

6. In a Court of Piespencers the Adjournment was entered Idem Dies
datus etc., where it should be Eadem Hora, and yet held good. Mo.

against the Heirs and the Ter-rentants. The Heirs appeared, but Nihil di-
pl. 4 Mich. E. cts. and four Ter-rentants appearing returned warned, pleased, that two of the. If R.
then we were Tenants of Sub Land with A. and B. who were not warned nor S. C. but
named.
Continuance and Discontinuance.

S. P. does not appear.
— N. 612.
pl. 850. S. C.
but S. P.
does not appear.

named, and demanded Judgment of the Writ &c. and thereupon the Plaintiff demurred, and on pleading this Plea in Mich. Term, Dies datas off partibus praedictis till Hill. Term. It was moved, that this was a Discontinuance of the whole; for the Heir here Nil dicit, and to Nihil ought to be entered against him, and not any Continuance, but that the Dies which is given partibus praedictis, is intended only to those Tenants on whose Plea the Demurrer was, and not to the Heir, and that so all is discontinued; but it was answered, that it was continued to the Heir as well as to those who pleaded; for it is Partibus praedictis inde &c. and all the Court, prater Gawdy, held the Continuance well enough. Cro. E. 739, 740. pl. 13. Hill. 42 Eliz. B. R. Holland v. Dauntrey.

8. Action upon the Case in the Court of S. The Defendant was enjoined, and had Day by Effin, and the Plaintiff had the same Day, at which Day the Defendant, being demanded, appeared not, but made Default, & habuit Dies per Default secundum Contractum Ville praedicta given by the Court, (viz. such a Day) at which Day both Parties appeared, and Judgment was given against the Defendant by Nihil dicit. Adjudged that no Day could be given him when he was out of Court, and the Custom alleged of giving Day cannot help it; for no Custom can help that which is against Common Law and an apparent Discontinuance, and therefore Judgment was reversed. Cro. J. 357. pl. 15. Trin. 12 Jac. B. R. Peplo v. Rowley.

Jo. 330. 331. pl. 2. Court v. the Bishop of St. David's, S. C. and the Court resolved, that no Dies datus can be to any but upon their Appearance S. P. and therefore where there Capias's and Exigent are accorded, and the Defendant appears upon the Exigent, and has Dies datus, and after makes Default, a Dilatings shall sile, and upon this returned Nihil, there shall sile three other Capias's and Exigent; But otherwise it suffers after Imparlane. Br. Continuance and Imparlanes, pl. 1. cites 19 H. 8. 6.

11. It was moved for Error of a Judgment in Bristol, that in one of the Continuances (Idem Dies datas off Partibus praedicit) it is not said per Cor. But ruled to be well enough, it being all as one Ac., but it would be otherwise in the Verdict. Comb. 285. Trin. 5 W. & M. in B. R. Hawksworth v. Hawksworth.

(C. 2) What Days shall be said the same Day.

1. N O T E, that every Adjournment is a several Day in Affils, but the Day of Nis Prin, and the Day in Bank, are all one Day, but not to all Intents. Br. Jours, pl. 60. cites 47 E. 3. 1, 2.

2. Note,
2. Note, that the first Day of the Nisi prius, and the fourth Day after, and eight Days after or more, which the Justices take to be advised, are but one and the same Day, and when they give their Judgment, this shall have Relation to the first Day, to that it Protection shall be cast at the first Day, which is expired mense, yet this shall serve, and shall be allowed. Br. Jours, pl. 83. cit. 10 H. 6. 4.

3. Of default recorded upon Tenant for Li-ion, where he in Reversion prays to be received after. Ibid.

4. And where a Man fails of his Record at the Day, and the Failer is recorded, and after (but before Judgment) be brings the Record in, this shall not serve when Judgment is given; for this shall have a Relation to the first Day. Ibid.

5. The Day of Nisi prius and the Day in Bank is all one and the same. S. P. to plead any Plea mense between the Day of Nisi prius and the Day in Bank, but not to make good a second Writ purchased and termed mense between those Days. Br. Jours, pl. 13. cit. 40 E. 3. 55. — Br. Nisi prius, pl. 5 cit. S. C. — S. P. So that a Releafe made mense between these two Days cannot be pleaded in Bank; but it seems, that a Release made mense between the Day of Nisi prius recorded and the Writ of Nisi prius awarded and the Day of Nisi prius, may be pleaded at the Day of Nisi prius. Ibid. pl. 51. cit. 21 H. 6. 10.

It is not one and the same Day to all Intents, for if a Man casts Protection at the Day of Nisi prius which is repeated at the Day in Bank, yet this shall have the Default of the Defendant at the Day of Nisi prius, and if he appear at the Day in Bank it suffices. Br. Jours, pl. 32. cit. 21 H. 6. 22. — S. P. Ibid. pl. 55. cit. 4 H. 6. 9.

6. The Words Ab Ol{fab Sancte Triniti shall be intended ab 240 Die Ol{sab} Sancte Triniti, and so fee that to this Intent the first Day and the fourth Day, and all Days mense shall be intended one and the same Day. Br. Jours, pl. 57. cit. 21 E. 4. 43.

7. All the Parliament is only one and the same Day. Br. Jours, pl. 91.

(C. 3) How Considered.

1. In Doli the Defendant was condemned, and Ca' &c. issued, and after Exigent thereupon, and be came upon Return of redditt i.e., and pleaded a Releafe of the Plaintiffs made after the Execution, and prayed Scire Facias thereupon against the Plaintiff to confess or deny the Deed, and had it; Quod nota, and so fee that this is not Day to plead, but upon the Scire facias to confess Deed &c. Br. Jours, pl. 68. cit. 22 Att. 91.

2. Error upon an Indictment of Trespass, which supposes the Trespass Die Jovis proximo post Dian Pentecostes, and it was assigned for Error, in as much as all the Week was Pentecost; Per Westton, Pentecost sealing the patience, quod et quinquc & co]te, quod et decem, quod et quinquies dozen Dies post Pentecost, and this Day is Dies Dominicus, wherefore plead over; Quod nota, by which he pleaded No such Vill of B. without Addition &c. Br. Jours, pl. 27. cit. 7 H. 6. 39.

3. Note where a Man is nonuitated this is referred to the Day which he had in Court, and not to the whole Term; Quod nota. Br. Jours, pl. 67. cit. 9 E. 4. 24.

4. See and note that the Vigil of the Feast is not Part of the Feast. Br. Jours, pl. 63. cit. 15 H. 7. 2.

6 E (C. 4) At
Continuance and Discontinuance.

(C. 4) At what Time, and when the Parties shall be said to have Day in Court.

1. In Praecipe quod reddat the Grand Jury, it was returned to the Court, and the Tenant came and made Defence and impleaded, and after came and said that the Writ was not served, and was received to it, and therefore it seems that such a Day is not to appear; for it it should, then the Default shall go quit, which shall not be, but ought to be fixed. Br. Jours, pl. 92. cites 22 E. 3. & Fitzh. Brief, pl. 393.

2. Where the Sheriff does nothing at the Alias, nor at the Pluries, by which Issued Writ to the Coroner to make Replevin and to attach the Sheriff to answer to the Contempt and to the Party, and afterDistress against the Sheriff, and because no Summons was awarded against the Plaintiff to receive his Beasts, therefore it is said that he has no Day in Court, and it he comes at the Day he cannot plead; by which when the Plaintiff came at the Day, he was not suffered to plead, but was compelled to find Pledges de prosequendo &c return habendo &c. and to sue Writ to the Coroner to make Deliverance and to attach the Party, and upon the Return of these Writs be hath Day in Court, and may plead, and not before. Br. Jours, pl. 14. cites 43 E. 3. 26.

3. In Replevin, at the Pluries the Sheriff did nothing, by which Issued Process of Contempt to the Coroner to attach the Sheriff to answer to the Contempit, but mentioned nothing of summoning the Defendant to answer; and they returned that the Sheriff is attached, and that they cannot have the View of the Beasts to make Replevin, by which Issued Distress to the Sheriff and Withernam de Awtis Def, and at the Day the Defendant came and prayed that the Plaintiff gave Deliverance of the Withernam, and said that the Beasts of the Plaintiff are dead in Bondy in Default of the Plaintiff, &c. non allocatur, for he has no Day in Court; but the Plaintiff was compelled to find Surety de Returno habendo &c. and pledges de prosequendo and Writ to make Deliverance of the first Distress to the Coroner. Br. Jours, pl. 70. cites 44 alf. 15.

4. He who is outlawed and has Charter of Pardon, and the Plaintiff is ready in Court, shall not be bound to answer immediately, but shall have Scire Facias against him to say why the Charter shall not be allowed; for neither the Plaintiff of Defendant have Day in Court till the Scire Facias be returned. Br. Jours, pl. 73. cites 46 E. 3. 15.

5. The Party has no Day to answer upon Process of Contempt till the Attachment. Br. Jours, pl. 22. cites 11 H. 4. 87.

6. In Replevin, the Plaintiff prayed Aid of A. R. who was seized in Fee and leased to him for Years, there the Prayee may join in Aid at the first Day in Person, and not otherwise; but he may join by his Attorney at the Day given by Process; Contra at the first Day when the Tenant prays. Br. Jours, pl. 58. cites 2 H. 6. 1.

7. Replevin & Alias &c. Pluries, and after Process of Contempt issued against the Sheriff, and be answered that he bad served this Writ, and that no other Writ came to him, and the Defendant came and prayed that the Plaintiff count against him, &c. non allocatur; for the Plaintiff has no Day in Court now, but only the Sheriff has Day in Court to answer to the Contempt. Br. Jours, pl. 82. cites 2 H. 7. 5.

8. At the Day that the Sheriff returned Mandavimus bullion &c. quad millium deit et Rofpoumum, and yet the Defendant was permitted to appear to plead to Alias. Br. Jours, pl. 87. cites Fitzh. Procesa 13.

1. **NOTE** per Luddington and Fitzjohn, if a Man who is *Debtor* to the King of Record be in Person in the Exchequer, he shall be compelled to answer without Proceses or *Day in Court*. Br. Jours, pl. 90. cites 40 All. 35.

2. *Contra* per Fitzjohn, if it be upon Surmise, and is not Debtor of Record. Ibid.

3. In Debt the Plaintiff recover'd, and he was not suffered to come after, and confess his Grief or Satisfaction; for he has no Day in Court. *Contra* upon Recognition, for this commences without Original; but *Writ* of Debt has *Day in Court*, and therefore shall have *Scire Facias*. Br. Jours, pl. 77. cites 47 E. 3. 24.

4. In *Writ of Error*, the Plaintiff cannot be non-suited, for he has no Day in Court upon it, but upon the *Scire Facias*; and *contra* in *Writ of Folshe Judgment*. Br. Jours, pl. 80. cites 20 H. 6. 18.


6. *Debt* by the King, which passed for him by *Nisi Prius*, and before the *Day in Bank* the King pardoned him all Debts, Trepasses &c. and after the King at the *Day in Bank* had Judgment, and after *Execution* and the Defendant pleaded a Release, and the King was barred; for the Defendant had no Day to plead it before, for the Day of the *Nisi Prius* and the *Day in Bank* are all one, and the Defendant cannot have *Audita Querela*, nor *Scire Facias ad eum sequend Falsum* against the *King*, and he shall have the Plea without *Day in Court* when the Execution fled, and therefore it seems that it was *founded* by Fieri *facias* or Ca. Sa. Br. Jours, pl. 61. cites 34 H. 6. 3. 50.

7. *Homine Replegiando* at the *Pluries*, and after *Proceses* issued against the Sheriff to answer the *Contempt*, and no *Day* given to the Defendant, and the Sheriff returned good *Corpus* *elungatur*, and yet the Defendant appeared and pleaded, and good per Cur; for if he should not be now received, his Body should be imprisoned by Withernam. Br. Jours, pl. 81. cites 7 E. 4. 5.

8. *Appeal at the Suit of the Feme*, the Defendant was outlawed and taken, and it was demanded what he had to say why he should not be hanged, pl. 57. cites and he said that where he is named f. S. his name is f. F. and the Feme, by a *Pray*d Execution, and it was doubted whether he may reply that he is the same Person who killed &c. without being warned by *Scire facias* to have *Day in Court*, and by the best Opinion *Scire facias* shall issue. Br. *Scire facias*, pl. 132. cites 9 E. 4. 24.

9. For where a Man is contained in Damages, the Plaintiff said that he is in the *Hall*, and prayed an Officer to take him, and the Court granted it, and he is taken and confesses, he shall remain in Execution; but if he says that he is not the same Person, the Plaintiff cannot reply that he is; for he has no *Day in Court*, and there he shall be put to Proceses to have Execution, but here there is no such Proceses to be awarded. Ibid.
(C. 6) Day in Court. What Day shall be given, common Day or other Day.

1. Receipt quod reddat, Contiuance of the Plea was demanded by J. N. and had it, and Day given in Franchize, and after those of the Franchize err'd, by which Writ of Error was brought, and the judgment reversed in B. R. and the Court was ready to have awarded Seilin of the Land, by which came M. and prayed to be received, and merged Cause, and was received and vouched, and the Demand counterpleaded, and they were at Issue, and common Day was given as in Plea of Land, and no such Day as shall be given in Writ of Error; for he is out of this Court; Quod Nota. Br. Jours, pl. 26. cites 21 E. 3. 4. 6.

2. In Seire facias the Court may give what Day they will; For this is in Nature of an Execution: Quod Nota. Br. Jours, pl. 66. cites 24 E. 3. 31.

3. Affid returnable in B. R. in Off. Martini, the Plaintiff prayed Day the next Day, and because it was returnable at a Day of the Term, and not at a certain Day of the Week, he can have only common Day of the Term viz. Off. Hill. Br. Jours, pl. 45. cites 27 Att. 33.

4. Per que Servitus, the Defendant was at Issue, and pray'd Common Day, and could not have it, because it is a Writ of Execution; Quod nota bene. Br. Jours, pl. 38. cites 39 E. 3. 29.

5. In Trepassa, if the King grants to J. N. Contiuance of Pleas within his Manor, there the Tenant shall not have Day, but de tribus Septimanis in tres Septimanas; per Rol. Contra per Marten; for the King may alter the Place of Justice, but not the Day. But Brook says, Quere of the Day, for the Law is with Rol; as it seems. Br. Jours, pl. 30. cites 8 H. 6. 29.

6. In Formulon the Parties demurred in Judgment, and Day was given 15 Frin. anno 8. and after from this in 15 Michaelis, and from thence in Off. Hill and from thence in 15 Paffex, which are not common Days in Plea of Land; and per tot. Cur. it shall not be amended; for after Demurrer they may give Day beyond the common Day, and may give Day within the common Day, for they may give longer Day or a very short Day, for this lies in their Discretion, and the Entry is quod justicie movatur &c. for these are Days of Grace and not common Days. Br. Jours, pl. 52. cites 8 E. 4. 4.

7. So of Imparlance. Ibid.

8. And the Statute of common Days in Bank is intended only where they pend in Procesos, and it is agreed that this is a Statute. Ibid.

9. If in Precipe quad reddat the Sheriff returns quod petens non inveniit Pleos de Prosequendo &c. the Scots eius shall not have common Days, but 15 Days fullices, for this is as Original, for he was not demandable at the first Day. Per Danby. Br. Jours, pl. 36. cites 9 E. 4. 18.

10. Per Brian, if grand Cape or Venire Facias be returned tarde, the 2d. Writ shall have common Day. Br. Jour. pl. 36. cites 9 E. 4. 18.

11. But they agreed with Danby in Caele that the Original shall be returned tarde. Ibid.

12. And by all the Clerks Seire Facias shall have such Day as Writ of Dover, in favour of Execution. Ibid.


(C. 7) What
(C. 7) What shall be Day in Court, sufficient by the Roll.

1. In Precipe quod reddat the Tenant vouched, and at the Day of the Summons as Warrantzandum returned, the Sheriff returned no Writ, and yet the Voucher was received to plead; Quod Nota; and the Tenant said that he is another Peron, and not the Voucher. Br. Jours. pl. 88. cites 5 E. 3. and Fitzh. Voucher 197. but cites Ibid. 256. contr.

2. In Replication, the Plaintiff after Issue was nonvited, and Return awarded, and the Plaintiff sued second Deliverance, and at the Pone per Vadius the Writ was not served; and the Defendant prayed that the Plaintiff might count against him; because he had Day in Court by Roll though he had not Day by Writ, and if the Plaintiff had Deliverance he would not count against the Defendant. And per Wilby, you cannot sue to the Sheriff to have the Writ returned if the Plaintiff will not; and if the Sheriff has made Deliverance and not returned the Writ, you shall have Remedy against the Sheriff, by which he was put to sue Sententia alia &c. Br. Averment, contra &c. pl. 10. cites 21 E. 3. 43.

3. In Trophies, at the Exigent the Defendant appeared and the Plaintiff not; nor did the Sheriff return the Writ, yet the Plaintiff shall be demanded to be Nonvited at the Day; for he has Day in Court by the Roll, though the Writ be not returned. Br. Jours. pl. 64. cites 38 E. 3. 20.

4. And the same Year fol. 25. in Quare impedit at the Attachment the Defendant and Plaintiff appeared, and the Sheriff did not return the Writ, and yet by Thorp, clearly, the Defendant may plead; for he has Day by Roll; Quod Nota. And concordat 21 E. 3. fol. 13. where the Sheriff returned no Writ. Ibid.

5. Contra if he returns Nihil; nevertheless it seems if Nihil be returned at such Day that the Defendant is to be at a Loss, he shall be received. Ibid.

6. Audita Querela upon a Release made after Judgment in Trophies, and Venire facias issued against him who released, and the Sheriff did not return the Writ, and the Defendant prayed that the Plaintiff be demanded, &c non allocatur, because the Writ is not returned served, notwithstanding that he has Day in Court. Br. Jours. pl. 51. cites 6 E. 4. 9.

7. Courts where a Man is to have corporal Punishment, as in Capias or Exigent, there it may appear by the Roll where the Writ is not returned; contra upon Pone; Quod Nota. Per tot Cur. Ibid.

8. Where no Writ is returned, and the Jury appears, they shall be taken, Per Huffle Ch. J. for they have Day by the Roll, which Townfend agreed; Contra per Brian, Fairfax and Sulyard. Br. Jours. pl. 47. cites 3 H. 7. 16.

9. Note, per Fitzherbert and Shelley J. quod non negatur, that where S. P. Br. Sa. the Grand Cape in Precipe quod reddat is not returned, yet at this Day ver Default, the Tenant may appear and gage his Law of non Summons, for he has Day by the Roll; Quod nota. Br. Jours. pl. 1. cites 27 H. 8. 14. but it should be H. S. according to Br. Jours, pl. 1.

10. In Caeo on an Indebitatus Assumpsit the Plaintiff made an ill Replication, and therefore Roll Ch. J. said, that Judgment ought to be given against him; but that by Favour of the Court they can give him Leave to discontinue his Action. Sty. 309. Mich. 1651. Kymlock v. Bamfield.
(D) Discontinuance of Process.

In what Cases it cannot be without the Assent of the Court. [Defendant.]

S. P. by the Court,
Juries, that
continuance
cannot
be
after
Verdich,
Hill,
3. Pacli. 7
Car. C. B.
Anon.--
S. P. by Roll

But after a special Verdich, and argued at the Bar, a Discontinuance was entred by the Plaintiff as it was agreed he might. Cro. C. 575. pl. 19. Hill. 15 Car. B. R. Oxford (Lat.) v. Waterhouse. -- S. C cited Arg. Show. 63.

2. The Plaintiff after a Demurrer cannot discontinuance his Suit without the Court's Licence; and although the Continuance be not entered, it may be entered at any Time, and the Defendant by Licence of the Court, for his own Advantage, may enter the Continuance; Per rot. Car. Cro. J. 316, 317. pl. 2. Mich. 10. Jac. B. R. In Cafe of Fox v. Jakes.

Bult. 217
Fox v. Jus,
S. C says, it was a Rule made by the Court, that the Plaintiff cannot discontinuance for to loose his Payment of Costs there by after a Demurrer, when the Cause is then by the Demurrer in the Judgment of the Court, and in their Argument either to confirm or discontinuance the same; and it is not then in the Power of the Plaintiff to discontinuance without Assent of the Parties, and this Assent be ought to make appear to the Court. -- After a Demurrer on an Affirmation it is not usual to discontinuance the Action; Per Cur, but ordered a Nil capias to be entered Nihil Causa. Sty. 134. Trin. 24. Car. Anon. -- 3 Lev. 240. cites 26 & 27 Car. 2. B. R. that a Discontinuance was permitted to be made by the Plaintiff after a Demurrer and Argument, by Ed Ch. J. Hale and the Court of B. R. but that it is entered Mich. 26 Car. 2. B. R. Rot. 349. -- Leave was given to discontinuance after Demurrer, Raym. 64. Hill. 14 & 15 Car. 2. B. R. Palmer v. Richards.


But afterwards, Hill. 26 & 27 Car. 2. B. R. he had Leave to discontinuance upon Payment of Costs. 2 . Lev. 124. S. C.

4. Debt upon a Charter-party, in which were several Covennants, and at the End each bound himself to the other in 1000 l. for the Performance of Covennants. The Declaration was good till Plaintiff came to the Assignment of the Breach in which were several Faults; upon a Demurrer to it the Plaintiff desired leave to discontinuance, but it was not allowed, unless the Defendant would confess, the Action being Debt for the Penalty; and for that the Plaintiff is not without his Remedy, for he may bring a new Action upon the Covenant. 2 Lev. 117, 118. Mich. 26. Car. 2. B. R. Rea v. Barnes.

5. In Covenant by the Father of an Apprentice upon the Indenture of Apprenticeship, there was Judgment by Default against the Defendant (the Maker.) Upon a Writ of Inquiry very small Damages were given, with which the Plaintiff being not satisfied, moved for Leave to discontinuance the Action; but the Court answered, that they had no Power to give such Leave without the Consent of the Defendant, which in this Cafe he retufed. But the Plaintiff's Counsel informed, that the Court had Power to give Leave to discontinuance without the Consent of the Defendant, because the Award of the Writ of Inquiry on the Roll is no other than a Rule of Court, and no Judgment. And it is clear, that after a special
Continuance and Discontinuance.

Special Verdict found for the Plaintiff he may discontinue; and this was laid down for a Rule (viz.) Wherever a Writ is arrested by the Death of the Plaintiff, there be may discontinue without the Assent of the Defendant, On the other Side it was laid, that the Award of the Writ of Inquiry on the Roll was such a Judgment that after wards the Plaintiff could not discontinue, because the Defendant is out of Court, and has no Day in Court, and therefore the Suit is determined; and an Action which is determined cannot be discontinued. Holt Ch. J. said, "Tis certain that the Action may be discontinued by such Assent of the Defendant, and that even after Verdict it may be discontinued by such Assent, and that there was no Difference (in respect to the Discontinuance) between a Verdict upon Issue joined and a Verdict upon a Writ of Inquiry; and it was held, that the Plaintiff could not by Law discontinue without the Assent of the Defendant. Carth. 86, 87. Mich. 1 W. & M. in B. R. Stephens v. Etherick.

(E) In what Cases the Court ought to have given Consent to a Discontinuance.

1. If the Parties demur in Law, and after the Plea is not continued in the Roll for a Year, and one Party prays a Discontinuance, if the other does not pray the contrary, the Plea is for the Court to grant the Discontinuance. P. 37 Eliz. Banco, between Fullwood and Ward, by the Clerks.

2. But if the other Party prays a Continuance of the Plea, the Court in Discretion hath used to continue it. P. 37 Eliz. B. between Fullwood and Ward, adjudged.

III. In Debt an Obligation to perform an Award, the Plaintiff in his Re- plication had ill assigned a Breach, and therefore prayed Leave to discon- tinue; but because the Award was for the Payment of Money, the Court would not give Leave, for they said he might have his Action of Debt upon the Award. Freem. Rep. 410. pl. 541. Trin. 1675. Anon.

S. C. and Tufton said, that he had known Leave to discontinue denied where the Award was for Payment of Money only, because he might have Action of Debt; but here the Plaintiff had Leave to discontinue paying Costs. — 3 Keib. 536. pl. 68. Mich. 27 Carr. 2 B. R. S. C. says, that the Award not being excepted to, and the Breach for Money; the Court granted Leave to discontinue or amend paying Costs, though there are other Remedies by Debit on the Award.

IV. The Defendant appeared by Attorney where he ought to appear by Guardian, and Affidavit was made that the Attorney had Notice of the In- fants at the Time of his Appearance, and afterwards bragged that he would arrest the Judgment for that Reason, whereupon the Court gave the Plaintiff Leave to discontinue &c. Conib. 63, 64. Mich. 3 Jac. 2. B. R. Peter's Cafes.

[E. 2] [In what Cases the Defendant may enter the Continuance.]

3. If the Plaintiff be Nonsuit, by which the Defendant is to recov- er Costs if the Plaintiff will not enter his Continuances on Purpose to have the Costs, the Defendant shall be suffered to enter them, and to re- cover his Costs. P. 8. Jac. B. Peter's Cafes, per Curtiam.

[E. 3] And
[E. 3] [And how much shall be said to be discontinued.]  

4. If the Defendant in his Demand leaves out Parcel of his Demand comprised in the Original in his Process, all is discontinued. 18 E. 3. 42. b.  
5. If a Man vouches for Parcel, and as to the Rest makes no Answer, and the Demandant does not take Advantage thereof by Prayer of Set- 

6. If the Tenant vouches for all the Demand, and the Process upon the Voucher is made for less than it is, all is discontinued. 18 E. 3. 40. b.  
7. In an Action of Trespass, a Discontinuance in Parcel is a Dis - 

8. In Trespass, if the Discontinuance be after Issue, this shall be a Discontinuance of the Original and all. Contra 30 Ass. 36. ad 

9. If an Affile be adjourned before themselves at Westminster, and after in Banco for Difficulty, and at the Day the Record is not four, nor the Parties demanded, all is discontinued. 22 E. 3. 3. b.  

X. In Debt, the Defendant by Attorney, to Part, sung his Law, and had Day to perform it, and pleaded to the Country for the rest, and at the Day of the Law the Defendant was esjoyed, and for the rest it passed for the Plaintiff by Nisi Prius, and he prayed Judgment. Markham said the Process is discontinued; for the Attorney was esjoyed after the Loy Go - 

XI. But Brook says it seems, because he remained Attorney for this Part, which was pleaded to the Country, therefore it is discontinued for the other Part, but not for this, therefore Queere. Br. Discontinuance de Procefs, pl. 21. cites 19 H. 6. 30.  

XII. Trespass against three by the Baron and Penu de Clunfo Trafo, and of menacing his Tenants, and the Writ was Tenentibus suis, and the Court was Tenentibus of the Baron only, and was made three Terms since, by which, per Danby, Chock, and Needham, Discontinuance in Parcel shall abate the Writ in all. Br. Discontinuance de Process, pl. 37. cites 7 E. 4. 10.  

XIII. As in Trespasses of Trees cut, and Goods carried away, and no Men- 

XIV. And in Trespass against two, if the Process against the one be dis -
Continuance and Discontinuance.

In Pleading, by answering to Part only.

10. In Trespass for several Things, the Defendant pleads a Plea in Bar for Part, and does not answer to the rest, and the Plaintiff demurs S. C. ad judged, not for want of pleading to the Rest, for he ought to have prayed Judgment upon Mail dist for it; if all is discontinued. Co. 4 481. Roll Rep. Herlatenches's Case 62. demurred. 39 Reports, 13 Jac. & 10 if contra, which was adjudged, Dic. 15 Jac. 25 R. between Clever and Ahe adjudged. Co. Contr. by Rep:ts 15 Jac. and 14 Jac. S. C. ad judged a gainst the Plaintiff; But Roll makes a Quære, why Judgment should not be given against the Defendant for not answering to all the Matter in the Declaration, and cites the Cases of * Bowle v. Nor ris, and 14 Jac. † Demmes Case.
* Roll Rep. 216. pl. 12. S. C. adjudged against the Defendant, because no Answer was given as to Part. † Roll Rep. 406. pl. 38. S. C. and Henden said, that if the Plaintiff would have taken Advantage of the not answering to Part, he ought to have made a special Demurrer for this Cause, but Curia deemed e contra, viz. that he should have Advantage of the not answering to Part by the Demurrer, and that it should not be discontinued; and Judgment was given for the Plaintiff. —— S. C. cited Ed. Raym. Rep. 716.

11. In Trespass for breaking his House, and taking and carrying away Brownl. 103. his Goods, the Defendant justifies all the Trespass. The Plaintiff quoted Fraissinon Dunns, and the taking the Goods, nec non materia in ea contræ, decurs upon the Defendant's Bar, and the Defendant joins in Demur r ther, viz. Quia Placitum predictum quad Fraissinon Dunns, and the taking the Goods sufficient &c. and thereupon Judgment is given in C. B. for the Plaintiff, but reversed in Error in B. R. for in the Offer of the Demurrer ex parte querentes, nothing is alleged specially, but quod the breaking the House and taking the Goods; and though the subsequent Words, viz. Nec non materia in ea contræ goes to all the Matter in the Bar, viz. the carrying away also, yet when the Defendant joins in Demurrer, he joins specially only, viz. quod the breaking the House and taking the Goods, but says nothing as to carrying them away, and so as to that nothing is put in Judgment of the Court. yet the Writ to inquire of Damages is for the whole, and the Judgment also; and the carrying away being Parcel of the Matter, and for which greater Damages are adjudged, and this not being put in Judgment of the Court by the Demurrer, the Judgment is erroneous; and as to the carrying away, (which is Part of the Matter) it is a Discontinuance. Yelv. 5, 6. Trin. 44 Eliz. B. R. Johnson v. Turner.

12. In Trespass Vi & Armis, the Plaintiff declared of entering into his So in Tref Warren, digging his Land, and chafing and taking his Conies. The De fendant Quære Claudum free defendant, as to the digging and chafing, be justifies for Common there, but giti pedibus answers nothing as to the entering into the Warren, neithur by Conjusio nor ambulantio Trefparsi, and therefore Houghton J. held, that all was discontinued according to 4 Rep. Herlatencon's Case, and to this the whole Court, abente Fleming, agreed. Brownl. 227. Trin. 11 Jac. Carrill v. conculcas Baker.

Short, and Hears. The Defendant pleads, Quoad Venire Vi & Armis, nec non tanto Transgressio nem predict Prater Pedibus Ambulantio, & prater the Horfes, Ozen, Sheep, and Cows, Not Guilty, but foas making as to the Hears; this is a Discontinuance in Pleading. Cart. 51. Hill. 17 & 18 Car. 2. 6 G
Continuance and Discontinuance.

C. B. Ayre v. Gledson.—So in Treasuries for taking several Sacks of Grain, the Defendants justified the taking, but of Part, and said nothing of the Replevis; this is a Discontinuance, and the general Words, Quod Residuum Transgressiones will not help, because he goes to Particulars afterwards, and does not enumeae all, and Judgment accordingly. 2 Mod. 254. 259. Trin. 29 Car. 2. C. B. Waldin v. Awberry.

The Defendant pleaded a Discontmuance. This is a Discominuance, and the General Plea of "Nisi Proo." is a Discontinuance, and the Plaintiff replying, the Defendant did not demur to the Plea, nor a Plea in Bar, the whole is discontinued. Carth. 187. Patch. 2 W. M. in B. R., Bifile v. Harecourt.

In Cafe, the Defendant concluded in Abatement, and the Plaintiff demurred as to a Plea in Bar, and so concludes Petit Judicium & Damna; Per Cur. it is a Discontinuance. Carth. 187. Patch. 3 W. M. in B. R. Carter v. Davis. 2 Salk. 57. S. P. and for that there is no Difference between Pleading over when Issue is offered, and not joining in Demurrer, but Pleading over; that both are alike and make a Discontinuance.

If Defendant pleads as Part, and says nothing as to the rest, it is a Discontinuance, unless Plaintiff will take Judgment by Nil ditct; Per Cur. 12 Mod. 421. Mich. 12 W. 3. Molley v.

Affirmat upon three Promises for 55 l. each. The Defendant, as to the 55 l. in the first Count, pleaded Actio nova, yet that the 5 several Promises in the Count mentioned were for the same Sum of 55 l. which the Defendant had paid to the Plaintiff before the Action brought, Judgment is Actio. The Defendant demurred. The Court held the Whole discontinued by pleading only to the first of the Promises, so that Plaintiff should have taken Judgment by Nil ditct on two of them, and by his not doing it the Whole is discontinued; for the Defendant had fixed his Plea by the Beginning to the first Promis, and therefore the special Matter following will not aid it. But afterwards, this being all done in Mich Term, and no Continuance entered on the Roll, the Plaintiff entered up Judgment by Nil ditct on the two Promises, to which the Defendant did not plead; and upon Reference to a Matter the Court approved thereof, and Judgment the next Term was given for the Plaintiff. Ld. Rayn. Rep. 716. Hill. 13 W. 3. B. R. Vincent v. Belton.

Replevin for taking Cattle in quodam Loco ocelat' the Brills & in quodam allo Loco ocelat' the Boggs. The Defendant answered the taking in Precedent Loco in quo &c. quia H. was seised in Fee of the Locus in quo &c. The Plaintiff demurred, because here are two Places alleged, and the Avowant has only anwered to the Locus in quo &c. which is but one of the two Places; And per Cur. it is a Discontinuance.

Continuance and Discontinuance.

19. Debt upon Bond of 500l. the Defendant as to 224l. Part of it, pleads Payment &c. The Plaintiff demurred, and per Cur. this is only a Plea to Part; for in Debt on a Bond a Man may have several Pleas, as supposable a Plaintiff fines as Executor, the Defendant may plead the Release of the Testator for Part, and for the Refidue the Release of the Plaintiff. So a Man as to Part may plead Payment, and as to the rest an Acquittance, and so there being no Answer to the Refidue, here is a Discontinuance for the Refidue; and the Plaintiff should have taken Judgment by Nil dicit. 1 Salk. 179. pl. 6. Mich. 15 W. 5.

B. R. Weeks v. Peck. S. C.

20. If a Man justifies to the Whole, and his Plea goes to Part, the Plea is bad, because the Thing pleaded as to the Whole, and going but to Part, being an insufficient Answer to the Whole, consequently the Plaintiff must have Judgment; and if the Plaintiff on such Plea does not demur, but takes Issue, since he takes it on a bad Bar, whether the Issue be found for the Plaintiff or Defendant, the Judgment shall be for the Plaintiff, because the Bar is insufficient; for though the Issue should be found for the Defendant, yet that will not amend the Bar, and make that go to the Whole which goes to Part only, and therefore here the Issue is material. Gilb. Hift. of C. B. 126, 127.

21. But if the Defendant had pleaded a Bar to Part, and says nothing to the Refidue, there the Plea is good as to the Part to which it is pleaded, and nothing being said as to the Refidue, the Plaintiff ought to have Judgment for want of a Plea as to the Refidue, if he does not take Judgment it is a Discontinuance of his Action, for the Defendant having said nothing, if that nihil dicit be not entered, there being no Continuance of that Part of the Action by what the Defendant hath said to it; nor the Plaintiff likewise having said any thing to it to continue it in Court, it is a Discontinuance; and if any Part of it be discontinued, it is a Discontinuance in the Whole; for there is not the fame Demand fulfilling that the Plaintiff had set forth in his Declaration; but if the Plaintiff takes Issue and obtains a Verdict, the Discontinuance is aided by the Statute of Jeofails, which cures all Discontinuances before Verdict, for the Issue is immaterial, because the Issue is not material to every thing to which the Plea is pleaded, for being not material as to the Whole, it was in that Case an inmaterial Issue. Gilb. Hift. of C. B. 127.

22. Where the Plaintiff declares in Mich. Term before Craft. Animer so as to have a Plea to enter of that Term, and the Defendant gives him a Plea to Part only, and the Plaintiff enters his Plea as of Hill. Term, and upon Demurrer in Hill. Term the Defendant objects the Discontinuance, and desires the Plea may be entered as of the Term in which it was pleaded, the Court would not interpose to make them enter their Plea on the Rolls of Mich. Term, because if the Court had done this, the Plaintiff's Action must have been discontinued by such Rule, whereas the Plaintiff having given the Defendant an Imparlance when he needed not, it is not erroneous, or any wise prejudicial to the Defendant, and the Plaintiff has the whole Hill. Term to take Judgment for the Part not pleaded to, and therefore there could be no Discontinuance during Hill. Term. Gilb. Hift. of C. B. 127, 128.

23. But if an Action of Debt be brought against an Executor or Administrator, and he pleads several Judgments to cover the Afters, and as to some of the Judgments the Pleas are good, and as to some bad, this is a Discontinuance of the Plaintiff's Action, because the Plaintiff's Demand remains the same, and is still pursued; and since the Judgments of some are avoided by a good Plea, and all the Judgments amounting but to one
Continuance and Discontinuance.

one Cover of the Affects, if one of them be avoided the Plaintiff must have Judgment for the Whole, because there is not a sufficient Bar to his Demand, since the whole Avoidance of the Plaintiff's Demand to charge the Affects amounts but to one Bar. Gilb. Hist. of C. B. 123.

15. Trespass for going over the Plaintiff's Clofe with Horses, Cows and Sheep; The Defendant justifies for that he has a Way for Horses, Cows and Sheep, and says that such a Day he went over with Horses; and upon Denmurrer it was adjudged ill; for it is a Judicitation only for Horses; Judgment for the Plaintiff; but the Reporter a Quare. 11 Mod. 219, pl. 8. Patch. 1709. 8 Ann. B. R. Roberts v. Morgan.

(E. 5) Entry of them; in what Cases, and How, and When.

1. R. Recovered in Action of Account against A. and Capias ad Com- purandum was awarded, and thereupon A. was taken and entered into the Account before J. T. and R. L. who were assigned Auditors and before them pleaded a Release of one J. B. by whole Hands he received the Money to Bail over to R. Upon this Plea R. demurred in Law, and at the Day appointed for arguing a Demurrer, the Defendant intitled that the Cause is discontinued, because there is no Continuance from Hill Term to Easier Term; But it was anwered that in C. B. no Discontinuance shall be entered but after the Year. But afterwards it was held clearly to be in the Discretion of the Court to enter it or not; and it was discontinued. Sav. 54 pl. 115. Patch. 25 Eliz. Ronyan v. Atward.

2. In Debt upon a Bond there is Issue joined as to Part and Demurrer joined as to the Rest, both are continued for a long Time by Curia adiuvat volt &c. but at last a Discontinuance is recorded, viz. Recordatur per Cur. such a Day of May Termo Pachae Anno &c. quod illud Placitum now hadit Dies ultra Officinas Sanei Hilarii. 1 Salk. 150. cites Co. Ent. 142.

3. If a new Scire Facias be taken out every Year, one Continuance may be entered at any Time by the Attorney in his Chamber, otherwise not; Quod Curia concexit. Keb. 159. pl. 110. Mich. 13 Car. 2. B. R. Weldon's Cafe.


5. On Leave granted to discontinue after Issue joined, the Court held it needless to enter the Discontinuance; Contra on a Nolle prosequi; But the Clerks said it is usual to enter on the Roll for discontinuance. But this being a Rule of a former Term, the Defendant cannot cause the Rule to be entered (if the Plaintiff refus'd it) without Motion. Keb. 574 pl. 53. Mich. 15 Car. 2. B. R. Balting's v. Temple.

6. Plaintiff had Judgment in Hill Term 1722. three Years past, which was signed 14th February, two Days after the Term, Execution bore 10th Feb. and the Warrant to the Sheriff was dated 28th March. It was moved, that though this for the Benefit of Purchasers for a valuable Consideration by the Stat. 29 Car. 2. cap. 3. shall be Judgment only from the signing and Entry of the Month and Year upon the Paper of Record; yet in respect of the Plaintiff and Defendant, and as to all other Purposes, it is a Judgment of Hill Term 1722. by Fiction of Law; so that the Term of the Execution ought to be the first Day of that Term. And the Court denied Leave to enter Continuances, this being now a Record of three Years standing; neither would they give Leave to en-
Continuance and Discontinuance. 485

ter the Judgment as of the succeeding Term, though in Fines which are the Agreements of Parties it has been done, whereas Judgments are in adversary Suits; therefore the Judgment in the principal Case must be of the first Day of Hil. Term; but as to qualifying the Execution the Court afterwards was divided. 8 Mod. 310. Mich. 11 Geo. 1. Graves v. King.

(F) Discontinuance of Processes. In what Actions a Discontinuance against one shall be a Discontinuance against others.

1. In Trespass against three, a Discontinuance of Process against one, is a Discontinuance against all. 39 Ed. 3. 3. * 30 Aff. 36.

Repleader, pl. 28. cites S. C. — S. C. cited L. Raym. Rep. 399. — Trespass against two who pleaded Not Guilty, and after the one died, the writ shall not abate; but yet, per Marren, Discontinuance of Process against the one in Trespass is Discontinuance against both; and it appears there, that in this Case the Process cannot be discontinued against the dead Person, nor the Process which was against two cannot be continued against the one, therefore new Venire facias shall issue. Br. Discontinuance de Process, pl. 10 cites 7 H 6. 21.

Trespass against two and Process is continued against the one, and not against the other, this is no Discontinuance against the other, but is Misperson and shall be amended, and it was so. Br. Discontinuance de Process, pl. 55. cites 22 E. 4. 5. — Br. Amendment. pl. 76. cites S. C.

2. If a Man brings a Writ of Error upon an Outlawry of Felony, Br. Discontinuance and affigns for Error, That he was in Prison at the Time, and the Process, pl. the Court of King maintains that he was at large upon a Venire facias issued, and 31. cites S. Process against the Lords mediate and immediate, the Lords come C. and there- and allege, That his Imprisonment was by his own Covin, upon which a Venire facias issues; and after, for Default of Jurors, a Continuance is made between the King and the Party, and now Continuance between Br. the Lords and the Party, by which the Process is discontinued against the Lords; This shall be a Discontinuance of all. 38. Aff. 17. ap. judge.

3. If a Writ be brought against several Tenants by several Pracpipes, though the Process is discontinued against one in a Pracpipe, yet it is not any Discontinuance against the other Tenants. 27 C. 2. 97. b.

4. [So] If a Man brings Debt against two by several Prac Pipes, if S. P. for the the Process is discontinued against one, it shall not be a Discontinuance against the other also. 7 H. 6. 27. per Curiam.

5. It seems that in Affife against several, the one pleads a foreign Deed, the others shall not have Day in Court till this issue be tried. Br. Affife, pl. 234. cites 22 Aff. 11.

6. Replevin against three of a Taking in S. the one appeared and avowed for himself in B. and recovered the Taking in S. and made Atcrossy to have return, which polled for the Plaintiff, and he prayed Judgment, and by the best Opinion, because no Process was made against the other two they shall not appear nor answer, and it is all discontinued. Br. Discontinuance de Process, pl. 8. cites 49 E. 3. 24.

6 H 7. Bar
Continuance and Discontinuance.

7. But, per Parle and Kitton, clearly, if the Actory had been made for him and for the others, Procefs shall not be made against the others. Ibid.

8. But, as here also, it is not properly in Nature of Actory, but is upon Plea to the Writ upon the View, in which Case all ought to appear and plead, or Procefs shall be made or Continuance against those who make Default, for otherwise it is Discontinuance. Ibid.

9. And by 21 El. 3. fo. 30. in Replevin against two, the one arboled for himself, and confessed for his Companions, and therefore the Plaintiff could not have Procefs against the others; for he is out of the Court. Ibid.

10. And in Replevin against two, the one aroused and the other justified, who came in Aid of him, there if Procefs be not continued against him who justified, the Writ shall abate; Per Cur. for there he once pleaded which varied from this Case. Ibid. cites 21 H. 6. 23.

11. Trefpafs against two, the one came by Discreet and pleaded Not Guilty, and the other was found Guilty, and the Procefs is continued upon Exigent where no Pluries Capias is returned, 'tis held Error by Radford, and the Argument was because they were seuered in Procefs, whether one shall take Advantage of the other's Procefs or not? And 'tis said there, that the like Point is 12 Ric. 2. where it is awarded that one shall have Advantage of all Procefs continued against the other, though they were seuered in Procefs, so that the Procefs against one is not the Procefs against the other. Br. Error, pl. 54. cites 40 H. 5. 9.


13. And Discontinuance of Procefs in Trefpafts against the one is Discontinuance against both. Br. ibid. cites 7 H. 6. 27.

14. At the Venire facias W. B. was returned, and in the Habeas Corpis 7. B. and not W. B. and that the said J. B. is dead, and in the Discreet W. B. was returned again, which was shewn for Discontinuance when the Inquest was ready to pass; and per Cur. this is Discontinuance against all the Jurors, and cannot be amended. Br. Discontinuance, pl. 47. cites 27 H. 6. 5.

15. And 34 H. 6. 20. Misprision shall be amended, but Discontinuance of Procefs shall put the Party to new Original. Ibid.

16. None shall have Advantage of Discontinuance but Parties or Priories to the Record, and not Strangers, though the Action was founded against him upon the same Record, by the said Opinion. Br. Discontinuance de Procefs, pl. 54. cites 21 E. 4. 33.

* This is misprinted, and should be 22 E. 4. 1.

7 Jac. B. R. Paltton v. Luther.
(F. 2) In what Court it may be; And Pleading there-
of in other Court.

1. Scire facias to repeal Letters Patent of the King. The Defendant
said, that there was other Scire facias of this Matter brought by the
Plaintiff, which 35s. ends &c. The Plaintiff said, that this is Difcon-
tinuance, and was in the Chancery; Per Tirrit, in the Chancery is no
Difcontinuance; quod tota Curia negat. Br. Difcontinuance de Pro-
cess, pl. 39, cites 3 H. 4. 6.

2. It was admitted, that Difcontinuance may be in the County or Court
Baron, and yet the Plea may be removed; for if it be well continued,
nothing shall be removed but the Original, and therefore all is one. Br.
Difcontinuance, pl. 42, cites F. N. B.

(G) Difcontinuance. By Death of the King.

1. S[urety to keep the Peace, or to keep a Day of Payment, are discharg-
ed by Death of the King; Contra of Surety to sue with Effect in pl. 20, cites
Writ of Account where the Defendant is let to Mainprise. Br. Pre-
rogative, pl. 58, cites 1 H. 7. 2.

2. In Appeal of the Death of a Man, the Writ was abated by the
Death of the King, and the Appellant should not have Re-attachment Law, 1 M. 1.
if he did not sue within the Year as well as the Original. Thel. Dig.
184, lib 12, cap. 7. S. 1, cites Hill. 2 H. 7. 10.

3. Where a Man is outlawed upon Indictment of Felony, if the King be
dead pending the Exigent, this Outlawry is revocable by Error; for the
Exigent was abated by Death of the King, but he shall answer to the
Felony; But otherwise it is where such voidable Outlawry passes against one at
the Suit of the Party, for there if the Outlawry be reversed, he shall not
be put to answer to the Party. Thel. Dig. 184, lib. 12, cap. 7. S. 2,
cites Mich. 7 H. 7. 5.

4. If a Man be indicted of Felony in the Time of H. 8. and the King
Died, he shall be arraigned thereof in the Time of E. 6. Per all the Jul-
tices. But by some, this Indictment shall be removed by Certiorari
be indicted in
the old Cuiros Rotolorum, and sent to the new Commissioners.

If one, and after the King died, he shall plead De Novo. 7 Rep. 31. a, cited per Cur. as Edward
Smith’s Caff, who pleaded to Ifuse upon an Indictment of Felony in Middlesex, in 3 & 4 P. M.
in B. R. and after the Death of Queen Mary, he re-pleaded in 5 & 6 Eliz. and was acquitted; And in
Dalmir’s Caff, who was arraigned in B. R. on a Nonliit in Appeal, at the Suit of the Queen,
Trin. 3 & 5 P. & M. and pleaded to Ifuse, and Queen Mary died, and Mich. 1 & 2 Eliz. he re-

5. 1 E. 6, cap. 7. S. 1. By the Death of the King, any Action between At Common
Party and Party, in any Courts of Record, shall not be discontinued, but the
Proces in every Action shall stand good, as if the King had lived, and all the
judicial Proces shall be made in the Name of the King that shall reign, and
that Variance between the Names of the King shall not be material.

Courts were discontinued, so that the Plaintiffs were obliged to commence new Actions, or to have
Re-
Continuance and Discontinuance.

Re summons, or Re-attachment on the former Proceeds to bring the Defendant in; and therefore to prevent the Exposure and Delay on these Occasions, was this Statute made. Gilb. Hill. of C. B. 195, 194.

6. S. 2. Every Affix of Novel Difaffix, Mortdannexor, Juris Urimi, and Attaint, which shall be arraigned, or tried before any Justice of the Peace, shall not be discontinued by Death, New Commission, Association, or Coming of the Justices. See Tit. Juf-
tices of Gaol Delivery, 27. pl. 12. and the Notes there.

7. S. 5. Where any Person shall be found guilty of Treason or Felony, for which Judgment of Death shall ensue, and shall be tried to Prison without Judgment given, those Persons that at any Time after shall by the King's Letters Patent be allaigned Justices to delive the Gaol where such Person shall remain, shall have Power to give Judgment of Death against such Person.


9. It was refused upon the Stat. 1 E. 6. cap. 7. that an original Writ not returned at the Death of the King cannot be returned in Time of the next King; But all Proceeds made upon any Original pending in any Court of Record in Time of the former King, may be executed and returned in Time of the succeeding King, by the Judge in the Statute to such Purposes. D. 165. pl. 1. Mich. 1 Eliz.

10. A Writ of Extent upon a Statute was executed in the Time of Queen Mary, returnable Quintena Martini, before which the Queen died, yet it was returned, and a Liberate granted Hillary following, being in the Time of the next Queen. It is let Quaere in the Book if the Return of the Extent was not without Warranty, because by Demise of the Queen the Warrant to make Executions sealed, and it is not reme-

11. Quaere Impedit brought in Name of the King abates by his Demise; for it concerns the King in Individuo. Jenk. 265. pl. 33.

12. But Intrusion into the Lands of the King, or Information, shall not abate by his Demise, because thes concern Publicum Commodum, and Profit of the King. Jenk. 250. pl. 33.

13. The Statute 1 E. 6. extends only to Actions, Suits, &c. between Party and Party, and consequently extends not to Causes where the King is Party. 7 Rep. 30. a. Trin. 1 Jac. in Case of Discontinuance of Proces &c.

14. Since the Stat. of 1 E. 6. if any Judicial Writ or Proceeds in any Court of Record be awarded in one King's Reign, it may be executed in the Time of his Successor. 7 Rep. 30. a. Trin. 1 Jac. in the Case of Discontinuance of Proceeds &c.

15. So in Appeal of Death, if the Writ be delivered to the Sheriff within the Year, and before the Return, or any Thing done by the Sheriff, the King dies, this shall be remedied by the Common Law, viz. byCertiorari returnable in B. R. and thereupon the Plaintiff shall have Re-attachment, though it comes not in by the Return of the Sher-
iff, but by Certiorari, and this for Necessity; for otherwise the Plain-
tiff, who lawfully purchased his Writ within the Year, shall lose his Appeal without any Default, the Year being now past; and therefore since
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since by Act in Law the Write is discontinued, the Law will give Means to revive it, so as that the Party shall not be without Remedy.

16. Informations for the King alone in any Latin Court, and likewise Information tam pro Parte quam pro Domino Rege, do not abate upon the Demise of the King, but shall be re-continued by Re-fummens or Re-at- tackment, and the Defendant shall plead to them de novo; and Information be- mations in English Courts shall not abate, because there are no Contexts, and the De- fendant pleads to them. Resolved by the Judges. No. 748. pl. 1027. Annu.

Primo Jac.

Demurrer be joined, and afterwards the King dies, all the Proceedings shall abate, but the Information shall stand. 7 Rep. 30. b. 51. a. — Cro. 1. 14. pl. 18. S.P. resolved.

In all Cases when the King is only Party, or when the Information is Tam pro Domino Rege quam pro felviso, and the King died before the Judgment, all the Proceedings on the Information are left, be- cause that King who was Party is dead; but the Information or Indictment shall stand, for as there are several penal Statutes which are to be prosecuted within a limited Time, which would be lost if the Information which was brought in due Time were abated, the Law will not permit that the Act of God should protract those from being punished who had broken the Laws pro Bono Publico. Thus shall the Law till * Annu. cap 8. Gibb Hist. of C. B. 194.

* This is misset, and should be 1 Annu. cap 8.

17. At Common Law, by Demise of the King, the Plea was discontinued, and the Proceeds which was awarded, and not returned before the Death of the King, was left; for by the Writ of the Predecessor, nothing can be executed in the Time of the new King, unless in special Cases; because by the King’s Death not only the Justices of the one Bench or the other, and Barons of the Exchequer, but likewise the Sheriffs and Eichentors, and all Commissions of Oyer and Terminer, Gaol-Delivery, and Justices of Peace, are determined by the Death of the Predecessor who made them, and to remedy this the Stat. 1 E. 6. was made; Resolved. 7 Rep. 30. a. Trin. 1 Jac. in Case of Discontinuance of Proceeds.

18. At Common Law, if a Verdict had passed for the Defendant, and before the Day in Bank, the King had died, the Plea was discontinued, and the Defendant might by Ceretiorari remove the Record, and though the Parties had never pleaded any Plea, yet the Defendant ought to sue a Sci. Fa. and thereupon to have Judgment, but without Sci. Fa. he shall not have Judgment, because the Parties have no Day in Court, and the Sci. Fa. shall revive the Record, and give Day to the Parties against the Opinion of Littleton, 10 E. 4. 13. b. though he said it was adjudged, that the Defendant in such Case should have Judgment immediately; Per Cur. 7 Rep. 30. a. Trin. 1 Jac. in Case of Discontinuance of Proceeds.

19. If a Man purchases a Formacion against the Perton of the Profits within the Year after the Title accrued, and before the Return of the Writ the King dies, the Writ shall be removed into C. B. by Ceretiorari, and thereupon on he shall have Re-fummens because of the Mischief, as it is held in 10 E. 4. 13. b. 14. a. 7 Rep. 30. b. Trin. 1 Jac.

20. Before the Act of 1 E. 6. cap. 7. if a Man had been indicted and convicted by Verdict or Confession, before any Commissions, and before Judgment the King had died, in this Case no Judgment could have been given; because the King, for whom Judgment should be given, is dead, and the Authority of the Judges who should give the Judgment is determined; Resolved. 7 Rep. 31. b. Trin. 1 Jac.

21. A Latitat instituted in St. Eliz’s Time, and was served in Time of King James. The Defendant refused himself, and the Sheriff returned the Returns. It was moved, that the Latitat was abated by the Queen’s Death, and so the Arreit fell, and consequently this was not a Reicsous. But the Court held a Latitat to be within the Stat. 1 E. 6. which is not
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loft by the Demise of the Queen; for it is not any original Writ, but is in Nature of an Execution grounded upon a Record precedent, every Latitad being founded on a Bill of Middlesex precedent, and supposes that the Party cannot be taken by the Sheriff of Middlesex, qui Latitad & dicurrit into another Country, and to titles upon a Suit or Plaint supposed to be depending. Yelv. 52. Mich. 2 Jac. B. R. Everard v. Bluck.

22. The Death of the King is called Demise, because in Law he never dies, but leaves his Crown to another, Fin. Law, 8vo, 433

23. A Writ of Error is a Suit, and the Plaintiff may be nonsuit in it, and if it be returned it will not be discontinued by the Demise of the King. Latch. 110. Hill. 1 Car. Cole's Cafe.

24. C. recovered in Squares Impedit against B. and now sued a Sci. Fa. against B. the Incumbent, who pleaded a Release, which was found against B. Afterwards the King died, and it was moved, that it is discontinued by Death of the King, As an Extent &c. fed non allocatur. Lat. 72. Patch. 1 Car. Catesby v. Baker.

25. Executor of an Executor was sued for Legacies, and pleaded no Affict, which was refused by the Spiritual Court, and therefore Prohibition was awarded out of B. R. in the Time of James, and upon Debate the Court referred, that this was discontinued; and the Difference taken was, between a Prohibition awarded out of B. R. and out of C. B. For out of C. B. a Prohibition shall not be awarded without Suggestion first of Record, and so it is the Suit of the Party, but in B. R. it is otherwise, and is only Prohibitory. D. 165. a. Marg. pl. 3. cites Patch. 2 Car. B. R.

26. Another Difference is when a Prohibition issues out of B. R. if no other Proceeds be upon it, there it is discontinued by Demise of the King; But if Attachment issues and is returned, or if the Party appears and puts in Bail, then it becomes the Suit of the Party and is not discontinued. D. 165. a. Marg. pl. 3. cites Patch. 2 Car. B. R.

27. In Action of Scandalum Magnatum, the Court is tam pro Domino Rege quam pro SciPIO, this is not discontinued by Demise of the King; For the Contempt to the King is Collateral, tho' otherwise it is where the King shall recover Part; Per Doderidge. D. 165. a. Marg. pl. 3. cites Patch. 2 Car. B. R.

28. In an Action of Dece. Qui tam &c. upon the 23 Eliz. for Recusancy in not coming to Church, after Demurrer by the Defendant the K. died. It was resolved by all the Judges at Serjeants Inn, that this Action was at the Suit of the Party, and that the King cannot discharge it, and therefore shall not abate. Hutt. 82. Tin. 2 Car. Farrington v. Arundel.

29. Upon an Outlawry and Plac, and Replication and Demurrer to it, after Extent the Protector died, and the Court was of Opinion that all but the Outlawry and the Extent upon it was gone by the Death of the Protector, as in 7 Rep. the Cafe of Discontinuance of Proceeds. Et Adjudicatur. Hardr. 136. pl. 7. Mich. 1659. in Sae. The Protector v. St. Johns.

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50. 4 & 5 W. & M. cap. 18. Upon the Demise of any King or Queen of this Realm, all Pains to Information shall stand without calling the Defendant to plead a new, unless the Defendant requests the Court for that Purpose within five Months after such Demise.

32. 5. By the Demise of her Majesty, or any King or Queen of this Realm, no Commission of Affife, Oyer and Terminer, General Goal Delivery, or of Affifances, Writ of Admintance, Writ of True Names, Writ of Affiance or Commission of the Peace, shall be determined, but shall continue for six Months unless superseded by the Successor; and no Original Writ, Writ of Nisi Prius, Commission or Proceedings, in or issuing out of any Court of Equity, nor any Process upon any Inquisition, nor any Certoarari or Habeas Corpus, nor any Writ of Afscription or Process for Contempt, nor any Commission of Delegates, nor Receipt for any Matters Ecclesiastical, Temporal or Maritime, or any Process thereupon shall be discontinued by the Demise of her Majesty, or any King or Queen.

33. The King was sole Plaintiff in a Writ of Error in the House of Lords, and died, and the Opinion of the Lords and of all the Judges, who attended on that Occasion, was, that the Writ abated by his Death. Gibb. 35, 36. Patch. 1 Geo. 2. The King v. A. Bishop of Ardmanagh and Whaley.

34. The Lord Chief Justice's Warrant for apprehending a Person is void by the King's Demise, and the Constable imprisoning the Person by force thereof is liable to an Action. Gibb. 80. Trin. 2 and 3 Geo. 2. Anon. Coram eyre Ch. J. at Nisi Prius in Middlesex.

(H) By Alteration or not coming of the Justices.

1. A SINF is taken in B. R. in Suffolk, and pending the Affife the Bank is removed to Westminster; yet the Affife is not discontinued, notwithstanding the Statute says, Quod Affife capiantur in suis Commissibus: for this shall proceed and shall be tried in Suffolk by Nisi Prius. Br. Discontinuance. pl. 51. cites 19 Aff. 5.

2. Affise in B. R. of Land in the County where the Bank is, and pending the Affise the Bank is removed into another County; it is not denied but that by this the Affise is discontinued. Br. Discontinuance de Proces. pl. 29. cites 25 Aff. 5.

3. Affise and Verdict for the Plaintiff, and the Parol was put without Day by removal of the Justices, the Plaintiff may remove the Record before the new Justices to have Reattachment, and upon this to have Judgment; and to see that the Parol may be without Day as well as Verdict as before; for the Record is not determined till Judgment. Br. Jours. pl. 69. cites 26 Aff. 29.

4. Note, per all the Justices, that by not coming of the Justices in Affise, or by Death of the King, no Writ is discontinued but the Parol put without Day, and may be removed by Reattachment or Rejudgment, and Note that when the Justices are changed, all the old Affises are without Day by the not coming of the old Justices; for the new One's can't proceed by the Assignment of the Day made by their Predecessor. Br. Discontinuance de Proces. pl. 2. cites 9 H. 6. 42.

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5 11 H. 6. cap. 6. Suits and Process before Justices of Peace, shall not be discontinued by new Commissions of the Peace, but the Justices in the new Commissions shall have power to continue the said Pleas and Processes.

6. Note, that by Demise of the King, all Commissions and Patents to Officers, Judges &c. cease. Contra of * Office of Coroner, for he is made Judicially by Writ and not Patent. Br. Commissions. pl. 19 cites 4 E.

7. Recognizance of Mainprize that a Man shall answer in Account this Recognizance is determin'd by Demise of the King; for it is ad respondend' Coram Juflici' noliris, and this is taken by the Justices of the old King, and the fame of Recognizance of the Peace ad conservand' Pacem nofrum, which is the Peace of that King who is then living; Per Car. Br. Commissions, pl. 21. cites r E. 5. 1.

8. Before the Statute of 1 E. 6. cap. 7. if the Justices of Affile had died before Issue in Affile, all the Pleading was lost and the Parties must plead De Novo; and if after Issue they had died &c. yet all should stand in Force. Thel. Dig. 184. lib. 12. cap. 8. pl. 2. cites Hill. 4 H. 7. 8.

9. r E. 6. cap. 7. S. 6. No Process or Suit before Justices of Affile; God deliver your Lordship and they be Justices of Peace or other the King's Commissions, shall be discontinued by making any new Commission or Association, or by altering the Names of the Justices, but the new Justices and Commissions may proceed as if the old Commissions had remained.

10. An Affile was arraigned before Justices of Affile, and adjourned to the second Saturday of Mich. Term to Serjeants-Inn, and Day being then given to answer, the Term was kept at Hartford, and Day given to the second Saturday of Hill. Term. It was held clearly, that the Affile was discontinued by not coming of the Justices the 1st Day; and there must be a Re- summons against the Jurors and a new Attachment against the Defendant, and he must begin de Novo to arraign his Affile. Cro. E. 12. pl. 1. Hill. 25 Eliz. C. B. Foliamb's Case.

11. The 1 E. cap. 7. helps the Non venire of the Justices as to a Discontinuance. Jenk. 228. in pl. 95.

12. Error was brought in the Exchequer-Chamber of a Judgment in B. R. in Debt for Rent, which (and all other Writs of Error depending there) were discontinued by the not coming of the Justices, the Term being adjourned proper Pestilential in London; and the Adjournment did not extend unto them. Now a new Writ of Error, Quod coram Vobis reificet was brought, and for as much as this Writ was brought after the Statute of 3 Jac. to stay Execution in Deed, it was prayed that according to the said Statute he might have Execution, or that the Party should put in Sureties to pay the Condemnation; But upon Consideration of the Statute all the Justices held that it was out of the Statute, because it is not an original Writ of Error, but it is in lieu of a former Writ, upon which the Record was removed before the Statute, and it being discontinued not through Default of the Party, it is not Reason he should be prejudiced thereby; wherefore it was resolved that this Case was out of the Statute 3 Jac. cap. 8. Cro. J. 135. pl. 8. Mich.


13. S. and A. were indicted of Perjury committed in their Evidence given upon an Indictment of Barrettry against N. (the Record of which was recited in this Judgment, and therein it appeared that the Venire was made returnable coram J. S. & J. N. Justiciarissi prædictiis, and at a Day certain) and Judgment given, and Error brought, and affirmed that the Venire being returnable coram Justiciarissi prædictiis, none but the same Justices
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Justices could proceed, and not those who sat the next Assizes by Virtue of a new Commission; and therefore the Proceeding before them were coron non Judge, and so no Perjury could be committed. Sed non Allocator; for the Statute of 1 & 2 E. 6. enables new Commissioners of Oyer and Terminer to proceed where the former left off, before whom the Matter commenced. Vent. 151. Hill. 23 & 24 Car. 2. B. R. The King v. Serjeant and Amis.

14. Where an Act of Parliament aids the Discontinuance of the Term, yet when the Term is continued by the Statute, the Party ought to enter up his Continuances; and for Default of it his Action is discontinued, per Cur. Skin. 571, 572. pl. 15. Mich. 6 W. & M. in B. R. in Case of Brook v. Ellis.

15. If after Justices have sat by Virtue of a Commission, and taken divers Intermissions, and awarded Proceeds thereon, they or some of them shall die, the King may grant a new Commission to those who are living only; or to others commanding them to continue the Proceedings begun, and to proceed upon such Proceeds, and to hear and determine all the Offences in the former Commission; and thereupon the King shall send a Writ unto the Executors of the Justices who are dead to send the Rolls, Records and Proceeds touching the Premisses, before the new Commissioners &c. 2 Hawk. Pl. C. 19. cap. 5. S. 16.

(I) Pleadings after the last Continuance.

What may be pleaded after the last Continuance.

1. A Man may plead a Plea after the last Continuance, after Issue join'd, and in another Term, and therefore it seems that the Parties have Day in Court as well after Issue join'd till Verdict as before; But a Man shall not have Plea after the last Continuance made between the Nisi Prius and the Day in Bank, as it is said elsewhere, nor at the Day of Nisi Prius, nor be received by Default of the Baron, or Tenant for Life at the Day in Bank after Verdict of Nisi Prius. Br. Continuance &c. pl. 77. cites 7 E. 3. Fitzh. Tit. Inquet 46.


Pleas, if the Jury remains Proper defendant the Defendant may plead it at the Day in Bank, because the Cause was not determined by the Jury, and therefore he is at Liberty to plead it at any other Day of Continuance, and it may be tried by the Jury when they appear. Glib. Hist C. B. 85.

3. In Account the Defendant scew'd Tally of the Plaintiff of the Receipt of Parcel of the Sum, and the Plaintiff waged his Law that it was not his Tally, and bad Day to perform it, and at the Day the Defendant came and pleaded the Release of the Plaintiff of all Actions after the last Continuance, and he was received to do, and the Plaintiff compelled to answer; But after this the Defendant shall not have any other new Plea after the last Continuance at any other Day; Quod Nota. Br. Continuance, pl. 21. cites 21 E. 3 49.

4. If Parties are at Issue, and the Demandant releases to the Tenant, and afterwards be taken Continuance by Prove Partition, he shall not plead the Releafe. Br. Continuance, pl. 17. cites 14 H. 4. 12. by Perley 6 K

and
Continuance and Discontinuance.

and Hammond. Brooke says & sic vide that a Man may plead Plea after the last Continuance, after illue.

5. A Man may plead as many Pleas by Matter of Record, after the last Continuance as he pleads; but upon Matter of Fact a Man shall have but one Plea only after the last Continuance; per Rolle: But by Chaunter clearly a Man shall not have more than one Plea after the last Continuance, be it by Matter of Record or Matter on Fact; Quod Cheyn ey J. concitit. Br. Continuance, pl. 5. cites 9 H. 6. 23.


8. In Prior of false Deeds against several, they were at illue, and Proceeds continued against the Inquest till the Jury appeared, at which Day the Defendant pleaded Arbitration after the last Continuance, and thereupon the Inquest was discharged. Br. Continuance, pl. 25. cites 19 H. 6. 36.

9. A. brought Repetiti against B. who assamed on the Plaintiff &c. for Rent-Seruice in fire of the Plaintiff’s Wife, whereupon A. profid Act of his Feme and had it, and after illue at the S. strings Juratiour returned the Plaintiff said, that after the last Continuance his Feme was dead; sed non allocatur, in as much as she was no Party to the Original, and it the Avowry had been upon a Stranger, and the Plaintiff had pleaded Hora de non Fec, and the Avowant had died, pending the Ilue & yet the Illue should stand. Br. Continuance &c. pl. 28. cites 21 H. 6. 23.

10. A Feme was received to plead that she Baron died after the last Continuance, and llue taken that he did not die after the last Continuance, and it was said that if he died before, the should not be admitted to plead as Party but as Auxibus Carue. Thel. Dig. 225. lib. 14. cap. 3. S. 9. cites Mich. 30. H. 6. 9. Quare.

11. In Debet, per Moyle, the Defendant after Issue may once plead a Plea after the last Continuance, as Releafe and the like, but not after than once; for then it would be infinite, and so mitchievous. Br. Continuance &c. pl. 41. cites 33 H. 6. 33.

12. In Debus after Garnishment pray’d by the Defendant, and the Scire facias awarded, he shall not plead that the Plaintiff was outlawed after the last Continuance. Thel. Dig. 225. lib. 14. cap. 9. S. 1. cites Trin. 11 E. 4. 14.

13. It is laid by Littleon that a Man shall not plead after the last Continuance, unless where a Plea is plead before, for if there be any an Importance before, it suffices to shew the Day certain when the Thing was done, which shall shew the Time. Thel. Dig. 225. lib. 14. cap. 3. S. 10. Mich. 15 E. 4. 5.

14. In Affise the Tenant pleaded as to 10 Acres that C. was attainted of Treason, and that it was found by Office Virtute Brevit that he was thereof failed in Fec at the Time of the Attainder, and the Affise * awarded of the Vex, which remained Pro Debel non Juratiour, and at the Day the Tenant said that it was found by Quae Plura that C. was failed of more Land specified in the Affise at the Time of the Attainder, and demanded Judgment if Rega Inconflutio; And upon Examination of the Electorator the Affise was adjourned to W. and afterwards into C. B. and at the Day the Tenant said that it was found before the same Electorator Virtute Officii the same Day that the Quae Plura was found that C. was failed of the Land in the Affise, the Day of the Attainder, whenupon pending the Affise, and before the

* This in the largest Folio Edition is (agreed) and so mutilated.
‡ All the Editions cite 21 H. 7. 8. but from mutilated, there being no such
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The Day of Adjournment in C. B. the Escheator sealed it into the Hands of the King, and demanded Judgment if Rejo inconfulto, and the Plaintiff's demurred; per Bradenel and Keble the Tenant shall not have the said Plea, for he shall have no more than one Plea after the last Continuance, and he shall have one Plea after the Continuance before, and shall not have another Plea after the Continuance again, as that one of the Plaintiff's was the dead or outlaw'd, nor other Plea unless there be in the same Court a Record of the same, and he shall not plead a Release made alter, nor shall he plead Entry after, nor any other Plea; but what appears to the Justices before them of Record. Br. Ad. del Roy pl. 99 cites S. P. &c. pl. 5.

15. But in Trespasses, if one pleads Release, and the other pleads Arbitriment, and afterwards he who pleaded the Release pleads another Release after the last Continuance, he shall have it, because this is the first Plea pleaded after the last Continuance, but if the Arbitriment be found afterwards against the Plaintiff, he shall have Advantage thereof; because in Trespasses Arbitriment is Satisfaction, and Satisfaction of one will exclude all. Br. Continuance &c. pl. 45. cites 4 H. 7. 8. See the Not. 5 H. 7. 8. &c.

16. And the same Law of Certificate of Bystandy for the one Tenant, the other who pleads a Plea after the last Continuance shall have Advantage thereof, because it appears of Record before the same Justices. Br. Continuance &c. pl. 45. cites 4 H. 7. 8. See the Not. 5 H. 7. 8. &c.

17. And the same Law of the Verdict of the Arbitriment, and he shall not have Plea after Plea as above in any other Case. Some held that the Plea should be fuller for the King's Advantage, but non adjudicatur. Br. Continuance &c. pl. 45. cites 4 H. 7. 8. See the Not. 5 H. 7. 8. &c.

18. It was agreed amongst, that a Man shall not have but one Plea after the last Continuance, unless such Pleas as were not in Cite at the Time of the first Plea; for then it is not after the last Continuance. Br. Continuance &c. pl. 82. cites 9 H. 7. 8.

19. After Plea in Bar pleaded, a Man shall not have but one Plea after the last Continuance, if it be not a Thing which is apparent to the Justices, or which is in Advantage of the King &c. Thel. Dig. 204. lib. 14. cap. 3. S. 12. cites Mich. 9 H. 7. 9. 16 H. 7. 11. & 1 E. 4. 4.

20. Where a Prior brings an Action, and pending the Action be not begun, the Defendant ought to plead it immediately, and so of Outlawry and Release, and yet these go in Bar, but if he does not plead it immediately, he shall not have them after the last Continuance, ut prius per Vavasor & Curiam. Br. Continuance &c. in pl. 79. cites 16 H. 7. 17.

21. If Inquest be taken by Default, the Defendant cannot plead a Plea after the last Continuance before Judgment; for he has not Day in Court; but is put to his Writ of Audita Quære, unless it be in the Case of the King; Quod Nota. Br. Jours. pl. 74. cites 21 H. 7. 33.

22. It seems that after Inquest awarded to inquire of Damages in Action of Trespasses or the like, the Defendant cannot plead any Plea after the last Continuance, because he had no Day in Court. Br. Continuance &c. pl. 61.

If the Plaintiff, after a Writ of Inquest awarded, releases the Defendant, he cannot plead the Release at the Day in Bank, because there is no Day given him, and Judgment is already given. Gilb. Hist. of C. B. 85, 86.

23. No more than one Plea after the last Continuance can be received, to avoid Infinity. Jenk. 160. in pl. 2.

24. There are 2 Cases wherein a Man may plead, that it be after the last Continuance, viz. Outlawry, and the Death of the Plaintiff; as to the Outlawry, it is upon the Prerogative, that the Debt isfeffed to the King, and by virtue of the Prerogative * Nullam tem
Continuance and Discontinuance.

...that an Outlawry may be pleaded after the left Continuance, because Nullity occurrir Regi; and therefore he may plead it tho' a Continuance has happened after the Outlawry; so he may plead the Death of the Plaintiff, because tho' a Continuance has been entred, yet that Continuance is a Nullity, because there was no Plaintiff in Being when Day could be given; so it may be pleaded it the Plaintiff died after the Day at Nisi Prius, and before the Day in Bank; and the Reason is, that if there is no Cause in Court, no Judgment can be given for a Person that is not Rerum Natura, and if it be given it is erroneous; and if the Plaintiff’s Attorney will Traverse that Plea, he cannot say the Plaintiff comes per Atorni, because that would be to forejudge the Matter in Issue; but the Attorney by his Name, viz. I. S. venit pro Magistro suo & dict. Gilb. Hist. of C. B. 83, 84.

25. In Debt upon an Obligation, the Parties were at Issue upon Tender at the Day, and afterwards the Defendant pleaded, that after the Darrain Continuance, the Money was attached in his Hands in London, at the Suit of I. S. The Court doubted if Monies might attached in London, a Suit for it being depending in this Court, but (if attachable) they held it might be well pleaded after the left Continuance; for it goes in bar at another Day. Cro. E. 151. pl. 7. Trin. 30 Eliz. B. R. Pell v. Pell.

S. C. Contra. He could not plead it after the Demurrer, tho' after Issue joined he that he might plead a Plea.

Puis darrain Continuance, and agreed also, that if Defendant or Plaintiff take Issue or Demurr upon this Plea, yet the Court must consider the first Demurrer alive, for it, upon that pleading contended by Demurrer, the Plaintiff could not have his Action, the Court cannot give Judgment for him, howsoever the latter Issue or Demurrer put; but otherwise if the first had been an Issue, for then nothing had been contended to his Prejudice, and then that had been utterly reliquified by a second Issue or Demurrer. S. C. cited per Cour. Trin. 24 Car. B. R., because after Issue joined no Respondent suffer can be awarded, and lays that with this agrees L. 5. 24. 159. when in Debt after Issue joined the Defendant at the Nisi Prius, pleaded Payment of Part, after the left Continuance in Abatement, and the Jury being discharged, and the Plea adjourned into Bank, the Plaintiff had Judgment to recover his Debt, because no Place of Payment was pleaded. Allen 66. in Case of Beaton v. Forreit.

27. Ejectsiones firme, after Verdict at the Nisi Prius for the Plaintiff, the Defendant at the Day in Bank pleaded a Release from the Plaintiff, because the Verdict and the Day in Bank, and shews it to the Court; And whether he thow’d be received thereto, was the Question; and resolved that he had not any Day to plead it, nor had he any Remedy but by Anditta Suerela, if the Plaintiff sued Execution; wherefore it was adjudged for the Plaintiff. Cro. J. 646. pl. 10. Mich. 20 Jac. B. R. Stamp v. Parker.

A Plea after the left Continuance cannot the former Plea; for now the Party relies upon this left Plea, and his a tacit Waiver of the former Plea, but not of a Demurrer joined, for that lies in the Power of the Court, and not of the Parties. Jenk. 100. in pl. 2.

(K) Pleas
Continuance and Discontinuance.

(K) Pleas after the last Continuance. Proceedings and Pleadings, how to be in such Cases in general.

1. At the nisi prius in plea of land, the tenant pleaded a release as cited in the last continuance, fed non allocatur; for this is not Day to plead, and therefore the inquest was taken. Br. Inquest, pl. 151, cited 7 C. 3-37.

2. And at the day in bank, he would have pleaded the release; fed non allocatur, but seisin of the land awarded. Ibid.

3. But at the day of return of the tenant's plea, the plaintiff may plead after the last continuance, and at all other days after and before the nisi prius. Ibid.

4. In quare impedit by R.H. the defendant said that the plaintiff was made knight at D. after the last continuance, to which the plaintiff said that he was made knight at D. on a day before the continuance, abique hoc that he was made knight after the last continuance, prifon and the other e contra, and it was admitted a good issue and found against the plaintiff, and the writ abated. Br. Negativa &c. pl. 14, cited 7 H. 6. 14.

5. And it was agreed there that no deed of the plaintiff after the last continuance is a good plea. Ibid.

6. False imprisonment by 3, the defendant said that one of the parties died after the last continuance, judgment of writ, and the plaintiff said that he did not die after the last continuance, and per June Ch. J. it is a negative pregnant. Br. Negativa &c. pl. 30, cited 14 H. 6. 9.

7. So in Forman, to say that ne dona pas in the tail, but shall say Ne dona pas modo & forma. Ibid.

8. And per tot cur. where the one alleged death, it suffices for the other to say prifon that not, and this is perfect issue, and after the issue was that he did not die modo & forma, quare therefore; for it seems that the issue is good there, but it seems it the party will say that he did not die after the last continuance, it is negative pregnant. Ibid.

9. In precipe quod reddat they were at issue, and the tenant pleaded a release of the defendant, after the last continuance, the defendant said that not his deed after the last continuance, and no plea, for it is pregnant, by which he said that he made it before, abique hoc that he made it newton and no plea, but confession of the action, by which he said that he made it after by doctrine & c., abique hoc that he made it after the last continuance, and then well. Br. Traverie per &c. pl. 366, cited 21 H. 6. 9.


10. In false imprisonment by two the defendant alleged the death of one after the last continuance, judgment of the writ; the plaintiff said that he did not die after the last continuance. This is a negative pregnant, whereupon he said that he did not die modo & forma, and the issue was accepted. Br. Continuance, pl. 35. cites 36 H. 6. pl. 24.

6 L
Continuance and Discontinuance.

11. In Gui in Vida the Tenant after the View pleaded that the Demandant had entered after the last Continuance, and the other contra, and so to Issue, which was fine by the Demise of the King. The Demandant afterwards brought Re-Summons, and the Tenant pleaded that after the last Continuance the Plaintiff brought Affidavit against him of 2 Acres in D. and pleaded all in certain, and how the Demandant recovered and entered, and that the 2 Acres are Parted of the Land in Demand, Judgment of all the Writ, and by the Demand he shall have but one Plea only after the last Continuance, whereas now he has taken two. Moore held that in the Case he might; for when a Plea is fully continued, he shall not plead but one sole Plea after the last Continuance; but here as to the first Plea pleaded after the last Continuance, the Plea was fine, and so in Effect determined, and upon the Re-Summons he shall plead De Novo, and therefore in the Re-Summons he shall have Plea once after the last Continuance. Quare; for afterwards they went to another Matter, and so the Case was not ruled in this Point. Br. Continuance &c. pl. 46. cites 1 E. 4. 3. & 2 E. 4. 10.

The Pleas are two. Two Fold, viz. in Abatement and in Bar; if any thing happens pending the Writ to abate it, this may be pleaded Post Discharge Continuance, though there is a Plea in Bar; for this can only relate all Pleas in Abatement that were in being at the Time of the Bar pleaded, but not subsequent Matter; though it be pleaded in Abatement, yet after a Bar is pleaded it is peremptory, as well on Denial as on a Trial, because after Bar pleaded he has awnsered in Chief, and therefore can never have Judgment to answer over. Gibb. Hill of C. 3. § 82. &c. it may be pleaded in Bar, but whether it be pleaded in Abatement or in Bar, in the first Place it must be pleaded Quod teneas Currens, and the other Quod Ahima uteri us non manutena non debet, and not that former Inquest should not be taken; because it is a substantive Bar in itself, and comes in the Place of the former, and therefore must be pleaded at the Action. Gibb. Hill of C. 8. 85.

12. In Debt, after Issue joined the Defendant at the Nisi Prius pleaded Payment of Part after the last Continuance in Abatement, and the Jury being discharged, and the Plea adjourned into Bank, for that no Place of Payment was pleaded, the Plaintiff had judgment to recover his Debt. Arg. All. 66. Trin. 24 Car. B. R. cites Long 5 E. 4. 139.

13. In Affidavit he that pleads the Death of one of the Plaintiffs, pending the Affidavit and after the last Continuance, ought to shew that the Affidavit was continued from such a Day to such a Day, and that after this Day he died; Quod Nota, per Curiam. Br. Continuance &c. pl. 49. cites 18 E. 4. 13.

14. If Tenant enters pending Pracipe quod reddat and before Issue, the Entry shall be that he entered pending the Writ; But if it was after Issue, it shall be that he entered after the last Continuance; per Jennor Proromatory. Note the Diversity. Br. Continuance, pl. 2. cites 26 H. 8. 3.

15. In Trophais, upon Not Guilty pleaded, the Jury appeared the first Day of Hill Term, the Defendant said that the Inquest ought not to be taken, for the Plaintiff had related to the Defendant all Actions after the last Continuance, but because the Relief was after the Effoain Day of Office, Hill, it was disallow'd, and the Inquest taken; contra it the Relief had been made before the Effoain Day; for in such Case he might plead it whether the Jury appeared or not, because he had no Day to plead it before; But then also he shall say Action non, and set that the Inquest shall not be taken. D. 361. a. pl. 10. Hill. 52. Eliz. Anon.
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was well brought, but that the Plaintiff, by reason of this new Matter, ought not to proceed further in it.

16. Action for Words, at Nisi Prius the Defendant pleaded Concord after the last Continuance, judge of arrest &c. and per Cur. it is no Plea, but he ought to have concluded Judgment at Action, and so in all Pleas pleaded since the last Continuance, and upon this Judgment was given per Quer, and no Nisi Prius granted, for it was a Conci lion of the Matter in Issue. Cro. E. 49. pl. 4. Trin. 23 Eliz. B. R. Cockain v. Witram.

17. In Debt by one as Administrator, the Defendant at the Nisi Prius 5 P. and pleaded that the Plaintiff's Letters of Administration were revoked after the resolved at the last Continuance, Judgment at contested procedure debuit; and good by good law. Walmley and Gawdy, but Anderton and Beaumont contra. Quere. D. 361. n. Marg. pl. 18. cites Trin. 36 Eliz. C. B. Hutton v. Paradise

but otherwise after Issue joined. Ma. 921. pl. 1230. Trin. 12 Jac. Stoner v. Gibbons—Hob. St. pl. 136. Sumner v. Gibbon &c. cited and upon Amendments and Continuances of Demurrers, the Plaintiff might be called at the Day in another Term whereunto it was adjourned, and by the same Reason he may plead a Plea after the last Continuance.

18. In pleading a Thing after the last Continuance, it is no good S. C. cited Pleading to say, Qiued post ultimam Continuacionem such a Thing hap- pen'd, but he must allege precisely the very Day, viz. from such a Day that pleads to such a Day ; Per Cur. Yelv. 141. Mich. 6 Jac. B. R. in Cafe. of Ewer v. Moyle. 

last Continuance, must plead certainly, and this is to be observed as a Principle in Law; Per Moun- tague Ch. J. Pl. Com. 35. b Patch. 4 E. 6.

19. Such a Plea can not be taken at Nisi Prius, the Power of the Juf. A Plea after 

(a) tices of Nisi Prius being only to take the Verdict of the Jury. Bullit. 92. Mich. 8 Jac. Moor v. Browne.

20. And if there be any Mistake in such a Plea pleaded at the Af- fairs, it cannot be amended after the Commision of the Judges is determined, neither by the Judges themselves, nor by the Court into which the Plea is returned with the Nisi Prius Record, as it ought to be ; and conditionally therefore where at the Trial of an Ejection a Plea was put in before the J. 261. pl. 23. the Jarows were sworn, that since the last Continuance, viz. such a Day Term Trin. before the Day of Affairs (viz.) 25 July (the Affises being v. Moor the 22 July) the Plaintiff had entered into such a Clofe by Name, Parcel S. C. se- of the Premises in the Declaration specificat' which Plea was received, and the next Term it was moved that this Plea might be amended in adding the Vill, where the Clofe lay, and the Court would not. Yelv. 1850. 181. Mich. 8 Jac. B. R. Moor v. Hawkins.

21. If a Man pleads an insufficient Plea after the last Continuance, there the Plaintiff shall have Judgment, as if the first Issue had been tried for him; and for this he cited the new Book of Entries, fol. 575. Win. 90. Trin. 22 Jac. C. B. Per Hutton J. said it was adjudged in Sir Hen. Brown's Cafe.

22. Time and Place for the Venue must be laid in this as in all Pleas. Gib. Hist. of C. B. 84.

23. A Plea after the last Continuance may be thus, viz. And now at this Day &c. comes such a one Defendant by J. C. his Counsel, and says,
Continuance and Discontinuance.

fays, this action the Plaintiff against the Defendant ought not to maintain, for that after the Quindecem et Holy Trinity last past, from which day until such a Day in Mich. Term next, unless the Justices of Assizes before come such a Day &c. the Action aforesaid is continued &c. the Plaintiff by his Deed dated &c. did release &c. and the Matter what it is, whether Abatement in Bar dilatory, or peremptory as the Case is &c. and this he is ready to aver. Clayt. 155, 156.

24. Debt for Rent, the Defendant pleads Nil debet, and so Issue joined, and at the Day of Nil Prior the Defendant pleads Quod pus Darrein Continuance the Plaintiff releas'd to him, and doth not name any Place where he releas'd, so no Issue could be taken, and to this the Plaintiff demurred; and it was adjudged a Fault incurable. Freem. Rep. 112. pl. 1.32. Trin. 1073. Gardner v. Bloxam.

25. In Malct and Battery the Defendant pleaded Not Guilty, and at the Affidavt he put in a Like Puis Darrein Continuance, to which, clearly, if the Plea had been sufficient, it could not have been then tried, neither could the Demurrer be argued there, but must be certified up before the Judge of Assize as Part of the Record of Nil Prior. 2 Mod. 307. Patch. 39 Car. 2. C. B. Abbot v. Rugeley.

26. In Trepasso against four Defendants, who appeared, and after several Continuances three of them pleaded the Death of the fourth after the last Continuance, & patent, &c. The Plaintiff demurred. The Plea was adjudged true in the Conclusion, which ought to be Ficta Judicium, & Curia ulterior procedere vult, because in Fact the Writ was abated before by the Death of the Party; whereupon a Responden Ourt was awarded. 3 Lev. 120. Trin. 35 Car. 2. C. B. Hallowes v. Lucy.

27. In Debt upon a Bond the Statute of Usury was pleaded, and a Demurrer was to the Plea, and the Paper Book made up and delivered, and the Demurrer joined, with a Blank left for the Day of the Curia aduocate only. The Defendant pleaded, that the Plaintiff died after the last Continuance, and thereupon the Plaintiff's Attorney filled up the Blank, and made it Deo Sallbat i Pros' post quodin' Presthe, to which Day the Judgment ought to refer, and if the Plaintiff was then living, it would be good; and the Attorney for the Plaintiff was examined upon Oath, whether he was then living or not? who swore that he saw him after the said Saturday; whereupon the Plea was rejected. L. P. R. 328. cites S. W. 3. B. R. Moor. v. Row.

28. In Debt on a Bond Defendant pleads in Bar as to Part, that after the last Continuance he had paid so much, where the Plaintiff accepted; to which the Plaintiff demurs, and it being a Declaration of Michaelmas Term, it was adjudged the whole was discontinued; for the Plaintiff's way had been to demur to the Plea, so far as it was pleaded, as he had
Caufe to do, it being after laft Continuance, and Discontinuance pleaded or produced, and take Judgment by Nil dies as to the reft; Per Cur. 12 Mod. 626. Hill. 13 W. 3. Crow v. Mafon.

29. Debt upon a Bond against two, the Declaration is, Memorandum quod alias felicet de Termino feiident Melch. An Imparlance is to Die Mercurius' [ed] 9th Decembar the Plaintiff offered one of the Defendants. At the Day of Pleading one of the Defendants pleads this Repiuent with an Actio non. The Plaintiff demurs, and held to be the usual Form of Pleading with an Actio non, though some of the Pleadings be with an Utterius non vult profequii, this is before Iflue is joined; for when the Party has two Matters to plead, he may take one, and then he waves the other; but after he has pleaded a Plea, and Iflue is joined upon it, then he is proper to plead an Utterius non vult profequii; and therefore in all Pleas Puis Darrein Continuance a Time must be mentioned, that it may appear that the Party had no Opportunity to plead this Matter before. When a Man hath a Matter that will bar the Plaintiff of his Action, he may plead this at the firit Day; So if the Matter will abate the Plaintiff's Writ. Parker Ch. J. laid as to *Jenner's * See (1) pl. Opinion, in 26 H. 8. 3. mentioned in Latw. 1178, where a Precipe is brought, and the Defendant enters, the Tenant may plead that he entered pondering the Writ, (Id efi) that he may plead this generally, without taking any Notice of Time, but when Iflue is joined in a Caufe, the Court hath nothing to do but to try the Iflue, and in the Café here, it is not material when the Repiuent was, because it is the fame Thing as if it had been before the Action commenced. As to Littleton's Opinion in Ed. 4, that was after Iflue joined, the Law doth allow but one Plea, and therefore when you have pleaded one, you cannot come in and plead another, but every Plea ought to be pleaded in the firit Intance, and you can have but one Puis Darrein Continuance to avoid delaying the Plaintiff, and 3 3 Keb. 397. was denied, and when * See (L) pl. a Puis Darrein Continuance is pleaded, he must flrew why he did not plead it before, and flew the Time particularly, as YeV. 141. for when a Man had pleaded before he had put himfelf upon that Defence; but if a Matter happen Puis Darrein Continuance he must plead it, and the constant Practice is to plead it ut supra, with an Actio non; for where a Man hath a Bar to an Action, why should he not plead it as fuch? Paffch. 9 Ann. B. R. Price v. Kendrick.

(L) Pleas after the laft Continuance. Where the Matter pleaded must be expressly mentioned to have been done or happened after the laft Continuance.

1. If a Man pleads the Death of the Defendant, pending the Writ, he Br. Brief, shall not plead it after the laft Continuance, because the Writ is pl. 579. thereby abated in Paef; but contra of a Plea which proves the Writ (351) S.C. abatable only; as taking of Baron and the like. Br. Continuance &c. pl. 52. cites 18 E. 3. 19.

2. In Treffary after Iflue, the Defendant was received to plead that the Plaintiff was outlawed of Felony, without paying after the laft Continuance. Thel. Dig. 204. lib. 14. cap. 3. S. 1. cites Mich. 20 E. 3. Ut- lawny 10. and 32 H. 6. 27.


4. After
Continuance and Discontinuance.

4. After Issue the Tenant shall not plead that the Demandant has entered &c. without saying after the last Continuance, and it is not sufficient to say that he entered after the Pleading. Thel. Dig. 204. lib. 14. cap. 3. S. 3. cites Hill. 50 E. 3. 4. and 21 H. 6. 54. But says, that after Continuance taken such Plea was admitted. Trim. * 2 H. 6. 13. by saying that he entered pendant brevi.

5. Entry, pending the Writ, nor Acquittance of Debt, pending the Writ, is no Plea, unless it be said that it was after the last Continuance. Br Continuance, pl. 16. cites 50 E. 3. 4.

6. It is said, that the Tenant shall not plead the Death of one of the Demandants who is feued in Formedon, without saying that it was after the last Continuance. Thel. Dig. 204. lib. 14. cap. 3. S. 4. cites Mich 19 R. 2. Br. 955. Quære.

7. In Præcipe quod reddat the Tenant cannot plead that the Demandant is outlawed in a Personal Action, without saying that it was after the last Continuance. Thel. Dig. 204. lib. 14. cap. 3. S. 5. cites Mich. 14 H. 4 15.


9. Feue receiv'd may say that the Demandant has entered pending the Writ, without saying after the last Continuance. But he who is Party to the Writ cannot, after any Continuance, plead the Death of one of the Demandants, nor of the Tenants, or Entry of the Demandant, or that the Demandant has taken Baron, without saying after the last Continuance. Thel. Dig. 205. lib. 14. cap. 3. S. 7. cites Titm. 21 H. 6. 54. and 32 H. 6. 12.

10. Præcipe quod reddat against Baron and Feme, who make Default at the Nift Brins, and the Feme prayed to be received at the Day of the Petit Cape returned, and said that the Demandants had entered into the Land in Demand pending the Writ, and did not say after the last Continuance [and well]; contrary if the and her Baron had pleaded this Plea without Receipt; Nor no other who remains Party to the Writ, without Receipt shall plead it, but shall say after the last Continuance; but Tenant by Receipt may. The Reason is, for that he is Tenant De Novo, and a new Tenant, and the Demandant shall count De Novo, and all ancient Pleas and Matters are waived except the Original, and therefore he shall plead it at Large, and is not bound by any Continuances before. Br. Continuance &c. pl. 29. cites 21 H. 6. 43.

11. A Man shall not say that the Plaintiff is made a Bishop pending the Writ, or that the Feme took Baron pending the Writ after a Continuance, unless he pleads it after the last Continuance; Per Opinionem Curiae, Qued Noca; But contra of Death or to say that the Feme was Cover of the Day of the Writ purchased. Note the Diversity; For this disproves the Writ in Fact, whereas the other does not disprove it but only in Law. Br. Continuance &c. pl. 57. cites 32 H. 6. 10.

12. A Man ought to plead that the Bishop is transferred to another Bishoprick after the last Continuance, if it be not pleaded at the first Appearance, but in Writ by a Feme the Defendant shall say that she was Cover of Baron the Day of the Writ purchased. Thel. Dig. 205. Lib. 14. cap. 3 S. 8. cites 32 H. 6. 12.

13. In Dower the Tenant pleaded that he himself discharged A. who re-entered the 10th Day of October &c. Neele said that the Tenant should say that he entered after the last Continuance; But Littleton said that a Man shall not plead after the last Continuance unless where a Plea was pleaded before, whereas here is nothing but an Impediment; But Brooke says, taken Quære inde, for it seems the Impediment is a perfect Continuance; but he that comes at the first Day and pleads Entry pending the
Continuance and Discontinuance.

14. In Trespass the Defendant pleaded Not Guilty, and so to Ijffice, Traverse, and Day given till another Term, and Mise between the same, the Plaintiff is not sued &c. pl. 247. S. B. 127. 11. 2.5.

15. In Debt the Defendant cannot say that the Plaintiff has received Parcel of the Debt pending the Writ, without saying after the last Continuance. Theel. Dig. 205. Lib. 14. cap. 3. S. 11. cites Trin. 5. H. 7. fol. ultimo.

16. In Action on the Cause by 2 Administrators for Money lent, the S. C. cited Defendant pleaded the Release of one generally after Imparability by Actio. Arg. 2. Law. 117. 11. 3. 14, and did not plead it after the last Continuance as he might; it being made since the Action brought, and therefore the Plaintiff demurred; pl. 29.

The Court held that the Plea should have been after the last Continuance, and the not pleading so loses all the Benefit of the Release, and Judgment for the Plaintiff. 3 Keb. 397. pl. 99. Mich. 26 Car. 2. B. R. Ahlerton and Dowly v. Miller.

17. In Replication against 4, the Defendants confess the Taking, but plead The Re-in Bar that the Plaintiff 6 Feb. 1 Will. had released 2 of them, without saying before the Writ brought or pending the Writ, or after the last Continuance; the Plea is not sued &c. pl. 117B. says that it seems it may be collected by the better Authority of the Books there cited (from the Year Books) that the Plaintiff, by which the Imparability the Defendants had affirmed the Action; and that if they would have any Benefit of the Release they should have pleaded, that it was made after the last Continuance which they could not do because it was made before; all which was admitted happened to be true, if it had been after Title joined, for there is no occasion of Continuances before. The Court, viz. Powell and Rookby on this first Argument were of Opinion that the Plea was good, and gave Judgment for the Plaintiff, Nili &c. But the Cafe was argued again on the same Term, and in Mich. Term, and ordered to be argued again, but no Judgment is on the Roll. 2 Laww. 117B. Trin. 2 W. and M. in B. R. Rainbow v. Worrall.

Write is abated and notatable only thereby, it may be pleaded wanting a Continuance after the Thing happened, and need not be pleaded that it was after the last Continuance &c. but these are so by the Opinion of the Person Proctorary of C. B. that in such Cases the Pleading ought to be that such a Thing happened pending the Writ; for in the 26th. H. 3. 5. he says that in Precise Part redress if the Demandant enters before they are at Issue, and the Tenant pleads this entry in abatement, he ought to say that the Demandant entered pending the Writ; but if they are at Issue and then the Demand.
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Contract and Agreement.

Demantid enters, the Tenant shall say that he entered after the last Continuance and not pending the Writ; but says that the Reporter makes a Quare of it, and says that the 21 H. 6. is otherwise, but Sergeant LutwIch says that upon search throughout the Year of 21 H. 6. no such Thing is to be found there but rather the Contrary; for in 21 H. 6 48, 49. & c. the Fore Tentant by Receipt pleaded the Entry of the Demantid pending the Writ and nothing more, and the Pea upon Debate was allowed to be good; and says that Brook in his Abridgment of the same Book Tit. brief, pl. 2. approves the Diversity there taken by Jennor, with a Note Diversitatem. But says that in the Principal Case here of Rainbow v. Worrall, it is not said that the Release was made either before the Writ purchased or pending the Writ or after the last Continuance.

* See (K) pl. 29.

5 Mod. 11. Green v. Moor, S. C. ordered to go over to the next Term, because it being a just Action, the Plaintiff may in the mean Time reverse the Outlawry, and then may plead after the last Continuance.

For more of Continuance and Discontinuance, in General, See Agreement, Amendment, Appeal (N) Default, Error, Estain, Protection, and other Proper Titles.

Contract and Agreement.

(A) What is, and the Effect thereof.

1. A Contract is an Agreement entered into by several Persons, including an Obligation by it's own Nature, and the Obligations arising from Contracts are divided and distinguished according as they are perfected, either by the Sole Content of the Contracters, or by the Intervention or Tradition of Things, or lafily by Word or Writing, and are either ex Re, from a Thing done; ex Verbis, from Words; ex Literis, from Writing; ex Confenfit, from Content. But as all Obligations cannot be bound up under general and regular Names of Contracts, the Law allows some Obligations to pass under the Name of Quasi Contractus, because they have some resemblance and are of the Nature of Contracts.

2. If A. sells a Horse to B. for 101. and has no Horse, yet A. shall have an Action of Debt for it; but if A. has a Horse, B. may take it, and so it may be a perfect Contract, and yet there is not quid pro quo. Br. Contracts. pl. 17. cites 37. H. 6. 8.

3. Lease for Years rendering Rent is a Contract. Br. Contract. pl. 43.

Ibid. 11. b. Arg. S.P.

4. An Agreement concerning Personal Things is a mutual Affent of the Parties, and ought to be perfect, full and compleat; for when it concerns Personal Things 'tis the mutual Consent of the Parties, and ought to be
be executed with a Recompence, or else to be so certain as to give an Action or other Remedy for a Recompence, otherwise it is a naked Communication without Effect. Pl. C. 5. a. Hill. 4. E. 6. in Cafe of Reniger v. Foglia.

5. Recital of * Whereas he was possessed of certain Land, he assigned * S. P. De-
the same &c. amounts to an Agreement. Le. 122. pl. 164. Trin. 30
Cafe. Hollis v. Carr.—So Everyman in a Lease amounts to an Agreement. Le. 117 pl. 151.

6. If one have Wares purposing to sell them, and another desiring to buy them, Latch unto him do not sell them away but tarry till such a Day and I will pay you then for them, this is a good Promiss and Consideration, for by this he is hindered in the Interim from the Sale of them. Per Doderidge J. 3 Bult. 70. Trin. 13 Jac. B. R. in Cafe of Copper v. Dickenion.

7. If I say the Price of a Cage is 4 l. and you say you will give me 4 l. and do not pay me presently, you may not have her afterwards except I will, for it is no Contract; but if you go presently to telling your Money, if it fell her to another you shall have your Action of the Cafe against me. Noy's Max. 87.

8. A forced Agreement of the Party is accounted to be no Agreement, and therefore the Court will not compel him that did thus agree to perform his Agreement; (22 Car. 1. B. R.) for the Law abhors all Force and Violence. L. P. R. 49.

9. Agreement of Parties cannot present a Court of Equity of its Juris-
diction, As in Cafe of a Mortgage it cannot be agreed that this Court shall not give Relief. Arg. Chan. Cafes 141. Mich. 21 Car. 2, in the Cafe of Fry v. Porter.

10. Delivery in Consideration of being paid the Value, is a Sale. 1 Salk. 25. pl. 11. Trin. 2 Anne B. R. in Cafe of Herbert v. Borlow.

11. If two Men submit to the Award of a third Person they two do also thereby promise expressly to abide by their Determination, for agreeing to refer is a Promise in itself. 6 Mod. 35. per Holt Ch. J. Mich. 2 Anne B. R. in Cafe of Squire v. Grevell.

(B) Good or not in Respect of the Contractor. See tit. Deaf, Dumb, and Blind.

1. The Contract of an Infant is void, Br. Contrac., pl. 34. cites 39 See Tit. En-
E. 3.

shall be liable. See Tit. Baron and Feme (E. a) (E. a. 4) — And see Tit. Feme sole Merchant.

5. Agreement made with an Infant is not binding, because Ex parti

6 N
(C) Good or not, in respect of the Contract, and the Manner of it.

1. C Arol or Promise to pay 10 l. without Quid pro quo, does not make a Contract; for it is only Nudum Pactum unde non oritur Actio. Br. Contr. 3. 3. 9 H. 5. 14.


3. As if there is a Bargain between two, that if one shall deliver twenty Cloths to another, that then he shall pay to him 20 l. Ibid.

4. In Trefpa's the Defendant said, that a Bargain was had between them at D, that the Defendant should go to S, and see the Corn of the Plaintiff, and if he liked it upon the View, and would give to the Plaintiff 40 Pence for every Acre, that he would have it, by which he went and viewed the Land, and was pleased with it, and took it, which is the same Trefpa's; and per Littleton, Choke, and Brian Jusices, it is no Plea, because he did not view that he had paid; But contral if a Day of Payment had been agreed; For if a Man cheapens Wares at a Price certain, and the Vendor agrees to the Price, this is no Bargain, nor shall he take the Wares if he does not first pay, or has a Day of Payment given; and as to the Notice to be given to the Vendor here, Brooke says it seems to him, that when he took the Corn it is Notice in itself that he was pleased with the Corn. Br. Contr. 3. 25. cites 17 E. 4. 1.

5. If a Man sells Stuff for 40 l. and delivers the Stuff, and no Money is paid, nor Day appointed, yet it is a good Contract, and the other shall have Action of Debt and Warranty of the Stuff is good. Br. Contr. 3. 36. cites 39 H. 7. 21.

6. If a Man buys a Horse of J. N. for his Ox; there each may take the Thing, viz. the one the Ox, and the other the Horse; Per Yaxley. Br. Contr. 3. 18. cites 21 H. 7. 6.

7. It was agreed, that a Bargain for 10 l. to be paid such a Day is good. Br. Contr. 3. 15. cites 14 H. 6. 19.

8. And that a Man may sell his Stuff for 10 l. upon Condition that he shall re-have it when he comes to Pay, and by the Performance &c. the Bargain shall be void. Ibid.

9. And per Brudel Ch. J. if a Man sells his Horse for 10 l. and accepts a l. in Earnest, it is a good Contract, and the Vendee shall have the Horse, and the other shall have an Action for his Money. Ibid.

10. A sells a Horse to B. on Condition to pay 40 s. for him at Christmas, and delivers him to B. Afterwards, before Christmas, A. re-sells to C. At Christmas B. pays not the 40 s. but that A. re-sells the Horse. C. never shall have him; For at the Time of the second Contralt. A. had no Interest nor Property, nor Possession of him, nor any Thing but Condition, which cannot enable A. to contract for the Property and the Possession, and so the second Contralt. is merely void; Arg. Pl. C. 432. b. Pauch. 15 Eliz. in Cave of Smith v. Stapleton.

11. In Contral's every Thing requisite ought to concur, as the Consideration of the one Side, and the Promise or Sale of the other Side; Per Pernum J. Godb. 31. in pl. 40. 27 Eliz. C. B.

12. The Defendant sold a Commissioner's Place in the King's Troops for 400 l. to the Plaintiff, who after he had enjoyed the Place 3 Years was turned out, and another put in his Room, and as the Bill supposed, by the Defendant's Means or Procurement, without any Fault of the Plaintiff, which was not proved. It was infus'd on by the Defendant's Coun-
Contract and Agreement.

Council, that this is not a Case proper for the Court to relieve; a Contract of this Nature being a Bargain for a Place or Office of publick Trust and Concern, viz. to take Musters, and though being concerned in Military Affairs is out of the Statutes, yet the King may be abused, and false Musters allowed. Lord Chancellor said, he wished a Law were, that such Bargains might not be, they occuring Decline to the King &c. but seeing the King hath not disallowed them, the Plaintiff shall not lose his Money, and therefore what the Defendant hath received shall repay. 2 Chan. Cases 82, 83. Hill. 15 & 16. Car. 2. Conyers v. Hampton.

13. A Sum vaily exceeding the Allowance per Stat. 21. 7. c. 1. cap. 17. 12 Car. 2. cap. 13. of 5 s. per Cent. Brocage was promted by a third Person, who was really to pay it, and neither the Borrower was to pay, or the Lender to receive the Money, and this was held not within the Statutes aforesaid. Carth. 251. Mich. 4. W. & M. in B. R. Bartlett v. Vinor.

14. If a Scrivener contracts for more than 5 s. for procuring the Loan of 100 l. such Contract is void, Per Holt Ch. J. Carth. 252. Mich. 4. W. & M. in B. R. in Cafe of Bartlett v. Vinor.

15. Every Contract made for or concerning any Thing prohibited, and made unlawful by any Statute is void, though the Statute itself does not mention of it shall be void, but only inflicts a Penalty on the Offender; because a Penalty implies a Prohibition, though there are no prohibitory Words in the Statute, as in the Case of Simoneys, and of Contract for more than 5 s. for Loan of 100 l. Per Holt Ch. J. Carth. 252. Mich. 4. W. & M. in B. R. in Cafe of Bartlett v. Vinor.

16. It was moved in Arrest of Judgment in an Action brought upon this Promise, viz. If you will procure 15000 l. to be paid into the Exchequer upon the Act of 12 d. in the Pound, in any Name, or in the Name of such Person as I shall direct, I will give you 600 l. and inferred that this was Brokage, and a Promise against Law; but the Court declared, that nothing appears in the Declarotion against Law; for the Borrower does not pay Brokage, nor the Lender receive it, but the Consideration is wholly between Persons not interrelated in the Money. Skin. 322. Mich. 2. W. & M. in B. R. Bartlett v. Vinor.

17. The Law knows of no Contract but what are good or bad at the Time of the Contract made, and not to be one or other according to a subsequent Contingency; Per Cur. 10 Mod. 67. Mich. 10 Ann. B. R. in Cafe of Earle v. Peale.

18. D. ordered C. a Broker to sell 5000 l. S. S. Stock upon the 18th of March, 1719-20. Upon the 19th (being Saturday) in the Morning C. told D. that he had sold the said 5000 l. Stock to T. at 200 l. per Cent. D. went to T. and asked him if he had bought the said 5000 l. Stock of C. who told him he had not bought the Stock, and thereupon D. went to C. and informed him what T. said, and then C. said it was a Miscarriage, and he had sold 1000 l. Part thereof to A. and the 4000 l. Referred to B. to be transferred the Wednesday following, and shewed D. his Book, wherein he had made an Entry thereof. The Stock rising very much every Day from the said 18th March, and C. having precarayed with D. and given him a wrong Name of the Purchaser of the Stock, began to insist that C. had not sold the Stock upon the said 18th of March, but meant to take the Advantage of the Rise to his own Benefit, and refused to transfer the Stock upon the Wednesday as required by C. and thereupon C. pressed him extremely to transfer the Stock, affirming, if it were not done his Credit would be blown up in Exchange-Alley, and he should be ruined, and begg'd to have the Matter referred, and to have a Meeting together, and bring each of them a Friend in order to settle the Matters between them; and that Meeting it was agreed, that D. should be with-
should transfer the 5000 l. Stock to such Persons as C. should appoint, upon
Payment of 10000 l. being at the Rate of 200 l. per Cent, but then C. should deposit 4000 l. in Exchequer Orders, in the Hands of J. S. and W. R. as a Pledge and Security for D. in case the Arbitrators then chosen should make an Award for D. that C. did not sell the Stock upon the 31st of March, to answer the Rise of Stock to D. between that Day and the Day on which the Stock was delivered, being the Friday following, and upon this Agreement D. did transfer the Stock for 10000 l. and C. made the De-
posit. After this one of the Arbitrators died before any Award made, and
then C. brought a Bill to have back his Deposit, and D. brought a Cross-
Bill to have the Deposit delivered over to him, upon a suggestion that C. bad
kept the Stock for himself, and as sold it at 200 l. per Cent, as pretended.
It appeared upon the Pleading and Proofs in the Cause, that C. did not
fill the 1000 l. Stock to A nor the 4000 l. Stock to B. though entered in
his Book, but the whole 5000 l. Stock, or the greater Part thereof,
he did retain to himself.
Per Macclesfield C. a Broker, or a Person acting as a Broker, (as C.
was, and not in so within the Statute which prohibits Brokers from buying
Stock for themselves) cannot retain the Stock to himself, which his Prin-
cipal has ordered him to sell, for that is to make the same Person both
Buyer and Seller. The Broker is intituled by his Principal to sell the
Stock to the best Advantage, and if the Broker should be allowed to be
Buyer, in such a Case, can it be supposed that he will heave as great a
Regard to the Interest of his Principal, as to his own particular Interest
and Gain? This would be a great Inlet to Fraud, and a strong Tempta-
tion to a Breach of Trust, and ought not to be allowed; and although in
the present Case D. did agree to the pretended Sale of the 5000 l. Stock,
at 200 l. per Cent, upon the Information of C. that the Stock was sold at
that Price, yet that subsequent Consent, founded upon a Misrepresen-
tation, shall not bind in Favour of the Broker who had deceived him, and
when in reality there was no Sale at all, but the Broker kept the Stock
for himself, upon a Prospect of the Rise of Stock, and though the Bro-
ker might be bound to take the Stock at the Price he informed the
Principal the Stock was sold at, yet it does not follow that the Princi-
pal shall be bound by his Consent which was founded upon a Fraud and
Decoy in the Broker. A Broker cannot retain the Stock which his Prin-
cipal orders him to sell, unless he expressly acquaints his Principal therewith, and he gives his Consent thereto; for then it is not a Sale
from the Broker to himself, but he buys it of his Principal himself, which he may as well do as of any other Man. Decreed the Deposit

N. B. This Decree was re-heard, July 8, 1725, before King C. poit
Term. Trin. 11 Geo. and the Decree affirmed.

(D) Agreement necessary to the vesting of Things.
In what Cafes.

1. WHERE an Estate is given to one by a lawful Act, it shall be
adjudged in the Party before Agreement until it be disapproved to. Arg. 2 Leon. pl. 97. Trin. 28 Eliz. B. R.

2. A
Contract and Agreement.

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2. Affirmavit, and declares that the Defendant Die Maii, Anno Dom. 1625, in Consideration that the Plaintiff would permit the Defendant to re-enter into a Messuage and Cold in which the Defendant had dwelt before, promised to pay to him 30 s. yearly during the Time that he enjoyed it, and that be permit it ipsum reintrare, and he enjoyed it a Year and half, which ended at Mich. 1626, and because he would not pay 45 s. he &c. Upon Non Affirmavit it was found for the Plaintiff. It was moved in Arrest of Judgment, that the Affirmant being to pay 30 s. Annuity, before the Year be determined nothing is due, and the Plaintiff cannot divide the Rent, and cited 5 R. 2. Annuity 21. Debitum Judex non operat. Then when it does not appear that the Action lies for the 15 s. for the half Year, and the Jury alleged Damages entirely, it is void, as 10 Rep. 130. Osborne's Case; and it appears, that by his Computation of Time, it is not a Year and a half from the Time of the Affirmant made. Richardson said, that it is not Secundum Ratam, for then he might divide the Rent, and no Day is limited for the Payment of it; for if a Lease be made for two Years, or at Will, paying annually at Michaelmas 30 s. and the Lease is determined after half of the Year, although it be by the Lessee himself, he cannot pay any Rent; But Yelverton said, that that is not a Rent, but a collateral Sum, and Debt does not lie for it; and in the Declaration it is said, Quod permitit ipsum reintrare, and does not say at what Time, which was taught by all, but Hutton; and it ought to be also, that he did De Facto re-enter. And per Hutton, if it had been said, as long as you shall occupy the Land, you shall pay annually &c. that he may demand half of the Year, but the whole Court against him, and Judgment was stay'd. Hect 53. Mich. 5 Car. C. B. Wentworth v. Abraham.


4. A lent Goods out of the Country to B. and B. apprehensive he would soon be a Bankrupt, delivers a Quantity of Goods, nearly the same, to C. for the Use of A. but before A's Acceptance B. became Bankrupt. Resolved, by the Judges of B. R. on a Reference to them by Parker Ch. J. before whom the Case was tried, that the Property of the Goods were sold in A. by the Delivery of the Goods to C. for the Use of A. that they were not subject to the Disposal of the Commissioners of Bankruptcy. 10 Mod. 452. Mich. 5 Geo. 1. B. R. Atkins v. Berwick.

(E) Construction and Extent thereof.

1. WHERE there is a Bargain between E. and A. for 10 l. that E. so if the shall infract A. in such a Science, and the Money is not paid, had been actually paid, Action would not lie to enforce E. to repay the Money. Ibid. — Br. Dette, pl. S4. cites S. C.

2. He who sells Trees is not bound to suffer the other to take them if he does not pay the Money. Br. Constraf, pl. 26. cites 18 E. 4. 5.

3. If I sell my Horse to you for 20 l. you shall not have the Horse if you do not pay the Money presently; for, though I am content that you shall have him for 20 l. yet if it is not paid presently, but another comes and gives me 20 l. for him and I accept it, there the second shall have it and not
not the first who did not pay me; Per Carell Serjeant, which Fitch. J. and Brudnel Ch. J. agreed. Br. Contr. pl. 15. cites 14 H. 8. 15.

4. But if a future Day of Payment be agreed, then it is a good Bargain, and the Vendee has Possession immediately, and the Vendor shall have Action at the Day; Per Fitch. Ibid.

5. But if you are in the Market and offer me a Piece of Cloth for 20£, and I agree, and as I am telling the Money another comes and gives you 20£ for it, and you agree; yet I shall have the Cloth, for there is no Delault in me; Per Brooke J. which Pollard J. agreed. Ibid.

6. But if I deposit, and before my Return you sell the Cloth to another, there I shall not have the Cloth, because I did not pay presently, nor no Day of Payment was given between us; Per Brooke J. which Pollard J. agreed; But otherwise it seems, if Vendor had agreed to stay till the Vendee had fetched the Money from his Horse. Ibid.

7. But if the Vendor and Vendee are agreed for 20£, and the Vendor delivers the Cloth to the Vendee, and he accepts it, there this a perfect Bargain, and so fee a Disputs between a perfect Bargain and a Communication; Per Brooke J. Br. Contr. pl. 15. cites 14 H. 8. 19.

8. But Sale of Stuff for so much as £, N. shall arbitrate is a good Con-

9. And a Man may sell his Stuffs for 10l. upon Condition that he shall have it again when he comes to Paul's, and by the Performance &c. the Bargain shall be void; Per Pollard. Ibid.

10. And if a Man sells his Horse for 10l. and accepts it d. in Earnest, it is a good Contract, and the Vendee shall have the Horse, and the other shall have an Action for his Money; Per Brudnel Ch. J. Ibid.

11. In every Agreement made between Parties the intent is the chief Thing to be considered, and if, by the Act of God, or by any other Means not arising from the Party himself, the Agreement cannot be performed according to the Words, yet the Party shall perform it as near the Intent as may be. Pl. C. 290. b. Arg. Trin. 7 Eliz. in Cafe of Chapman v. Dalton.


13. If a Man retained a Servant generally, without expressing any Time, the Law shall continue it to be for a Year, because such Retainer is according to Law. Co. Litt. 42. b.

14. In all Contracts he that speaketh obscurely or ambiguously is said to speak at his own Peril, and such Speeches are to be taken strangely against himself. Noy's Maxims, 91.

15. B. agreed to give A. 2 s. per Seeme for all the Bark of the Wood which A. should cut, and B. promised to have Articles ready such a Day containing the Agreement, and a Bond for Performance; but no Sum was mentioned, nor to whom, and therefore it was argued, that the Agreement was void; But, per Cur. B. the Defendant ought to have given a Bond, and the Sum may be reduced to Certainty according to the Value of the Bark, and should not have pleaded None of Asum. See Keb. 776, pl. 15. Mich.


17. All Agreements must be construed Secundum Subiectam Materiam, if the Matter will bear it, and in most Cases are governed by the Intention of the Parties and not to work a Wrong; and therefore if Tenant in Tail makes a Lease for Life, it shall be taken for his own Life; and yet if before the Statute of Entails he made such a Lease, he being then Tenant in
in Fee simple, it had been an Estate during the Life of the Leesee; but when the Statute had made it unlawful for him to bind his Heir, then the Law confines it to be for his own Life, because otherwise it would work a Wrong. Arg. 2. Mod. 32, 81. Patch. 22 Car. 2. C. B. in Cafe of Richards v. Sly. cites Co. Litt. 42 [a. b.] 17. Every Agreement must have some reasonable Construction, which may be consistent with the Intent of the Parties. 2 Vent. 278. Hill. 2 & 3 W. & M. in C. B. Target v. Floyd.

18. If a Man sells 2 Horses for 20l. one is his own and the other a Stranger's Horse, if the one be defeated he shall have an Action for all the 20l. because it is an entire Contract. Per Dockeridge J. 3 Bull. 232. cites Br. Cases 9. pl. 52.—Where a Man's Contract has subjected him only to one Action, it cannot be divided so as to subject him to two. 1 Silk. 65. pl. 2. Mich. 10 W. 3. B. R. Hawkins v. Cardew.

19. The Construction of Marriage Articles, where there appears to be an Intent that Lands shall be settled upon the Issue of that Marriage, is to make the Father Tenant for Life, Remainder to the first and every other Son of A. in Tail Male, MS. Tab. March 6, 1726. Martin v. Martin. 20. A. before Marriage, settled 500l. a Year on A. his Wife, in Bar of Dowry and Thirds, and what she might claim by the Custom, but not to extend to Household Goods. At the Time of the Settlement the Husband was under a Contract with the Commissioners of the Navy to take Care of wounded Sailors, where he had great Quantities of Goods for that Purpofe. Ld. C. King decreed for a Share of those Goods; But on Appeal to the Lords this Decree was reversed. Sel. Cases in Chan. in Ld. King's Time. 52. Mich. 11 Geo. Clerk v. Jackson.

21. Marriage Articles recite, that Lands covenanted to be settled were 500l. per Ann. but there was no express Covenant that they were fo, yet decreed that the Deficiencies should be made up out of other Lands, MS. Tab. March 14th 1728. Gleg v. Gleg.

22. Contracts are to be judged according to the Law of the Place where such Contracts are made. MS. Tab May 23d 1728. York-Buildings Company v. Neers.

(F) Performance. What is; and By whom, When, and How it must be.

1. If a Man sells a Lease of Land, and certain Cloths for 10l. the Contract is intire, and it cannot be severed. Br. Contract, pl.

35. cites 7 H. 7. 4. 2. And if the one of them was by defensible Title, yet the Vendor shall have the intire Sum, though the one Part was devised from the Vendor. Ibid.


4. Agreements may be paid performed when the Intent is performed, And if they thought it be not according to the Words. Pl. C. 291. a. b. in Case of Chapman v. Dalton.

Performance is according to the Words, but not according to the Intent. 291. b. Ibid.
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And if the Price is agreed upon, and then the Buyer takes the Goods away without Payment or Delivery of the Owner, [REFLS] or [THERE LIE, notwithstanding the Bargain. Mod. 175. per Hyde J. 67. p. 6. — On Contracts for Chattels it is no Time it limited for Payment of the Money, it must be paid presently. Mo. 472. Ositer. — Adjudged D. 30. pl. 203 — 6 Med. 162. Patch. 3 Ann. per Holt Ch. J. S. P.

6. A promises B. that if he will grant him a Lease for 21 Years at 10l. per Ann. that he will give him an Horse. B. grants a Lease for 21 Years, but to intitle himself to the Horse it must be at the very Rent of 10l. and to a Lease of 60 Years would not intitle, though 21 are contained in 60. 3 Bulk. 35. Patch. 13 Jac Lea v. Adams.

7. A. bids B. do an Errand at York and he will give him 40s. Afterwards A. says, do this Errand for me at your Horse, and this shall suffice; yet if B. goes not to York, and does his Errand according to that Contract on which the Promise was grounded, he shall never have the 40s. because he has not purloined the Body of the Contract. Per Coke Ch. J. 3 Bulk. 36. Patch. 13 Jac. Lea v. Adams.

8. If one contracts to pay another for any Thing [TINCTIUM QUANTUM MERUIT] as for a Quarter's Board, if he will go away 2 or 3 Days after, he shall pay for the Requisite Per Coke Ch. J. 3 Bulk. 183. Trin. 14 Jac in the Caffe of Cotton v. Wescott.

9. A. promises B. 22l. on Delivery of 20 Quarters of Corn by him; B. delivers 10 Quarters, B. shall not have Action on the Cafe for the Promise before he has delivered all. Per Crew Ch. J. 3 Bulk. 325. Hill. 1 Car. B. R. in Caffe of Hungerford v. Haviland.

10. The Plaintiff had agreed with two of the Defendants to pave their Streets in Putney, and they on the Behalf of the Parish agreed to pay him for them, which Agreement was put into Writing, and remains in the Hands of the Defendant W. The Work was done according to the Agreement, and it came to 300l. The Plaintiff preferred his Bill in Equity against them with whom he had agreed, and against others of the Parish who had agreed with the Undertakers for the Parish to pay their Shares; And per Curiam the Plaintiff must have Relief against th. Undertakers, especially in this Cafe, because the written Agreement, which is his Evidencc, is in the Hands of one of the Defendants, and the Undertakers must take their Remedy against the rest of the Parish. Hard. 205. pl. 5. Mich. 13 Car. 2. in Scacc. Meriel v. Wymondham & al.

11. The Manner of performing a Contract is to be guided by Usage and Custom, as if a Taylor is to make a Suit the Cloth must be found for him, but a Shoemaker is to find Leather to make a Pair of Shoes; Per Curiam. Lev. 93. Hill. 14 & 15 Car. 2. B. R. in the Cafe of Oles v. Thornhill.

12. Agreement on Marriage by Articles to settle 1930l. per Ann. Jointure, and 1500l. per Ann. on the Issue of the Marriage, the Lands settled on the Wife did not hold out to be 1520. per Ann. and great Part of that too in Reversion. The Husband devises his Land unletted for Payment of his Debts, the Diligence was between the Creditors and Trustees of the Infant Son and Widow. Per Car. There is no Covenant that the Ethere shall continue of the Value in the Articles, nor that it should be of that Value in present Possession, and therefore the Settlement ought to stand, the Articles being sufficiently performed. 2 Vern. R. 272. pl. 257. Trin. 1692. Whitchurch v. Lady Ann Bainton.

13. A. Covenants to transfer Stock on such a Day to B. his Executors or Assignes. B. Covenants that he or they shall accept in the usual Manner upon the said Day, and erum tempore solvent the Money; Defendant pleads no Transferr so he could not accept; 'twas argued that according to the Cafe of Carter v. Taylor adjudged the last Term, Defen-
Contract and Agreement.

Defendant ought to have tendered his Money and demanded a Transfer and Judgment pro Quo. Show. 393. Patch. 4 W. & M. Smith v. Cudworth.

4. A bought of the Defendant all his Corn growing in such a Close for 20 l. before the Reaping; the Defendant in Consideration A had paid to L in Hand, and promised to pay so much more Relictue &c. promised to deliver the Corn. Resolved in this Case there needs no Averment that he was ready &c. For there is a Pronounge against a Pronoun which gives mutual Remedy, but if it had been Pronoun the Money must have been first paid. Cumb. 256. Patch. 6 W. & M. in B.R. Mansfield v. Stephen.

15. Every Man's Bargain ought to be performed as he intended it; when he relies on his Remedy vis but just he should be left to it according to his Agreement, but on the contrary there is no Remedy a Man should be forced to Trust where he never meant it. 1 Salk. 171. 172. Patch. 13 W. 3. Thorp v. Thorp.

16. If I sell you my Horse for 10 l. if you will have the Horse I must have the Money, or if you will have the Money I must have the Horse. Per Hol: Ch. J. 1 Salk. 113. pl. 1. Trin. 2 Ann. at Nifi Prius. Owner may sell him to an other. Per North. Ch. J. 2 Mod. 245. in Case of Mires v. Solebay.

16. By Marriage Articles it was agreed that 6000 l. in the Hands of the Trustees should be laid out in the Purchase of Lands to be settled on the Husband for Life, Remainder to the Wife for Life for her Jointure, Remainder to the first and every other Son of that Marriage in Tail Male successively, chargeable with 2000 l. for younger Children, Remainder to the Husband in Fee; the Father by the same Articles Covenanted after his Death to settle other Lands upon the Husband and the Heirs Males of his Body, Remainder to the Heirs of the Father. One Point was, the Father of the Husband having made a Settlement of the Lands agreed to be settled by the Marriage Articles, on the Husband and the Heirs Males of his Body, with Remainder to himself in Fee if this is a good Performance of the Agreement, and if the Limitation ought not to have been on the Husband for Life, with Remainder to his first, and every other Son in Tail Male successively in strict Settlement. Ld. C. King was of Opinion, that the Settlement made by the Father, on the the Husband and the Heirs Male of his Body was a good Execution of the Agreement; by the Articles these Lands were not intended to be settled as a Provision for the Children of that Marriage, they were taken Care of by the other Part of the Articles, by the Trust Money, but for the support and Provision of the Husband, and it is not like the common Case of Articles for Settlement on the Marriage where no other Provision or Care is taken for them, and the different Manner of Penning the Articles in Relation to the Trust Money, and as to these Lands, the one to be in strict Settlement to the first, and every other Son of that Marriage, the other Limitation to the Husband, and the Heirs Males of his Body generally and not tied up to the Issue of that Marriage, fiews plainly the Parities underlood and had in Contemplation the difference between a strict Settlement upon the Issue of that Marriage and a general Settlement upon the Husband and the Heirs Males of his Body, and his Lordship confirmed the Settlement. MS. Rep. Trin. 3 Geo. 2. Cane. Chambers v. Chambers.

17. Bill was brought against Defendants, being 3 of the Trustees of the Sun-fire Office to make good a Loss by Fire &c. The Case was, that Plaintiff had a Policy upon which he usually paid 2 s. per Quarter, and by the Proposals was to pay on the Quarter Day, or within 15 Days after; And the Method of Collecting the Money was by the Agents of the Office calling at the Persons Homes, which they some-
Contract and Agreement.

Times did within the 15 Days, and sometimes a few Days after. Plaintiff's Policy expired at Michaelmas 1727, and the 15 Days were out, the 14th Oct. the Agent of the Office did not call for the 2s. and on the 5th of November following Plaintiff's House was Burnt. A. B. the Agent of the Office examined for Plaintiff swore that if the Fire had not happened he should have called on Plaintiff for his Quarterage the 6th. or 7th. of the same Nov. For Plaintiff it was insisted that this Non-payment by the Plaintiff was not by any Default of his, but happened by the Course and Method of Defendants collecting, and the Negligence and Omission of their Servant or Agent &c. and therefore ought not to be turned to Plaintiff's prejudice &c. It was insisted for Defendant, that there was one subsisting Contract between the Office and Plaintiff at the Time the Loss happened, for by the Payment only the Contract is renewed. And as to the Objection that this is but relieving in Point of Time or a Day, it was answered that, here no Contract arises till the Payment; for the Insurance is but from Quarter to Quarter, and every Payment is a new Contract &c. Lt. Can. said that in Law this Policy is an Agreement to insure Quarterly as long as the Parties please. This Insurance was on Books, and the Party to pay Quarterly; the Continuance, or not, depends on the Act of the Party insured (viz.), on his paying 2s. per Quarter, and upon his paying as the Quarter, or within 15 Days after, the Insurers Covenant to pay &c. the Loss, and in a Declaration at Law the Payment within the 15 Days must be averred. As to Equity, if the Office had dispensed with the Time and taken the Premium after, this Court would have held them to it, because it was their own Act. But here it was neither paid nor tendered; the Office appointed a Collector for the Benefit and Eafe of the Persons paying &c. and to prevent any misunderstanding there is a Memorandum on the very Receipts, that the Payment after the 15 Days was not to dispense with the Time, and the Agent had no Authority after the 15 Days to take the Money. The Premium is the Consideration and is to precede, and if the 15 Days be not the Time what shall be the Time &c. within which it shall be necessary to pay &c. Bill dismissed. Miil. Rep. Mich. 4 Geo. 2. Cane. Fisher v. Brocas.

(G) Agreement &c. determined, extinguished or discharged by what and how.

1. A Man made a Contract to serve for a Year, for 20s. to be paid at 2 Terms, the Master died after the first Term passed and before the last Term, and he was barred of the rest of the Salary, for by the Death of the Master he could not serve him, and so the Contract determined. Br. Contract. pl. 50. cites 27 E. 3. 84. and Fitzh. Deft. 143.

2. Debt of 20l. upon a Contract, the Defendant said that the Plaintiff after took an Obligation of 10 Pounds thereof, and held a good Plea to the whole Contract, for a Contract determined in Pard is determined in all, for it is in fact, and Issue was taken that the Obligation was made for other Matter. Contract. pl. 8. cites 3 H. 4. 17.

3. Contract shall be determined if the Debtor makes Obligation to the Creditor, but one Obligation does not determine another Obligation nor Record, as Account made before Auditors, but both remains. Br. Contract. pl. 53. cites 11 H. 4. 79. and 3 H. 4. accordingly, for otherwise it would be a double Charge.
And by the Opinion in 20 H. 6. 21. if a * Contract is made of the * S.P. Con-

Thing which comes to the Use of the House by an Abbot, there if the Party

takes Obligation, it shall determine the Contract which at first might

have charged the Successor, and the Obligation of the Abbot alone will

not Charge the Successor. Ibid.

5. Note, twas almost agreed for Law, that if a Man retains a Serv-

vant for 20s. for a Year, and the Master Discharges him within the

Year, to which the Servant agrees, that there the Servant shall not have

An Action for any of his Wages for Service done before his Discharge

nor after, for the Sum is not Payable but in the End of the Year, and

the Contract is intire and cannot be fevered. Br. Contract. pl. 31. cites

10 H 6. 23.

6. If an Abbot buys Goods, which comes to the Use of the House so that

the House is charged in Case the Abbot dies, there if the Vendor takes

Obligation of the Abbot alone for the Debt, this shall discharge the Con-

tract, and there if the Abbot dies, the Action is determined, and the


7. A Contract cannot be severed nor apportioned, therefore in Lease

of a Chamber and Boarding of the Leicer, rendring for the Chamber and

Boarding 6s. by the Week, if in Debt upon it he pledges Quod non Dimi-

nis cameram, this goes to all, because Contract is intire, and if it be

destroy'd in Part it is destroy'd in all. Br. Apportionment, pl. 7. cites

9 E. 4. 5.

8. If a Man recovers in Debt upon Contract, and does not take Execution,

yet he cannot have a new Action of Debt upon the Contract; for the

Contract is determined by the Judgment of Record. Br. Contract. pl.

39. cites 9 E. 4. 51.

9. If 2 are agreed upon the Price, and the Buyer departs without ten-

dring the Money, and comes the next Day and tendereth, the other may

refuse, for he is not bound to wait upon him unless a Day of Payment

was agreed between them. Br. Contract. pl. 26. cites 15 E. 4. 5.

10. In Debt, if the Bargain was that the Plaintiff shall give to the De-

fendant 10l. for so much he did, if he likes it upon the View of it; there

per Littleton, Brian and Choke J. if the Plaintiff upon the View of it

disagrees to the Bargain, then it is a void Bargain though he agrees to it


11. And if he agrees to it then it is a perfect Bargain though he disa-

grees after, for the first Act shall bind. Per Littleton, Brian and

Choke, quod nemo negavit. Ibid.

12. A Man may sell his Stuff for 10l. upon Condition that he shall re-

burse it when he comes to Pauls, and by the Performance &c. the Bar-


13. If a Man be indicted to me by Contract, and after makes to me an

Obligation of the same Debt, the Contract by this is determined, for in

Debt upon the Contract it is a good Plea that he has an Obligation of


14. But if a Stranger makes to me an Obligation for the same Debt,

yet the Contract remains, because it is by another Person, and both are

now Debtors. Ibid.

15. A. was indicted to B, on simple Contract, afterwards A. procured And upon

7. S. to be bound to B, for the said Debt of A. and A. gave J. S. a Counter

bond; Per Cur. the Contract is not determined by the Bond given by

J. S. But if J. S. had given the Bond at the Time of the Contract that A. had

determined the Contract, because the Bond was purpant to the Contract.

2 Le. 115. pl. 143. Trin. 29 Eliz. C B. Hoopers Cafe.

Stranger to the Contract being present, promised to enter into a Bond unto the Party &c.

for the Payment of the Money agreed for upon the Contract, and afterwards became bound accordingly; in that

Case the Contract was determined because the Obligation was purpant to the Contract.

16. Ac-

17. An Agreement made between the Parties by Parol only may be discharged and made void, at any Time before it is broken, by Parol only without Satisfaction; for eodem Modo quo oritur, eodem Modo dillollitetur; but after it is broken it can not be discharged without Satisfaction (22 Car. 1. B. R.) For by the Breach there is a Wring done to the Party, which the Words cannot relieve without Satisfaction; but before the Breach no Injury was done to either Party, nor any of them injured by such a Discharge. — L. P. R. 48.

18. If an Agreement made by Parol to do any Thing be afterwards reduced into Writing, the Parol Agreement is thereby discharged; and if an Action be brought for the Non-Performance of this Agreement it must be brought upon the Agreement reduced into Writing, and not upon the Parol Agreement, (Patch. 22 Car. 1. B. R.) For both cannot stand together because it appears to be but one Agreement, and that shall be taken which is the latter and reduced to the greater Certainty by Writing; for Vox emittis volat, Litera Scripta manet. — L. P. R. 48.

19. A Parol Agreement is determined by the giving of a Bond. — Caius, Cales 226. Patch. 26 Car. 2. Davis v. Curiris.

20. A. on the Marriage of N. his Son with M. made a Settlement, and limited 6000/. for Daughters Portions. There was one Daughter who married J. S. and the 6000/. being become due, B. entered into Articles with J. S. to pay the 6000/. within four Years, and Interests in the mean Time. On a Bill for the 6000/. it was infidist, that notwithstanding such Deed of Settlement the Plaintiff ought to refor to the Articles for Relief; for that by those Articles the Deed was made void, and not to refor to the Settlement and Articles both as they had done. The Court decreed, that the Articles did not impeach or vacate the Settlement. — Fin. Rep. 237, Mich. 27 Car. 2. in Canec. Briñce & Ux' v. Denibgh (Earl) & al'.


22. Bill to have Agreement in Writing executed in Specie; Per North. K. such Agreement may be discharged by Parol, since the Statute of Frauds. Vern. K. 240. Patch. 1683, Goman v. Salisbury.

23. Bill to have the Benefited an Agreement, furnishing that A. agreed that on Failure of Issue Male of his own Body the Land should remain to B. the Plaintiff, and that A. and his Heirs should stand seised of the Premises upon such Issue as aforesaid. The Court supped the Deeds produced by the Plaintiff purporting such Agreement to be forged; but in Cafe there was any such real Agreement, yet it was well barred by the subsequent Agreement. — 2 Verm. 129 Hill. 1690. Per Lords Commissioners. AynfelÌv. V. Vaughan.

24. Agreement between Lord and his Tenant for including a Common, that the Tenant should quit their Right of Common, and the Lord should release them all quit Rents, the Incluſe was prevented by pulling down the Fences, and the Tenant continues to use the Common, this is a Waiver of the Agreement. — MS. Tab. Jan. 2. 1719. Lady Lanesborough v. Ockthor. 25. A. made a Purchase before a Master in Chancery for 10,050 l. and deposited 1000 l. Upon its being prayed, that A. might compleat his Purchase, he by his Counsel offered to lose his Deposit and not to proceed, which Lord C. Maccefield decreed accordingly, and observed, that according to his Apprehension a Court of Equity ought to take Notice under what a general Delusion the Nation was at the Time of this Contract made (viz. in the S. S. Year) when People put Imaginary Values on Elixir. — Mich. 1721. Wins Rep. 145 Savile v. Savile.

26. Where
(H) Parol what is, and made good in what Cases.

1. 29 Car. 2. cap. A Ll. Leafes, Estates, Interests of Freehold or Terms 3, 8, 1. A Of Years, or any uncertain Interests in or out of any Lands, Tenements or Heridaments not put in Writing and signed by the Parties making them, or their Agents authorized by Writing, shall have no greater Effect than as Estates at Will, except Leafes not exceeding three Years, whereas the Rent shall be two thirds of the full Value.

2. 29 Car. 2. cap. 3. S. 4. No Action shall be brought to charge any Person for an any Agreement made upon Consideration of Marriage, or upon any Assignment of Sale of Lands &c. or any Interest in them, or upon any Agreement not to be performed within a Year after the making, unless such Agreement be to be performed, or some Note thereof be in Writing, and signed by the Person to be charged or some other by him authorized.

Tends not to any Agreement concerning Lands or Tenements, admitted. Vern. 159. Pauch. 1685, in Case of Dean v. Isaac. ——- Adjudged in Error, that a Contract to assent over a Term is within the Statute, as well as an Interest created de novo. 1 Vent 361. Anon.— Payment of Money binds only in Contract for Goods, nor is a general Term or Memorandum sufficient, though signed by the Party; but it ought to specify the Terms as the Sum to be paid, and the Number of Housers to be sold or dispofed of, and to whom and how. Pauch. 1274, Ch. Prec. 900, Brayton v. Mansfield and Norton. —— An Agreement was made, that in Consideration of £1 paid by the Plaintiff to the Defendant he was to pay the Plaintiff 10s. on his Day of Marriage, which happened about nine Years after this Agreement; adjudged that a Memorandum in Writing was not necessary in this Case, because the Marriage might have happened within a Year after the Agreement made. 3 Silk. 9. Smith v. Welthall. —— Ed. Rep. Rep. 316. S. P. cited by Norbury, and that it was held by the Judges at Serjeant's Inn to be out of the Intent of the Statute and good, because it might have been performed within a Year; and Holt Ch. J. granted that it was so adjudged. —— Comyn's Rep. 50. S. P. cited as resolved by the major Part of the Judges in B. R.

* The Case of Smith v. Welthall was upon the Statute of Brokers of 8 & 9 W. 3, for which see Tit. Stocks (A) pl. 4, and the Notes there.

3. S. 17. No Contract for the Sale of Goods, Wares or Merchandizes for 10 l. upwards shall be good, except the Buyer actually receives Part of them, or give something in Earnest, or some Note thereof in Writing be made and signed by the Person to be charged, or their Agents.

4. A verbal Agreement, though subsequent to a Decree, yet shall not stay the Execution of it, but must bring an original Bill. 2 Chan. Cales 8. Mich. 31 Car. 2. Wakefield v. Walthall.

5. A Bill in Chancery was to have the Execution of a Parol Agreement. S. P. cited mens for a Lease of a House, setting forth that in Confidence of this Ch. Prec. Agreement the Plaintiff had laid out and expended very considerable Sums of Money &c. Defendant pleaded the Statute of Frauds and Perjuries, and the Plea was allowed. But Lord K. was of Opinion that if Matter of the Plaintiff had laid in his Bill that it was Part of the Agreement that the Agreement should be put in Writing, it would alter the Bill, and possibly require an Answer. Vern. 151. pl. 141. Hill. 1682. Halls v. Smith v. Whiting.

6. In such Case, per North K. the Leffe ought to be repaid his Consideration-Money if any, but for the Money expended he directed a Trial at Law. Vern. 159. pl. 148. Pauch. 1683, Dean v. Izard.

7. And per North K. though the All makes the Easement void, yet it says not that the Agreement shall be void, and therefore the Agreement may still subsist, though the Easement is void; to that Damages may be recovered. 6 Q. vered
Contract and Agreement.

Concerned at Law for the Nonperformance, and it to be should not dubo
to decree it in Equity. Vern. 160. Patich. 1693, Dean v. Ishard.
8. Lease for Years to A. in Writing, but by Parol agreed by him to
be in in Trust for himself and B. jointly, and B. paid a Moity of the
Rent; Whether this is within the Statute of Frauds? Vern. 108.
9. A. agreed to offer a Term for Years in his House and Plate, and
certain Vehicles of Beer for 200 Guinea's to B. whereof B. paid one Gui-
nee in Hand, as Earnest of the Bargain, and three Days alter 19 Gui-
nee's more; and Part of the Bargain was, that it should be executed by
Writings by a certain Day. A. pleaded the Statute of Frauds &c. and
that it was a Parol Agreement, and none of the Goods deliver'd by
A. but confessed the Receipt of the 20 Guinea's, and offer'd to repay
them. North K. over-ruled the Plea, it being charged that the Agree-
ment was to be put in Writing. 2 Chan. Cales 135. Hill. 34 & 35 Car. 2.
Leak v. Morril.
10. An Innuence was made, but there was a parol Agreement at the
same Time, that the Policy should not commence till the Ship came to fuch
a Place, and it was held in the Time of Pemberton Ch. 1. that the pa-
rol Agreement should avoid the Writing; cited per Holt Ch. J. at Nili
Prius at Guildhall. 2 Sulk. 444.
11. A Settlement of a Jointure actually made and accepted, and the
Marriage thereupon had, is an Evidence that all parol Agreements be-
fore the Marriage were reduced into the Jointure; but ordered Defend-
ants to answer, and to give the Benefit of the Plea to the Hearing. Per
12. Parol Agreement varied from in a Deed of Trust executed in or-
der to avoid a Salse by the Sequestrators in the Life of Cromwell, de-
creed 3 severall Times by 3 severall Persons to be made good, though
Harvey.

As to this
Cafe, Rey-
nolds Ch. B.
said, that
though ge-
nerally no
Parol Evi-
dence is to be admitted against a Deed, yet the Declaration in this Cafe being previous to the Deed, and the De-
Sign of it plainly appearing to be to protect the Estate from a Sequestration, that Resolution is very
right; but to admit Parol Evidence without such a Foundation would be a very dangerous Precedent.
E. & S. P.

12. A. and B. being joint Leases of a building Lease, A. by Parol a-
Agrees to tell his Intelect to B. and accepts a Pair of Compasse in Hand
to bind the Bargain; Defendant pleads the Statute of Frauds. The A-
Agreement being in some Part executed, the Court order'd the De-
endant to answer, and gave the Benefit of the Plea to the Hearing. Vern.
13. A Son and Heir apparent perfluades his Father (who was about to
make a Will and Provisions for younger Children) not to make any
Will, and promises to make the like Provisions for them; whereupon the Fa-
ther forbore making such Provisions, and the Heir was decreed to make

Tenant in
 Eston being
about to
suffer a
Recovery,
in order
to provide
for his younger Children, and had been kept from it by the Promises of the Issue in Tali to do it, the Issue
in Tali after the Father's Death was decreed to provide for them. Per Keck. Com. Chan. Prec. 5.
Hill. 1689. in Cafe of Devenish v. Baines.

14. A Copyholder by his Will intended to give the greatest Part of his E-
state to his Godson, and the other Part to his Wife; the Wife persuades him
to nominate her to the Whole, and that she would give the Godson the Part
defiended for him; On a Bill by the Godson for those Lands it was de-
creed against the Wife, notwithstanding the Statute of Frauds and Per-

16. A
Contract and Agreement.

16. A parol Promise was made to pay so much Money upon the Return of such a Ship, which Ship happened not to return within 2 Years after the Promise made, and whether this Parol Promise was voided by the Statute of Frauds was made a Question before all the Judges; and they were of Opinion that this was a good Promise, and not within that Clause of the Statute; for that by Possibility the Ship might have returned within a Year; and though by Accident it happens not to return so soon, yet if they said, that Clause of the Statute extends only to such Promises, where Contingent by the express Appointment of the Party, the Doing is not to be performed within a Year, the Action shall be maintainable, and is not within the Statute. Per Holt Ch. J. upon Evidence. Skin. 326. pl. 4. Mich. 4 W. & M. Francam v. Fotherley.

17. When O. was going to be married to M. the Wife's Uncle promised that he would settle his Freehold and Copyhold upon his Wife and her Issue. Though this was by Parol only, yet Chancery decreed an Execution of it; being in Consideration of Marriage. 2 Freem. Rep. 199. pl. 274. Trin. 1694. cites it as Sir John Otway's Case.

18. The Bill was for a Marriage Portion of 3000 l. upon the Marriage of the Plaintiff with the Defendant's Daughter, there being no Note or Agreement in Writing sign'd by the Defendant for the Payment of it; but it appearing that a Letter was wrote to the Plaintiff by a third Person, offering so much Portion, which Letter it appeared was wrote by the Consent of the Defendant, and that afterwards he was acquainted with it, and it being a Treaty was bad for a Settlement suitable to it with the Defendant, but the Treaty depending long, the young Couple married; and although it appeared that the Defendant, before they went to Church, did declare he would give them nothing, and the Statute of Frauds and Perjuries was infringed upon, yet decreed for the Plaintiff, although his Wife is since dead, and the Plaintiff married to another. And the Lord Keeper said, as to his Countermand when they were ready to go to Church, he looked upon it as nothing, after the young People's Affections were engaged; and for the Statute of Frauds and Perjuries, he cited two Cases, one of Part and More, where a Portion was decreed upon a Letter wrote, and another Case of Maquin &c. where Writings were prepared and agreed, but being blotted, were ordered to be wrote fair, and were, but before they were sealed the Party died, and this Court charged the Executor with the Portion agreed to be paid. 2 Freem. Rep. 251. pl. 276. Mich. 1694. Wanckford v. Fotherley.

19. It was said, that before the Statute of Frauds and Perjuries, this Court would not execute a Parol Agreement unless it had been executed in Part of the one Side or the other, and then it would; because it was but Reason, when one Party had performed of his Part, that the other Party should be compelled to perform of his Part; But if an Agreement be under Hand and Seal, that is suppos'd to be made and transact'd with greater Caution and Solemnity, and though there had been no Execution of either Side, yet this Court will compel the Execution of it. 2 Freem. Rep. 216. pl. 259. Mich. 1697, Normandy (Marquis) v. Duke of Devonshire.

20. It was said by the Attorney General, that since the Statute of Frauds &c. it an Agreement be made, and reduced into Writing, and signed, but not sealed, that this is still but a Parol Agreement, and the Writing is only in Evidence of it. 2 Freem. Rep. 217. pl. 259. Mich. 1697. Normandy (Marquis) v. Duke of Devonshire.

21. A Man contrives to pay 100 l. upon the Day of his Marriage; this needs not be put in Writing, not being within the Intent of the Statute of Frauds, the Words whereof are, that every Contract to be performed
ed within one Year after the making shall be put into Writing, so that the Design of the Statute was, that only those Contracts that were impossible to be performed within that Time &c. Now this Contract depends upon a Contingency, that may or may not be performed within the Year, and therefore is Causus omittit out of the Stat. as was resolved by most of the Judges, by Information of Holt Ch. J. Comb. 463. Mich. 9 W. 3. B. R. Anon.

22. If a Bill be brought for Execution of a Parol Agreement which is in no Part executed, if the Defendant by Answer confesses the Agreement * without insisting on the Statute of Frauds and Perjuries, the Court will decree an Execution of it; because when Defendant confesses it there is no Danger of Perjury, which was the only Thing the Statute intended to prevent. Ch. Prec. 208. pl. 169. Mich. 1702, by the Master of the Rolls; Croydon v. Banes.

23. The Plaintiff having a Houfe in Monmouth-street, agreed with the Defendant for a Piece of Ground adjoining, to take a Leafe of him for as long Time as he had in his Houfe, and thereupon the Plaintiff entered upon the Ground, and built a Wall, and made a Vant &c. for Convenience of his Houfe, and when he had so done the Defendant refused to make him a Leafe, whereupon the Plaintiff preferred his Bill to have an Execution of the Agreement, that the Defendant might make him a Leafe. The Defendant pleaded the Statute of Frauds and Perjuries, the Agreement being only by Parol, and no Agreement in Writing. His Plea was over-ruled by the Lord Keeper, and the Cause coming now to Hearing before the Master of the Rolls, he decreed the Defendant to perform the Agreement, and to pay Costs, and laid the Statute was not made to encourage Frauds and Cheats, and the Plaintiff having laid out his Money in Purluance of the Agreement, and taken Possession of the Land, the Defendant ought to execute a Leafe for as long Time as the Plaintiff had his Houfe. 2 Freem. Rep. 268. pl. 337. Mich. 1703, Floyd v. Buckland.


25. A Deed was sealed for Security of Money borrowed, and the Deed being absolute, the Defendant promised to pay a Decease, and afterwards refusing, a Bill was preferred to compel him, and though he infilled upon the Statute of Frauds and Perjuries, he was decreed to pay a Decease, though there was no Agreement in Writing for that Purpose. 2 Freem. Rep. 269. pl. 337. Mich. 1703. cites it as a Cafe decreed by Ld. Nottingham.

26. Sir Samuel Clarke being feized in Fee of the Reservfon of the Lands in Quelton, espiall upon the Death of Margaret Mumpiord, who was Tenant for Life, made a Leafe for 500 Years by way of Mortgage, to commence upon the Death of Margaret Mumpiord. Afterwards William Whitmore agrees with Sir Samuel Clarke for the Purchase of the Reservfon, and the Term was affigned to the Defendant William Whitmore 16th May, and the Fee was conveyed to William Whitmore 16th May. In the Conveyance of the Fee the Consideration is mentioned to be paid by John and Willi-
Contract and Agreement.

...but there was a Concurrence of many other Circumstances, whereby it plainly appeared that John Whitmore was only a Trustee for Williams, and that the Term was intended to attend the Inheritance, but no Declaration of Trust in Writing, and the Defendant having denied the Trust by his Answer, the Question was, whether any Decree could be made by reason of the Statute? In this Case, though the Ld. Keeper declared he was fully satisfied that it was intended a Trust, yet there being no Writing to declare it, he was not satisfied to do it in Opposition to the very Letter of the Statute, unless they could shew him some Precedents, and so took Time to consider. 2 Freem. Rep. 280. pl. 352. Pach. 1705.

Sket v. Whitmore.

27. Though Parol Agreements are bound by the 29 Car. 2. cap. 3. and Agreements are not to be part Parol and part in Writing, yet a Deposit or collateral Security for the Performance of the written Agreement is not within the Purview of the Statute, though there is no Writing declaring such Deposit to be a Security; Per Cowper C. 2 Vern. Rep. 617. pl. 555. Mich. 1703. Hales v. Vanderchem & UX' and Cole.

28. A. and B. being severally in a Treaty about the Purchase of a Houfe and some Land of C. they agree by Parol, that A. shall defi, and let B. purchase, and that B. shall let A. have such a Part of the Land at a proportionar Price. A. delified accordingly, and B. purchased, but related to perform the Agreement. Decreed at the Rolls for the Agreement, as an Agreement executed in part by A's delifying; But per Cowper C. revered, as being a Parol Agreement within the Statute 29 Car. 2. cap. 4. 2 Vern. R. 627. pl. 555. Mich. 1703. Lammas v. Bailey.

29. Executory Contract, as Lease for one Year, and so from Year to Year, Guinard & C. is not void by the Statute of Frauds, though it be for more than 3 Years, because there is hereby no Term for above two Years ever subsisting at the same Time. 2 Salk. 414. pl. 6. Hill.


31. The Father purchases Lands to him and his Heirs, and when he was upon his Death-Bed lends for his eldest Son, and tells him that the Lands were bought with his second Son's Money, and that he intended to give them to him, wherein the eldest Son promised that he should enjoy them accordingly. The Father dies. The Ld. Keeper Wright, and the Matter of the Rolls held, that the eldest Son ought to have these Lands, because by the Statute of Frauds and Perjuries, there ought to have been a Declaration of the Use of Trust in Writing; But Lord Chancellor Cowper was of another Opinion, because of the Fraud in this Cafe, in that the eldest Son promised the Father, upon his Death-Bed, that the other should enjoy the Lands, so he took this to be a Cafe out of the Statute. Mich. 7 Ann. Canc. Selback v. Harris.

32. A. enters into Treaty with C. about a Parcel of Land, and so did B. A. meets B. and tells him, that if he would deliver, and permit him to go on with his intended Purchase he would let him a Parcel of Ground which he desired, according to this B. agreed, and A. afterwards completed his Purchase with C. then B. comes to A. and desires him that he would let him have the Parcel of Ground, to which A. answers, that now he could not, because it would be more convenient to him, and says he, though I intended to let you have it, as the Circumstances then were yet my Purpose, and my Intentions, are now altered. B. brings a Bill in Chancery to have a Performance of this Agreement. A. initits that he made no absolute Promise, and sets forth such Agreement as before, and also insists upon the Statute, that there ought to have been an Agreement in Writing. At the Hearing it was initided, that for two
Reeons this was out of the Statute, tit, Because the Plaintiff had exe-
cuted one Part of the Agreement. 2dly, Because here was an Agree-
ment in Writing, the Agreement being set forth in the Defendant's An-
swer. Lord Chancellor said, here is no absolute or positive Agree-
ment, but the Words are ambiguous and uncertain, and the Statute in-
tended to obviate all such ambiguous Agreements as to prevent Perju-
dices &c. and this Agreement will not bind unless it were in Writing.


33. A Marriage Settlement was explained by Articles precedent. 2 Vern.


34. A Father encourages the Courtship of his Son with another's
Daughter, who proposes by Letter to give her 500 l. if the Father could
sell 100 l. per Annum on the Son which is refused; The Son and Daugh-
ter marry privately, and after this Letter is written; then be, that refused, con-
fented, and be, that contented, refused. On a Bill for Performance of this A-
greement it was objected, that theises Promises were within the Statute of
Frauds, and that the Letter being after the Marriage should not bind; but
decreee' contra on Circumstances of the Father's Privy and Content to the
Match and of the Marriage by afterwards approving of it. That it was
out of the Statute if no Letter, for the Agreement is admitted by the Añswr;
but this Case doth not depend on Parol Evidence or Admissions; for the
Letter after Marriage, considering the Transactions before, is sufficient. The
Offer to settle 100 l. per Annu. shall be in Tail, with a Power to the Huf-
band to charge it with 500 l. for younger Children, being the Mother's
Portion, and decreed accordingly; Per Harcourt Lord Keeper. 1712.
Hodgson v. Hutchenon.

35. A Steward has a general Authority to make Contrafls with the Tenants
&c. but this will not bind the Lord without his Consent and Approbati-
on, or unless Part of the Bargain is actually executed; Per Lord C. Cow-
per. Patch. 3. Geo.

36. A Distillation was taken and agreed by the Court, that where-
upon a Treaty for Marriage, or any other Treaty, the Parties come to
an Agreement, but the fame is never reduced into Writing, nor any Pre-
posal made to reduce it into Writing, so that they rely wholly on their
Parol Agreement, that if this be not executed in Part, neither Party can
compel the other to a specific Performance. But if there was an Agree-
ment to reduce it into Writing, but that is prevented by the Fraud, or prac-
tice of the other Party, the Court will relieve. As where Instructions are
given and Preparations made for the Drawing of a Marriage-settlement, and
before it is completed, the Woman is drawn in by the Aflurances and
Promises of the Man to perform it to marry him; Per Ld. Macclesfield
Ch. Prec. 352. pl. 323. Mich. 1719. Sir George Maxwell v. Lady Mon-
tague.

S. P. cited as
decreed by
Lord Not-
tingham,
on the Fraud
after the

37. A Fee-simple was made, and the Flarea promised to make a Deaen-
fance, which Promise was by Parol and not in Writing, yet decreed a
good Promise within the Statute; Per North K. Skin 143. cites it as
ruled in Lord Chancellor's Finche's Time.

38. W. leased an House to N. for eleven Years, and was to allow 20 l. to
be laid out in Repairs, the Agreement was reduced into Writing signed and
sealed by both Parties; N. repaired the House, and finding it to take a
much greater Sum than the 20 l. told W. of it, and that he could not without
get one, and lay out more Money, if he would enlarge the Term to twenty one
Years, or add fourteen, or as many as N. should think fit. W. replied, that
Contract and Agreement.

that they would not fall out about that; and after declared, that he would en-
large the Term, without mentioning any Term in writing. 

Quere. Whether this new Agreement made by Patrol, which varied from the written
Agreement, should be carried into Execution notwithstanding the Statute of Frauds? Matter or Rolls said, that before the Statute written
Agreement could not be controlled by a Parol Agreement contrary to it,
or altering it; but this is a new Agreement, and the laying out the Money
is a Performance on one Part, and ought to be carried into Execution, and
built his Doctrine upon these Cases. 18. Where a Parol Agreement was for a
Building Leafe, and before it was reduced into Writing the Leafe began to
build, and after suffering on the Terms of the Leafe, the Leafe brought a Bill
and the Leafe insisted on the Statute of Frauds. The Lord Keeper disnifi-
shed the Bill, but the Plaintiff was relieved in Decr. Proc. and the second

39. A agrees with B's Broker for 5000 l. South Sea Stock, the Broker,
according to Usage, made an Entry of this Agreement in his Pocket-book.
The Defendant pleaded Statute of Frauds, that no Contract can be good
unles reduced into Writing. Lord C. Copier seemed of Opinion that the
Plaintiff was good, and said that it had been so held in many other Cases;
but on looking into the Plea he found, that he had barely pleaded the
Statute, without adding, that this Agreement was not reduced into
Writing as he should have done, and so had not brought his Case within
the Statute; and therefore the Plea was over-ruled. Chan. Prec. 533.

40. Where the Statute of Frauds has been used to cover a Fraud, the Court
has always relieved. The 1st Case in Lord Nottingham's Time, where
there was an absolute Conveyance and a Defeasance, which Defendant
would not execute, but insisted on the Statute, and it was over-ruled.
Next, in Lord Jeffery's Time, where putting the Party into Possession was
such an Execution of the Agreement in Part as was good against a subsequent
Purchase; So where one stands by, and fees the Party by out his Money in
Building the Defendant's Ground, he was bound thereby. The Bill
here was to have a Lease according to the Defendant's Promise, Plaintiff hav-
ing laid out Money in the Premises, and the Defendant insists on the Sta-
tute there being no Agreement in Writing, nor any certain Terms agreed
upon, and favs what Plaintiff laid out was not on lating Improvements,
but admits Plaintiff built a Stable which cost him about io l. It was pro-
ved, that Defendant told the Plaintiff his Word was as good as his Bond,
and promised the Plaintiff a Leafe when he should have renewed his own from
his Landlord. Lord Chancellor said, that the Defendant is guilty of a
Fraud, and ought to be punished for it, and so decreed a Leafe to the Plain-
tiff, though the Terms were uncertain, it is in the Plaintiff's Election for
what Time he will hold it, and he does elect to hold during the De-
fendant's Term, at the old Rent, and Plaintiff to pay Costs. Mich. 5
Geo. Cane.

41. Where a Man on Premise of a Leafe to be made to him, lays out
Money on Improvements, he shall oblige the Leffer afterwards to execute
the Leafe, because it was executed on the Part of the Leffer; besides
the Leffer shall not take Advantage of his own Fraud to run away
with the Improvements made by another; but if no such Expend has been
on the Leafe's Part, a bare Premise of the Leafe, though accompanied
with Possession, as where a Leafe by Part agreed to take a Leafe for a Term
for Years certain, and continued in Possession on the Credit thereof, yet there
being no Writing to make out this Agreement, it is directly within the
Statute. Chan. Prec. 66. pl. 344. cites it as held by the Maller of the

42. A agree with B. for the Purchase of nine Houses, which were in
Mortgage to J. S. and pays him a Guinea in Earnest. B. writes a Note to
J. S.
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3. S. and desires him to deliver up the Writings by having disposed of them, which J. S. refuses, unless the Mortgage-money was paid him down, and afterwards purchasethem himself; on a Bill brought by A. for a specific Execution of the Agreement it was held, that neither the Guinea paid down, nor the Note (which was only an Evidence of Allent, but did not ascertain the Terms of the Agreement as to what Sum was to be paid, nor to whom the Houseto be disposed of, nor whether by way of Sale or Assignment, or Leafe, and to all the Danger of Perjury, which the Statute was to provide against, would be let in to ascertain this Agreement) were sufficient to take it out of the Statute of Frauds and Perjuries. Chan. Prec. 560. pl. 344. Pauch. 1721. Seagood v. Meal and Leonard.

43. Where there is a Parol Agreement for a Lease, and the Leassee by Virtue of such Agreement enters and builds, this Court will establish it on the Foot of Fraud in the Leasing, notwithstanding the Statute of Frauds &c. because Contracts executed in Part are not always within the Statute, though Executory Contracts are. Per Cur. 9 Mod. 37. Trin. 9 Geo. in Case of Savage v. Poiter.

44. A. made an absolute Mortgage to B. (which was the old Way of mortgaging Estates) B. the Mortgage promised to make a Deedance, and the Court decreed B. to make it, notwithstanding the Statute of Frauds. Cited Arg. 9 Mod. 88. Hill. 10 Geo. in Case of Hofer v. Read.

45. Appeal from the Rolls upon this Case. Hendon enters into a Contract in Writing with the Plaintiff for the Purchase of a College Leafe; the Plaintiff agrees to renew the Leafe in the Name of Hendon, or such Person as he should nominate and appoint. Hendon directs the Plaintiff to renew the Leafe in the Name of Cox, and declares he bought it for him as Agent; The Plaintiff brings the Bill against both for the Refit of the Purchase-Money. Decree at the Rolls was against both Defendants to pay the Money, and in Case Hendon should pay it, then he be at Liberty to prosecute the Decree in the Name of the Plaintiff against the other Defendant Cox, who was the Principal. The Defendant Cox appeals, for that he did not give any Authority in Writing to the other Defendant Hendon to buy it for him, and therefore per Stat. 29 Car. 2. of Frauds he ought not to be bound by the Contract. Maclesfield C. affirmed the Decree, for that the Authority to treat or buy for him may be good without Writing, though the Contract itself must be in Writing, by the Statute of Frauds. NS Rep. Mich. 10 Geo. in Case. Waller v. Hendon & Cox.

46. It was made a Question, and laid before all the Judges of England, Whether a Contract for Stock be within the Statute of Frauds, which mentions Goods, Wares and Merchandizes so as to require the Contract to be in Writing, or Money to be paid in Earnest, and they were equally divided thereupon; laid per Ld. C. King. 2 Wms's Rep. 508. Mich. 1725. in Case of Colv v. Netterville.

47. Bill for a specific Performance of a Promise by Defendant to procure Plaintiff to be made Deputy to Defendant's Son as Clerk of the House of Peers, or otherwise to procure for Plaintiff in Conjunction of Plaintiff's inflicting upon and soliciting in procuring a Vexatious Grant of that Place for
(I) Executed in Part. By 29 Car. 2. cap. 3.

1. A Parol Agreement for the Sale of a House, and 20s. paid, was decreed without further Execution proved; and the Matter of the Rolls said that be found have demurred on the Bill; but having now proceeded to Proof, he would decree it, and so he did. 2 Freem. Rep. 128. pl. 154. Hill. 1670. Anon.

2. A. agreed with B. for the Purchase of an House for 290l. to be paid, and paid 20s. in Hand, and tendered the rest at the Day, and was relieved. 3 Chan. Rep. 25. Mich. 21 Car. 2. at the Rolls, Voll v. Smith.


4. A. sold Houses to B. for 2000l. A Note was made by A. of the Agreement, paid by B. but not by A. It was objected, that the Note binds not A. who did not sign it, and that by the Statute of Frauds &c, and therefore in Equity cannot bind the other Party; because either
Contract and Agreement.

Both must be bound, or neither of them, in Equity; but decreted the contrary. 2 Chit. Cites 164. Trin. 36 Car. 2. Hatton v. Gray.

5. A. by Parol agrees to grant a Lease to B. A Lease is drawn and corrected by B's Counsel, and afterwards ingrossed and executed by A. B pleaded the Statute of Frauds, that he had signed no Agreement in Writing, the Words of the Act being, that it must be signed by the Party that is to be bound by it. North K. ordered B. to answer, and to give the Benefit of the Plea to the Hearing. Vern. R. 221. pl. 220. Hill. 1683. Lowther v. Carrill.

6. Administrator and her two Children being intitled to a Lease of a Houfe, agree to make a Lease for 10 Years. The Administrator, with the Privyty of the other two, executed the Lease. The Statute of Frauds is no Plea for the other two; Per Ld. K. North. Vern. 210. pl. 287. Mich. 1683, Heyter v. Sturman.

7. In a Cafe where no Interest may pass by a Parol Agreement, yet if the Person enjoys according to such Agreement, an Action lies for the Money upon the other's Agreement, as in the Cafe of an Agreement for Enjoyment of Tithes for 6 Years. Skin. 113. pl. 4. Trin. 35 Car. 2.


8. A Settlement was made on the Wife in Marriage, in Pursuance of Articles in Writing sealed; if it after appear to be deficient, it shall be made up by the Heir; but if it had been only by a Parol Agreement, or if at the Time of the Settlement the Lands had been at full Value, and after by Accident had gone less, there been had no Relief. Skin. 113. Hill. 35 & 36 Car. 2. Speak v. Pedler.

In this Case there was a Note with the Agreement, but not signed by either Party, containing the Heads of the Agreement. Ibid. An Agreement, though not in Writing, if executed on one Part, has been always looked upon so far conclusive, as to invoke the Court to decree an Execution on the other Part; Per Ld. Macclefield. Ch. Prec. 518. pl. 520 Trin. 1719. Lookey v. Lookey.

9. A Parol Agreement for a Purchase of Land, and Possession delivered, decreed by Jelfines C. to be executed against a subsequent Purchaser, with Notice to whom a Conveyance was made, and who had thereupon paid his Money. Vern. R. 363. pl. 357. Hill. 1685. Butcher v. Scapely and Butcher.

10. Articles for the Purchase of Lands were signed, but not sealed, but the Plaintiff was put into Possession of some Part. The Court decreed an Execution, and Ld. Commissioner Rawlinson said, that Agreements in Writing, though not sealed, have gone better Countenance since the Statute of Frauds and Perjuries than they had before. Ch. Prec. 16. pl. 16. Hill. 1690. Wheeler v. Newton.

11. If A. lays to B. I will give so much for your Horse, and B. agrees to take it, if nothing more passeth between them, and no Earnest is given, and they depart from one another, this in Point of Evidence is not to be taken but as a naked Communication, and so is D. 30. [pl. 323. & 14 H. 8, 22. Per Holt. Ch. J. in delivering the Opinion of the Court. Latw. 252. Hill. 8 W. 3, in the Cafe of Thorp v. Thorp.

12. A. at a publick Sale of Estates, offered 1350 for the Purchase, which was accepted and agreed to, and Conveyances directed to be made, and Possession actually delivered, but Diligences arose about settling the Conveyances. Wright K. decreed A. to proceed in the Purchase, in Cafe he could have a good Title, and for that Purpose referreid it to a Maller. 2 Vern. 455. pl. 417. Hill. 1703. Pyke v. Williams.

13. A. pursuant to a Parol Agreement for a Building Lease of Wild-House, proceeded to pull down Part, and build Part, but before any Lease executed, the Owner of the Soil died. Defendant's Representatives knew nothing of the Matter, and inflicted on the Statute of Frauds &c. and the Lord Keeper dismissed the Bill; but on Appeal to the Lords in Parliament, that Dismission was reversed, and a Building Lease decreed.

P. cit. cit. also the Cafe of Butcher v. Butler — 8 P. per Cur 9 Mod. 27. — When the
Contract and Agreement.

14. Earnest is only to bind the Bargain, and a Demand of Goods without Tender of the Money is void, because it is not pursuant to the Intent of the Bargain. 6 Mod. 162. Pach. 3 Ann. Langford v. Administrator of Tyler.

15. After Earnest given the Vendor cannot sell to another, but if Vendor does not come to pay and take the Goods, Vendor ought to requell him to come and pay, and if he comes not in convenient Time, the Agreement is dissolved and then he may fall. 6 Mod. 162. Pach. 3 Ann. B. R. Langford v. Tyler.

16. Notwithstanding the Earnest the Money must be paid upon fetching away the Goods; unless there is express Agreement that Payment is to be made at a certain Time. 6 Mod. 162. per Holt Ch. J. Langford v. Tyler.

17. The Provost and Scholars of Kings College in Cambridge, being fled in Fee of the Tithes of Priors Quarter in Tiverton in Com. Devon cum Prestinentibus, did by a Deed dated 15 July, 1699. demife the same to Eliz. Duck, Widow, for 21 Years under several other Covenants and Rents &c. And afterwards the said Mrs. Duck, by Articles dated the 23d June 1704 between her of the one Part, and Mr. Upcott of the other Part, did covenant and promise to convey to the Defendant Upcott, his Executors, and Assigns, the said Portion of Tithes cum Prestinentibus, during her Estate and Interest therein unexpired at Michaelmas next following, and there were several other Covenants and Reservations about the Payment of the Rents, and providing for the College Officers; and the said Upcott was to give in Consideration of this 150l. The Plaintiff, Coleman, who had formerly been in Treaty with Mrs. Duck for these Tithes, hearing the Defendant had arbitred for them with her, applied himself to the Defendant, and after several Treaties, which proved to be ineffectual, the Defendant sends his Son, William Upcott, and Mr. Fruit, and Mr. Barton, with a Letter to the Plaintiff's Houfe, dated 20th September, 1704, wherein the said Defendant said, that if he parted with the said Tithes, it should be on certain Conditions following, (viz.) That the Plaintiff should pay the Defendant 150l. when he relinquished his Right, and executed his Agreement with Mrs. Duck; That the Plaintiff should quit all Pretences of Tithes which the Plaintiff or his Son London should, or might claim in the Park lying within the said Quarter of Tiverton, and pay no more than formerly per Acre for the Tithes, or Venison, and pay only 10s. per Ann. in lieu of Tithes or Judgement for his 8th Part in West Barton, and that the Defendant would have the Plaintiff's Right in the Seat in the Church where his Son London's Family sits, and unless the Plaintiff would take it upon these Terms, he would not part with it; and if the Plaintiff parted with it, the Defendant was to have the Refusal, and would be obliged to take it within a Year upon the same Terms. This Letter was directed to the Plaintiff, and brought to his Houfe by the Defendant's Son, who came thither with two other Persons, and as soon as the Plaintiff had perused the Letter, he accepted of the Terms in the said Letter; and
and the son went home and acquainted his father with it, and the next day sent his attorney to acquaint the defendant with it, and to request from him a copy of Mrs. Duck's articles (the original being lodged in the hands of a friend) who accordingly delivered them to the said attorney, and appointed a day for the executing the same, and the receiving of the 150 l., but on the same pretense he appointed the day after that, and on the Monday went to Mrs. Duck (who had also notice of the defendant's agreement with the plaintiff, by the plaintiff's order) and settled a conveyance from Mrs. Duck to himself.

N.B. The letter was not subscribed by Mr. Coleman till 3 or 4 days after his accepting of the bargain, and was afterwards stamped, paying the 5 l. penalty.

My Lord Keeper decreed the defendant to perform this agreement, for that it was directly within the statute of frauds, as being an agreement signed by the party to be charged with the same, and there was no need of its being signed by both parties, and the plaintiff by his bill hath submitted to perform what was required of his part to be performed. If a man (being in company) makes offers of a bargain, and then writes them down, and signs them, and the other party takes them up, and prefers his bill, this shall be a good bargain, and the party shall be compelled to a particular performance of it. This though it was not at first a contract, but conditionally only, if the other would accept of it, yet when the other had accepted of it, it was all one, and the defendant intended it so by his sending his son with the letter, and the perilous besides. MS. Rep. Hill, vac. 5 Ann. Coleman v. Upcorn.

18. Wherever a panel agreement is begun to be put in execution, and intended to be continued, there though there be no writing, yet this court will enforce the execution thereof, notwithstanding the statute of frauds and perjuries; per Ld Cowper, G. Equ. R. 4. Hill 6 Ann. in case of Ld. Guernsey v. Rodbridges.

19. A bought goods of B. to the value of 500 l. but not having money ready to pay, proposed to mortgage land to secure the money, and in order thereto, A. left the title deeds with B. to get an assignment drawn, who carried the deeds to an attorney to inspect the title, and draw the assignment, and after some time the attorney died without drawing the mortgage. Then B. carried them to a scrivener for the same purpose, before the mortgage was perfected A. became a bankrupt. Decreed the deeds to be delivered up by B. to the assignee of the bankrupt. Ch. Prec. 375 pl. 261. Mich. 1713. Brander v. Boles.

20. A. the plaintiff agreed to sell B. the defendant a house for 650 l. and by consent of A. and B. an attorney drew a conveyance, and sent it to B. who made several alterations, and gave it back to be ingrossed, whereupon a time was appointed for A. and B. to meet and for B. to pay the money. A. and the attorney came to the place appointed, and executed the conveyance, and got the same registered, and then brought his bill to compel B. to pay the money. It was inferred, that B.'s altering the draught with his own hand could not be called a signing, and that he had been over the whole deed with his own hand, without signing it, it had not been sufficient, and cited the case of felix v. perritt, determined at the rolls, Trin. 1719, on the very same point. And Lord Chancellor said, that unless in some particular cases where there has been an execution of the contract, by entering upon and improving the premises, the party's signing the agreement is absolutely necessary for the completing it, and to put a different construction upon the act, would be to repeal it; and as to the registering the deeds, he thought it immaterial as to binding B. And his lordship laid great stress on what the defendant mentioned in the accompanying part, wherein B. swore that it was agreed on between A. and him, that B. might be off at any time.
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on paying the Charge of preparing the Writing which B. said he was willing to do. Whis. Rep. 772. pl. 221. Mich. 1722. Hawkins v. Holmes.

21. An Agreement, though executed in Part, yet being afterwards by an Act of Parliament rendered impossible to be performed, shall not prejudice any Person. 8 Mod. 51. Trin. 7 Geo. 1. Winnington v. Bricoce.

22. Some Heads of a Lease agreed upon were taken by an Attorney in Writing, but upon Proof that some other were omitted which were agreed upon between the Parties at the same Time, 'twas declared that those Clauses should be put into the Lease, notwithstanding the Statute of Frauds, which was strongly insisted upon; Arg. 9 Mod. 83. Hill, to Geo. 1. in Cae. in the Case of Holier v. Read, cites it as the Case of Jones v. Sheriff.

(K) Pleadings.

1. In Trespass upon the Cafe, the Opinion of the Court was, that if a Man declares that the Defendant took upon him to make a Mill by a Day, and did not, the Declaration is not good, because 'tis not declared what he should have for his Labour, and the Reason seems to be inasmuch as otherwise it is Nudum pactum unde non oritur Actio; Quod Nota. Br. Contract, pl. 5. cites 3 H. 6. 36.

2. Notwithstanding a Contract may be upon Condition, yet in Debt the Party shall not traverse the Contract, because he may wage his Law. Br. Contract, pl. 7. cites 33 H. 6. 43.

3. In Debt upon a Contract, if the Defendant says that he was made upon certain Condition at another Place in the same County, the Plaintiff may say, that it was made simply without Condition, Prist, without traversing the Place, because it is in one and the same County; but if the Condition be made in another County, there he shall traverse that it was not made simply where the Plaintiff counted, and the like Order shall be in Detinue of Chattels, said by Needham that it was adjudged the last Term, Quod nemo negavit, and so fee Contract traversable which is in Efficet a meine Conveyance, where he might have waged his Law. Br. Traverse per &c. pl. 30. cites 34 H. 6. 42.

4. Debt upon a Retainer in Husbandry for his Salary arrear; the Defendant said, that he did not retain him in Husbandry, and a good Plea, by reason that he cannot wage his Law in this Cafe, and therefore he may traverse the Contract; Quod Nota bene. Br. Contract, pl. 20. cites 35 H. 6. 22.

5. A Prior retained a Servant who served the House, the Prior died. The Successor shall be charged, though the Salary was more than is warranted by the Statue; and per Danby, his Count is good, though he did not say by whom he was retained, nor whether he did his Service or not. Quere of the Retainer. Br. Contract, pl. 37. cites 3 E. 4. 21.

6. Debt, because the Plaintiff had the Feme and Son of the Defendant at Board, and let to the Defendant a Chamber for the Feme and Son, rendering for the Chamber and Boarding 6s. a Week; and the Defendant said, that the Plaintiff did not let the Chamber, and by the best Opinion it is a good Answer to all. For destroying the Contract in Part, is destroying it in all; for it is a Thing intire. Br. Harre, pl. 39. cites 9 E. 4. 1.

6 T 7. In
7. In Debt against B. upon a Contract he saith, that the Contract was made by him and one C. who is alive not named; Judgment of the Writ by which the Writ abated. Br. Brief, pl. 217, cites 9 E. 4. 24.

8. Action upon the Cafe of Bargain of certain Land for Money paid before-hand, and after he informed a Stranger contrary to his Bargain; the Defendant saith, that he sold to the Plaintiff upon Condition he should pay to him 10 l. such a Day, and per Cur. there he ought to traverse, abique hoc that it was sold for so much Money paid before-hand, prout &c. For when the Plaintiff falsely recites his Bargain, it suffices for the Defendant to traverse it. Br. Traverse per &c. pl. 238. cites 16 E. 4. 9.

9. But Brooke saith it seems, that if the Bargain be declared single, the Defendant may show that it was upon Condition without Traverse. Br. ibid.

10. Debt, and counted of a Lease of a Chamber and certain Beds to the Defendant, and that shall be at Table with the Plaintiff for a certain Time, paying 20 s. by the Week for all, and counted that it amounted to 10 l. &c. The Defendant saith, that as to the Chamber and Bed Non distingl. and found for the Plaintiff, and alleged in Arguendo, that this is Jeafo, because he did not answer to the Bonding; and upon good Argument it was held, that the Contract false in Parcel is false in all, and therefore the Plea good, Quod non dimittir Parcelclan &c. and therefore the Plaintiff recovered by Award. But Brian was strongly against it, and the Justices of B. R. in coming from Westminister said, that it was Jeafo. And per Brian, the Maffe ought to have been Nulli deset prout &c. and give his Matter in Evidence; But all the other Justices of C. B. were against Brian, and it seems to be good Reason that it shall be a good Plea; for otherwise the Plaintiff, by falsa Declarations, (where the Contract was only for Boarding) may, by the adding the Lease of the Chamber, oult the Defendant of his Law without just Caufe; Quod Nota. Br. Dettl. pl. 170. cites 21 E. 4. 28.


12. It was laid Arguendo, that in Debt, if the Plaintiff counts of buying of a House in the County of Middlyes for 20 s. and the Defendant saith, that he bought it in London upon Condition, and in the Condition performed, abique hoc that he bought it in the County of Middlyes, prout &c. and a good Plea; Quod omnes concerfundit. Br. Traverse per &c. pl. 261. cites 21 E. 4. 29.

See Tit Agreement.

13. If one retains a Servant to serve for a Year, for a Salaty of 20 s. there if the Servant demands the 20 s. he ought to shew that the Time is past, viz. that the Year is expired, and ought to plead it certainly; because his Action is given in respect of the Year past, and of the Thing done in Time, and the Time is Parcel of the Cause of the Demand, and precedes the Demand. Pl. C. 26. 5. cites Mich. 20 H. 7. 12. by Rede J.

14. Action for Breach of Covenant in a Deed; Defendant pleads Parol Agreement, afterwards in Discharge of the former Covenant, but the Court held the Plea not good, and took these Differences; that a Parol Agreement, before Breach of it, may be discharged by Parol, and so pleaded; but after Breach it cannot be pleaded in Discharge without Satisfaction also pleaded; but a Discharge may be pleaded by Deed be the Covenant by Parol or by Deed after a Breach, and without Satisfaction. Sty. 8. Hill. 22 Car. B. R. Forealeue v. Broughave.

15. He that will have the Benefit of a mutual Agreement, must shew that he has done his Part. MS. Tab. March 23th, 1727. Dutschel of Hamilton v. Duke Hamilton.
(L) Decreed.

2. Though an Estate cannot be created by Covenant by Law, yet it will be made good in Equity. Toth. 147. cites Jane 40 Eliz. Prince v. Green.
3. The Defendant promised and agreed to affire Leases in Marriage with the Plaintiff’s Daughters, who would not perform it, but ordered. Toth. 260. cites Long v. Long. 40 Eliz. li. A. 10. 360 or 369.
5. Where the Law cannot give a Lease, or a Thing promised but Danger, there is some Cause for the Court to compel the Party to perform the Thing promised. Toth. 259. cites Brown v. North, Waller v. Salter, Trin. 8. Jac. lii. A.
6. The Defendant promised to sell the Plaintiff Lands, whereas 10 s. was given him, yet the Defendant would not perform, yet he should. Toth. 260. cites Perne v. Bullock. Mich. 9 Jac. lii. A. 10. 274.
7. The Defendant promised his Eater, to affire certain Copyhold Lands to the Plaintiff, but the Father dying before any Surrender, he denied to affire the same, yet decreed he should. Toth. 261. cites 21 Mait, 9 Jac. Paine v. Paine.
8. Upon a Pretense made by the Defendant to convey his Lands unto the Plaintiff, was the Cause of his Marriage, but when the said Defendant came to be old, he conveyed away the same Lands from the Plaintiff, contrary to his Promise. The Plaintiff was relieved for Part of the said Lands. Toth. 260. cites 13 Jul. 11 Ja. Otway v. Hibbettwaite.
9. A Promise of 500 l. to make himself a Baronet, but would not pay it. Toth. 261. 262. cites Rufield v. Read; yet decreed about, 5 or 6 Car.
10. A purchaser, Land of B. at 4320 l. A. after agrees, that on B’s Abatement of 420 l. of the 4320 l. he would re-convey whenever the King, and Dean, and Chapter were restored. B. made the Abatement, Decreed against the Son of A. A. being dead, though it was objected, that it was only in Nature of a Wager, and the Consideration unequal and penal; and that an Action more properly lay. Chan. Cases 42. Hill. 14 Car. 2. on appeal from a Decree at the Rolls. Parker v. Palmer.
11. Promise to deliver up a Bond upon a Condition, which was afterwards perform’d; Decreed to deliver up the Bond, though the Thing done did not amount to the Sum due. N. Ch. R. 128. 21 Car. 2. Boole v. Sansbury.
12. Sale of fourteen Shares out of thirty-six Shares in the New River Water, which thirty-six Shares were charged with a Rent of 500 l. per Ann. to the Crown in Fee, and 100 l. per Ann. to H. M. for Life. And Sir Hugh in his Agreement with B. had covenanted to discharge the fourteen Shares he had agreed to sell B. from those Rents. Decreed that the Plaintiff should enjoy the fourteen Shares discharged of thole Rents, and that the other twenty-two Shares should be subject to the Plaintiff’s Indemnity therein, notwithstanding was infilled that Sir Hugh’s Covenant to discharge the fourteen Shares of thole Rents was merely Personal, and did not nor could charge the whole Rents upon the twenty-two Shares. Chan. Cases 338, 272. Trin. 23 Car. 2. Lord Cornbury v. Middleton.
13. The

14. A Widow agrees to accept £100 l. per Ann. for her *Jointure,* when by Marriage Articles the was to have £300 l. per Ann. The Court decreed the Agreement. *Fin. R. 128.* Mich. 26 Car. 2. *Norcliff v. Worles.*

15. A having made a *Bill of Sale,* and confess'd a *Judgment* to B. for securing Rent, agreed afterwards with B. to deliver up the Bill, and acknowledge Satisfaction on the Judgment if C. would be bound with B. to A. for Payment, which was done accordingly, but B. died before he had performed his Part. Decreed that the Administrator of B. deliver up the Bill of Sale, and acknowledge Satisfaction on the Judgment. *Fin. R. 30.* *Pach. 29 Car. 2.* *Love v. Hawk s.*


18. Lessee of a Term agrees in Consideration of Money paid, and more to be paid, to sell his Term to A. A. procuring a *Licence of Lease* and demising the Land to B. for her Life. A. instead of a Licence took a new Lease of the Lessee for the same Lives, and by Bill facts forth that he is ready to make the Demise to B. and pay the rent of the Money. Decreed the Agreement to be performed, and the Lease to be made to B. and B. to execute a Counterpart. *Fin. R. 420.* *Pach. 31 Car. 2.* *Wallenger v. Greenfield & Norris.*

19. In Case of an *unaccountable Agreement,* though reduced into Writing but not Seal'd, as to give in Marriage with one Daughter more than would be remaining for the Father, (who was in Debt) and two other Daughters, and the Mother. *Ld. Chancellor* would not decree the same, but if the Plaintiffs could recover at Law he would leave them to the Remedy, and it was referred to the Parties to agree amongst themselves, else to attend again. *2 Chan. Cales 17 Hill. 51 & 32 Car. 2.* *Anon.*

20. A. agreed to sell Land to B. and received £10 l. of the Purchase Money, and the Residue was to be paid on executing the Conveyance such a Day. But at the Day the Writings were not ready though the Money was; and A. telling B. he could have £10 l. more for the Land if B. would consent to quit it to C. and that then A. would pay back to B. the £10 l. with Interest, to which B. consented, and C. promised to become B's Paymaster, if B. could procure A's Order for that Purpose; But A. refusing to give such Order, B. brought his Bill to compel him. Decreed that C. pay the same. *Fin. R. 435.* *Trin. 32 Car. 2.* *Farmer v. Marshall.*

21. A. sells Part of a Ship to B. and made a Bill of Sale of it, and B. gave Bond for the Money. A. sues the Bill of Sale, and said he would keep it till B. had paid the Money. B. requisted a Bill of Sale, but A. refused. However, B. *took Possession* of the Ship, and went a Voyage with her; at the Return A. offered to give B. a Bill of Sale, which B. then refused, and now *fies to know up his Bond,* though he had not paid the Money. Finch C. decreed the Bond to be delivered up to B. and B. to resell the Part of the Ship, because when A. had Security he ought on Demand to have made Ablution. *2 Ch. Cales 5.* *Mich. 32 Car. 2.* *Legate v. Hookwood.*

22. If a Man buys Lands and secures the Money, if he who sells will not make Ablution when reasonably demanded, he shall lose the Bargain.
Contract and Agreement.


23. A Promise or Agreement by Feme sole to avoid a Law-suit, that if she died without Issue she would leave f. 3,500 l. or the Land. She Marries and devises the Land to her Husband, and dies. Decreed that that the Agreement be executed. Vern. K. 49. Palfch. 1682. Goilmer v. Battison.


25. Where a Part Agreement is content with, and does not contro- dict the Deed, you may sue at Law; Per Lord Keeper, and refused to & al S. P. grant Relief. 2 Chan. Cafes 143. Trin. 35. Car. 2. Foot v. Sal- way & al'.


27. A Person indebted by Bonds, and failing in the World, applies to the Scrivener of the Obligees, to know where they lived, to apply to them for a Composition; but the Scrivener not telling him, but pre- tending the Obligees were absolutely under his Direction, undetook to compound for 10 s. in the Pound, which was more than other Creditors received. The Debtor paid some Money, and tendered the rest according to the Agreement, but the Obligees would not stand to the Agreement. The Scrivener refused to deliver up the Bonds. On a Bill by the Debtor it was decreed, that he pay to the Obligees their Principal, Interest, and Costs, and that the Scrivener should repay what the Plaintiff should pay, and indemnify the Plaintiff according to the Agreement; Per Lds. Commissinners. 2 Vern. 127. pl. 126. Hill. 1690. Parrot v. Wells & Clerk.

28. A. makes a voluntary Settlement on B. who afterwards agrees to de- liver it up without any Con sideration. This Agreement will be decreed in Equity; For he is a voluntary Settlement may be furrendered without Consideration, and decreed a Reconveyance. Chan. Prec. 69. pl. 62. Hill. 1696. Wentworth v. Deverginy.


30. Bond to transfer 300 l. East India Stock on or before September 30 next. The Stock was much rifer in Value since the Agreement, yet the Defendant was decreed to transfer 300 l. Stock in a Fortnight, and ac- count for all Dividends since Plaintiff ought to have transferred, and Costs at Law, and here, or dismiss the Bill with Costs. 2 Vern. 394. pl. 365. Mich. 1700. Gardner v. Pullen.

31. As a beneficial Bargain will be decreed in Equity, so if it hap- pens to be a losing one, it ought for the fame Reason to be decreed; Per 186 S. C. — Wright K. 2 Vern. 423. Palfch. 1701. City of London v. Richmond & al'.


33. Equity will not decree Tenant for Life to commit a Forfeiture. MS. Tab. February 1721. Brian v. Acton.

34. Nor where the Method of obtaining them is not strictly regular, al- though executed in Part. MS. Tab. May 22d 1721. Rochiord v. Cefwick.

35. Nor where a Person of weak Understanding is drawn into it. MS. Tab. July 14th 1721. Carol v. Chamberlyn.

36. Earl Galway is given to Builders, before the Act made for build-
534 Contract and Agreement.

ing Elenheim at the Expence of the Crown; and notes, that he made such Agreements at the Instance and Desire of the Duke of Marlborough. The Duke is bound by such Agreement, and as well as able to pay for the Work done after the Statute as before. MS. Tab. May 5th, 1721. Dutches of Marlborough v. Strong.


38. Where a Contract has lapsed dormant for many Years, there shall be no specific Performance decreed. MS. Tab. March 3, 1722, Wingfield v. Whaley.

38. The Plaintiff's House being so near the Church, that the 5 o'Clock Bell rung in the Morning disturbed the Plaintiff. He came to an Agreement in Writing with the Churchwardens and Inhabitants, at a Vestry, that the Plaintiff would erect a Cupola and Clock at the Church, and in Consideration thereof, the 5 o'Clock Bell should not ring in the Morning; This is a good Agreement, and decreed to be binding in Equity. 2 Wms's. Rep. 266. Hill. 1724. Martin & al v. Nutkin & al'.


40. A treats for the Marriage of his Son, and in the Settlement on his Son there is a Power referred to the Father, to jointure any Wife, whom he should marry, in 100 l. per Annum, paying 1000 l. to the Son. The Father treating about marrying a second Wife, the Son agrees with the second Wife's Relations to release the 1000 l. and does release it, but takes a private Bond from the Father for the Payment of this 1000 l. Equity will not set aside this Bond, because it would be injurious to the first Marriage, which being Prior in Time is to be preferred. 2 Wms's. Rep. 66. pl. 17. Trin. 1730. Roberts v. Roberts.

41. A, agreed with B. for the Purchase of Land devoted to B. by J. S. Afterwards B. sued A. to compel him to complete the Purchase and pay the Purchase Money. B. answered, that he believed J. S. duly executed the said Will, and devised the Premises as set forth, and admitted the Articles, and that he was ready to proceed in his Purchase, all proper Parties joining. The Will was proved in Chancery to be duly executed; but the Heir, who was beyond Sea, though made a Party Defendant, had not appeared to or answered the said Bill. B. had entered upon Part of the Estate, but the other Party being in a bad Condition, he wanted to be discharged of his Purchase. Ld Chancellor King said, that it appears the Defendant who agreed for the Purchase, knew at that Time that the Heir was beyond Sea, and still accepted the Title, without assuming that the Heir would join, or that the Will would be proved against the Heir; Also the Defendant admits by his Answer, that the Will was duly executed, and by entering upon great Part of the Estate, his himself executed the Purchase, for which Reason he let him pay the rest of the Purchase Money, with Interest, according to the Articles; and at the same Time let the Trustees and Mortgagees join in proper Conveyances to the Defendant the Purchaser. It items in this Case to have been a great Help to the Title, that the Mortgage made by the Trustor, and prior to the Will, was for the greatest Part of the Purchafe Money; which must be kept on Foot for the Protection of the Title. 3 Wms's Rep. 192, 193. Trin. 1733, Colt v. Willon & al'.

42. A Bill in Equity lies not to compel the Performance of an Agreement to pay in Consideration of having filed a Petition for Felony; otherwise it to file a Petition at Law for a Fraud. 3 Wms's Rep. 279. Palen. 1734, in Case of Johnston v. Ogilby & al'.

43. An Agreement was assigned by the Parties, and by the Consent made
Contract and Agreement.

an Order of Court to submit to such Decree as the Court should make, and neither Party to bring an Appeal, yet the Cause allowed to be re-heard. 3 Wms's Rep. 242. pl. 57. Hill. 1733, Buck v. Pawlett.

45. An Attorney, for and on Behalf of his Client the Defendant, promises to pay 500l. This being done by the Consent of the Client, the Attorney is not liable, but only the Client; otherwise it the Attorney had no Authority from his Client to make this Engagement. 3 Wms's Rep. 277. pl. 65. Hill. 1734, Johnston v. Ogilby & al.

46. A Trust Estate was decreed to be sold for the Payment of Debts and Legacies, and to be sold to the best Purchaser. A. articles to buy the Estate of the Trustee, and brings a Bill to compel them to perform the Contract. The Trustees by their Answer disclaims this Matter. The Court will make no new Decree, but will leave the former Decree to be pursued. 3 Wms's Rep. 282. Trin. 1734, Annelly v. Affurit.

(M) Decreed in Specie.

1. If a Man promises me to make me a House which he does not do, I shall have Remedy by Subpoena, and if my Service of Tpiff will not perform my will, I shall have Surpens against him; Per Jenny; Quod Nota. Brit. Conflict. pl. 14. cites 3 & 4.

2. On producing Precedents the Court found it warranted by them, and the constant Practice of this Court, that where such Agreement have been made on which the Party can only recover Damages at Law and not to decree the Thing to be performed in Specie, wherein this Court does shew it cannot bind the Interest of the Lands, but enforcing the Party to perform his own Agreement. Chan. Rep. 158. 21 Car. 1. Wilman v. Roper.

3. B. having married without his Father's Privity, A his Uncle, in S.C cited order to regain the Good-will of the Father to B. did, in Consideration of natural Affection to B. as for regaining the Good-will of the Father to B. covenant with the Father, that in Case the Manor of H. should descend to him, he would settle it on himself for Life. Remainder to B. and his Wife for Life. Remainder to B. and if such Deed should be presented by Alienation, then he would assure other Lands which might descend to him of that Value, and if no Lands of that Value descended, he would settle 400l. to be paid at his Death. The Manor did descend to A. and upon a Bill by B. and his Wife, the Court, upon searching and considering Precedents, decreed a specific Performance, and that A. convey accordingly, though at the Time of entering into the Covenant B. had no Power over the Lands to be settled. Ch. Rep. 427. 21 Car. 1. Wilman v. Roper.

4. The Vendor entered into Articles with the Vendee, to convey the Estate clear of all Incumbrances, and some were to be paid out of the Purchase Money, and the Vendor entered into a Recognizance for the Performance of his Part, and thereupon 700l. Part of the Purchase Money was paid, but by the Articles the Vendor had Liberty to be discharged of the Bargain if he gave Notice thereof before such a Time, and then the Vendor was to pay back 700l. The Vendor liked, and afterwards disliked, and gave Notice thereof, and desired to be discharged, but the Vendor exhibited a Bill for specific Performance of the Articles. Vendor objected Incumbrances not discharged, and affirmed &c. Decreed the Vendor to pay the 700l. at Midlummer next, and Interest from this Time, and then the Recognizance to be delivered up and vacated, or in Default, that the Bill be dismissed, but without Costs. Fin. Rep. 12. Mich. 25 Car. 2. Hatton v. Long.
5. Tenant for Life decreed to perform an Agreement in Specie as far as he was capable, and from which he would have discharged himself by pretending that in so doing he was subject to an Action of Waste, and Damages decreed against him according to what Plaintiff had obtained by his not enjoying the Premises according to his Agreement. Fin. Rep. 164. Mich. 26 Car. 2. Cleaton v. Gower and Carleton.

6. A feited of a considerable Estate of Lands, both Free and Copy, and of a good Personal Estate, in Consideration of 150l. agreed to settle all his Lands which he had or should have, except Bl. Acre, and to leave all his Personal Estate, except 300l. so that all should come to B. after his Death. On a Bill by B. A. was decreed to convey, and the Writings to be delivered to the Uther of the Court. Fin. R. 230. Trin. 27 Car. 2. Coke v. Bishop.

7. The Heir of Law pretending a Right to the Land, threatens to seise the Tenant in Possession, who likewise claimed an Interest in the Fee, whereupon the Tenant promises thus, viz. If I the without Issue of my Body, I will either give you 500l. or leave you my Land. The Tenant was a Pene folio at the Time of the Promise, but after marries, and devises the Estate to the Husband, (who had no Notice of this Agreement, nor had any other Portion with her) and dies. Finch C. decreed the Agreement to be executed. Vern. 45. pl. 47. Mich. 1692. Godmire v. Bateman.

8. In Case of Agreement to quit Possession of Lands, Chancery will not decree a Conveyance; But per Ld. K. North, if the Agreement had been to have conveyed those Lands he would have decreed the Agreement, though he was not apprised what Estate he had in them. Vern. 121. pl. 111. Hill. 1682. Gerard v. Vaux.

9. The Plaintiff assigned some Shares of the Excise to the Defendant, who thereupon covenanted to face him harmfully, and to stand in his Place taking all Payments to the King. The Plaintiff, being sued by the King, brought his Bill to have the Agreement performed in Specie, and although it was inferred that the Plaintiff might recover Damages at Law, and that this was not a Covenant for any Thing certain, and that by this Means a Maller in Chancery was to tax Damages instead of a Jury; yet it was decreed that the Defendant should perform his Covenants, and it was directed to a Maller, that as often as any Breach should happen, he should report it specially, that the Court, if Occasion should be, might direct a Trial in a Quantum Damnificat. 1 Vern. 189. Mich. 35 Car. 2. Ld. Ranelagh v. Hayes.

10. Bill was brought to have a specifick Performance of a Covenant, by which the Plaintiff was to have a Pit for digging black Stone in Defendant’s Ground, and that there should be no other Pit there for such Purpose; But it appearing that Defendant, and thoe under whom he claimed had had a Pit there for above 60 Years past, the Court dismissed the Bill. 2 Vern. 127. Hill. 1690. Sooleield v. Whitehead.

11. Where no Action at Law will lie to recover Damages, there this Court will not execute the Agreement in Specie, for Equity will never make that a good Agreement which is not good by Law. 2 Freem. Rep. 217. pl. 289. Mich. 1797. Normandy Marquis v. Duke of Devonshire.

12. It was said also, that where this Court executes an Agreement in Specie, it must be such an Agreement as is fairly made, without any Fraud or Convenvention. 2 Freem. Rep. 217. pl. 289. Mich. 1697. Normandy Marquis v. Duke of Devonshire.

13. Sir R. B. having Issue only Daughters fethed his Estate upon

Faytes to feth, subject nevertheless to a Power of Recreation; Afterwards, upon the Marriage of his Daughter with the Plaintiff, by Deed reciting, that his Intent was that the Manor of C. in Question should go to the Issue Male of the Plaintiff, he thereby agreed, that if the Plaintiff should be minded
to purchase the same to him and his Heirs, he should have it for 1500 l. more; and cheaper than the last Purchaser would give for the same. Sir R. B. after
words made his Will, and gave the Complainant 1500 l. to be raised out of further, and afterwards, the Court, having heard the evidence, did not construe
the 1500 l. agreed to be allowed the Plaintiff in Case he would purchase the
same. The Plaintiff preferred his Bill to have the Agreement executed, that he might purchase the said Manor, and have an Allowance of the Plaintiff
the 1500 l. It was held, that as it stood barely upon the Deed, this was not
Court would not execute this Agreement in Specie, for this Court will not bound to
not execute all Agreements in Specie, but will consider upon Circumstances relating to the said Agreement, the Real Suitableness and Equitableness of any Price; and it was
executing the same, and will in many Cases leave the Party to his Re-obtained,
merely at Law to recover Damages only for not performing the said Agreement; and the Reason why they should not execute it in this Case, was, because, as it appeared upon the Face of the said Agreement, it
would not answer the Intent of it, it being declared by the said Sir R. B. in the said Agreement, that it was intended that this Manor should go in the Later
years, and having no issue Male, it was plain the main End of the Agreement would not be answered by an Execution in Specie. 2 Freem. Rep. 245, 246. pl. 313. Hill. 1700. Bromley v. Pettitplace.

14. And it was said by the Lord Keeper, for another Reason he
could not be for executing it, because he looked upon it as impracticable wards had
for Mr B. to have it at 1500 l. less than the last Purchaser would give, be-
cause it was impossible to know what the Purchaser would give; for it should
not be exposed to Sale before a Matter to the last Purchaser, because
whoever should bid for the Estate was not to have it because Mr. B. was to have it 1500 l. cheaper. The Plaintiff's Bill was dismissed as — Chan.
the executing of the Agreement in Specie, but was offered a Decree Pec. 158.
for the 1500 l. Legacy, but then was to be enjoined from proceeding at pl. 121. S. C.
Law, and had Time to consider whether he would take it or not.
place.

Settlement and revokes it, which is, by Constriction, a defeating of the 1500 l. but however, a
Court of Equity is not obliged to decree a specific Execution of all Covenants and Agreements, be
they on never so valuable Considerations, but will consider all Circumstances; and Sir R. B’s Circum-
stances, and the Condition of his Fortune, being so much altered, (he being much indebted at the
Time of making his Settlement) and thereupon his Purposo to which he changed, that if a specific Ex-
ecution of this Covenant should be decreed, the whole Will would be defeated, and therefore he
thought it ought not to be executed in this Case; and of the same Opinion was the Lord Keeper, and dismissed the Bill.

15. It was said, that generally this Court will not execute an Agreement
in Specie, but when the Agreement is such that an Allot of Law will lie
for Damages for Nonperformance of it; But in some Cases that will not
hold; for if a Marriage Agreement should be so ill worded, that an Allot
would not lie at Law for the Breach of it, yet this Court will decree a Per-

16. And sometimes subsequent Accidents discharge the Execution of a
in Selby's Cafe, s. 1 Rep. 100. where a Man being Sick, directed his Cies C.
Trustees to convey to his Daughter, and afterwards had a Son born, and

17. On a Quarrel between Baron and Feme, the Baron agreed with the
Father of the Wife that he would return her Portion to the Father, who
should keep his Daughter, and indemnify the Baron from Debts; afterwards
6 X the
the Baron offering to re-take his Wife, the Baron refuses Payment of the Portion back; but notwithstanding, the Payment was decreed on the Father's giving Security to indemnify the Baron against the Debts and Maintenance of the Wife and Child. 2 Vern. 386. Mich. 1700. Seeling v. Crawley.

18. Where one Person hath trifled, or shewn a Backwardness in performing his Part of the Agreement, Equity will not decree a specific Performance in his Favour, especially if Circumstances are altered. MS. Tab. Jan. 26th 1702. Hayes v. Caryll.

19. Bill brought by a Son to set aside an Agreement with his Father for releasing his Inheritance, being a Trust Estate in Trust for an Annuity, because he was under the Power of his Father was disallowed, because there being no Fraud proved, and the Son having been extravagant, but without Prejudice to his Heir. MS. Tab. January 25th 1710. Green v. Green.

20. A Party that enters into Articles in Violation of a Trust shall never take Benefit by them. MS. Tab. August 17th 1715. Daly v. Linch.

21. Bill for a specific Performance of an Agreement to transfer Stock. Case was, the Defendant agreed with the Plaintiff to transfer to him 1000 l. S. S. Stock upon the 20th of November then next following, at the Rate of 104. per Cent. and gave him a Promissory Note under his Hand for so doing, and received two Guarantors of the Plaintiff in Part of the Consideration Money; but the Defendant in drawing the Note, had put in the usual Words (for pay the Difference) which the Plaintiff struck out, and would not agree to, and then the Defendant signed the Note. After the Bargain made, and before the Time of delivering the Stock, the S. S. Stock did rise considerably in Value, and the Defendant did not deliver the Stock at the Days, but a few Days after offered to pay the Difference, and submits to do by his Answer; but the Plaintiff refuses to have the Stock actually transferred to him, and refuses to take the Difference &c. Sir Robert Raymond, and Mr. Vernon for the Defendant insisted, that buying of Stock in this Manner to be delivered at a future Time, at a certain Price, was in Nature of a Wager upon the Rise and Fall of Stock, and therefore paying the Difference is a sufficient Performance of the Contract; that a Contract for Sale of Stock differs from other Contracts for Sale of an House, Lands &c. for in such Things there may be a particular Conveniency or Benefit to the Buyer in this individual House &c. but 'tis not so in Stock; for one 1000 l. is as good as another 1000 l. Stock, and is to be purchased daily in Exchange-Alley; that the Plaintiff hath his Remedy at Law for the Damages, viz. the Difference, and that is the Justice of the Cafe between the Parties, that it is discretion-ary in the Court to decree a specific Performance of an Agreement, and that in many Cases the Court will leave the Party to his Remedy at Law for Breach of a Contract &c.

Sir Joseph Jekyll the Master of the Rolls said, that this is a fair and reasonable Agreement, and he saw no Reason why the Court should not in this Cafe, as well as others, decree a specific Performance of the Contract, especially since it was inflicted upon by the Plaintiff at the making the Agreement, that he should not be obliged to take the Difference, but would have the Stock actually delivered to him, and 'tis more for the Advantage of the Buyer do have the Stock than the Difference, and savs him the Trouble of buying it of another, and paying Brokerage, and decreed that the Defendant do transfer the Stock and pay the Dividends since 20th November, Plaintiff to pay Interest of the Money to that Time, and ordered Costs to the Plaintiff.

On an Appeal from this Decree, Parker C. upon opening the Cafe, asked if the Plaintiff was at the South Sea House upon the Day appointed for transferring the Stock to demand it, and tender the Money, and
feemed strongly against the Plaintiff, and urged the Law in Case of a Bargain for Corn to be delivered upon a Day certain at such a Market, at such a Price, and the Corn is not delivered according to the Contract, the Buyer shall not by a Bill in Equity compel the Seller to a specific Performance of this Agreement, but the Buyer is left to his Remedy at Law for Breach of the Agreement, to recover Damages, (id eit) the Difference between the Price agreed on by the Parties, and the Price of Corn upon the Market Day.

It was said, it was the common Justice of this Court, to compel the Party to a specific Performance of his Agreement, if the same was just and reasonable, and fairly obtained; that this was a just, reasonable, and fair Agreement in all the Circumstances; it was the current Price of the Stock at that Time, and no Impediment upon the Defendant; that the subsequent Rise could not alter the Case, for it was an equal Hazard that it might fall, and the Parties in such Contracts executory must take their Chance; they compared it to the Case of a Contract for so many Bales of Silk, or any other Merchandize to be delivered at a future Day, at a certain Price; if the Value of the Silk or other Goods doth rise before the Day, that is no Excuse for Nonperformance of the Contract. So in the Case of a Contract for Lands, if Lands rise in Value, yet the Party ought to execute his Agreement. They said, that from the Time of the Contract, to the Time appointed for the Deliver'y, the Stock did not rise above 12 l. per Cent. that it was not more at the Time of filing the Bill, which was in January 1718; nay, it was not more at the Time of the Decree pronounced by the Master of the Rolls in Mich. Term last, and though the Stock has risen since to a vast Price, between 900 l. and 1000 l. per Cent. if the Plaintiff fullers by it, it is his own Fault in not performing his Contract sooner, when he was demanded so to do, and in not obeying the Decree as he ought to have done; that whatever has happened since cannot alter the Case; that the Contract was reasonable at the Time it was made, and so it was when the Bill was filed, and the Decree pronounced.

It was said for the Defendant, that the Rule was laid down too general for compelling the Execution of Agreements between the Parties, that this Court would not compel the Party to perform a hard Agreement, though it was fair at the Time it was made, but leave the other Party to his Remedy at Law; that it was very unreasonable now to compel the Defendant to transfer 1000 l. S. S. Stock to the Plaintiff at 124 l. 10s. per Cent. when it was worth 1000 l. per Cent. that paying the Difference at the Day was a good Performance of this Contract; that the Plaintiff knew that the Defendant had no Stock when he made the Bargain with him, and therefore could not expect to have the Stock delivered to him, but to have the Difference if the Stock should happen to rise before the Time, and he had no more Intention to take the Stock than the other had to deliver it, and this appears by his Non-attendance at the S. S. House upon the Day to accept and pay for the Stock. They cited the Case of Marques of Normandy and Lord Berkeley, Tempore Ld. Somers C. who said in that Case, that the Court would not carry Agreements into Execution unleas the Contract was reasonable and fair in every Particular, because they cannot mitigate Damages upon the Circumstances of the Case as a Jury may do, but must decree the whole Contract to be performed.

It was reply'd, that Plaintiff four Days before the Stock was to be delivered, told the Defendant that he expected to have the Stock delivered to him, but the Defendant said, that he had not the Stock, and therefore could not deliver it, and afterwards the Defendant kept out of the Way for some Days, and the Plaintiff could not find him, and that was the Reason he did not attend at the S. S. House to accept the Stock; that this being occasioned by the
the Defendant's own unfair dealing, the Plaintiff ought not to suffer by it, and upon that Account the Plaintiff ought to be relieved in Equity, because he is remediless at Law for want of a Legal Demand and Tender upon the Day.

Parker C. There is no Reason to bring this Bill for a specific Performance of this Agreement, because there is no Difference between this 1000 l. S. S. Stock, and another 1000 l. Stock, which the Plaintiff might have bought of any other Person, upon the very Day, and the Plaintiff doth not suffer at all by the Non-performance of the Agreement specifically, if the Defendant pays him the Difference, the terms of Contracts are commonly under stood to mean no more than to transfer the Stock or pay the Difference, and this fully answers the Intention of the Parties, and the Party has thereby the entire Benefit of his Contract as fully as if the Stock were actually delivered, for he may buy of any other Person, and be no more Money out of Pocket than if the Stock were delivered to him according to the Agreement; this differs very much from the Case of a Contract for Lands, some Lands being more valuable than others, at least more convenient than others to the Purchaser, but there is no Difference in Stock, one Man's Stock is of equal Benefit and Convenience as another's.

3dly, It appears that the Defendant had not the Stock when the Contract was made, and this Court will not decree a specific Performance of a Contract when the Party has not the Thing to deliver. Suppose a Contract for the Sale of Land, and the Party has not the Land at the Time he contracted for the Sale of it, this Court would not decree a specific Performance of the Agreement; if there be a Contract for the Sale of Malt, or any other Commodity, and the Seller has not the Malt or other Things agreed to be delivered, this Court will not compel the Party to perform his Agreement, but leave the Buyer to recover his Damages at Law for Non-performance of the Agreement.

3dly, In Contracts for Stock, being subject to sudden Rise and Fall, the Day is the most material Part of the Contract, and therefore not proper for a Court of Equity to carry into Execution; the Decree might be beneficial to the Plaintiff one Day, and to his Prejudice the next. I shall always discourage Bills of this Kind, but since the Defendant did Shuddle with the Plaintiff, and not offer to pay him the Difference till two Months after the Day, I will not disjoin the Bill, but let the Master enquire what the Difference was at the Day, and the Defendant pay it to the Plaintiff with Interest, but no Costs. Decree reversed per Parker C. MS. Rep. Trin. 6 Geo. Cudde v. Rutter.

22. Bill for a specific Performance of a Contract for 1000 l. York Buildings Stock at 105 l. per Cent. Bill dismissed, for that a Court of Equity will not carry these Sorts of Contracts into Execution, but leave the Parties to their Remedy at Law for the Difference, but no Costs in this Case, because the Defendant's Answer was nullified in several particulars; Per Macclesfield C. MS. Rep. Trin. 8 Geo. Canc. Dorison v. Welbrook.

23. A. and B. who had married two Sisters, presumptive Heirs of J. S. article to divide equally between them whatever should be given to either of them by the Will of J. S. J. S. by his Will gave a great Real and Personal Estate to A. and only a small Real Estate to B. who brought a Bill against the Executors of J. S. for an Account. It was objected, that such Articles were not to be encouraged. But Ld. C. Macclesfield held, that a Performance ought to be decreed, and his Lordship decreed accordingly. 2 Wms's Rep. 182. Trin. 1723. Beckley v. Newland.

24. It being laid down as a Rule, that wherever no Action lies at Law to recover Debt or Damages, there no Suit in Equity lies to compel a specific Performance, which specific Performance is given in Lieu of Damages; But Ld. C. Macclesfield denied this Rule to be true, which he
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said was plain from this Case; As if a Vmz Infant staid in Fe, upon a Marriage with Content of Guardians, should covenant in Consideration of a Settlement to convey her Inheritance to her Husband. It this were done in Consideration of a competent Settlement, Equity would execute this Agree- ment though no Action would lie at Law to recover Damages.


25. 'Tis a general Rule in Equity, that where there is a Purchasor for a Sale, and a sale of Copyhold Land, thereupon a Title, without any other Conveyance, is conveyed to the Purchasor, if the Articles shall be carried into Execution, and this is often done in Case of an Heir on the Articles of his Ancestor, Arg. 9. Mod. 16. Charles v. Andrews, S. P. and Lee, Mich. 9 Geo. 1. in Canc. Lady Coventry v. Lord Coventry.

decreed, though the Heirs of the Vendor were an Infant, that he joins in the Conveyance within six Months after Age.

26. Marriage Agreement was to surrender Copyhold Estate to Use of the Wife and her Executors if she survived, and gave a Bond for Performance. The Wife survives and dies. The Bond was put in Suit and Recovery therupon. Then Bill was brought for specifick Performance and Surrender of Copyhold which was decree, but Deduction to be made of Damages recover'd. Decreed by Lord C. King, Mich. 1525. Dowding's Case.

27. A purchased Land in B's Name, and B. gave Bond of 200l. to convey it to such Uses as B. should appoint, but did not. Though the Penalty of the Bond was recovered at Law, and actually paid, yet the Obliger is compellable in Equity to convey the Land, and account for the Profits, but then he shall be allowed the 220l. and Interest; Per Lord C. King, Mich. 1725. 2 Winds. Rep. 314. Moorecroft v. Dowding.


Mr. Lutwicb pro Quer. Though these Articles for the Sale of this Estate were made and executed by the Vendor after the making his Will, which he thought was a Revocation of the Devise of those Lands in Equity, yet the legal Estate for Life he apprehended was in the Executor and Devisees, and therefore he prayed a Conveyance from the Devisees, and an Injunction for quiet Enjoyment against the Infant Heir at Law, &c. but did not pray an immediate Conveyance from the Infant Heir, because he did think him a Trustee within the Meaning of Stat. 9 Ann. cap. 19. to as to be able to make a good Conveyance from the Trustee, Virtue of that Act; for though the Vendor after a Contract for Sale of his Lands is considered in Equity as a Trustee for the Purchasor, yet he is only a Trustee by Implication, and not an express Trustee; as where Lands are conveyed to A. in Trust for B. and these express Trusts only are within Stat. 7 Ann. cap. 19.

King C. Decreed, that the Articles be carried into Execution, and the Plaintiff Sikes, upon paying the Purchase Money to the Executor, to be let into Possession at Lady-day next, and the Defendants, the Executors, and Devisees, to make a Conveyance to the Plaintiff and his Heirs at the Costs of the Plaintiff, and the Plaintiff to hold and enjoy the Premises against the Infant Heir, and the Heir when he comes of full Age to convey to the Plaintiff and his Heirs, unless the Infant Heir, within six Months after he comes of full Age, ibews Cause to the contrary. Per King C.


29. A Bill was to have Execution of Articles of Agreement for the Purchase of Copyhold Land, setting forth the Title, which appeared to be doubtful. The Court Laid it seemed to be a Bill brought to know the Opinion of the Court, whether the Plaintiff had bought a good Title or no; But Lord Chancellor would give no Opinion as to that, or as to a doubtful Custom of barring Entails in the Minor mentioned like-

wife
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wife in the Bill; But decreed in general a specific performance of the Articles, and decreed the Lord (he being also a Party) to admit the Plaintiff accordingly. 5. Equ. Rep. 189. Hill. 12 Geo. 1. Style v. Reeves.

30. Bill lies to compel a specific performance of an Award to convey an Estate, where the Party submitting has received the Money, in consideration whereof he is to convey the Estate sued for. 3 Wms's Rep. 187. pl. 45. Trin. 1733. Hall v. Hardy.

(N) Decreed. Though there is no, or a very unequal, Consideration.

1. Agreement on a very unequal Consideration, as where A. before the Restoration of Charles 2d. sold a Lease held of a Dean and Chapter for three Lives for 420 l. Afterwards B. agreed with A. the Plaintiff, that if A. would agree him 420 l. he would re-convey the Lease when the King, and the Dean, and Chapter were restored. The Plaintiff thereupon abated the 420 l. and now after the Restoration of the King, and Deans, A. brought his Bill for the Lease against the Son of B. and the same was decreed him by the Master of the Rolls. And the same was afterwards confirmed by the Lord Chancellor and Bridgman. 5 Chan. Cases 42. Hill. 14 Car. 2. Parker v. Palmer.

2. A. seized in Title of Freehold Lands, with Remitter to B. his elder Brother, and in Fee of Copyhold Lands, devised the Copyhold Lands to B. and devised the Freehold Lands to C. the Plaintiff, his younger Brother. B. the Defendant apprehending, as C. had suggested to him, that there had been a recovery suffered by the Tenant, agreed with the Plaintiff without any Consideration, that each of them should enjoy the Lands according to the Will; but discovering afterwards that no recovery had been suffered, he brought his Action to recover his Freehold Lands; and the Plaintiff brought a Bill to establish his Agreement; which was decreed accordingly. 1 Chan. Cases 84. Patch. 19 Car. 2. Frank v. Frank.

3. A. was indebted to B. by Bond, and C. was indebted to A. C. gave Judgment to B. for the Debt which A. owed him. B. delivered up A's Bond, and A. gave B. a new Bond that A. would pay the Money, if C. did not. Afterwards B. promised A. that if B. at his own Charge would extend C's Land, B. would deliver up the new Bond. The Promise was proved, and that A. at his own Charge did extend C's Land. The Bond was ordered to be delivered up, though the Extent would not satisfy the Debt, and C. became insolvent. N. Ch. R. 128. 21 Car. 2. Booth v. Santery.

4. A Scrivener neglecting to inquire into a Title for his Client, on which Money was to be lent, and the Money being lent, and the Title proving bad, the Scrivener agrees to make satisfaction another Way, and reduces it into Writing; and 'twas decreed in Specie, though 'twas nullified that there was no Consideration. Ch. Proc. 19. pl. 20. Hill. 1690. King v. Withers.

5. A subsequent deliberate Affirming an unreasonablc Bargain, when the Party is fully informed of every Thing, and under no Fraud nor Surprise, shall make the Bargain good. A. having 500 l. given him by his Uncle, in Case he should survive the Tenant's Wife, sells it for 100 l. to be paid by 5 l. per Ann. but that if the Tenant's Wife should die before A. and the Legacy become due, in such Case the rest of the Money to be paid within a Year then next following. A. does survive the Te-
(O) Not perfected, but Decreed; and against whom, Not Party thereto.

1. T. H. E. Bill prayeth Relief against the Defendant as Brother and Heir, for that the Plaintiff paid to his Brother deceased a Fine of 344. for a Leafe, who died before the same was made, and therefore debrefh either to have the Leafe made by the Heir, or his Money again; thereupon it was ordered the Defendant shall answer, and an Injunction granted. Cary's Rep. 110. cites 21 & 22 Eliz. Keen, alias, Mogge v. Meere.

2. A Man that marries the Executrix of one that makes an Agreement, shall be as far bound as he himself that made the Agreement. Trin. Toth. 66. 49 Eliz. li. B. fo. 118. Smith v. Gouch.

3. A. agreed to beoife Bl. Acre to 'S. for ten Years, but before A. made the Leafe according to his Promiffie be enjoifed B. of Bl. Acre for a valueable Confideration, and B. had Notice of this Promife before the Feoffment made to B. is compellable in Chancery to make the Leafe to J. S. according to the Promife, and by reafon of the Notice; cited by Tanfield Ch. B. as decreed in Chancery in the Cafe of Core v. Rightfworth, and to the Court agreed in the principal Cafe. Lane 60. Trin. 7 Jac. in the Exchequer. Jackfon's Cafe.


5. Bill to be relieved concerning a Promife to affure Land of Inheritance, but because there was no Execution thereof, but only 55 s. paid in Hand, dimifled. Toth 85. cites 30 Jac. Miller v. Blandiff.


7. An Agreement for a Custom shall bind a Purchafe or Heir. Toth. 67.


8. Articles of Purchafe were decreed to be performed against a voluntary Conveyance made before the Articles. Chan. Rep. 146. 16 Car. 1 against a Conveyance for a valuable Consideration.

made after, the Purchafe's Agent having Notice N. Ch. R. 59. 13 Car. 2 Hallowell and Merry v. Abney. — — — Chan. Cales 38. Merry v. Abney, S. C. but calls it only a Contract, and that the Notice was given to him that made the Purchafe for another. — — — Toth. 67. Mich. 2 Car. Wilkinson v. Dean.

9. A. Perfon that suffered a Recovery was, in point of Law, only Tenant for Life, but there had been an Agreement precedent to the Recovery by the Ancestor, that was dead, for the setting of the Premifles so as to have made the Tenant for Life Tenant in Tail; Resolved that the Recovery should be good in Equity, and should work upon the Agreement. Chan. Cales 49. Patch. 16 Car. 2. Goodrick v. Brown.

10. Tenant pur anter Vie to him and his Heirs articulated for a Sale and died: Though this is such an Estate as is not Affeis to the Heirs, yet he Rep. 106. was decreed to execute this Agreement. 2 Frewen. Rep. 199. in pl. 274. 17 Car. 2 cites it as the Cafe of Stephens v. Baily.

11. De-
11. Decreed that a Copyhold for Life shall be surrendered according to the Agreement, the Purchase Money having been paid to the first Life who was Grantee, and died before his Purchaser's Admittance. Chan. Rep. 272. 18 Car. 2. Greenwood v. Hare.

12. Tenant in Tail mortgages without levying a Fine, and covenants for further Assurance; the Issue is not bound in Equity to make good this Assurance. Lev. 238. Pach. 28 Car. 2. in Corc. Jenkins v. Keynsh.

13. Plaintiff agreed with Defendant for the Purchase of an Estate for £90 to be paid, and paid 20s. in Hand, and tendered the rest at the Day; and relieved. 3 Ch. R. 26. Mich. 21 Car. 2. at the Rolls. Voll v. Smith.

14. Tenant in Tail is bound by his Agreement to convey, but the Issue in Tail is not bound by that Agreement; But if Issue in Tail accepts the Satisfaction which was agreed to be given to the Tenant in Tail, it now becomes his own Agreement, and shall bind him. Chan. Cafes 171. Trin. 22 Car. 2. Rols v. Rols.

15. An Agreement for including Lands, which were exchanged, was confirmed by a Decree against Several, whereby the Person of the Plaintiff was one, and he and his Successors bound as to the Thithes. Fin. Rep. 18. Mich. 25 Car. 2. Edgerley v. Price & al."

16. The Question was, Whether the Issue shall be bound by the Agreement of his Father, where 'twas an Intail in Equity only, and not in Law, and no Fine paid? Per Lord Keeper, where Equity creates the Estate it shall be guided by Confidence (and seemed to incline to make good the Agreement). Chan. Cafes 234. Mich. 26 Car. 2. Northc v. Worlsey.

17. A Settlement agreed to be made on Marriage was decreed, after the Death of the Father who made the Agreement, to be executed, and the Grandson when of Age to levy a Fine. Fin. R. 170. Mich. 26 Car. 2. Fetter v. Fetter.

18. An Agent for a Purchase of Lands entered into Articles, and died before the Purchase compleated, and so did the Vendor. But the Heir was decreed to execute a Conveyance, and to be indemnified from the Heirs of the Agent till a perfect Release or Conveyance be procured from them. Fin. R. 201. Hill. 27 Car. 2. Earl of Bath v. Harvey.

19. Lease covenants with Lessees to take a new Leafe of a College, and then to add three Years mor to the Leafe, or assign the Want thereof in Damages, the Leafe being of Coppice Ground, and of no Profit to the Lesse without such Addition of three Years. Leffer took a new Leafe, but instead of adding three Years sold it to a third Person, who had Notice of the Covenant at the Time. Decreed that the Vendor perform the Covenant. Fin. R. 212. Pach. 27 Car. 2. Finch v. the Earl of Salisbury and Harty.


22. The Father and Son within Age covenant to convey Lands on a Agreement valuable Consideration; the Son was Infra Aetatam, but being now come of Age, the Father is decreed to procure the Son to convey. Chan. Cafes 52. Trin 33 Car. 2. Anon.


23. A. on a Treaty of Marriage between B. his Brother and M. where a bound himself, his Heirs etc. by Deed, to settle certain Lands of 141. a 144. (the bond to Year on the said B. and his Heirs in Cafe the said A. bound die without Issue. Afterwards A. married, and settled the same Lands on his wife's Life, to be a Jointure before Marriage, and dying without Issue devised the Land to his said Wife in Fee; But on a Bill by B. Lt. C. Finch decreed the Land to the Plaintiff, because it was proved, that the Marriage with the Plaintiff's Wife was in Expectation of the Performance of this Agreement, and he was obliged to have left the Land to the Plaintiff if he had had no Issue. 2 Vent. 353. Mich. 33 Car. 2. Goi- mer v. Padiliff.

Child, who died. The Husband brought a Bill to compel a Convenance. Lt. C. Muckle held said, that the Improprity of the Security, or the inaccurate Manner of wording such Bond, was not material, and the Bond being a written Evidence of the Agreement, and this Agreement being on a valuable Consideration, he said, it should be executed in Equity. But the Bond being very blote, the Court ordered a Trial at Law, to see whether the Bond was executed or not, and all other Matters to be refisted till after the Trial. 2 Wm's Rep. 243. Mich. 1744 Camel v. Buckle.

24. A. covenants on Marriage with B. to purchase Lands of 110 l. per Ann. over and above what he had settled already, and lette it on his Wife for Life, Remainder to his Heirs. A. dies, no Purchase and Settlement made, and Administration is granted to B. The Benefit was intended to B. and therefore a Bill brought by the Heir of A. to have such Purchase made for his Benefit was dismissed. 2 Chan. R. 271. 35 Car. 2. Langton v. North.

25. An Administrator De Bonis Non of the Conuse of a Statute, had agreed with the Conue to affign it in Consideration of a Sum of Money which upon the said Agreement the Conue had covenanted to pay him, his Executors, or Administrators. Administrator died. The Money was decreed to be paid to the Executors of the Administrator, and not to the Administrator De Bonis Non, though before the Extent it could not be aligned at Law; Sed Nota that there were not Debts of the first Intestate appearing. 2 Vent. 362. Pashc. 35 Car. 2. in Canc. Anon.


27. A. agrees with B. to purchase a Copyhold for two Lives, and pays The Heir 200 l. in Part, and was to pay the Remainder in three Months, and decreed to then to name his Lives, and take up his Copy. A Court is held. The such Con- Time expires, and B. dies suddenly, and the Manor comes to one who raed of his was not bound by this Agreement. The Executor of B. decreed to Anceoler, refud the 200 l. though it happened by the Laches of the Plaintiff. Vern. 472. pl. 439. Mich. 1667. Awdry v. Keen.
28. A in Consideration of a Portion, articles to settle a Jointure, and dies before the Portion paid or Settlement made. The Wife takes Administration, and if becomes intitled to the Money, and then brings a Bill against the Heir to have her Jointure settled. Bill dimissed, for that she was not intitled to the Money and the Jointure too; but Quare. Vern. 463. pl. 443. Trin. 1687. Meredith v. Jones.

29. If a Jointenant agrees to alien, and dies before 'tis done, 'twould be a strange Decree to compel the Survivor to perform the Agreement. 2 Vern. 63. pl. 56. Pach. 1688. per Cur. in Calé ot Muigrove v. Dalh-wood.

30. A covenants to settle Land of such a Value, or an Annuity out of Land; A at the Time of the Covenant has no Land; but purchase afterwards, and devites it to J. S. and dies. This Land shall be liable to the Covenant; Per Lords Commissiurers, 2 Vern. R. 97. pl. 90. Pach. 1689. Took v. Hatlings.

31. A lends 100l. to B, and for Security takes a Warrant of Attorney to confisc judgment in Inheritam of three Close, upon a leigned Demife for 20 Years. Per Lds. Commissiurers, though the Security is defective, yet it amounts to a good Agreement in Equity to charge the Land, and decreed it accordingly against the Heir. 2 Vern. 151. pl. 146. Trin. 1690. Dale v. Smithwick.

32. The Auctor in his Life-time article for the Sale of certain Lands which he covenanted to convey, but did not covenant for him and his Heirs. The Court held, that the Heir was bound to perform this Agreement, in as much as his Author, after writing the said Articles, was in Nature of a Trustee for the Plaintiff of those Lands, which Trust, with the said Lands, descended to the Heir; and decreed accordingly. 2 Freen. Rep. 199. pl. 274. Trin. 1694. in Canc. Gell v. Vermaen.

33. A was bound as Surety in a Recognizance dated May 7th 1662, with B. his Father for 150l. Portion with his Sitter on her Marriage. This Recognizance was not confirmed by the Convention Act for Confirmation of Judicial Proceedings, that Act having Relation to the first Day of the Sessions, April 25th 1662, and confirmed only Recognizances then taken; A. having no Concern in the Treaty of Marriage, being only a Surety, and having no Allowance for what he did, and not making any Promise, the Court would not bind him where he was not effectually bound before, but dimissed the Bill; Per Wright K. 2 Vern. 393. pl. 364. Mich. 1700. Sheffield v. Ed. Cuttleton & Ux.

34. A was Affiance of a Commission of Bankruptcy issued out against one Bovil, who had contracted with Defendant for Goods to the Value of 244l. but not having ready Money to pay for them, offered to Mortgage to him an Estate he had in Possession as a Security for the Money, and for that Purpose left with Defendant the Title Deeds to get the Affiance drawn. Defendant carried the Deeds to an Attorney to draw the Allignment, who died without doing it; alter that he carried them to a Scri-vener, but before the Allignment was perfected, Bovil became a Bankrupt. A. now brought his Bill to have the Deeds delivered up for the selling of the Estate to satisty the Creditors. Defendant's Council urged, that this was more than a Pledge of the Deeds, for that an Allignment was intended to be made; that if it had been made, the Court would not have taken it from him without Payment of the Money; that its not being made was owing to the Death of the Attorney, which was an Accident, and this Court often relieves Accidents, and therefore the Deeds ought not to be delivered up without Payment of the Money. The Court decreed the Deeds to be brought before the Matter, and to be delivered by Schedule to the Plaintiff; but Note no Reason was given for this Decree. Ch. Prec. 375. pl. 261. Mich. 1713. Bander v. Bovles.

35. Bill
35. Bill to compel the Defendant and his Wife to join in a Fine to the Plaintiff, pursuant to his Covenant in a Conveyance &c. The Defendant and his Wife, and H. their Son and Heir, set forth in their Answer, that Defendant H. is Tenant for Life, Remainder to his Wife for Life, Remainder to the Heirs of the Husband begotten on the Body of the Wife, Remainder to the Heirs of the Husband, and enforces that nothing pulled by the Conveyance but an Estate for Life of the Husband, and that the Wife did not seal the Deed &c.

Note, the Husband and Wife were Parties to the Deed, but the Husband only sealed it, though the Covenant was that the Husband and Wife would levy a Fine; and a Fine Sur Conuains de Droit Cume coe was levied by the Husband alone.

Deed that the Husband, the Defendant, should procure his Wife to join with him in a Fine to the Plaintiff according to his Covenant, since he has taken upon him to do it, and the Plaintiff hath paid the full Value of the Estate; for Cowper C. MS. Rep. Mich. 1 Geo. in Canc. Barrington v. Horn &c.

with him in a Fine, this Court will enforce a Performance of such Covenant; Per Matter of the Rolls. 2 Wms's Rep. 189. Trin. 1733, in Case of Hall v. Hardy. —— Ibid. at the bottom, the Reporter adds a Note, and says, because in all these Cases it is to be presumed that the Husband, where he covants that his Wife shall levy a Fine, has first gained her Consent for that Purpose; to hold by the Matter of the Rolls, in the Case of Clutter v. Diburtz, Trin. 1723, and that the Intrest in such Covenant has been taken to be an Inheritance depending in the Heir of the Covenantor. But after all, if it can be made appear to have been impossible for the Husband to procure the Concurrence of his Wife, (as suppose there are Differences between them) surely the Court would not decrees an Impedibility, especially where the Husband offers to return all the Money, with Interest and Costs, and to answer all the Damages.

36. Marriage Articles were that within a Month after Marriage he would surrender a Copyhold to the Wife for Life, Remainder to the Issue, Remainder to the Heirs of the Wife, and if he should neglect or refuse to make such Surrender, then be should leave the Wife 500 l. at his Death. No Surrender is made; The Husband dies after the Month without Affairs. Parker C. decreed that the Heir at Law should surrender to the Plaintiff and her Heirs, and till Surrender'd he was a Trustee for her. Here was no Election; if done after the Month the 500 l. was not to be paid; Those are two express Covenants, and it is not put in the Alternative and here is no Purchaser to be defeated; 'tis a Charge in Equity. Mich. 5 Geo. Canc. Wood v. Peley.

37. Those Cases, where the Court will not compel the Execution of Powers are, where 'twould be against the Will of the Donor that they should be executed, As in the Case of Hear in Tail, this Court will not enforce him to suffer a common Recovery though his Father was decreed to do, and died in Contempt for not doing it. 9 Mod. 16. Mich. 9 Geo. in Canc. cited in the Case of Lady Coventry v. the Earl of Coventry.

38. Money was devised to be laid out in Land to the Use of B. in Tail, Remainder to the Use of C. in Fee; B. (having no Issue) agrees with C. by Deed to divide the Money, and before this Agreement is executed B. dies. This Agreement shall bind in Favor of his Executors. Cases in Equ. in Ld. Talbot's Time. 271. Patch. 1733. Carter v. Carter.


(P) Un-
(P) Unreasonable set aside.

1. A Brocage Bargain of an unreasonable Allowance for affihing to the Purchase of an Estate has no Equity in it, and a Bill for making good such a pretended Agreement dismissed. Tin. R. 32. Mich. 25 Car. 2. Gibbon v. Lewis.

2. No Relief for a Sale of Land in the Funds, according to the Statute of Draining, though void at an unreasonable Undervalue, as for 33 l. what was worth 400 l. For Finch C. said he could not relieve against an Act of Parliament. 2 Chan. Cases 249. Hill. 30 & 37 Car. 2. Brown v. Hammond.

3. A. articles to sell Lands to B. for 15000 l. to be paid in Money, or so much Land to be returned as would make what he paid short. A. conveys Part of the Lands to B. and by his Perfusion values that Part at an Under Value. B. sells this Part to C. and D. &c. amounting in all to about 4500 l. and would now return the red. Decreed that the Articles be set aside as unreasonable, but that the Sales to C. D. &c. should stand. 2 Vern. 156. pl. 169. Mich. 1690. Broom Whorwood v. Simplicio.

4. Bill to have an Execution of Articles for a Lease of Lands in Norfolk, where the general Custom is for the Landlords to repair; Per Cor., the Leefe being Plaintiff, and it being proved that the Rent referred is less than the Value of the Land, decreed a Lease, but that the Leefe should covenant to repair, and the Rent to be Subject to no Deductions, have only Parliamentary Taxes. 2 Vern. R. 231. pl. 210. Trin. 1691. Barrel v. Harrison.


6. A. had an Inn in Newcastle descended to him, which was let at 69 l. per Ann. but subject to a small Mortgage, and A. being very poor, was inveigled to sell it for 80 l. and afterwards brought a Bill to be relieved, but was dismissed. Ld. Chancellor declaring, that though the Bargain was not a fair one, yet no such Fraud appeared as to set it aside. Chan. Prec. 206. pl. 166. Wood v. Fenwick.

7. An Agreement for the Purchase of the Remainder of an Estate after an Estate Tail from a Woman 90 Years of Age, by an Attorney for 400 l. neither paid nor secured, but in the Agreement (which imported a Conveyance) mentioned to be paid, and several other Specious Circumstances appearing, Cowper C. would neither decree Performance by the Heir at Law to the old Woman, (the Easte being now fallen in and worth 5000 l.) nor the Writing to be delivered upon the Cross Bill. 2 Vern. 632. Hill. 1758. Green v. Wood.


Contract and Agreement.

10. Upon a Controversy between M. and T. (who had a joint undivided Interest in an Estate, and who had agreed to set a Price upon each the other's Moity) concerning the Meaning of their Articles in Writing, by which it was declared that T. should set the Price, and that upon Payment the

and Publication &c. and

of such Price, together with the Repayment of 600l. and Interest paid by T. to M., he was to convey, T. sets 700l. for his Rights in Writing, and M. accepts thereof; Then M. presents a Bill to have the Agreement performed according to the true Meaning of the Parties &c. T. insists that he was to have 700l. besides the 600 l. and Interest; But M. says that T. at the Contract, valued his half but in 700 l. (and the whole Estate in 1400 l.) and that it was the Intent of all the Parties that the 600 l should be included in the 700 l. and not be taken at two different Sums &c.

This Cause was first heard before the Master of the Rolls, but he put it off to be heard before the Ld. Chancellor, who upon hearing dismissed the Bill, it appearing that as the Agreement was made in Writing, it was unequal and against Reason; For the 600 l. paid by T. was towards M's, a Mortgage to H. and M. had paid towards the same about 530 l. which was 70 l. short of the Payment by T. and though M. by Answer offered to let his Part go on Payment of 700 l. including the 600 l. paid, yet paid by M. the other had 70 l. advantage, and so unequal and unjust in T. to have to T. appears 1300 l. for his Moity, which made the Estate 2600 l. in Value, but he to be 70 l. to the Execl of the Coys on an Account of an inequitable Examination on the Part of M. MS. Rep. Mich. 8 Geo. i Triliram v. Mellhui. If the Bill is only for a specific Performance of the Articles, he must either take it according to the Articles, and pay not only the 700 l. but also the 600 l. and Interest, or his Bill will be dismissed with Costs; But if the Bill be also to explain the Articles, and to have a Mistake therein, or in the Proposal, and his Acceptance thereof rectified, in as much as the 700 l. was to include the 600 l. and Interest, he ought not to have demanded a specific Performance, but to have offered either to become a Purchaser on 700 l. or to have waived the Benefit of the Articles and Agreement; and indeed he ought rather to have offered to accept 700 l. for his Moity, including the 530 l. paid by him, and since there is such a Contrariety of Proof, not only as to the Value, but of what the Parties understood to be the Meaning of the Agreement, and a Proof that Mr. M. himself declared he was to give, or would give 1300 l. the Agreement in Writing must be the Measure between the Parties, and the rather, because M. himself offered to pay the Interest of the 600 l. over and above the 700 l. so that Mr. M. must pay 1500 l. or suffer his Bill to be dismissed with Costs, unless he can get off upon an Offer to accept 700 l. for his Moity, including the 530 l. It had been proper to have made H. a Party, the said Estate having been in Mortgage to him for the said 600 l. and 530 l. and not yet assigned.

11. 'Twas said, that an extravagant Bargain ought not to be carried So though into Execution in Equity; Arg. 9 Mod. 152. Trin. 11 Geo. i. in Cafe of Charles v. Andrews.

Fraud and Circumvention, yet though there was not full Proof of Fraud, yet it appearing to be an unreasonable and shameful Contravert, as to grant a Lease for 67 l. per Ann. of Lands which was leased out again for 167 l. without any Hazard or Expense, Lt. G. Macclesfield would not declare a specific Execution, but dismissed the Bill, and left the Plaintiff to recover what he could at Law, Ch. Prec. 538. pl. 553. Mich 1720. Young v. Clerk.

12. A written Agreement being unreasonable the Court would not carry it into Execution, but decreed that it be delivered to the Party for whole Benefit it was designed, that he may have an Opportunity to make the use of it at Law. MS. Tab. February 27th 1726. Squire v. Baker.

13. A Bargain being hard and unreasonable is a Reason sufficient why Chancery will not give it Affiance, as in the principal Cafe, where a young Gentleman that has a Remainder in Tail executant on the Death of his Uncle without Issue, and executant on the Death of his Father, of the Value of 300 l. a Year, fell this Remainder for 300 l. Two Mannors are inherited in the Deed, and it was agreed on all Hands that it was designed the Defendant would have but one of them. The one did not know what he sold,
Contrab—by Vern. Wms's thole Vefuch and
One Rowfe. Q^)
paid Jl-ars^ decreed
Reliev'd
Ledee Perlbn in
dare, Arjg. 4. 2.
the Mafoo, allowed
Placed ^'^'^'^
Decreed Lingwood. Moderated.

(Q.) Moderated.

1. A Placed his Son as Clerk to B. an Attorney, and gives with him 120 l. and B. by Articles agrees with A. to return 60 l. of the Money if B. died within a Year. B. was sick at the Time, and of that Sicknels died in three Weeks after sealing the Articles, and Payment. Jef-


2. Though by a Dead 5 l. per Cent. was directed to be allowed until a Purchafe made, yet it appearing that the Money had been placed in the Go-

vernment Funds which yielded but 4 l., the Court reduced the Interest to 4 l. per Cent. Decreed by Sir Joseph Jekyll Master of the Rolls. 3 Wms's Rep. 227. Mich. 1733. in Cale of Lechmere v. Lord Car-

Hille.

(R) Not strictly perform'd. Reliev'd; In what.

Cales.

W H E R E a greater Sum is due by Specialty, and a 1/2 is agreed to be taken for it, to be paid in certain Sumas at certain Days, if the Agreement be not strictly purfued, and the Monies paid precisely at those Days, but Part of the Money paid at other Days, a Court of Equity
ought not to oblige him, that made that Agreement (in favour of the Perfon failing to perform it) to stand to it upon Payment of so much as will make up the Money paid since the last Agreement with Damages for the fame from the repective Times the fame should have been paid by that Agreement to the Times the fame were paid, and Damages for what remains unpaid till the fame be paid; Arg. Chan. Cales 115. Trin.

20 Car. 2. in Cale of Delamere v. Smith.

2. Promife to deliver up a Bond upon a Condition which was afterwards performed; decreed to deliver up the Bond, though the Thing done did not amount to the Sum due. N. Ch. R. 128. 21 Car. 2. Booth v. Sancriy.

3. One that could read made an Agreement for a Lease for 21 Years; the Leffer himself drew the Lease but for one Year, and read it for 21 Years, and after the Expiration of a Year ejected the Leffire, and he brought a Bill in Chancery to be relieved upon all this Matter which was in Proof, but 'twas difmisfed with Costs, for it was within the Statue of Frauds and Perjuries &c. and being able to read it was his own Folly; otherwife if he had been quitted. Skin. 159. pl. 6. Hill. 35 & 36 Car. 2. in Cane. Anon.

4. Leffe
(A) Contra Formam Statuti.

1. If an Offence be at Common Law, and also prohibited by Statutes, * Cro. E.
   the Indictment may conclude Contra Formam Statuti, or Statute 148. pl 14.
   torm; thus in Barter, though there be no direct Statute against it by *Cro C.
   that Name, yet the general Tenor of the several Acts running against 349.
   it by Circumlocations, the Indictment concluding Contra Forma Statuti, and Roll.
   or Diverforum Statutorum is good, and it is the usual Form. 2 Hale's 3.
   Cafe. Hill. 9 Car. 1. B. R. * Chapman's Cafe, but it must conclude also

2. P. was indicted upon the Statute of 5 E. 6. cap. 4. for drawing his S C. cited
   Dagger in the Church of B. against J. S. and does not say (according to F.
   the Statute) to the Intent to strike him; for this Cause it was void; But J.
   S. * cited, then it was moved, if this were not good as for an Aulfault, that he
   S. C. cited might be fined upon it; but per Curiam it is void in all; for being in-
   dicuted upon the Statute, it is void as to an Offence at the Common Law. J. Comb.

For more of Contract and Agreement in General, See Actions, Con-
venant, Cumbishment, Fraud, Grants, Marriage, Mort-
gage, Vendor and Vendor, and other Proper Titles.
Contra Formam Statuti.

3. In an Indictment on the Statute of 8 H. 6. the Statute was misconceived, and the Conclusion was Contra Formam Statuti, and therefore held insufficient; but then it was moved, that though the Indictment was void for the Entry with Force, yet it being that they with others Riotofe and Routofe entreated &c. it should be good for the Riot; but Curia contra; For the Indictment beginning with the Statute of 8 H. 6. and concluding Contra Formam Statuti, this can have no Relation to any Offence except upon this Statute. Cro. E. 307. pl. 10. Mich. 35 & 36 Eliz. B. R. Hall v. Gawan & al.

4. Information upon the Statute 33 H. 8. cap. 16. and 1 E. 6. cap. 6. for buying of Worsted Yarn, not being a Weaver, and the Information concluded Contra Formam Statuti; It was said it was not good, but it ought to be Contra Formam Statutorum; But the Court as to that held it good, but because he did not shew in his Information, that it was not Yarn spun upon the Rock, (for otherwise it is not an Offence) it was held the Information was not good. Cro. E. 750. pl. 6. Paich. 42 Eliz. B. R. Dingley v. Moore.


5. Where there are several Statutes, and it does not appear on which the Information is founded, the concluding Contra Formam Statuti is ill. Cro. J. 142. pl. 19. Mich. 4 Jac. B. R. Broughton v. Moor, cites as is adjudged in the Case of Talbot & al.

D. 547. pl. 9 contra, Topcliff v. Waller, cites 5 H. 7.

If there are diverse Statutes in the Point of Information, Contra Formam Statuti is good; because the beast shall be taken for the King; Per Coke. Ow. 135. Trin. 9 Jac. cites New Book of Entries 182. and 5 H. 7. 17.

and S. E. 547. a.

6. Where one Act makes the Offence, and another gives the Penalty, an Information must be Contra Formam Statutorum, and cited 33 Eliz. Talbot v. Sheldon, who were indicted for Recency Contra Formam Statuti, 23 Eliz. and the Judgment was reversed because the Penalty was demanded; for the 10 Eliz. made the Offence, and the 23d gave the Penalty; but if the Information be for the Offence only it had been good; Per Coke. Ow. 135. Trin. 9 Jac.

7. In Appeal of Death, the Defendant pleaded that he was indicted and convicted &c. and prayed his Clergy. The Appellant demurred, alleging that the Conviction was not lawful, because the Indictment was, that he stabbed him having no Weapon drawn, nor striking him, and so killed him Contra Formam Statuti, whereas there is not any Statute which prohibits it; but only takes away the Clergy from such Offender; and the Verdict finding that he was guilty of Homicide against the Statute is not good for that Reason; sed non allocutur; For the Indictment being framed upon the Statute the Conclusion is good, and their Verdict is pursuant thereof. Cro. J. 283. pl. 4. Trin. 9 Jac. B. R. Bradley v. Banks.

2 Hale's Pl. C. 191. cap. 25. says, that it is the usual Course at this Day, to conclude such an Indictment, Contra Formam Statuti, and that it has been ruled good accordingly;

and cites this Case of Bradley v. Banks, but says, that it is not there questioned but that it may be good without it, so that in these Cases, where Clergy is specially outraged by an Act of Parliament, the Indictment is good with this Conclusion, or without it, but the best way in these Cases, is to follow what is most usual.

8. If the former Statute be discontinued and revived by another Statute, the best Way is to conclude Contra Formam Statutorum. Mich. 31 & 32 Eliz. Spoon's Cafe, though there is good Opinion that it is good enough to conclude Contra Formam of the first Statute, as in Case of the Statute of 5 E. 6. of Ingrolling, 37 H. 8. for Injury, and 5 Eliz. for Perjury,
Contra Formam Statutii.

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jury, which were discontinued and revived, yet Indictments good concluding Contra Formam of the first Statute. 2 Hale's Pl. C. 173. cap. 24. cites Tinm. 9 Jac. Rot. 124. C. B. Wellwood's Cafe. 9. If it be a general Statute it need not be recited, but if sufficient to e Cr. C. conclude Contra Formam Statutii in hajumodi Caufl edit & provis for 232 pl. 14. the Court ought to take Notice of it; and all point Statutes that in-duce a Fasurcture to the King, or make a Felony or Treason are general Statutes, because it concerns the King; but if a general Statute be recited in an Indictment, and be misstated in a Point material, and concludes Contra Formam Statutii prediji it is fatal, and the Indictment shall be quashed; but it seems, it it concludes generally Contra Formam Statutii in hajumodi Caufl edit & provis it is good; for the Court takes Notice of the true Statute, and will reject the Mifrecitation as Surpruige. 2 Hale's Pl. C. 172. cap. 23. cites Mich. 7 Car. B. R. Coke, n 14. of Barn's Cafe in Maintenance, and Mich. 8 Car. B. R. per Jones super Stat' de Cottages.

10. An Indictment of forcible Detainer concluded Contra Formam Statutii: Exception was taken that it ought to be Statutum; for the Statute of 8 H. 6. cap. 9. is relative to the Statute of 15 R. 2. cap. 2. and recites it; and then the Words are joined thereto, the Cafe of peaceable Entry, and forcible Detainer, and to this Statute is but Supplemental of the other; But to this it was answered, that this Statute first recants the Deleas of the Statute of 15 R. 2. and then confirms it, and after provides for the Cafe of Peaceable Entry and forcible Detainer, to which the Statute of 15 R. 2. did not extend, so that as to this Clause it is a new distinct Law, and consequently the Indictment good. But to that it was replied, that the Statute 8 H. 6. goes on and provides, that in Cafe of Porobil Detainer, after Complaint made to the Justices of Peace, they shall cause the Statute 15 R. 2. to be duly executed, by which Statute the Offender is to be fined and imprisoned, so that this Statute grants only Restitution, and refers the Punishment to the Statute of 15 R. 2. So then upon this Indictment Contra Formam Statutii, taking it to be that of 8 H. 6. as it must be, the Offender cannot be punished within that of 15 R. 2. and the King should lose his Fine; and for this Cause, after several Debates, Roll held the Indictment insufficient, but Bacon e contra, because the ancient Precedents both of the Indictments and Actions upon the Statute did use to recite this Statute only, but now the Courts according to Lord Coke's Advice, 4 Rep. 486. not to recite the Statute but conclude it Contra Formam Statutii; See Dalton cap. 122. And he said it would be very mischievous to subvert so many Precedents as have been this Way, but the best Way had been to have wrote it Stat' with a Daff, for then it would have flood by Law as it ought. All. 49. 50.

Hill. 23 Car. B. R. Simond's Cafe. 11. P. and H. and one f. 3. were indicted at the Affltes at Notting-2 Hale's Pl. ham upon the Statute 1 Jac. cap. 8. for stabbing one W. R. and the In-C 195, 197. cites S.C. difficult was, that f. 3. stabbed him, and P. and H. were present, abetting - S.C. & Contra Formam Statutii; The Court held the Indictment need cited by not conclude Contra Formam Statutii, because the Statute does not alter Hifi Ch. J. the Nature of the Offence, but only takes away the Privilege which the Common Law allowed in such Cafe, and therefore it is sufficient that the Circumstances be exprest in the Indictment, whereby it may appear that the Offence is within the Statute; and the Offenders had their Clergy, S.C. cited, and upon their Reading were burnt in the Hand in conspicua Curiæ. All. 43. 44. Hill. 23 Car. B. R. Page and Harwood,
Contra Formam Statuti.

Rep. 150. — S. C. cited by Holt Ch. J. 4 Salt. 214, 215. — S. C cited by Holt Ch. J. Comb. 421. — And an Indictment on the Statute of Stabbing need not conclude Contra Formam Statuti; Per Holt Ch. J. Comb. 218. Nich. 3 W. & M. in B. R. Anom. — The Statute of Stabbing does not make the Officer, but only takes away the Clergy from Manslaughter to circumstantiate; yet the Indictment may conclude Contra Formam Statuti; but it is good without such Conclusion; Per Holt Ch. J. Comb. 571, 572. cites Hale's Pl. C. (Svo.) 58.

12. If a Man be indicted for an Offence which was at Common Law, and concludes Contra Formam Statuti, but in Truth is not brought by the Indictment within the Statute, it shall be quashed, and the Party shall not be put to answer it as an Offence at Common Law. 2 Hale's Pl. C. 171. cap. 24.

13. If an Act of Parliament making a Felony or other Offence be but temporary, and made perpetual by another Statute, the Indictment concluding Contra Formam Statuti is good. 2 Hale's Pl. C. 172. cap. 24.

14. If an Offence be newly enacted, or made an Offence of a higher Nature by Act of Parliament, the Indictment must conclude Contra Formam Statuti, as an Indictment of Burglary, Transporting of Wool &c. 2 Hale's Pl. C. 189. cap. 25.

15. Rape: though before the Statute of Westm. 2, it was a Trepasso, yet being made Felony by that Statute, the Indictment ought to conclude Contra Formam Statuti. 2 Hale's Pl. C. 189. cap. 25.

16. If an Offence were High Treason &c. at the Common Law, and a declarative Act of Parliament declares it to be, as the Statute of 25 Eliz. 3. de Proditionibus, the Statute of 3 H. 5. of clipping the Coin &c. till repealed by 1 Mar. the Indictment is good with a Conclusion Contra Formam Statuti, or without such a Conclusion. 2 Hale's Pl. C. 189. cap. 25.

17. But at this Day the Indictment for clipping, Wielding &c. of Coin enacted to be Treason by the Statutes of 5 & 8 Eliz. must not only express, as the Statute requires, that it was (Causi lucris) but must conclude Contra Formam Statuti. 2 Hale's Pl. C. 189, 190. cap. 25.

18. If an Offence were Felony at Common Law, but a special Act of Parliament enjoins the Offender to some Benefit (that the Common Law allowed him) when certain Circumstances are in the Fact, though the Body of such Indictment must express those Circumstances according as they are prescribed in the Statute, yet the Indictment must not conclude Contra Formam Statuti. 2 Hale's Pl. C. 190. cap. 25.

19. Thus the Statute 21 Jac. cap. 27. concerning murdering of Bastard Children requires Proof by one Witnesses that the Child was dead born, the Indictment must shew that it was a Bastard Child to bring the Offender within that Statute, but concludes not Contra Formam Statuti. 2 Hale's Pl. C. 190. cap. 25.

20. By the Statute of 8 Eliz. cap. 4. in Cases of Pick-Pockets, 39 Eliz. cap. 15. breaking Hounis in the Day Time, and stealing to the Value of 5 s. the Statute of 23 H. 8. cap. 1. in Cases of Petit Treason, willful Murder, of Malice prepense, Robbing in or near the Highway, 18 Eliz. cap. 7. in Case of Burglary, the Statute of 4 & 5 P. & M. cap. 4. in Case of malicious commanding &c. any Person to commit Murder, Robbery, willful Burning, the Offenders are out of their Clergy; the Body of Indictment must bring them within the express Purview of the Statutes, or otherwise they shall have the Benefit of Clergy, but it need not conclude Contra Formam Statuti, neither is it usual in such Cases; for they were Felonies before, and the Statutes do not give them a new Punishment, nor make them to be Crimes of another Nature, but only in certain Cases take away Clergy. But yet if they should conclude in these Cases Contra Formam Statuti, it would not vitiate the Indictment, but would be only Surplusage, for though the Statutes do not give a new Pen-
Contra Formam Statuti.

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555, yet they take away an old Privilege, when the Case falls within the Circumstances mentioned by the Act. 2 Hale's Pl. C. 192. cap. 25.

21. If an Offence be at Common Law, and also prohibited by Statute, with a corporal or other Penalty, yet it seems the Party may be indicted at Common Law, and then though it concludes not Contra Formam Statuti, it stands as an Indictment at Common Law, and can receive only the Penalty that the Common Law inflicts in that Case. 2 Hale's Pl. C. 191. cap. 25.

22. Mich. 10 Jac. B. R. an Indictment of forcible Entry upon the Statue of 8 H. 6. cap. 9. and Mich. 9 Car. 1. B. R. an Indictment for Forgery quashed for not concluding Contra Formam Statuti, * Smith's Case, yet both these were Offences at Common Law, though Reformation were not at Common Law in the first Case, nor Pillory, and Lofs of Ears in the second, but only Fine and Imprisonment, or at most standing in the Pillory, but without Multilation. 2 Hale's Pl. C. 192. cap. 25.

23. Regularly, if a Statute only makes an Offence or alters an Offence * See Indict from one Crime to another, as making a bare Misdemeanor to become a Felony, ment (O) pl. the Indictment for such a new made Offence, or new made Felony must 2 S. C. conclude Contra Formam Statuti, or otherwise it is insufficient. 2 Hale's Pl. C. 192. cap. 25.

24. And on the other Side, if an Offence be purely at Common Law, if Cro. C. 465. it conclude Contra Formam Statuti it is insufficient, and shall be quashed. Pl. 2 ed except in the Instance above given touching Clergy; and therefore an Indictment of Battery concluding Contra Formam Statuti is insufficient, and shall be quashed. 2 Hale's Pl. C. 192. cap. 25. cites Trin. 12 Car. B. R. Coke n. 2. Cholmley's Case.

25. There is a Difference when an Information or Affidavit is grounded on an Act of Parliament, and the Conclusion is Contra Formam Statuti predici, there the Information is not good if the Statute is misrecited, but if the Conclusion be Contra Formam Statuti in insufficient, and must be quashed, and therefore the Court may take Notice of a good Act of Parliament to punish the Offence mentioned; Per Twifden J. Raym. 192. Mich. 22 Car. 2. B. R. in Case of the King v. Wild.

26. W. brought an Affidavit against H. R. de Usores abduita, and keeping of her from him, ufque such a Day, which was some Time after the exhibiting of the Bill, and concluded Contra Formam Statuti. After Verdict for the Plaintiff, this was moved in Arrest of Judgment, but the Declaration was held good notwithstanding the Misrecital, because the Court can take Notice of a good Act of Parliament to punish the Offence mentioned; Per Hale's Pl. C. 192. cited ante. "In form of a 5th Case." 193, 194. Mich. 22 Car. 2. B. R. Ward v. Rich.

27. Where a Statute continued de Tempore in Tempus, and was never discontinued nor determined, there it shall be said Contra Formam Statuti ; Agreed. Ow. 135. and cites 35 Eliz. and 9 Eliz. Palmer's Case.

28. Where a Statute prohibits a Thing without a Penalty, or makes a new Duty to an Officer, the Indictment needs not conclude Contra Formam Statuti ; Per Eyre J. Comb. 205. Palfch. 5 W. & M. in B. R. The King and Queen v. Wiggot and Perry.

29. Where a Statute makes an Offence, the Conclusion must be Contra Formam Statuti. 5 Mod. 308. Mich. 3 W. 3, Bemtet v. Talbot.

30. An Indictment for a Riot was moved to be quashed, because it concluded Contra Formam diversorum Statutorum, whereas there is but one Statute against Riots, the rest give Penalties on Sheriffs, Judges &c. but though it held good. Comb. 371. Trin. 8 W. 3. B. R. The King v. Branc & Mull.

31. If
Contra Formam Statuti.

31. If a Declaration is Contra Formam Statuti, and some Things alleged therein are within the Statute mentioned, and others are not within it, yet it is good; for as to those which are not, it is surplusage. 12 Mod. 121. Patch. 9 W. 3. Bennet v. Talboys.

32. If an Act of Parliament increases a Penalty, or deprives a Man of any Benefit which he had before at Common Law, there if you count on the Statute, and do not bring yourself within it, and conclude Contra Formam Statuti, it is naught; Per Holt Ch. J. 12 Mod. 122. Patch. 9 W. 3. in Case of Bennet v. Talboys.

33. In Case, Plaintiff declared that he disdained certain Casks of Hay for Arrears of Rent, in order to fell them Secundum Leges et Statuta Regni Angliae; and that the Defendant, being Confinet of the Premises, refused them &c. After Verdict for the Plaintiff, he played his trade Damages upon the Statute of 2 W. & M. c. 5. and inferred that though the Plaintiff do not recite the Statute, nor conclude Contra Formam Statuti, yet it is well enough, because it is a general Statute, and the Ditrefs is of such a Thing, as was not disdainable for Rent at Common Law, and therefore Secundum Leges et Statuta refers to this Statute of W. & M. sec non allocatur; For per Curiam, the Plaintiff does not bring himself within the Compas of the Statute, for he doth not shew that the Ditrefis was approv'd, nor conclude Contra Formam Statuti; and when Secundum Leges et Statuta is vater where a Thing is proper by the Common Law, and confirmed by Statute and adjudged accordingly. Ex relatione M'ri Daly. Ld. Raym. Rep. 342. Patch. 10 W. 3. Anon.

Nor will the concluding of the Indictment Contra Formam Statuti, bar the Party from supporting the Indictment by the Common Law, if it could be maintained upon the Statute. 10 Mod. 1361. Trib. 2 Geo. 1. B. R. in Case of The King v. Dixon. Whereover there was an Offence at Common Law, and a Statute makes a further Provision of Penalty, an Indictment for that Offence may conclude Contra Formam Statuti, or leave it out at Election; Per Holt Ch. J. Patch 13 W. 3. in Case of The King v. 

Contra Pacem.

ament increases a Penalty, or deprives a Man of any Benefit which he had before at Common Law, then
If you count on the Statute, and do not bring yourself within it, and conclude Contra Formam Stat-
tut, it is taught; Per Holt Ch. J. 12 Mod. 122. in Case of Bennett v. Talboys.

For more of Contra Formam Statuti in General, See Indictment (O), Robbery (S) and other Proper Titles.

(A) Contra Pacem.

1. WRIT of Receiue made against Bailiffs in collecting Toll, and
quad solere Tolluetium contrairissimum contra Pacem, and yet ad-
3. 20.
2. WRIT of Attachment upon a Prohibition for a Suit in Court Christian of a
Thing Temporal was Contra Pacem, and held good. Thel. Dig. 114.
lib. 15. cap. 24. S. 9. cites Mich. 31 E. 3. Attachment upon a Prohibi-

3. WRIT of Prohibition to a Suit in Court Christian was served on Thel. Dig.
the now Defendant, who flung it into the Ditch, and trampled upon it,
and afterwards prosecuted the Suit in Court Christian; The WRIT a-
gainst the Defendant was Contra Pacem. Regilser, 95. a. b.

4. WRIT upon the Cafe for not cleansing and repairing a Ditch &c. And be-

5. And so it shall be for every Non-feasance. Thel. Dig. 114. lib. 10.
cap. 24. S. 12. cites 12 H. 4. 3.
6. A Man shall have WRIT of Trespass Contro Pacem E. super Regis
7. WRIT of Recaptiuit shall be Contra Pacem and against Law and Sta-
tute, but not Vi et Armis; Per Babington. Thel. Dig. 115. lib. 10.
cap. 24. S. 17. cites Patch. 9 H. 6. 1. But says the Form of the Re-
gilser 86 is, after retching the Fact, Et qua si Injunctum est & mani-
jette Contra Pacem nonfrum, ibi praecipius &c. And other WRITS are
in Contemptum preceptorum nonfrorum &c.
8. Indictment for eredding a Wate over the River Wyre, whereby the C. 189. cites
Subjects were hindered of their Patlage with their Boats, laid it to be done S.C.
2 Hale’s Pl. a 43 Eliz. with a Continuance ad Non-espousament of the Subjects of King James,
and to the Juries concluded that the Wate was eredded and continued Con-
Pacem Regis nonfrum &c. and adjudged void, because it is as well Contra
Pacem super Reginae, as Contra Pacem Regis nonfrum for the Commence-
ment &c. in
Marg. S. C.
ment of the Tort was in the Queen's Time, and this was an Offence to
the Crown now; for though the Parties might be indicted for the Con-
tinuance only, without alleging expressly the Commencement, yet the
Scope of this Indictment is not to make the Offences several, as in them-

selves they are; for though the Jurors have concluded upon both, yet they
have found the Peace of this King only broken. Yelv. 66. Trin. 3 Jac.
B. R. Sir Edward Winter's Case.

9. But per Popham Ch. J. if the Conclusion of the Jury had been upon
the Continuance of the Tort only, then it should be taken in Law to be an In-
dictment to this Purpose only, and the other matter of the finding the Erection
of the Wear to be only by way of Information, how the Thing was done; Or
if the Jurors had found that the Defendant in the Queen's Time had effect-
ed &c. and continued it in the Time of this King, Contra Pacem Regis none,
it had been good; because the express Matter found was only the Con-
tinuance of the Tort, and the other only a Recital or Introduction to the
Matter found; Quod Curia concinit. Yelv. 66. Trin. 3 Jac. B. R.
in Winter's Case.

10. An Indictment of forcible Entry was quashed, because it did not
conclude that it was Contra Pacem. 2Bulk. 238. Trin. 12 Jac. The
King v. Cox.

Coddington
v. Wilkin,

v. Wilkin,

v. Wilkin,

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18. An Information was brought by a common Informer for exercising the Trade of a Barber. Exception was taken, because it did not fit Contra Pacem; but per Curiam, that is never done in a Suit by a common Informer. Keb. 469. pl. 70. Hill. 16 & 17 Car. 2. Lufaumoore's seems clear, from all the precedents, that neither an Information Qui tam on a penal Statute, nor an Information by the King for an intrusion, or other Wrong of civil Nature done to his Lands, Goods, or Revenues, need the Words Contra Pacem.

19. An Indictment of Battery concluded only to the great Disturbance of the Peace of our Lord the King, but because it did not lay Contra Pacem it was quashed. 2 Keb. 36. pl. 72. Patch. 18 Car. 2. B. R. The King v. Hooker.

20. An Indictment for retaining a Servant without a Testimonial from his last Master, wanted the Words Contra Pacem, and it was quashed. Mod. 78. pl. 39. Mich. 22 Car. 2. B. R. Anon.

21. Trespass for breaking, entering, and depauphuring 36 Car. 2. Conti. Show, mandando the Depauphuring till the 4 Jac. 2. Contra Pacem Dominis Regis nunc. s. C. & S. P. which was K. James the 2d. This was held naught; for that is no — Comb. Contra Pacem to the Trespass's Tempore Caroli secundi, but it is omitted. 166. S. C. and Contra Pacem is Substance. 2 Salk. 636. pl. 1. Mich. 1 W. & M. in & S. P. ruled ill; for Contra Pacem refers to the Trespass, and not to the Contemnand, and then it is as if no Contra Pacem had been at all, which is Substance, and had upon a general Demurrer; and that it is Substance is proved by the 16 & 17 Car. 2 which by express Words aids it after Verdict; so that it appears by this Statute, that it was not aided by Verdict before that Statute, which it would have been, if it had been Part Form. The common Way is to conclude Tres contra Pacem dicit nuper Regis quam Domini Regis nunc.

22. Trespass Queve Vi & Armis 1 Feb. 1701. Clauidum summ freicit Contra Pacem Domine Annae nune Regine &c. Adjudged on Denurrer for the Defendant; For K. William died 8 Mar. 1701, and so it was Contra Pacem Regis, and not Contra Pacem Regine; the Omision of Contra Pacem had been only Matter of Form, but here it is repugnant; For the Court must take Notice of the Demise of the King, that is, the Description of the Trespass, and a Trespass done Contra Pacem Regis could not be given in Evidence; But indeed a Verdict would have aided it. 2 Salk. 640. pl. 11. Mich. 2 Ann. B. R. Day v. Muskett.

23. A Confabul was indicted for not returning the Warrant of a Justice; Salk. 584; of Peace to levy the Penalty on a Conviction of Deer-flading. Exception pl. 28. S. C. was taken that it was said Contra Pacem of the late King, and that it ought to be Contra Pacem of the Queen also; because the Neglect, tho' Contra Pacem was, the Return being never made at all, and so was an Offence against Surplusage, both the King and Queen. But Holt Ch. J. said, he supposed it would be necessary to lay Trespass of the Queen as well as the King where that is necessary; but here the Indictment being founded on an Omifion, it is otherwise, and there you never conclude Contra Pacem at all, Fortescue's Rep. 167. Trim. 3 Ann. B. R. The Queen v. Wyatt.


24. Serjeant
24. Serjeant Hawkins says it seems to be a good general Rule, that no Indictment or Information for an Offence, capital or not capital, against the Common Law or Statute can be good unless it expressly supposes such Offence to be done against the Peace of the King or Kings in whole Reign or Reigns it was committed; and accordingly he says he finds, that every Precedent of an Indictment in Coke's Entries, whether for Treason or Felony, or inferior Offences, expressly lays the Offence against the Peace of the King, except only in four Entries, whereas one is of an Indictment for a Nuance for not repairing the Highway, which, if it may be maintained, seems to depend chiefly on this Reason viz. that the Offence is of such a Nature, that a Man may be as well guilty of it in his own Ground as that of another, and therefore it has been held, that it need not be laid against the Peace, because the laying it in such a Manner may seem to imply somewhat of Force or Trespass against the Persons or Possessions of another; but it seems difficult to reconcile this Opinion with those many Resolutions taken Notice of in the following Part of this Section, by which Indictments for want of those Words Contra Pacem, have been adjudged insufficient, where the Offences could, on no other Account, be laid to be against the Peace, than as they were Breaches of the Law, as all Nuances certainly are.

And one other of the said Instances in Coke's Entries is of an Indictment of Homicide by Misadventure, and one other of an Indictment of Homicide in Self-Defence; but these Precedents, if they may be maintained, seem to depend chiefly on this Reason, that such Offences are supposed to be arising rather to the Misfortune, than Fault, of the Party.

And the 4th of the said Instances is of an Indictment of Perjury on the Statute, which concludes in Contemnpi Regnum &c. & Contra Formam Statuti, without adding Contra Pacem.

But Raffles Precedents, both of Indictments of Felony, and of inferior Offences, do as often omit the Words Contra Pacem, as make use of them. However, certainly the much greater Number of Precedents expressly conclude Contra Pacem, and the Authority of these is much strengthened by those many Cases in the Reports, wherein Indictments and Informations appear to have been qualified for want of the Words Contra Pacem; As Indictments and Informations for Barterry, Forgery, Retaining a Servant without a Testimonial from his last Master, following a Trade without having served an Apprenticeship, and Battery &c. 2 Hawk. Pl. C. 243. cap. 25. S. 94.

For more of Contra Pacem in General, See Indictments, Trespasses (Q. a. 5), and other Proper Titles.
Contribution, and Average:

(A) In what Cases. And How; In Proportion.

1. A Verage is commonly used by the Law Merchant for that Contribution which Merchants and others make towards Loses sustained, where Goods are cast into the Sea, for the Safeguard of the Ship, or of the other Goods, and Lives of the Persoas therein during the Tempest; and it is called Average and Contribution because it is proportioned and allotted after the Rate of every Man's Goods aboard. Law of Trade and Commerce, 112.

2. All the Parties interested are to bear the Loses by a general Contribution, and a Master, or Purser of a Ship, shall contribute for the Preservation thereof; also the Passengers, for such things as they have in the Ship, be they precious Stones, Pearls, or of the like; and where Passengers have no Goods in the Ship, in regard they are a Burden to it, it is said an Estimate shall be made of their Apparel, Rings, Jewels &c. towards a Contribution for the Loses; and generally Money and Jewels, Clothes, and all things in the Ship, except the Clothes which are upon a Man's Body, or Viuuals &c. put on Shipboard to be spent) are liable to Average and Contribution; and the Goods lost shall be valued, and the Goods and Merchandize saved are to be estimated, which being known, a proportionable Value shall be contributed by the Goods saved, towards Reparation of the Goods cast overboard; and if in the casting over, or Lightning of the Ship, any of the remaining Goods are spoiled, or receive Injury, the same must come into the Contribution for the Damages received. Law of Trade and Commerce, 113. cites Molloy 123, 126.

3. If a Man is bound in a Recognizance and dies, there is, as long as the Heir has Affists, Execution shall be against the Heir only. Br. Suit, pl. 13. cites 17 E. 2. Fitzh. Execution 139.

4. But if the Heir has not Affists, Execution shall be against all the Tenants, and every one shall be contributory to the other; but where Execution is fixed against the Heir who has Affists, he shall not have Contribution against the Tenants nor the Feoffees. Br. Suit, pl. 13. cites 17 E. 2. Fitzh. Execution 139.

5. If the Heir be wounded in Ward of several, and the Tenant loses, and recovers in Value against the Heir, every Guardian shall be contributory to the Renter in Value. Br. Suit, pl. 12. cites 48 E. 3. 5.

6. So where Feoffee of the Confiur upon a Statute Merchant is in Execution, he shall have Contribution against every other Feoffee of the same Confiur. Br. Suit, pl. 12. cites 48 E. 3. 5.

7. And per Finchd. where the Confiur upon Statute Merchant ains Part of his Lend, and the Confiur sees Execution against the Confiur, there the Confiur shall not have any Contribution from the Feoffee, as the Feoffee might have of the other Feoffee. Br. Suit, pl. 12. cites 48 E. 3. 5.

8. But if the Confiur dies, and the Feoffee sees Execution against the Heir, he shall have Contribution of the Feoffees. Br. Suit, pl. 12. cites 48 E. 3. 5.
9. So that the Poeties shall have Contribution from the Heir, if any of them be in Execution, Contra of the Heir. Br. Suit, pl. 12. cites 48 E. 3. 5.

10. If a Man charges Land tailed, and Land of Fee-simple, and dies, the Land tailed is discharged, and the Fee-simple Land remains charged with the whole; Per Strene, which none denied. Br. Charge, pl. 9. cites 17 H. 4. 17.

11. In Dower if the Tenant vouches the Heir in three several Wards, each of them shall be severally charged. 3 Rep. 13. a. by the Reporter, in Herbert's Case, cites 11 H. 7. 22. & 49 E. 3. 5 a. b.

12. Contribution shall be had by the Tithemants in Seire Facias upon Reparations by their Feoffor. Br. Suit, pl. 18.

Br. Seire Facias, pl. 21. cites

17 E. 2. First Execution, 159.

13. If the King's Tenant alienes to several severally, and the King discharges the one for the whole, he shall have Contribution of the others. Br. Suit, pl. 19.

14. The Writ of Contribution lies where there are Tenants in Common, or who jointly hold a Mill pro indiviso, and take the Profits equally, and the Mill falls into Decay, and one of them will not repair the Mill, now the other shall have a Writ to compel him for to be contributory to the Reparations. F. N. B. 161. (B).

15. And if there be three or four Coparceners of Land, and the eldest Sister does the Suit to the Lord, of whom the Lands are held, for all the Coparceners, and the others will not allow her for her Charges and Losses, according to the Rate for the same Suit, that Coparcener, who did the Suit, may have a Writ of Contribution. F. N. B. 161. (C).

16. And if there be many Coparceners, and the eldest does the Suit, and the other Coparceners agree with the eldest for a Rate, now the Writ of Contribution shall be brought against the others who would not contribute &c. F. N. B. 161. (C).

17. And if several be inposseted of Land, for which one Suit ought to be done &c. now if they agree among themselves, that one of them shall do the Suit, and that the others shall contribute unto him, if he do the Suit, and afterwards the others shall not allow him for that Suit according to their Rate, then he shall have the Writ of Contribution against them, and the Writ shall mention the Agreement &c. F. N. B. 161. (C).

18. The Plaintiff seeks relief by Way of Contribution, for that one of the Defendants hath a Rent-charg out of bis, the Plaintiff's, Lands, and one other of the Defendant's Lands, and seeks to lay the whole Burthen of the Rent-charg upon his, the Plaintiff's, Lands; and because the Defendant would not answer, therefore an Injunction is granted for staying of the Suits for the Rent. Cary's Rep. 132. cites 22 Eliz. Doleman v. Vavasor &c.

19. The Duke of Northumberland acknowledged a Recognizance of 1000 Marks to the Lord Cromwell, and afterwards refused to tender the Lands of the Defendant, and afterwards both the Duke and the Lord Cromwell were attainted of Treason, whereby the Recognizance came to the Queen, and in her Name was put in Suit by one Lane, to whom her Majesty had granted the said Recognizance, who fought to extend the Defendant's said Lands alone, whereas there are divers other Lands to a great Value in other Men's Hands liable to the said Recognizance, therefore it is ordered that no Liberate go out upon the said Extent, until the Court order the same. Cary's Rep. 159. cites 21 Eliz. The Queen v. Colborne.

20. In the Case of a Common Perfon, the Heir of the Comrcur, or of him, against whom Judgment is given in Dile, shall be only charged, and shall not have Contribution against another Tithemant in some Cases, and
in some Cases he shall have Contribution, and shall not be solely charged; Resolved. 3 Rep. 12. b. Nich. 20 & 27 Eliz. in Scacc. Herbert's Cafe.

21. For if a Man is seised of three Acres of Land, and enters into a Recognizance or Statute &c. and inchof's A. of one Acre, and B. of another, and the third depends to his Heir, in this Case, if Execution is sued only against the Heir, he shall not have Contribution; for he comes to the Land without Consideration, and the Heir sits in the Seat of his Ancestor, & Heires eilt alter ipse & Fillius off Pars Patris, and therefore shall not have Contribution against any Purchaser, though in Rei Veritate the Purchaser comes to the Land without any valuable Consideration; For the Consideration of the Purchaser is not material in such Cafe. Resolved 3 Rep. 12. b. Ibid. And says that if it was lately resolved in Galicia Cafe, late Marshall of B. R. that the Heir may be only charged, and he shall not have Contribution against Purchasers; For though in the Case of Recognizance, Statute, or Judgment, the Heir is charged as Tenement, and not as Heir, as appears by 27 H. 6. Execution 135. 15 E. 3. Tit. Age 95. because by the Recognizance or Statute the Heir is not bound, but the Conunor grants Qualis dicta Proprietate Summa de Terris &c. Levatur, yet he shall not have Contribution against a Purchaser, contrary to the Opinion of Finchden in 48 E. 3. fol. 5. b.

22. But yet in some Cases the Heir shall have Contribution, and shall not be solely charged; As if a Man is seised of two Acres, the one of the Nature of Boronagh England, and binds himself in a Statute or Recognizance, or if Judgment in Debt is given against him, and he dies, leaving Issue two Daughters, who make Partition, in this Case if one only is charged, the shall have Contribution; for as one Purchaser shall have Contribution against another, and against the Heir of the Conunee also; so one Heir shall have Contribution against another Heir; for they are in Equili Jure, Resolved. 3 Rep. 12. b. in Herbert's Cafe.

23. If there are Grandfather, Father, and two Daughters, and Judgment is given for Debt or Damages against the Grandfather, and he dies, and the Father dies, one of the Daughters being within Age, and the other of full Age, and Partition is made, the eldest Daughter shall not be charged solely, but shall take Advantage of the Infancy of her Sister; For both Heirs stand in the same Degree. 3 Rep. 13. a. by the Reporter in Herbert's Cafe.

24. So if one be bound in a Recognizance, and has two Daughters, and dies, and they make Partition, the one shall not be charged solely, but shall have Contribution, and if the one is within Age, the other shall take Benefit thereof; because in such Case, though he is charged as Tenant, yet he shall have her Age. 3 Rep. 13. a. by the Reporter in Herbert's Cafe.

25. If a Man is bound in a Statute or Recognizance, and after his Death some of his Land defends to the Heir of the Part of the Father, and so to the Heir of the Part of the Mother, one only shall not be charged, and if he is, he shall have Contribution against the other. 3 Rep. 13. a. by the Reporter, in Herbert's Cafe.

26. A Suit was for Average of a Ship robbed of certain Goods, ship'd at Briffol to Galicia in Spain. Dr. Dale, Master of the Requests, said, that by the Civil Law Average is not due unless the Goods are lost in such a Manner, that thereby the Residue in the Ship is freed; As if Goods of one of the Merchants are cast into the Sea NAVIS ecnde Cunva, then all the other Merchants shall pay Average, because thereby all the Residue is saved; So if Parcel is by Composition given to a Pirate to save the Residue; but not if a Pirate takes Parcel by Violence; for in such Cafe Average shall not be paid for it. But in the principal Cafe the Merchants having
having allented, after the Ship was robbed, to pay Average, it was de- 
creed for the Defendants. Mo. 297. pl. 442. Patch. 32 Eliz. in the 
Court of Requests. Hicks v. Palington.

27. If a Man grants a Rent-charge out of all his Lands, and after- 
wards sells his Lands by Parcels to divers Persons, and the Grantee of the 
Rent will from Time to Time levy the whole Rent upon one of the Pur- 
chasors only, he shall be eaid in Chancery by a Contribution from the 
rest of the Purchasers, and the Grantee shall be restrained by Order to 
charge the same upon him only. Cary's Rep. 3.

28. Sir Edmund Morgan married the Widow of Fortescue, he had his 
Wife's Lands disfrained alone by the Grantee of a Rent-charge from her 
former Husband, and therefore sued the Grantee in Chancery, to take a 
verable Part of the Rent, according to the Lands he held subject to the 
Dilettres, and notwithstanding the Ld. Ch. J. Popham's Report, who 
thought this reasonable, the Lord Chancellor Egerton would give him 
on this Bill no Relief, but ordered that he should exhibit his Bill against 
the rent of the Tenants and Grantees both, the one to shew Cause why they 
should not contribute, the other why he should not accept of the Rent 
equally; otherwife it was no Reason to take away the Benefit of Dilettres 
from the Grantee, which the Law gave him. Cary's Rep. 32, 33. cites 
7 June 1603.

29. A Collector of a Fifteenth may levy all the Tax within one Township, 
upon the Goods of one Inhabitant only if he will, and that Inhabitant shall 
have aid of the Court to make each other Inhabitant contributory; Per 
Tanfield Ch. B. which was granted by the Court, Bromley being absent. 
Lane 65. Trin. 7 Jac. in the Exchequer. Anon.

30. If a Lighter, or a Ship's Boat, into which Part of the Cargo aboard 
is unladen for the Lightening of the Ship, shall perish, and the Ship be pre- 
fined, Contribution is to be made; but if the Ship be cast away, and the 
Lighter or Boat preferred, no Average or Contribution is recoverable; for 
Contribution may not be had in any Case but where the Ship arrives in Safe- 
ty. Law of Trade and Commerce 118, 119.

31. Where Passengers cast Goods out of a Ferry Boat in Cafe of a Tem- 
pef, which they may do for Preservation of their Lives, the Owners shall 
have no Remedy, unless the Boatman furcharge the Boat, when they 
may have their Action against him. Law of Trade and Com- 
merce 119.

32. Confeee of a Statute comes to have Part of the Lands charged, he 
cannot require Contribution, though he grants over, and the Lands of all 
other the Feoffees are discharge, though such as are or remain in the 
Hands of the Debtor himself are chargeable. Hob. 45. 46. pl. 50. 
Fleetwood v. Atton.

33. He shall not have Contribution but again the other Heirs; Per 
Jones J. 3 Bulls. 324, and per Doderidge J. 32. 31. Hill. 1 Car. B. R. in 
Cafe of Boyer v. Riveet.

34. How far the Court will refrain a Lord to diffrain for Rent where 
he pleinfth, but for the prfent thinks fit that there should be a Contribu-
tion. Toth. 103. cites Mich. 3 Car. Hall v. Ofiley.

35. If after Liberat a Feoffment is made of Part to A. and Part to B. 
the one shall not have Contribution against the other; Per Jones J. Lat. 
274. Mich. 3 Car.

36. If a Purchasor has Cause of Contribution, and makes Feoffment, 
his Feoffee shall not have it; Per Jones J. Lat. 274. Mich. 3 Car.

37. In an Enghfh Bill against the Defendant, as Executrix of her Hus-
bond, to have Contribution, the Cafe was, that the Plaintiff in this Cafe, 
and the Lifatm, were Sheriff's of Middlesex, and that there had been a Re-
covery
Contribution and Average.

covery against them for an Escape in the Tzfatator's Life time, and 500 l. Damages recovered, which the Plaintiff in this Cause had paid and satisfied, to which the Defendant ought to contribute, as the Bill fuggets. The Court allowed hereof, the Cause being Prime Impreception, and remitted it to the Cause of two joint Obligors; but what became of it non conflat. Hardt. 164. pl. 4. Hill. 1695. in Scacc. Phillips v. Biggs.

38. 16 & 17 Car. 2. cap. 5. 3. 2. When any Judgment, Statute, or Recognizance shall be extended, the same shall not be avoided or delayed by Occasion, that any Part of the Lands extendible are omitted out of such Extent, seeing always to the Parties, whose Lands shall be extended, their Remedy for Contribution against such Persons, whose Lands shall be omitted.

39. 8. 3. This Act shall we give any Extent or Contribution against any heir within Age, during Minority of such heir, in respect of any Lands descended.

40. 8. 4. Provided that this Act extend only to Statutes for Payment of Money, and to such Extent as shall be within twenty Years after the Statute, Recognizance, or Judgment had.

41. This Act shall continue for 3 Years. Made perpetual by 22 & 23 Car. 2.

42. Devise for Life, Remainder in Fee of Lands, charged with 500 l. And if De- vise for Life, and for Default of Payment the same was limited to the Person to whom Life refus'd the 500 l. was payable. Decreed one third to be paid by the Devisee for Life, and two thirds by the Remainder-man in Fee. Fin. R. 231. Trin. 27 Car. 2. Hayes v. Hayes.

whole, to have the whole Estate. Ibid. — Chan. Cafes. 223, 224. S. C. But if Tenant for Life can prove that it was the Intention of the Devilor, that Tenant for Life should pay nothing, it was admitted to be material. — Fin. Rep. 221. Trin. 27 Car. 2. S. P. as to the one third to be paid by Tenant for Life, and two thirds by him in Remainder, in Cause of Cornish v. New. — 3 Chan. Rep. 131. in Case of Orby v. Mobun, S. P.

43. A. charges Land with Payment of 50 l. a-piece to B. and C. at Or if E. their respective Ages of twenty-one, and limits the Land over on Default of Payment, but if either die before twenty-one, her Legacy to go to D. to whom A. devised the Lands. D. devised the Lands so charged to E. for Life, Remainder to F. in Fee, and made E. Executor. Decreed that F. should contribute two thirds towards Payment of the Legacies of 50 l. Fin. R. 304. Trin. 29 Car. 2. Peachy v. Colt.

44. Land is marreded to A. then to B. then to C. If A. sues to Re- deem, and try his Debt by Devise, C. A. and B. shall be bound by the ibid. Account which A. made in his Suit, and pay, or contribute to the Charges of Suit, if made without Fraud or Collusion. 2 Chan. Cafes. 32. Trin. 32 Car. 2. Williams v. Day.

45. If the Portion of any one lay on or out of Bl. Acre or other particular Fund by itself, and the others out of Wh. Acre or any other Fund, each must bear his own Loss; agreed at the Bar. Chan Cafes 132. Hill. 34 & 35 Car. 2. Tilley v. Throcmorton.

46. Lands in Mortgage were devised to A. for Life, Remainder to B. and his Heirs. A. enters and takes an Assignment of the Mortgage in a Trustee's Name. A. died within one Year. B. brought a Bill against the Executor of A. to redeem the Mortgage, and his Counsel intilled, that B. ought to pay only two thirds of what was due on the Mortgage, and the other third to be allowed by A's Executor, by reason that A. enjoy'd the Profits during his Life. The Court said, that had B. come to re- deem in A's Life-time, then A. should have allowed a Proportion of the Money with respect to the Value of their several Estates; but A. being now dead, and having enjoy'd the Estate but one Year only, the Defen- dant must make an Allowance only for the Time that A. enjoyed the E- state. Vern. 404. pl. 376. Trin. 1665. Ciyat v. Battifon.
47. A. on his Marriage with B. agreed and gave a Bond to settle particular Lands on the Wife, and the Issue of the Marriage, and afterwards aliens Part of those Lands; A. dies. Finch C. decreed the Jointreves to have the Deficiency of her Jointure made good out of the Inheritance of the Lands remaining unford. But Jeffrics C. revered that Decree, for the Jointreves and Children are equally Purchasers, and they must bear the Loss in Proportion. Vern. 439. in pl. 412. Hill. 1691. Carpenter v. Carpenter.

48. A. B. and C. were bound in a Bond, A. being Principal and B. and C. Sureties; afterwards J. S. becomes bound to the Obligee, that if the other three did not pay according to the Condition of the Bonds, that he would pay. A Month after B. one of the two Sureties, pays the Money, and prefers his Bill against the fourth now for Contribution, and the Question was, whether he should be bound to Contribution, he being but a Supplemental Security? And the Master of the Rolls seemed to think that he should. 2 Freem. Rep. 97. pl. 107. Thin. 1696. Cooke’s Case.

49. A. covenanted to settle 100 l. a Year Annuity out of Land on B. having no Land at the Time of the Covenant, but afterwards purchases Land in S. and D. and then devises S. to C. and dies, without settling the Annuity. D. descends to the Heir of A. Decreed that D. and S. shall both be liable to the Annuity, but that C. shall be reimbursed out of D. which descends to the Heir. 2 Vern. 97. pl. 50. Patch. 1699. Took v. Haltings.

50. A Term was conveyed in Trust to raise 500 l. a-piece for B. C. and D. to be paid at their respective Ages of 21 Years, Remainder to G. for Life, Remainder to his first Son in Tail, Remainder over. Decreed that G. pay 700 l. and thole in the Remainders 500 l. and to G. be let into Possession, and whereas 500 l. only was now due, and the other not in several Years, if the other 500 l. should become payable in the Life of G. then G. shall pay it, but in such Case the Term for 99 Years should stand his Security to reimburse him again. Ch. Prec. 21. pl. 23. Hill. 1699. Rives v. Rives.

51. If an Estate in Mortgage be settled on A. for Life, and then on B. in Tail, or in Fee; Tenant for Life shall bear two fifthis of the Principal and Interest, and the Remainder-man three fifthis. Chan. Prec. 44. pl. 43. Patch. 1692. James v. Hales.

52. Upon an Order for Contribution to the Relief of a poor Parish, it was ruled, that the Justice may either change particular Persons, of the whole Parish, and they levy it, but here a Sum in Gros was laid for a whole Year, which (it was objected) was unreasonable; for their Ability might change; but the Order was confirmed. Cumb. 390. Mich. 6 W. & M. in B. R. The King v. Knightley Parli in the Life of Wight.

53. An Estate in Jointure was subject to a Mortgage. Resolved that the Jointreves, and the Reverfioner, must redeem in Proportion, viz. the Jointreves one third Part, and the Reverfioner two thirds, and that hath been the Proportion usual in this Court, to charge the Estate for Life with a third; but it seems hard, because now an Estate for Life is worth nine or ten Years Purchase, whereas formerly it was worth but seven. 2 Freem. Rep. 210. pl. 284. Hill. 1696. Fluid v. Fluid.

54. And
Contribution and Average.

54. And so it is if an Estate subject to a Mortgage is devised to A. for Life, Remainder to B. in Feve, there they may redeem in Proportion, viz. A. one third, and B. two thirds. Ibid.

55. Two several Estates, one in the Seizin of A. for Life, and one of B. for Life, are subjected to the Raling of 2000l. for a Portion for a Daughter, by a Term of 500 Years, to commence after the respective Deaths of A. and B. A. died first, and that Estate by Limitation of the Settlement came to R. The Daughter brought a Bill for the 2000l. against R. who paid it. Afterwards B. died, and the Fee-simple of that Estate descended to the Daughter. R. shall have Contribution out of the Estate of B. descended to the Daughter, in Proportion to its Value; A's Estate to be valued as an Estate in Possession, and B's Estate as in Reversion; Per Somers C. afflicted with Matter of the Rolls. 2 Vern. R. 355. pl. 321. Hilt. 197. Hemingham v. Hemingham.

56. If a Manor is held by the Service of a Bridge, every Tenant of the 6 Mod. 159. Manors is liable to the whole Charge, and are contributory among themselves. 1 Salk. 358. pl. 5. Patch. 3 Ann. B. R. The Queen v. Buck- leugh (Dutchefs of ).

57. Reversion regnant on an Estate for Life was convey'd to Trustees to be held for Payment of Specifie Debts, and if any Surplus, to go to his Heirs, Executors, and Administrators. A. married the Heirens, and the Husband got a Conveyance from the Trustees to him and his Heirs, and paid some of the Debts. The Husband died without Issue, and her Heir brought a Bill for a Reconveyance pertaining, that sufficient had been raised for Payment of the Debts out of the Rents and Profits. The Husband inhaled that his Wife was as Tenant in Fee-simple, and what Rents he received were in his Right, and he has a Right to retain them; But decreed that he ought to have paid the Interest out of the Profits, and shall not suffer the Debt to increace, and that he account accordingly. 2 Vern. 566. Mich. 1726. Brompton v. Alkis.

58. Some Persons fitted out a Privateer in the French War, and by Com- mission by Letter of Marque from the Duke of Savoy, sent her to cruise in the Mediterranean, where she took a French Ship, in which were several Turks and Tripolins, and their Effects, but the Captain for the Persons on Shore, detaining some of their Effects. The Matter coming into the Admiralty, the Sentence was, that the Ship and Goods were not well taken by an Englishman, and English Vessels, there being no Com mission from the King, but only from the Duke of Savoy, and therefore if the Captain was lawful, yet it was a perquisite belonging to the Lt. High Admiral; and also, because the Tripolins being in Peace with England, their Goods and Effects were not to be esquisled by English Ships or Men. After this Sentence, the Captain having agreed the Matter with the Contul of Tripoli, and having obtain'd a Grant of the Ship and Goods from K. William, brought his Bill, and obtained a Decree for two thirds of the Value of the Ship and Goods, each Part-owner to pay according to the Quantum of his Interest, and if any were Insolvent, the Lots to be born by such as were Solvent, with Interest and Costs. 2 Vern. 592. Mich. 1707. Walton v. Hanbury.


60. By Marriage Articles it was agreed, that 6000l. in the Hands of Gibb, the Trustees should be laid out in the Purchase of Lands, to be settled on the S. Husband for Life, Remainder to the Wife for Life for her Jointure, Remainder to the first and every other Son of that Marriage in Tail Male succedively.
Conuances of Pleas.

Exclusively, chargeable with 2000 l. for younger Children, Remainder to the Husband in Feo. The Marriage took Effect, and the 600 l. being vested in Lotteries Annuities in the Year 1722, with the Consent of the Husband and Wife, was subscribed by the Trustees into the S. S. Company, pursuant to the Act of Parliament, which impowers and indemnifies Trustees for so doing, upon which there happened a Loss of near 500 l.

Bill was brought by the only Son of the Marriage against the Trustees, his Father, and Mother, and four Infant Sitters, for an Execution of the Trust.

One Point was, how, and in what Manner, and by whom the Loss in the Trust Money should be born? Lt. C. King was of Opinion, that the Loss upon the principal Sum of 6000 l. ought to be born in Proportion, or Average by all the Children; the Loss happening under the Direction of an Act of Parliament, the Trustees are not liable to make it good, and it is plain by the Articles, that the Parties intended two thirds for the eldest Son, and one third for the younger Children, but if the eldest Son should bear the whole Loss, it would be just the reverse, the eldest Son would have but one third, and the younger Children two thirds. And decreed that the eldest Son bear two thirds of the Loss, and the younger Children one third, according to their several Proportions in the Money, and referred it to the Maker to have a Settlement made accordingly. Ms. Rep. Trin. 3 Geo. 2. Canc. Chambers v. Chambers.

5 Wms's Rep. 402.

61. Leafe of a Coal Mine to A. referring a Rent; A the Leasor declares himself a Trustee for five Persons, to each a fifth. The five Persons enter upon Work, and take the Profits of the Mine, which afterwards becomes unprofitable, and the Leasor insolvency; the Coal is lost to Trust; and it becomes of the Children, to whom the Coal was born? To the Time during which they took the Profits. 3 Wms's Rep. 402. Mich. 1735. Clavering v. Wileley & al.

For more of Contribution and Average in General, See Charge, Deme, Mortgage, Payment, Rent, Surety, Trade and Navigation, Trepass, and other Proper Titles.

Conuance of Pleas.

(A) Francheise.

At what Time to be demanded.

Br Conuance, pl. 35. cites S. C. accordingly.

If a Franchise be granted to a Vill, that Allises of Land within the Vill shall not be taken out of the Vill; if an Allise be brought out of the Vill, and the Allise is awarded for Default of the Tenant, the
Conuance of Pleas. 569

the Bailiff of the Mill shall not have the Franchise if it be demanded after. 20 Aft. 13.

2. Where the Court is suffered to be sesed, as by Award of Procefs, or by Award of Affife, or such like, the Lord of the Franchise shall not have Conuance of the Plea by reason of his Laches. Br. Laches, pl. 1. cites 3 H. 6. 10.

3. If Bailiffs, who have Conuance of Pleas, suffer Affife to pass with- out demanding the Conuance, yet they may have the Conuance in another finem, S. P. and Br. Laches, pl. 2. cites 3 H. 6. 14.

4. And where Sheriff returns Mundari Bollavo Libertatis &c. qui ha-
ed till after Imparlace; Resolved; And though some have seemed to S. C. and Twilfen J. make a Difference between Plea pleaded to the Jurifdiction by the De-
sendant, and by a Stranger, as in the principal Cafe, yet it seems there pigg3 but is no Difference, and that the Lord cannot plead it after Impar- upon citing lance. Sid. 103. pl. 9. Hill. 14 & 15 Car. 2. B. R. The Bishop of Ely's Cafe.

7. 6. Mich. 9 H. 7 6. Trin. 6 H. 7. 17 that though the Party cannot plead to the Jurifdiction af-

(A. 2) The several Sorts of Conuance of Pleas, and the Differences.

1. There are three Sorts of inferior Jurifdictions; one whereof is Placita, and this is the lowest Sort; for it is only a concurrent Jurifdiction, and the Party may sue there, or in the King's Courts if he will. The second is Conuance of Pleas, and by this a Right is vested 3 S. C. in the Lord of the Franchise to hold the Plea, and he is the only Person who can take Advantage of it. The third Sort is an exempt Jurifdiction, as the King grants to a great City, that the Inhabitants thereof shall be sued within their City, and not elsewhere, this Grant may be pleaded to the Jurifdiction of this Court, if there be a Court within 12 Med. 645. S. C. that City which can hold Plea of the Cafe, and no Body can take Ad- 2 Ed. 6. Raym. Rep. vantage of this Privilege but a Defendant, for if he will bring Certiorari, in the Cafe that will remove the Cafe, but he may waive it if he will, so that the of the Uni-Privilege is only for his Benefit. 3 Sal. 79. 80. pl. 4. Hill. 1 Ann. B. R. 3 Croft v. Smith.

Courts in like Manner, and cites Hardr. 355. &c. pl. 4. Patch 21 Car. in the Exchequer] and says, the Difference between Logusia Placiturn without exclusive Words, and when wise, is not, that the last has
Conuufance of Pleas.

an exclusive Jurisdiction, and the former not; for Cognitio Placitorum does, ex vi Termini, exclude all other Courts, and imports the Words, Et non alibi; But the first Difference is, that the former must be local, confined to some Place; the latter may follow the Person, and be as to Place unceas'd, 2dly, In the former, if the Lord waives his Privilege, there shall be Re-fummons, and Proceedings shall begin where they left off; but in the latter, in Case of Writs, or the like, the Proceedings in the Court excluded by this Jurisdiction must begin De novo. 3dly, The former is for the Advantage of the Lord only, and therefore the Lord only can claim it, and not the Party; but where there are exclusive Words, the Party may claim it as well as the Lord. Says that in 9 H. 7. fol. 10, 11, 12. these Differences are fully and clearly laid down.

2. Conuufance of Pleas is, that one living within the Jurisdiction, may implead another within it for a Cause arising there; Per Holt. Ch. J. 12 Mod. 643. Hill. 13 W. 3. in Case of Cros v. Smith.

(B) Of what Actions Conuufance may be granted.

1. THE Grant of Conuufance in a Quare Impedit is void, for the Franchife cannot do Right therein, felicit, lend a Writ to the Bishop. * 44 E. 3. 29. b. 38. 14 P. 4. 20. b. 50. All. 9. per Lim. & S. P. by 4 26 Ed. 3. 73. b. Kirton.

2. At Common Law Conuufance might be granted in a Recordari or Replevin. 38 Ed. 3. 31.

3. But otherwise it is now after the Statute, which provides, That if the Plaintiff be nonuit, a second Deliverance shall be granted, and the Franchise hath not Power to grant it, therefore there would be a Failure of Right if he should have Conuufance. 59 Ed. 3. 31. Little.

In a Recordari the Bailiff of Franchise de- datastore Conuufance; Bellamy said, they could not have Conuufance, because second Deliverance is given by the Statute, which they cannot make upon Nonuit of the Plaintiff, so that they cannot do Right as the King's Court can. But Kirvet said, that where they might have Conuufance before the Statue, they shall have it now; for the Statue does not ouit it. But per Thorp, they shall not have it, because they cannot make the same Proceeds which is given by the Statue; but Brooke says Quære; for it sees, that where they had Conuufance of the Original before, the Statue extends to them to make new Proceeds. Br. Conuufance, pl. 22 cites S. C.

The original Writ of Repleg is in Nature of a Jufticiés, and is not returnable, and in a Jufticiés no Conuufance can be demanded, because none can demand Conuufance, but he that hath a Court of Record, and of a Plea in a Court of Record; but the County Court, though the Plea be helden therein by Jufticiés the King's Writ, yet it is no Court of Record, for of a Judgment therein there must a Writ of false Judgment, and not a Writ of Error; also, if the Sheriff should grant the Conuufance, he could not award a Re-fummons, and the Lord of the Franchise can demand no Conuufance in a Replevin. 2 Hilt. 149.

Conuufance shall not be granted in Replevin, because if the Plaintiff be nonuit, a second Deliverance shall be granted, which the Franchise cannot do. Gibb. Hil. of C. B. 156.

Br. Conuufance, pl. 20. cites 44 E. 5. 28. S. C.

4. It seems that Conuufance may be granted to levy Fines in a Franchise; Admitted 44 Ed. 3. 29. 38. if the Grant had been ex-preely.

and pl. 21. cites 44 E. 5. 37. S. P. In both which it seems that they cannot have Conuufance of laying Fines, without express Words in the Grant. — Fitch. Conuufance, pl. 30. cites 44 E. 5. S. C. and says, that it ought to be specially mentioned in the Charter, if the Franchise would take any Advantage of it. — Br. Fines, pl. 22. cites S. C. — See (f) pl. 3. S. C. — A Fine cannot be levied to have the Force of a final Concord by any that hath Power Tenera Piaiza, but only before the Jufticiés of the
Conuance of Pleas.

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the Court of C. B. or before Justices in Eyre, (whilst they stood) and not elsewhere, with this Act, and therefore the King cannot grant Power to hold Pleas for the levying of Fines against this negative
Statute. 2 Inst. 315.

5. Conuance cannot be granted to a Lord in ancient Demesne or Feudal
Writs of Waiie and Re-dilettin, for there wants such Judge as ought
to be in such Actions, felicet, the Sheriff. 1 D. 4. 5.

Action of
Waiie, be-
cauae no Court can award Action of Waiie but the King's Court; Per Cur. Dal. 12. pl. 25. Patch. 7 E. 6. cites Trin. 4 E. 3.; Fitcl. Conuance, 69. Gilb. Hil. of C. B. 156. S. P.

In Redigcfl Conuance shall not be granted, because the Defendant cannot be awarded to Prifon there. Dal. 12. pl. 20. Patch. 7 E. 6.—4 Le. 257. in pl. 577. Mich. 5 Jac. S. P. said.

6. In Writ of Right after Battail joined, a Man shall not have Conuance; because he cannot try the Illuc by Battail; Per Kirton. Br. Con-
nuans, pl. 12. cites 44 E. 3. 28.


8. In Atiuau upon a Verdiin in Norwich, upon the Stat. 23 H. 8. a-
gainst a Citizen there, the Corporation demanded Conuance by Charter of E. 4. De omnibus Placitis & Attachitis, and the Charter was confirmed by E. 6. but the Conuance was denied; For the Words of the Sta-
tuate are, That all Attachants shall be taken in B. R. or C. B. and in no o-

Words only in 7 E. 6; and there are no Words of Non Obstante Bilo, in the Statute of 23 H. 8. there is no Proviso for Norwich; and this Statute expired 7 E. 6 and was revived again, and a new one made 7 E. 6, and in this Statute was made after their Confirmation. —— Bendil. in Kilwa. 210. b. pl. 16. S. C.

9. Lord Anderfon, Ch. J. of C. B. brought Trefpays by Bill for breaking his House, in the City of Worcester, against A. a Citizen there. The Corporation produced a Charter granted them by E. 6. and demanded Conuance of Pleas; Per tot. Cur. it shall not be granted; because the Pri-
vilege of C. B. whereof the Plaintiff is a principal Member, is more ancient than the Patent whereupon Conuance is demanded; For the Justices, Clerks, and Attornies, ought to be here attending their Offices belonging-
ig to them, and shall not be impelled, or compelled to impede others eluwhere than in this Court; And this Privilege was given to C. B. up-
on the Original Eradution thereof; Per tot. Cur. and the Conuance was denied. 3 Le. 149. pl. 198. Mich. 29 Eliz. C. B. The Lord Ander-
fon's Cafe.

10. If the King grants Conuance of Pleas, Grantee shall not have Cognizance of, Affls, Redigcfl &c. Sic dictum futur. 4 Le. 257. pl.
377. Mich. 5 Jac.

11. K. H. 8. by Letters Patent of the 14th of his Reign, and con-
firmec by Parliament, granted to the University of Oxford Conuance of Pleas, in which a Scholar or Servant of a College should be Party, Ita quid justi,
caruit denuo Banco se non inventorium, An Attorney of C. B. sued a
Scholar in C. B. for Battail; Per Cur. This general Grant does not ex-
tend to take away the special Privilege of any Court without special
Cafe.

But Bendil, 251. 254. pl. 262. Mich. 16
Eliz. Who-
per, alias, Hooper v.
Harewood, an Attorney of C. B., in
Action of

Battery, the Conuance was granted to the Bishop of Bath and Wells.

12. If a Scholar of Oxford, or Cambridge, be sued in Chancery for a
special Performance of a Contrav to have Lands in Middlesex, the Uni-
versity shall not have Conuance, because they cannot suquelette the Lands.

Gilb.
Conunance of Pleas.


(C) Against what Persons it shall be granted.

See S. C. at tit. Privilege (F) pl. 3.

1. If a Clerk of the King's Bench be sued by Bill in Banco Regis, for Land in a Place where another hath Conunance of Pleas, yet the Conunance shall not be granted, for otherwise the Batters of this Court should be drawn to attend in inferior Courts. Trin. 4 Jac. B. R. Butt's Case, per Hopkain.

2. If a Trespass be brought within a Franchise against a Foreigner, who has nothing within the Franchise, Conunance shall not be granted; for they cannot oblige a Stranger to answer, who has nothing within the Franchise. Gilb. Hist. of C. B. 157. cites 22 All. 83.

3. Bill of Debt against Accountant in the Exchequer, and counted against him, and the Defendant made no Defence, nor other thing, but prayed the Court to have Day in the same Form, which was granted and entered, and before this Day came the Abbot of Battle, and demanded Conunance of the Plea; and per Hutton, upon Privilege of Exchequer, or Bill of Middlesex in Caffodia Marischall, Conunance of Plea shall not be granted; for this Privilege, nor Custody, cannot be in another Court; but the Court was against this clearly, and that the Conunance may be granted upon the Plea, and entered to Bill, but because Day was taken, and entered to Answer, though no Defence was made, therefore the Conunance was outed; Per Cur. Br. Conunance, pl. 52. cites 6 H. 7. 9.

4. The King grants to the Mayor, Bailiffs, and Jurats of the Cinqua Ports, that they shall not be impeded for Land, or for any other Cause arising there, elsewhere than before the Conunable of Dover, or Shepeway; this Grant does not bind the King in a Cafe where he is Party; it does not bind the King as to his own Cafe in a Quo Warranto, nor in a Quare Impedit. By all the Judges of England. Jenk. 190, pl. 93. cites 22 H. 7.

(D) Of
Conclusive of Pleas. 573

(D) Of what Actions Conclusive shall be said to be granted upon a general Grant.

1. If the King grants to a Corporation to hold Plea of all Actions, Br. Patents, per they shall not have Conclusive of any Plea out of another Court, without special Grant of Conclusive. 9 H. 6. 27. b. Letter Placitum can a Man have Affix; For this is Quæreba ; per Vampage.

2. But if the Grant be, that they shall have Conclusive of all Actions, &c. they shall have Conclusive out of other Courts. 9 H. 6. 27. b.

3. If the King grants Conclusive of all Manner of Pleas, yet the Grantor shall not have Conclusive of Appeals of Felony, 8 H. 6. 21.

4. Nor of Appeals of Mayhem. 8 H. 6. 21.

5. If Conclusive be granted of all Pleas motis in quibuscunque Curis &c. they shall have Conclusive of Pleas motis in Banco, or Banco Regis, without naming them specially. 9 H. 6. 27. b.

S. C. — If the King grants Conclusive of Pleas in quibuscunque Curis laps, the Grantor shall not have Conclusive extra Bancum Regis, without special Mention thereof, because it is Coron Rege; Per Babington. Br. Conclusive, pl. 27. cites S H. 6. 18.

6. If the King grants Conclusive of all Manner of Pleas motis * See supra, coram quibuscunque Juticiariis, yet he shall not by this have Conclusive of Pleas moved in Banco Regis, without special naming it. * 8 H. 6. 21. Contra 9 H. 6. 27. b. does not clearly appear.

7. If Conclusive be by Prescription to hold Plea by Writ of Right * Br. Conclusive, in Nature of any Action, they cannot hold Plea of a Writ of Covenant, for they cannot have a real Writ in Nature of a personal Writ. 44 El. 3. 37. *59 Am. 9.

real, as Writ of Right is, this cannot be turned into Covenant afterwards, and so change it into a Plea Personal, and thereby levy a Fine by Writ of Right, making Protefition; Per Knivet. But Brooke says, Quære if it had been so used; for then it seems good. — And the Charter willed, that they shall not be implemented of Tenements in D, nor in the Suburbs of the same, nor of Covenant, Contrar, nor Tenpah there, but only before the Mayor and Bailiffs of Oxon, Nifi tangat nos vel Harrold' nolos, & quod indecat Exeversionem omnium Placitorum & quod in omnibus Aëternum Placitorum poffet per breve de Redit per Proteftationem in Natura cypifcunque beris; And yet, per Knivet, it is a Question, whether they may levy Fines, because it is not expressly granted; and so it seems, that by general Grant of the King such Things do not pass. Ibid. — Br. Fines, pl. 22. cites 44 El. 3. 39. Br. Fines levied &c. pl. 164. cites S C & S. P. per Knivet; for the Action is Real, and the Protection is Personal; and therefore, if it be not expressly to levy a Fine, it is a great Question.

8. If Conclusive be granted of all Pleas, yet a Fine cannot be le: 2 Inf. 515. but there, for this is no Plea, but a Record. 3 H. 4. 6. but first to hold Plea for the levying of Fines against the Negative Nature of Modas levandae Fines. 18 El. 1.

— See the Notes to pl. 7 supra.

7 G 9. [So]
Conufance of Pleas.

10. But upon an ancient Grant by such Words, (if Conufance had been allowed in an Affile after Memory, as it feems the Book is to be intended) he fhall have Conufance of Affiles. 12 P. 13. 14 P. in the Notes to the Plea next before. — Affile against the Abbot of Glaflenbury, in the County of Somerset, the Abbot appoin-
ted by Attorney, and claimed Franchises, and_flowed the Charter, by which William the Conqueror had granted to his predecessor Owen Region Patrjeaten & Cognitum omnium Pecudiorum & that the Charter had been allowed in Affile before Summ. Per Conife, the Charter is before Time of Memory, and has not been in Ufe, and by such Ufe it is not fufficient at this Day, and alfo the Abbot himfelf is Party, Thorp J. concili, in Cafes of a new Charter, but becaufe it had been allowed, and was an ancient Charter, therefore the Conufance was granted, though the Abbot was Party; the Reason fhews to be, becaufe it may be held before the Steward of the Abbot, who may be as indifferent between the Abbot and the Party, as the King's Justices are between the King and his Subjects, in Action between them. Br. Conufance, pl. 48. cites 54. Af. 14.

11. So if upon an ancient Grant to an Abbot $e. Quod habet Cu-
rium fium regalem $e. If Conufance hath been allowed in Affiles, he fhall have Conufance of Affiles. 30 Af. 31. adjudged.

12. But upon an ancient Grant, if Conufance hath not been al-
lowed in an Affile, though there had been a general Allowance of Li-
berties, he fhall not have Conufance of Affiles. Conrca 37 Af. 6. adjudged.

13. If Conufance of all Pleas be granted, they shall not have Co-
ufance of fuch Actions which were not in Ufe at the Time, but created after by Statute. 14 P. 4. 2. [*20].

Conufance of Pleas.


17. But where the Action was at Common Law, and is given against a Person by another Name than was before the Grant of Conufance, as an Action of Debt against an Administrator, there they shall have Conufance. *9 14 Br. 4. 20. b. † 22 E. 4. 23. S. C. cited D. S. 5. a. Pitch 7 E. 6. in the Serjeant's Cafe. † Br. Comnans, pl. 22. cites S. C. — S. C. cited by Hobart, Ch. J. Hob. 28. — Gilib. Hill, of C. B. 177. S. P. and cites the same Cafe.

18. Where Conufance is granted to a Man Pro fe & Hominibus suis by Charter of the King out of the Bank and the other, except in Pleas of the Crown, that they have a Conufance Sicut habilimentante Adventum Banci, and it was said for the King, that Affife is no Plea of the one Bank, nor of the other, unless for the County in which the Bank sits; For it was demanded in Affife here, and that by this Word (Hominibus) it shall extend only to the Villeins; Per Shard, it extends to those who become their Men in doing Homage, Quadre of those who do Fealty, but Parning was mere contra, and it was said, in Protection Pro fe & Hominibus, Villeins, nor Franckenants shall not be aided, therefore it seems there that it extends only to his Family Servants. Br. Comnans, pl. 34. cites 12 Aff. 35.

19. Conufance of Pleas was granted to an Abbot in the Time of the Kings St. Edmond and St. Edward, exclusive of the Justices of the Common Pleas, of the King's Bench, and of the Justices of Affife; this Grant does not extend to Affises, without express Words of Affises, although it was confirmed by H. S. Resolved by the Counsel, that the King's Charter ought to have a reasonable Conftitution. Jenk. 33. pl. 66. The Abbot St. Edmond's Bury's Cafe.

20. Tenor of a Record of a Fine was removed into Bank by Certiorari and Mitiminus out of the Court of the Abbot of Reading, and the Abbot demanded Conufance of the Plea, because King H. 2. had granted to the Abbot the Hundred of R. and that the Tenants of the Abbot should not be impleaded out of the Hundred De quibusdenique Placitis, Contraillis &c. and that they may hold Plea of Affife before his Justices, and to levy Fines, & onnum Libertatem, unless where the Abbot himself was Party, and that the King had confirmed it with a Clause hoc alibi fierint, and that they have used at all Times after to levy Fines; by the said Opinion he shall not have Conufance, as it seems. Br. Conufance, pl. 12. cites 44 E. 3. 25.

21. In Ejectinent in B. R. &c. the Mayor and Commonalty of S. demanded Conufance of Pleas by Virtue of a Grant of Q. Eliz, thrown to the Court Tenure Placita &c. Exception was taken, that the Defendants did not show any Allowance in Eyre, or in Quo Warranto, or upon any Record, or that at least he ought to have a special Writ to the Court to allow the Charter; besides, the Grant Tenure Placita does not take the Jurisdiction from other Courts without Negative Words. It was admitted,
Conufance of Pleas.

admitted, that if the Demand had been by Virtue of an old Grant Time out of Mind, then there must be an Allowance in Eyre &c, but this was upon a new Grant in the Reign of the Queen, and shewn in Court, and that this is good cites 39 E. 3. 15. which is express in Point; and it is true, that Tenere Placita does not take away the Jurisdiction of others in express Words, but Grant of Conufance of Pleas ex Vi Terminii, implies that no other Court shall hold Plea of such Matters and cites 9 H. 7. It was adjourned. Palm. 456. Trin. 3 Car. B. R. Hampton v. Phillips.

(E) Of what Actions, Suits, and Pleas, Conufance shall be said to be granted; as Confequents, and incident to the Thing granted.

1. When Conufance is granted, though no Procefs is limited, as that he shall have a Petition, or Procefs upon Vouchers, or other Procefs, touching the Pleas, yet he shall have them as incident. 44 E. 3. 29.

2. If Conufance be granted of Writs of Covenant, a Fine may be levied there upon it; for this is but a Confequent. * 44 E. 3. 29. Querc, whether this general Grant shall extend to to high a Conufance of Land; this also will be prejudicial to the King by the Loss of his Fines for Alienation, * and Brook, Conufance 12. seems the better Opinion, that this shall not extend to Fines. 3 H. 4. 6.


4. Notice, per rot. Cur. if the King grants to J. S. Cognitum omnium Placitorum tenendi before his Bailiff, liceit J. S. fuit Pars, it is good; Contra if it was to hold before the same J. S. and so fee that it ought to be * expresed before whom the Plea shall be held. Br. Conufance, pl. 55. cites 21 E. 4. 47.

(F) How
Confinance of Pleas. 577

(F) How it ought to be granted. [And when it must be said before when it shall be as] Judge.

1. The Grant ought to make Mention before what Judge the Pleas ought to be held, otherwise the Grantor shall not have Confinance by Force of it. * Br. Comn. fans, pl. 11. cites S. C. & Maitzto 3. Contra, 8 D. 6. 21. b. 

2. William the Conqueror granted to an Abbot Ommem Regiam Potestatem & ommem Justitiwm puniciendi & dimittendi, and this had been anciently allowed to be held before his Bailiff, this shall not now be disallowd. 12 D. 4. 13.

3. But it a Grant be made without such Allowance, and it is not determined before whom the Plea shall be held, it shall not be held before his Bailiff. 12 D. 4. 13.

4. But it it appears by Implication what Judge is intended, it is good; as if the Grant be, that the Grantee shall have Confinance in the Court; This implies, that it shall be before the Judges and Ministers of the Grantee, and therefore it is good. 44 C. 3. 17. b.

5. But a Grant of Confinance of Pleas to another within the Precinct of his Manor, is not good without more. 6 D. 4. Plaitto 3.

6. But if in such Case it be further to be held before his Steward, it is good. 6 D. 4. Plaitto 3. has no Steward; for he may make a Steward. Br. Comnans, in pl. 11. cites 7 H. 4.

7. If the King grants Confinance of Pleas to another to be held Br. Comn. before his Bailiffs, Stewards, or Justices, if he had not such Officers before the Grant, he cannot make them by this; the Grant is void. 7 D. 4. 5. b.

8. If the King hath anciently granted another Curiam seuam of this Case a Town, without appointing who shall be Judge, yet if Confinance hath been theretupon allowed to the Bailiff of the Grantor, it shall be good. 37 H. 6. adjudged.

9. Affile in the County of Southampton of Tenements in S. where the Bailiffs of S. came, and shewed Charter, by which King H. had
Conuance of Pleas.

granted to the Burgesses of S. that they shall not be impaled out of their Vill of Tenements within their Vill, and that Affile shall be taken within the Vill, and that at all Times after the Charter, the Justices had used to come and take the Affile in the Vill; and Note, that Non dicitur coram quo Placita illa tenentur in the Vill of S. nor does the Charter will that the Justices shall come within the Vill, nor was Conuance of Pleas granted by the Charter to the Bailiffs. Fitzherbert saith, that this Exception is for the Party, and not for the Bailiffs, for the Cause aforesaid, and the Party is pull it, for he had taken Continuance before, and for those Reasons the Court was in Opinion, that they should not have those Franchises.

Br. Conuance, pl. 45. cites 30 Aff. 1.

10. And after they demanded the Affile, and the Jury came, and some of them saith, that they were Burgess of S. and that by the same Charter it was granted, that the Burgess should not be put in Affile, nor in Juries, but within their Vill, and prayed thereof Allowance, to which it was not answered. But Brook saith, it seems clearly that they shall have thereof Allowance upon shewing the Charter. Ibid.

(G) How it may be granted.

1. If the King grants Conuance, he shall not change the Day by his Grant, for he cannot change the common Day in a Plea of Land, for there is a Statute called Dies Communes et. and this Statute limits the Day in a Plea of Land, and therefore the King cannot grant a shorter Day, for this would be against the Statute. 3 H. 6. 21.


Firth Conuance, pl. 57. cites S. C. & S. P. accordingly. — S. P. But he shall have only the Transcript of it; for if they fall of Right in the Franchize, the Words shall be Repealed to the Bank again upon this Original, and then the King's Court shall proceed upon the Original there; Per Choke. Br. Conuance, pl. 52. cites 57 H. 6. 27.

Br. Conuance, pl. 45. cites S. C. but S. P. does not clearly appear.

Firth Conuance, pl. 57. cites S. C. & S. P. accordingly.

3. A Prescription and Confirmation of this to have the Original, et, with Conuance of Pleas, is not good for the Cause aforesaid, though it hath been several Times allowed in Eyre. 26 Aff. 24. adjoind by all the Court.

4. Where the King grants to J. S. Conuance of all Pleas to be held before his Bailiff but four Parts, this is a good Grant, per tot. Cur. Contest if it was to be held before himself; For a Man by Justice cannot be his own Judge. Br. Parents, pl. 71. cites 21 E. 4. 47.

5. The King may grant Conuance of Pleas, but not otherwise thin Secundum Legem & Consequentiam Regni; Arg. Show. 142 cites 12 Rep. 51. [Hill. 5 Jac.]

6. By a Charter of Q. Eliz. Cognitio Placitorum, with exclusive Words of Non aliui &c. was given to the Court of the Vice Chancellor of Cambridge, to proceed Secundum Legem & Consequentiam Universitatis in all Cases, where any of the Body of the University should be Defendants, which Charter was confirmed by Act of Parliament; Per Cur. such Grant is
Conunance of Pleas.

not good of itself without the Help of all of Parliament; For though the Crown may grant Conunance of Pleas to proceed Secondum Legem Terrae, yet it cannot to proceed by other Laws; For that would be to make new Laws, which the Crown, as being but one Branch of the Legislature, cannot do. 10 Mod. 125, 126. Hill. 11 Ann. B. R. Cambridge (University's Cate.)

(H) Upon what Grant.
Upon a General Grant.

1. A man upon a general Grant shall not have Conunance of a Pleas where he himself is Party, and where the Plea is to be held before himself. * 40 E. 3. 10. b. abjudged. 18 P. 6. 21. b. and Brooke cites that AtjUt Sc. 

Curia.

was disallowed, because it had no Allowance, nor had these Words, Licet fuerit Pars. — Fitch Conf. ens, pl. 26. cites S. C. and that Conunance was disallowed for Reasons before-mentioned by Brooke.

† Br. Conunans, pl. 25. cites S. 6. 18. S. C. & S. P. by Martins, but he said, that though the Words Licet fuerit Pars had been in the Grant, yet it is not sufficient, unless the King had granted further, that where he himself is Party, he might make another Judge; for where he himself is Party, he cannot be a Judge indifferent in his own Case.

2. [So] in Tredpats against a Mayor, and several of the Commonalty, the Mayor and * Commonalty shall not have Conunance upon a general Grant of Conunance, because they cannot be Judges in their own Cause. 38 E. 3. 15 b. Curia. 

3. But where the Plea is to be held before the Steward or Bailiff, * Fitch Conunans, pl. where Conunance shall be granted upon a general Grant, without the 15. cites Words Licet ipse sit Pars, where the Lord of the Bailiff is a Party. S. C. — D. 4. 5. 157. 27. Dibuttatur, * P. 7. 11. Contra 12 D. 4. 4. Fitch Conunans, pl. 13. 10 P. 6. 7. b.


4. [And] upon a general Grant anciently made and allowed, in * In such Case where the Lord is Party, and this had used to be held before his Grant shall Bailiff, he shall have Conunance at this Day also, where he himself is allowed. Party. * 12 D. 4. 13. 34 Art. 14. abjudged; but it is not there mentioned whether it was to be held before his Bailiff, but it seems it is to be so intended.

by Thorne and Hull, but Hanke e contra, and therefore Brooke adds a Quaest. — Fitch Conf. ens, pl. 21. cites S. C. 

‡ Br. Conunans, pl. 48. cites S. C. and Brooke says, the Reason seems to be, because it may be held before the Steward of the Lord, who may be indifferent between the Lord and the Party, as the Judges of the King are between the King and his Subject, in an Action between them.

5. Where Conunance is granted to be held before the Bailiff, if an Action is brought against one of the Bailiffs, they shall not have Conunance thereof, for then the Bailiff should be his own Judge. 10 D. 4. 9.

6. So in this Case, it after the Writ brought new Bailiffs are elected Fitch Conunans, pl. 92. cites S. C.

6. So in this Case, it after the Writ brought new Bailiffs are elected Fitch Conunans, pl. 90. cites S. C.

7. In a Writ of Entry against the Mayor and Burgesses of B. they demanded Conunance, and shewed the Charter, which was, that Niellas Burt-
Conufance of Pleas.

(1) Special Grant.

1. If Conufance of Pleas be granted, Liceet ipfemter fit pars, he shall not have Conufance in an Action in which he himself is Party, because he shall not be his own Judge, unless it be granted further, that if he be Party, that he may make another Judge. 8 H. 6. 19. b.

2. But upon such Grant, Liceet ipfemter fit Pars, if it be granted, that if he be Party, that the Plea shall be held before his Steward, he shall have Conufance, for there the Steward shall be Judge. 8 H. 6. 20. b.

3. If the Grant be, that if any Clerk of Oxford be impleaded, that the Chancellor shall have Conufance to be held before him, if the Chancellor be sued, he shall not have Conufance, though he himself be a Clerk, for the Words are not express, Liceet ipfemter fit Pars. 8 H. 6. 20. b.

(K) Where they have Conufance of the Action yet for a collateral Cause the Conufance shall not be granted.

Failure of Right.

* 1 If a Fine be removed out of a Franchise by Writ of Error, and comes in Banco Regis by Mitimus, and after a Scire Facias is sued to have Execution of it, the Franchise shall not have Conufance of it, because the Record shall not be remanded be Banco Regis, and without it they cannot go Right to the Party. 30 H. 9. abjudged. || 44 E. 3. 37. abjudged.

The Case was, Writ of Error was sued in B.R. by which the Record of a Fine was removed out of the Franchise, Owen, in as much as they had erred in Scire Facias upon Fine, as it is supposed, and no Error was there offered, by which be in Remainder, and Execution there by Scire Facias to have Execution of the Fine, and at the Day the Parties appeared, and the Bailiffs of Owen, demanded Conufance by Grant of Kings H. 3. That no Barrage shall be impleaded of Land out of the F, and that they had held Plead &c., and were called by Judgment, because when the Record comes into B. R. it shall not be remanded if Error be assigned or not; And yet, when Franchise is pleaded of Land in ancient Demesne, and after it is proved to be of ancient Demesne, it shall be remanded. Ibid. || 30 Conufance, pl. 14; cites S. C. but mentions the Removal into B. R. but according to that Year Book it should be into B. R., as Roll cites it —— Gllb. Hist. of C. B. 159, 157; cites S. C. & S. B. for
Conufance of Pleas.

for the King never puts with the Records of his Court. — Gilb. New Abr. 361. cites S. C. & S. P. in bold Verbs.

2. At the Return of the Exigent Conufance shall not be granted for Failure of Right, for he cannot be restrained in the Franchise to appear by Attorney, and it is against the Law to appear by Attorney at the Exigent. 3 S. 6. 10. b.

If a Man comes by Exigent in a Writ of Debts, Conufance shall * Br. Conufans, pl. 3. not be granted; because the Defendant ought to remain in Prison still he has agreed with the Plaintiff, and the Body cannot be deliver- ed to the Franchise. * 40 C. 3. 1. adjudged; to Failure of Right.

Conufans, pl. 25. cites S. C.

S. C; — And Bell is misprinted, there being no Fol. 1. but the Title Page.

† Br. Conufans, pl. 18. cites 11 H. 4. 43. S. C. — Fitzh. Conufans, pl. 20. cites S. C. — See (L) pl. 5. S. C.

4. So if in a Plea of Land the Tenant makes Default after Default at Br. Conuf- the Summons, Conufance shall not be granted, because they cannot give Judgment upon the Default of Record here. 40 C. 3. 1. 2. S. C.


Br. Conufans, pl. 5. cites 40 E. 5. 2. S. P. for they cannot do Right to the Party upon the Default recorded here. Quod Nisi.

6. But Diat 11 D. 4. 43. b. in an Action upon the Statute of L. Fitzh. Con- bouners, if the Defendant comes in Ward at the first Day, and Conufance is demanded, it shall be granted, yet he shall not have Mainprise to keep his Day in the Franchise. 11 D. 4. 43. b.

S. P. accordingly; but then the Plaintiff counted a Retainer in his Franchise, and a Departure to D. out of the Franchise, and there the Defendant was compelled to answer; for now the Franchise cannot do right.

7. At the Grand Cape returned, Conufance shall not be granted up Fitzh. Conuf- on Demand, though the Tenant be an Infant, for the Failure of Right, ans, pl. 1. for though the Infant be a good Cause to have the Default, yet this is a Default in Law, and to the Court once tried. 3 S. 6. 10. b.

Br. Conufans, pl. 1. cites S. C. and accordingly, it is a Laches of the Party who would have had the Conufance, and therefore now he shall not have the Conufance; Quod Nisi.

8. So if at the Grand Cape returned the Demandant releases the De- fault, yet Conufance shall not be granted, for this affirms the Default. 3 S. 6. 10. b.

Br. Conufans, pl. 1. cites S. C. & S. P. by Babb. for these Matters the Court is lawfully filed.

9. If Conufance be demanded at the grand Distref returned in a Writ of Debts, it shall be granted. 2 C. 3. 62. b. adjudged.

10. After Bailment joined in a Franchise in a Writ of Right upon a Br. Conuf- Grant of Conufance, it shall be returned in Banco, because the Plaintiffs cannot be cited there. 44 C. 3. 29. b.

Kirtin.

11. If one brings Detinue, and counts of a Bailment in a Franchise, and another brings Detinue for the same Thing, and counts of a Bail- ment in another Place out of the Franchise, and the Defendant prays that they may interplead, and the Franchise demands Conufance — Br. Co-
Confiance of Pleas.

If a Plea be removed out of a Franchise because of a foreign Voucher, if in Banco the Tenant waives the voucher, and pleads in Bar, or the Voucher is determined, yet the Franchise shall not have Con- 

13. If Confiance of Pleas be granted to a Franchise, and after an Affidavit is there brought (admitting this to be a Plea within their Grant) and the Tenant pleads, that by this Grant they cannot hold Pleas originally, but shall have Confiance out of other Courts, which Plea they there over-rule, and award the Affidavit, by which the Defendant is found, and the Tenant out of the Possession, if the Tenant that is ousted brings an Affidavit after upon this Outer, the Franchise shall not have Con- 

14. In Trespasses, if the Defendant pleads Villegian in the Plaintiff, and after Confiance is demanded, it shall be granted, though the Vil- 

of the Definate, who counts of a Building within the Franchise, yet it shall not be granted, because then the Defendant would be at a Mitigation, for it cannot have Con- 

15. A Trespass lies not in a Franchise for a Trespass done in a Place 

16. If a Trespass be brought of a Trespass within a Franchise, against a Foreigner that hath nothing within the Franchise, Con- 

17. So it is of an Action of Debt brought against such Foreigner, upon a Contract within a Franchise. 22 Ass. 83. for the Cause afores- 

18. In a Conspiration against two, for a Conspiration within a Franchise, of which one is a Foreigner, and the other within the Franchise, Con-
Conufance of Pleas.

Conufance shall not be granted, because the Action is entire, and they cannot do Right there against the Foreigner. 22 All. 8.

If a Trespass be brought against them for a Trespass within the Franchise, Conufance shall be granted, because he might have had several Actions, and to his joint bringing of the Action shall not take away the Conufance. 22 All. 81.

If it appears to the Court, that the Party Defendant has nothing within the Franchise, nor dwells there, so that they cannot bring him in to Answer, Conufance shall not be granted. Br. Conufance, pl. 39. cites 22 All. 81.

Where Precipio quod reddat of Land is brought in Bank, and other Precipe of the same Land in a Franchise, there is the one recover and enters, the Writ is abated, and the Tenant shall plead it. Br. Conufance, pl. 23. cites 8 H. 6. 39.

But it is no Plea in Detinue of Writings or Chattels; For this shall not abate the Writ of the other, unless the other be made privy by Garnishment, which the Franchise cannot do, therefore shall not have Conufance. Ibid.

The Mayor and Bailiffs of Coventry had Conufance in Affe in the County of Warwick, and the Tenant in C. pleaded a Plea which they could not try, by which the Plea and Affe were remanded to the Justices of Affe in the County of W. and there the Parties appeared, and the Mayor and Bailiffs at another Time demanded Conufance again, upon which they were adjourned into C. B. and there by Newton, Fulth. and Affe, where the Franchise fails of Right to the Party, or if the Franchise cannot do Right because they have not Power, there the Franchise shall lose the Conufance, and shall not have the Conufance again. Br. Conufance, pl. 29. cites 22 H. 6. 58. 59.

Debt in London, the Defendant pleaded that the Obligation upon which &c. was made at Norwich by Durefs, which was found for the Defendant, and the Plaintiff brought Attaint, and those of Norwich demanded Conufance of the Plea; and by Needham, Littleton, and Jenney, they shall not have Conufance; For they cannot award Execution in London, nor award Cope or Exigent to deny the Debt, and also they have not the Record in N. Br. Conufance, pl. 53. cites 8 E. 4. 6.

And per Danby, if it passes for the Plaintiff in the Action, he shall have but his first Action; Contra per Littleton and Needham, For he shall recover his Debt, As where the first Verdict had paffed for him, which was adjudged, 8 H. 4. as it is faid there. Ibid.

Debt upon an Obligation in London, the Defendant said, that it was made by Durefs at York, upon which they were at Issue that at large at large at London, and the Record was removed into Bank by Writ of Chancery, and the Plaintiff prayed venire facias upon the Issue joined in London, and per Thirn it is reasonable that it should be tried in Bank, and removed into London; but Hill Contra; For by the foreign Plea they are out of the Jurisdiction, and by this they shall not have any Power to take any Issue thereupon; For it is in vain to take Issue which cannot be tried by them, and fo is the best Opinion, and the Law, as it seems; and per Hank. in such Case of foreign Plea in Franchise, it was usual, in ancient Time, to condemn the Defendant, because he used a Plea which could not be tried there, but the Use is contrary now; But where a Man pleads a Plea in Bank Ultra Mare he shall be condemned at this Day, because it cannot be tried in England, as it was faid Mich. 56 H. 8. And per tot. Cur. in the Case above, where Franchise demands Conufance out of the Bench, and the Defendant pleads foreign Re-
Conuinance of Pleas.

[L] What shall be said an Action arising within the Franchise.

[And where the Franchise shall not have Conuinance in respect of Part only being done within it.]

1. W[here an Action is brought of a Thing done partly within a Franchise, and partly out, if it be a Thing that cannot be severed, then the Franchise shall not have Conuinance. 3 P. 6.

2. As in Trepass for a Battery in one Place, and continued in another Place, if one of the Places be within a Franchise, yet Conuinance shall not be granted, because it is an entire Trepass. 3 P. 6. 31 b.

3. If one be summoned against a Prohibition within a Franchise, to appear at a Place within the Franchise, but Sentence is given out of the Franchise, if an Attachment upon the Prohibition is brought, Conuinance shall not be granted, for the principal Grievance is where the Sentence was. 46 Ed. 3. 5 b.

4. If a Lease be made in Middlesex of Land in Durham, he cannot have an Action of Debt upon this in Durham. 11 P. 49.

5. If
Consequence of Pleas.

5. If a Retainer of a Servant be out of a Franchise, and the Departure within a Franchise, yet the Action upon the Statute of Laborers lies not within the Franchise. 11 H. 4. 44.

6. If an Account be brought of a Receipt within the Franchise, Consequence shall be granted of it. 29 Ed. 3. 35. b.

and Receiver in A. and B. the Bishop of E. demanded Consequence of the Plea, because A. is within the Life of Ely, and because this Action may be severd, and the King have Consequence in B. and the Bishop Consequence in A. therefore the Writ was abated by Award; for it is no Relief, that by an ill Writ a Man shall have his Right. Br. Consequence, pl. 30. citing 24 E. 3. 62. — But see elsewhere, that of Rent granted out of Land in A. and B. it is otherwise; for it is entire, and cannot be severed; Note a Diversity. Ibid. — And it is said, that in Pracipe quot residat of Land in A. and B. the Writ shall abate alfo; for this may be severed. Ibid.

7. An Heir cannot be tried upon the Obligation of his Ancestor within a Borough, where he hath not Aliens within the Jurisdiction of the Court, but without. 48 Browne v. Carrington, adjudged in a Writ of Error where the null Judgment was reversed, because in the Pleading there was no Place alleged where the Aliens were, which might be out of the Jurisdiction of the Court. J. said, that though the Aliens is not alleged by the Party to be within the Jurisdiction, yet if the Jury find it to be within the Jurisdiction it is sufficient. — The Plaintiff ought to allege Aliens in some certain Place; if better this Action be brought in a Town Corporate, which has a limited Jurisdiction, or at Westminster, the Jury in both Cases, upon this Issue, may find Aliens in any other Place. Adjudged and affirmed in Error. Jenke 171. pl. 60. — Cro. J. 502. pl. 17; S.C. and Judgment reversed; But says, that in the same Term a Writ of Error was brought of a Judgment in Lambeth, betwixt Clark and Broughton, where in Debar against the Heir, upon an Obligation of his Father, the Defendant pleaded Aliens per Decent. The Plaintiff replies, that he had Aliens by Decent, but they did not find any Place where, and the Plaintiff had Judgment, and this Judgment was affirmed, although it were objected, that this being a private Jurisdiction, they had no Authority to inquire if any Thing was out thereof; and that this differs from the Case of Actions brought in the King's Courts, which have a general Jurisdiction; sed non allocatur; for this Inquiry is good enough; As an Inquiry may be of Aliens in Ireland; wherefore the Judgment was affirmed. — See Br. Trial (M. 1). 1

8. Affixe was brought of Rent reserved upon a Lease for Life of Land, Part in Guildable and Part in Franchise of D. and the Bailiff demanded Consequence; Per Thorp he shall have Consequence, for the Rent is feasible, and therefore the Plaintiff shall be put to two Originals. But several causes, and so is the Law, as it seems; For the Rent is one and the same Rent, and therefore shall not have two Originals, no more than of Rent ifgins out of Land in two Counties, [in which Case] Affixe does not lie, and as here the Affixe shall be at Common Law pro toto; For Caviaria digna &c. Br. Consequence, pl. 60. cites 22 Aff. 52.

9. Trepass against two, and the one has nothing within the Franchise, and the Bailiffs demanded Consequence of the Plea against the other, and had Consequence by Award, though they could not do Right to the Parties, for they cannot bring the one to answer, because he does not come there, nor has he Land nor Goods there to be distrained nor attached; The Reason was, because the Plaintiff ought sever his Action, and have one Action against the one, and another against the other. Br. Consequence, pl. 39 cites 22 Aff. 81.

10. But if it was in Conspiracy &c. where the Action cannot be severed, there he shall not have Consequence. Ibid.

11. A Man leged Land which is in a Franchise by Decid indicated at another Place out of the Franchise, with Clause of Re-entry, and for the Rent arrear before his Re-entry he brought Debit, and the Bailiff demanded Consequence, because the Land whereof &c. is in the Franchise, & non allov. catu.
Conufance of Pleas.

(M) At what Time it may be demanded.

1. Conufance ought to be demanded the first Day, otherwise it shall not be allowed. 20 P. 6. 32. b.

2. When the Place appears in the Writ where the Action arose, there Conufance ought to be demanded the first Day, because it appears where Conufance belongs to them, but otherwise it is a contra: 11 P. 4. 41. b. 14 P. 4. 20. b. § 3 P. 6. 30. b. 2 Ed. 3. 62. b.

3. As in Trespafs, Conufance ought to be demanded the first Day before the Count, if the Party makes Default, because the Place of the Trespafs appears in the Writ. 11 P. 4. 41. b. 43. b. 14 P. 4. 20. b. 3 P. 6. 30. b.

4. But otherwise it is in a Writ of Debt. 11 P. 4. 41. b. 43. b. because the Place of Contract does not appear in the Writ. 14 P. 4. 20. b. 3 P. 6. 30. b. 2 C. 3. 62. b.

5. The same Law in Detinue. 3 P. 6. 30. b.

(Fitzh. Conufans, pl. 3. cites S. C.)

3. But these Cases are to be intended when the Writ is brought in a County within which the Franchise is, for there it may be, that the Contract was within the Franchise, or without in the County, for this stands indifferently by the Suppofal of the Writ, and to the Truth cannot be known by the Writ before the Count. 3 P. 6. 31.

4. But if all the Town be a County by itself, and no Franchise within it, as Bristol, there, because they are determined by the Writ, they ought to demand Conufance at the first Day. 3 P. 6. 31. Adjudged.

5. In a Writ, if Conufance be not demanded at the Return of the Law, they shall not have Conufance after at the Return of the Capias.
Concourse of Pleas.

Capitis 2. for though upon the Return of the Original the Defendant must, pl. 21. cites S. C. he ought to challenge it at the Day of the Return of the Original, viz. the first Day, and every Day after, and his Challenge shall be entered, and yet he shall not have it allowed till the Plaintiff and Defendant are in Court; Per Cur.

9. In an Affix against two, if the Affix be awarded against one by Br. Courts-Default, if Concourse is demanded for the other that appears, it shall not be granted; for the Court is tried by the Default of one, and the Original is in the. 3 P. 6 13. 14 b.

10. But if a Tenant brings several Affixs, and one is awarded by Default of Land, and for the other Concourse shall be granted upon Demand at the same Day; for he hath Election to have Concourse of any which he pleases. 3 P. 6. 14 b.

11. In an Affix, if the Tenant makes Default, by which the Affix S. P. though to be awarded by Default; if Concourse is demanded before the demand, it shall be awarded, yet it shall not be granted. 8 P. 6 7 b. as Concourse is said to be settled by the Default of a Tenant, and Concourse in the Bulk is there, the Court is inquired to award the Affix by Default. Br. Concourse, pl. 26. cites S. C. — Br. Default, pl. 36. cites S. C. — Fitzh. Concourse, pl. 7. cites S. C.

12. In Trespass against two, if one makes Default, and the other Firth. comes and pleads Not Guilty, Concourse may be demanded now, furs, pl. 7. though it shall not be granted till the other comes, yet this Demand shall be entered, and he shall have it when the other appears. 22 sufians, pl. 47. cites S. C. and S. C. and Brooke says it seems to him, that he shall have Concourse in this Action.

13. In Trespass against two, if Concourse be not demanded every Day of the Process continued, it shall not be granted, for it ought to be demanded at every Day of the Process continued. 22 att. 83.

14. In Precipe quod reddat, J. N. demanded Concourse, and had it Br. Peremptory, pl. 31. cites 21 E. 5 61. [S. C.] challenged it, because he had made Attorney in Bank, who is not removed this Effusion and there it is awarded that the Attorney in Bank shall remain in the Franchise till he be removed; Quod Nota; that this is of Record in the Franchise, and yet the Warrant was not sent to the Franchise, nor ought to was it comprised in the Record which was sent sent into the Franchise awarded Said he is Attorney there, and yet Judgment ut supra. Br. Concourse, pl. 25. cites 21 E. 3 45. per Seron; the Reason seems to be there, in as much as the Party ought to have sued Returnees in this Case; Quere, for it was not adjudged in that Point. Br. Peremptory, pl. 51. cites 21 E. 5 61.

15. The
15. The Difference with respect to the Time of claiming Consentance is laid down to be, that where the Matter is local, so that it appears upon the Face of the Record, that there is Ground for such a Claim, it must be made Primo Die, viz. when the Writ was returned; But where the Matter is tranitory, it must be made upon the Day given to plead. \( \text{cf. Mod. 127. Arg. cites ii H. 4. 41. and says the Reason is, that otherwise there would be a Failure of Justice, unlefs such Claims were made as soon as possible.} \)

16. Consentance may be demanded as well upon the Original as upon the Returnmons, and the Caufe may be traversed as well upon the one as upon the other. Br. Consentance, pl. 5. cites 34 H. 6. 53.

17. Prohib, quod reddit; the Tenant is espoused, and no Challenge entred to claim any Consentance of Plea, there, at the Day of Assize, if he demands Consentance, he shall not have it; For the Court is seised without Challenge. Quod Nota. Br. Consentance, pl. 6. cites 35 H. 6. 24.

18. Replevins was removed out of the County into B. R. and Defendant took Consentance, and at the Day the same Defendant demanded Consentance, which was disallowed, because demanded after the Continuance, and not the first Day; besides, himself being Defendant, knew well when he disdained, and whether it was within his Jurisdiction or not, and also his Charter, by which &c. bore Date in the Time of William the Conqueror, before Time of Memory, and allowed in Bank, but not in Eyre, and therefore was disallowed. Br. Consentans, pl. 51. cites 9 H. 7.

10. And per Curiam, Consentance may be demanded by Attorney, and so fee that Allowance in Bank without Allowance in Eyre shall not serve; But other Charters and Records, which are not of Liberties, may be allowed though they are before time of Memory, and there was Exception taken because the Charter had not there Words Licit juris Pars. Ibid.

20. As to the Time, it must be demanded before an Imparlance, and the same Term the Writ is returnable, after the Defendant appears, because till he appears there is no Caufe in Court, otherwise there would be a Delay of Justice; for it atter Imparlance, when the Defendant has a Day already allowed him, he would have two Days, since when the Consentance is allowed, the Franchise prefixes a Day to both Parties to appear before them, and it is the Lord's Laches if he does not come soon enough not to delay the Parties. Gilb. Hyt. of C. B. 158.

21. In Indeb. All the Bail was put in in Easter Term. The 5th Day in Trinity Term the University of Cambridge came and demand Consentance, (in a proper Manner). The Entry is of the left Term. It being objected, that this was irregular, because the Defendant not pleading within four Days of Trin. Term, he ought to have an Imparlance; to which it was answered, that the Demand of Consentance was so late because of an Agreement between the Plaintiff and Defendant's Attorney; But it was laid per Cur. that the demanding of Consentance is a Connexion between the two Courts, and it must be done in Court, and not between the Attorneys. It must be demanded either by the Party that claims it, or by his Bailiff or Attorney, and not by the Defendant. (N. B. The Record here was entered up without an Imparlance, but it was now praying to be done). This can be a Plea of Easter Term, because it came not within four Days. The antiquit Practise was, to make all Pleading at the Bar, but now the giving the Pleadings to the Plaintiff's Attorney in Writing is instead thereof. In this Matter the former Method is to be pursued, because the Court may see that there is just Ground of Consentance. The Party may reply, that the Caufe does not come within the Consentance demanded, but full the Court is concerned; for a Day must be given over; the Defendant's Attorney cannot contest this, but the Party, who claims it, must come into Court, and produce his Letters Patents. Here the Plaintiff,
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till might reject the Imparlance, and yet upon praying that Imparlance an Allowance of Conufance is demanded. This Demand by the Attorney is nothing. It is a Qudion of Jurisdiction between the two Courts. If the Court here fees that there is such a Jurisdiction, they are to fend a Transcript of the Record to the Court below, and to give the Parties a Day. If the Lord will not proceed at the Day given, the Court here may refummon the Party &c. Hereupon a Rule was made, that the Record should be set right, and an Imparlance entered, and then it will be the fame Thing as if the Lord had come into Court the 3th Day. Mich. 11 Ann. B. R. Periv v. Manners.

22. And in Hill. Term the Charters were produced, and an Exemplification of an Act of Parliament which confirmed them. It appeared that this was an exclusive Jurisdiction granted &c. viz. that no Litudes or Judges should intermediate &c. and that the Party should be tried before the Chancellor &c. John wode &c non abit. There is a Difference between a Conufance generally, and an exclusive Conufance; for the latter may be either demanded by the Lord, or pleaded by the Party; the Lord ought to come the Day he knows that his Franchife is invaded. The Juridiction here granted by the Charter being fuch as was inconsistent with the Common Law, there wanted an Act of Parliament, or else the Charter could not fubfift. There is no Hardship in coming in the firft Day, viz. the Day the Declaration is delivered, which Day is enlarged, and if the Party comes within four Days of the fubfequent Term, it is as if he came in of the former Term; if the Party lives within the Jurisdiction, it must be known when he was arrested; if he did not live there no Justice can be done by them; the Cafe of an Ellis is the fame with the Cafe here; for that is an Exculc to the Court to let them know he cannot come, and therefore it would be odd that he should be excluded from pleading any Plea that he lawfully might; but though this is the firft Day to the Party, yet it is the second Day to the Lord; fo it is in Cafe of an Imparlance, for that is the second Day to the Lord. As to the Manner and Time of demanding it, the Charters and Act are silent, but every Thing ought to be laid before the Court, together with the Condition and Circumftances of the Party, whether he be a Member or Servant of the Univerfity; This is a Fact triable by the Court here; The Lord need not come at the Return of the Writ, for nothing in this Cafe appears, till the Declaration, how the Debt did arise; But if he might come at any Time, the Plaintiff would be at a great Difadvantage. The Authority of * Hard 505, 506. as to what Ld. Ch. B. Hale fays, is of little weight, neither is there any Thing in that Cafe to the Purpofe here.

What Hale fays, that any one may demand Conufance, cannot be maintained; it is not only the Right of the Univerfity, but it is alfo of the Party, if he will plead it; and fhall a Stranger come and obtain this? The Proceedings here, in Cafe of an exclusive Jurisdiction, are not merely null and void, though the Charter fays, that all Writs fhall be null; it is but a Franchife which doth not take away the Jurisdiction of Welfmin-ster-Hall, unlefs it be claimed; A Conufance generally must be demanded, but an exclusive one may be either pleaded by the Party, or demanded by the Lord. If it were a mere Nullity, Trefpaft would lie againft the Sherifl or Officer; but it is a Franchife, which muft be claimed, and if it is fo, it fhall be allowed, but it doth not take away the Jurisdiction of the Courts here. In Cafe of a bare Conufance, a Day is given to the Parties only, and a Transcript is fent hence, and if upon this there is a Failure of Justice below, there fhall be a Refummons, but in the other Cafe there is a Stop, for there is no Day given, as where the Party pleads it. The Crown could not grant Pleas to proceed Secundam Leges & Conufantines of that Place, but it could be only to proceed according to Law, and therefore the Act was of Use to enable them to proceed

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preceded by another Method than the Law did allow of, whereupon Costs were prayed, fed non allocatur. Hill. 14 Ann. B. R. Penn v. Manners, alias, Cambridge (University's Cafe).

23. An Afcion of Trelpafs was brought in Trin. Term 12 & 13 Geo. 2. for an Affaut and Battery, and false Imprisonment, by an Attorney of this Court.

Defendants in the same Term plead a joint Plea, viz. as to the wounding, and Part of the Imprisonment, Not Guilty, and as to the rest, they plead specially the Privileges of the University of Oxford, and set forth the Charter, and the Act of Parliament of the 13 Eliz. by which the Charter is confirmed; That Defendant Truburn is Proctor of the University, and, as such, has Power to apprehend any Person making Disturbance within the University; that finding the Plaintiff making an Affray late at Night, he commanded him to keep the Peace, but that instead thereof the Plaintiff beat the Defendant, whereupon Defendant laid his Hands gently upon him, and committed him to Gaol; That the other Defendant, Etty, is Gaoler of the Gaol, and received him, being so lawfully committed, and traverse their being guilty of any other Trelpafs.

Plaintiff imparles till Midd Term, and then replies, and admits the Privileges of the University &c. but denies the Facts for which they imprisoned him, and says they took him of their own Wtong without such Cause, and renders an Affidavit of the Facts of the Disturbance.

After this the University of Oxford, (by the Chancellor) comes and claims Conufance, setting forth the Privileges of the University, and relying principally on a Charter of the 11 of April, 14 H. 8. by which the King grants to the University the Conufance of all Causes, where either Plaintiff or Defendant is a Member thereof, though the Cause of Afcion arise in any Part of the Kingdom, with an exclusive Clause that no Justice (and particularly mentions the Judges of this Court) shall presume to intermeddle in any Cause arising within the Jurisdiction of the University. They then set forth the Stat. of Eliz. which confirms all their Privileges, and consequently this of the exclusive Jurisdiction, and that this Conufance was allowed to them in Easter Term, 9 Ann. B. R. and thereupon claim Conufance of the Cafse.

Upon this Case two Questions arise, 1st, Whether the University have claimed this Conufance in Time or not? 2dly, If they have, whether they are intitled to the Conufance of this particular Cafse?

But the first only has been spoke to, because it we are of Opinion against the University upon that, it will be unnecessary to determine the second.

And upon great Consideration we are of Opinion, that the University have not claimed in Time, both from the Reason of the Thing, and from several Authorities in which this has been determined.

The Time required for the University to come in is before Imparlance, whereas in this Case they have not come till after Plea and Replication.

And though this is said to be hard upon the University, because they may not know any Cause was depending, and therefore could not come so early, yet we think it would be much harder, on the other side, if it was otherwise; For if not till after Imparlance, or Plea pleaded, When are they to come? They may as well come at any Time before Judgment, and this would create great Delay and Expence, if after Matters are brought to a single Issue to be tried, the University can come and make all go for nothing.

Besides, the University, when they come to judge, must judge not according to the Law of the Land, but the civil Law, and though it must be that the Party be tried by another Law than that of the Land, when an Act of Parliament gives such a Jurisdiction, and 'tis not in the Power of
of the Courts at Westminster to help it, yet we are to take Care to keep it in its due Bounds, and that it be claimed in proper Time. This Jurisdiction is so contrary to the Laws of the Land, that it could not be granted even by the King himself, unless by Act of Parliament; For it has been determined, that it is not in the Power of the Crown to create a new Court of Equity, because such a Court does not proceed according to the Rules of Law. And the same Reason holds as to this Court of the University, which determines Mens Properties without Juries, and by a different Law; So that without an Act of Parliament no such Concourse at all could be allowed to the University; And this was the Opinion of the Court in the Case of *Barker b. Bannet,* Hill. 11 Ann. B. R. where the University came five Days after Impairment, and the Court held it was too late, that they ought to have come the first Day, to prevent a Delay of Justice, and because it took away the Law of the 22. supra. Land; and accordingly the Claim was disallowed. Indeed, it was not and Tit. U. the Case of this University, but of Cambridge; but upon comparing the two Charters, that of Cambridge has rather, if possible, a larger exclusive Jurisdiction, so that it is a Case in Point.

In that Case were cited two Cases in the Year Books, one in 16 H. 7. 9. b. the other in 16 H. 7. 16. a. where it was expressly adjudged, that to claim Concourse the Party must come before Impairment. This Case was cited and allowed, and the Court were of the same Opinion in the Case of........ U. *Memor* 12 Geo. 1. B. R.

The same Point was determined in the Case of this very University, *Trin. 1 Geo. 2. Wadd b. Grahall,* according to a Note I have had of it from a Gentleman at the Bar.

As to the Cases cited, that in Latch. 83, 84. where 'tis said, that ancient Demenefe may be pleaded after Impairment, was cited as a parallel Case. But it is remarkable, that the Court in allowing it, admitted it to be a single Case, and said it was otherwise in all other Cases except that; and when one considers the particular Case of Ancient Demenefe, it stands upon a quite different Reason, infomuch that a Man may come after Judgment; For though a Fine be perfected, or a Judgment in a real Action given, yet the Tenant may come and reverse the Fine or Judgment by Writ of Deceit; and the Reason is, because if he was not allowed to do it, he would lose the Privilege of Ancient Demenefe for ever; For to long as such Fine or judgment stands in Force, it appears to be Land pleadable at Common Law. But the present Case is very different, for though we should disallow this Claim of Concourse, the University will only lose it as to this particular Case; but their Jurisdiction remains the same in any other Case, provided they come in Time.

Another Case was laid before me, determined so long ago as Hill. 12 E. 3. in the Court of Exchequer, where, in an Action of Trepass, the Court granted a Writ, directed to the University of Oxford, to have the Concourse of the Caufe, Non Obstante that they did not claim it at the Return of the Writ, but laid till the Parties had pleaded; but this Determination is expressly contrary to the Opinion we are of, and especially as it is not only before the Stat. of Q. Eliz. but even before the Charter of H. 8. upon which the University put their Case, so that I can pay no Regard to the Authority of it, but must consider it as the Effect of Power, and not of Judgment.

One more was mentioned, and that was the Case of *Ultridge b. Dr.* See Tit. *U. Stratford* in Cane. *Trin. 12 Ann.* where Lord Harcourt determined a Jurisdiction contrary to our Opinion, but as it was a Judgment given without one finge Reason, and contrary to strong and unanswerable Reasons given by himself a little before in the same Case, I have no Regard to it, I shall never pay any Reason to a Judgment founded either on Fear or Favour.

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As to the second Question, whether the University's Privilege will hold in the Case of an Attorney, As we have rejected the Claim of Conufance, being made too late, it is not necessary to lay any Thing upon it, but as it may hereafter come in Question, I would mention some Cafes which may be proper to be considered, viz. In Litt. R. 304. 1 Roll. 489. 3 Leon. 149. the Privilege of an Attorney's suiting in his proper Court will be preferred; For it is a Privilege Time out of mind, and is for the sake of Justice, and all the People of England, and that therefore a King's Charter will not deprive him of it, nor even an Act of Parliament, without express Words.

I shall be as tender of the Privileges of the University as any Man living, and have a great Veneration for that Body, yet I shall always endeavour to support Trials by Juries, upon which all that we have, our Liberties, and Properties, and Lives depend, and prevent the Increment of any Jurisdiction whatever. The Conufance was disallowed; Per Willes Ch. J. Mich. 14 Geo. 2. C. B. Wells v. Trabern and Ery.

(M. 2) Conufance; How to be demanded and entered. Proceedings and Pleadings.

1. A Count; Conufance was demanded by the Mayor and Bailiffs of Coventry, and they show a Charter to this Purposes; the Demandant does not counterplead the Franchife, but a Stranger to the Plea assigns Reasons to the Court, that this Franchife ought not to be allowed; & non allocatur. If the Demandant in a Plea of Land counterpleads the Franchife, and the Tenant joins with the Claim of the Franchife, and it is found against the Franchife, the Demandant shall recover the Land; but if it be found against the Demandant, the Writ shall abate. Jenk. 13. pl. 32. cites 20 E. 3. Fitzh. Conufance, 46.

2. The King grants Conufance to A. of Pleas arising within certain Bounds; the King grants to B. the like Conufance within the same Bounds; C brings a Praecipe quod reddat against D. for Land within those Bounds; Both A. and B. claim Conufance; the Demandant and Tenant agree to the Conufance, but the Tenant did not join with either of the Patentees. This Controversy between the Patentees shall not be tried in this Case, because of the Delay of the Demandant, which fuch Trial would occasion; but by all the Counsel the Conufance in this Case shall not be granted to him who first demanded it; and the Right of the said Patentees shall be tried in another Action between them. Jenk. 19. pl. 36. cites 20 E. 3. Fitzh. Conufance, 46.

3. In Affife, a Man may challenge a Franchife by Attorney, if he has Warrant to challenge the Liberty; Quod Nota; Per Berff. and so it is usually done for the City of London in the Exchequer, B. R. and C. B. Br. Conufance, pl. 36. cites 22 Aff. 14.

4. Pleas against two in the City of York; the one came, and the other made Default, and the other appeared pleaded Not Guilty, and the Bailiffs of York prayed Conufance of the Plea, and Thorpe made them enter the Claim, adding Iden Dies to the other, for the Mitchief of the Franchife; Quere, if by this he shall have Conufance in this Case? or if he shall have it hereafter? Brook says it seems to him, that they shall have Conufance
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nuance in this Action, for in other Actions he shall have Conufance, though he did not demand it now. Br. Conulfance, pl. 37. cites 22 All. 50.

7. Note, that by Conulfance of Pleas granted by the King the Franchise shall make such mutual Fores and Execution as is at Common Law, for all this appertains to the Conulfance of Pleas. Br. Grants, pl. 171. cites 22 All. 61.

6. In Account Conulfance of Plea shall not be alleged by the Defendant, but shall be demurred by the Bailiff of the Franchise; Per Thorp J. and per onmes, and otherwise it shall not be granted; Quod Nota. Br. Conulfance, pl. 31. cites 39 E. 3. 17.

7. Refummons is sued out of a Franchise for Failure of Right for Conulfance of the Plea granted, and the Bailiff came and traversed the Caufe, and his Challenge was not entered upon the Affit, which was cast by the Tenant upon the Refummons. Br. Conulfance, pl. 66. cites 39 E. 3. 17.

8. Note, that the Defendant cannot challenge the Franchise, inuulfach as Conulfance of Plea is granted there, but the Bailiffs of the Franchise shall demand it. Br. Conulfance, pl. 67. cites 39 E. 3. 17.

9. Conulfance, when it is granted that none of the Vill shall be impiegled but in the Vill before the Steward &c. For in this every Inhabitant has Interest. Contra of Conulfance of Pleas granted; Note a Diverfi-

10. Where Conulfance shall be granted nothing shall be sent into the Franchise but the Original, and this at such Time as the Franchise may do Right to the Parties, as the Court of the King may; Quod Nota. Br. Conulfance, pl. 8. cites 40 E. 3. 2.

11. Record which is removed out of a Franchise by Error shall be sent into Chancery, and thence into B. R. by Mittimus. Br. Caufe a Remover, pl. 46. cites 44 E. 3. 37. 48 E. 3. 20, and 49 E. 3. 21.

12. Where Record is removed by foreign Plea, it shall be at Affit before the Removemen, and when it is removed, the Bank can do nothing but try this Affit, and can not take Plea to the Writ after the left Conulfance. Ibid.

13. Affife in Com. Warwick. The Conulfance was demanded by the Mayor &c. and in Coventry the Tenant pleaded foreign Plea, by which the Parol was demanded before the Justices of Affife, but non patet How; It seems that this ought to be by Re-attachment clearly to give the Parties Day in Court, and this was the Practice in the Court of the Bishop of Ely, who had Conulfance extra Comitatum of Canterbury; The Tenant in H. pleaded Battle of the Plaintiff in Affife, and the Plaintiff said, that he was Muller, and not Battard, and because the Justices of the Bp. did not write to the Bp. the Plea was remanded before the Justices of Affife, and the Bp. demanded Conulfance again, but could not have it, Quod Nota. Br. Parol, or Plea remanded, pl. 3. cites 22 H. 6. 58.

14. The Caufe is traversable always where the Nature of the Land shall be changed, and where a third Person is to be prejudiced, and not where it is removed out of one Court of the King into another. Br. Caufe a Remover, pl. 8. cites 34 H. 6. 49.

15. To the Demand of Conulfance upon the Original the Demandant may say that the Land is out of the Franchise, and join Affit; Quod Nota. Br. Conulfance, pl. 5. cites 34 H. 6. 53.

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16. In Frecce quod reddat, the Tenant is issued, and no Challenge entred to claim any Conuance of Plea, there, at the Day of Eftion, it he demands Conuance he shall not have it; For the Court is seased without Challenge; Quod Nota Br. Conuance, pl. 6. cites 35 H. 6 24.

17. And after *issue was taken that the Land is out of the Franchise, by Reason that a Challenge of the Franchise at the Day of Eftion was found on the Remembrance of the Clerk of Eftions, and the Tenant demanded the View, and could not have it, because this Issue shall be first tried, by which the Tenant was compelled to join to the one or the other, and so he did to the Demandant. Ibid.

18. Trefpafs against the Albion of B. who appeared by one Attorney as Party, and appeared by another Attorney, and said, that the Place where &c. was within his Liberty &c. and demanded Conuance of the Plea before his Bailiff, by which Day was given to be advised, and at the Day he demanded Conuance to be allowed; and per Moyle, he ought to have Caufe, and also he has lost it by reafon of the Day which was given over; but per Prior, Atton, Danby, Daves, and Needham, Conuance shall be granted; For the Day given [does not] out the Matter, because he challenged it before, and also it is of Record here, that the Liberty has been at another Time allowed; For to the first Demand of the Conuance he shall sue Caufe, as Letters Patents of the King &c. and Writ of Allowance, which shall be entered of Record, and then this Julicies after, upon which, by Prior he shall have Conuance, Quod Curia conceiuit, though he was Party, for his Bailiff or Steward before where &c. may be indifferent, as the Julicies are between the King and Party, and if not, it is a Power of Right, and the Party may have Remainnois, by which the Defendant traversed the Caufe, and said, that the Place is out of the Liberty &c. and held there that the Defendant thrill join to the one or to the other. Br. Conuance, pl. 7. cites 35 H. 5 54.

19. He who has Conuance of Pleas may demand the Conuance in Person, or by Bailiff, or by Attorney, but the Bailiff cannot make Attorney to demand Conuance for his Master; Costra of the immediate Attorney of the Master. Br. Conuance, pl. 50. cites 6 H. 7. 9.

20. The King granted to the Burgeffes of Pomfret, that they shall implead before themselves, and that no Burgefs shall implead another of any Thing done in P. but in the same Vill, and that they shall not be impleaded in another Place, but there of any Thing done there, and in Trefpafs against A. D. he said, that he was Burgefs of P. and that it appeared that the Trefpafs was done in P, as appears in the Declaration, Judgment of the Writ; and by Judgment the Writ was abated; Quod Nota; and it was not by Demand of Conuance, but by Plea of the Burgeffes, and per Keble, this Judgment shall serve all other Burgeffes hereafter without fwhelng their Charter again. Br. Conuance, pl. 52. cites 9 H. 7. 12.

21. When a Lord demands Conuance of Pleas, Day ought to be given to the Franchise, otherwise it is a Discontinuance of the Nifi Prius; For there ought to be a Special Day for the Parties here to hear Judgment in this. Lane 81. Arg. cites 10 H. 7. 26. [but it seems that the Book is miscited.]

22. In an Action brought against an Attorney of C. B. for affailing the Plaintiffs in the City of Wells, the Bishop of Bath and Wells, by his Attorney demanded Conuance of all Pleas of Land &c. within the Lut City and Liberty of Wells, and of all Personal Pleas of Debt and Trefpafs &c. granted by King E. 4. to the then Bishop of Bath and Wells, and his Successors, and also threw Letters Patents of Q. Eliz. in Confirmation

Lane 87. Arg. lays, that this is where the
Plea is to be sent into an
other Court,
As Durham &c. where the Parties had no Day before, and that there a Day ought to be given. —
of the said Grant of E. 4. and also her Close Writ directed to the Justices to permit him to enjoy his Liberties, and thereupon the Conunance was allowed. Bendl. 233. 234. pl. 262. Mich. 16 Eliz. Whoper v. Harewood.

23. On a Plaint levied in Yarmouth against T. S. he was committed, and being removed into B. R. by Habeas Corpus cum Causa, the Plaintiff rescoved a Charter granted to the Bailiffs of Y. that every Person of that Place should be impleaded there, and not elsewhere, and prayed a Proceedendo, but it was denied, because B. R. cannot be ouled of their Jurisdiction without some Matter of Disticharge pleaded and recorded, and this Habeas Corpus being directed to the Bailiffs &c. they might as well have returned this Charter as the Cause, and then the Proceedendo should be granted; but by their not doing so, they have lost that Advantoge. Roll Rep. 232. pl. i. Mich. 13 Jac. B. R. Sterling's Case.

24. It seems, that the Conunance is demanuable by the Lord of the Franchise, and not pleandable to the Jurisdiction by the Party. Lev. 89. Hill. 14 & 15 Car. 2. B. R. obiter.

25. The Habeas of Attorney to demand Conunance ought to be filed in Court. Lev. 89. cites Pach. 18 Car. 2. B. R. per Car.

26. In Case of Conunance where the Lord is Party, Entries shall be made on the Roll of the Day and Place when he will try the Cause before his Steward; Per Car. agreed. Sid. 283. pl. 16. Pach. 18 Car. 2. B. R. Grange v. Simpson.

27. In Fijclement for Lands in the Isle of Ely, after Not Guilty pleaded 1 Salk. 235; it was objected on the Roll, that the Privilege of the County Palatine, that no Jury should be returned out of the Isle, and so be ventre facias was prayed to R. the next Vill in the County of Cambridge, Et quia ineditur iusticiam hoc ratione causanre ex concordia; it was objected, that the Defendant's Conunon should have been entered like cause on the Roll, (viz.) Et quia Defendens nec non deductit hanc ex concordia, but adjudged, though some Proceedences are so, yet otherway is well enough; for if the Fact is otherwise, he may bring a Writ of Error, and alignt it for Error. 3 Salk. 110. pl. 1. Hill. 2 W. 3. B. R. Cotton v. Johnfon.

28. Then it was objected, that the Entry ought to have been Quod Liberti Tenentes nec Restiduces in eadem insula non aggrident debent ad alii quam Juratam extra Libertati illam factam, for otherwise it doth not appear to be a Privilege annexed to the Inhabitants, but a mere Cognitum Judgment in the Bishop; however, the Trial being in the County of Cambridge, of which this is Passed, the Court held it to be aided by the Statutes 16 E 17 Car. 2. cap. 8. 3 Salk. 110. pl. 1. Hill. 2 W. 3. B. R. Cotton v. Johnfon.

29. Fijclement in Court of Ely removed by Certiorari, Serjeant Wright demands Conunance for the Bishop of Ely, being a Royal Franchise, and Stone had a Warrant of Attorney for that Purposse; Holt said, there must be a new Declaration in this Court, and then after the Defendant's appearance, the Conunance is to be demanded, for the Defendant may counterplead the Conunance, but as he will not appear you may have a Proceedendo; we must have a Roll made of it, that the Court may be poifieled, then we appoint a Day upon the Roll, and if you do not hold your next Affixe, you lose your Conunance, it is a Continuance [Discontinuance] of your Plea. Day was given to the Caufe why there should not be a Proceedendo. Comb. 319. Hill. 6 W. 3. B. R. Wild v. Villers.

30. One may preferre to hold Pleas, but not to have Conumance of Pleas; For that excludes other Jurisdictions; Per Holt Ch. J. Cumb. 282. Trin. 6 W. & M. in B. R. in Case of Millard v. Cole.
31. In Trufpafs Quare Claufum fremit removed by Certiorari into B. R. and Bail put in, Conufance was demanded for the Bishop of Ely; And first, the Warrant of Attorney under the Bishop's Seal was read in Latin, and then the Record as it was, viz. Trufpafs &c. and then the Record proceeded, Et modo ad hunc Diem venit Simon Epiphanes Elenius per Jo- hannem Stone Antoniutum saum, & petit Cognitionem &c., quia dicit, that the place where &c. is within the Liberty of the Bishop; & quod Alias, feliciter, Mich. 23, Linn. 3, B. R. Rot. 44. in Trufpafs and Battery, and Hill. 21 E. 3, Rot. 21. B. R. in Trufpafs, quare &c. and Hill. 17 & 18, Rot. 229. B. R. in Trufpafs and Ejufdem, and Mich. 23. Car. 2. B. R. Rot. 151. in Trufpafs, Affaiuis and Battery, this Conufance was allowed, and he prays his Privilege, Habendi Cognitionem, and then the Entry proceeds, quae- stum est of the Plaintiff, &c. dicit, ensus, &c. propter quo allocatur &c. and then Day is given upon the Roll to the Parties at Ely, &c. &c. &c. of the Bishop quod celeris Jufititia fiat. The two Late Records were produced, in Court, but because the Old Records were not produced, and because it was the last Day of the Term, and therefore unfit for such a Motion, and because Holt Ch. J. doubted of the Matter, it was ad- journed; for Holt Ch. J. said, that the true Method of pleading should be, to lay Ufage immemorial, and not to rely upon it, but to produce the Allowance in B. R. or in Eyre, and this is agreeable to the Reason of the Allowance in B. R. or in Eyre, and therefore not to lie in Prefcription, but in Grant, that alone cannot be a Title to them, but because that if the Charter was before Time of Memory &c. before the first of R. 1. the said Charter could not be pleaded, therefore by the Statute of Quo War- ranto, 13 E. 1. one may lay a Ufage, which is an Argument of an Ancien Grant time whereof &c. and then they produced the Allowance; and if no such Ufage hath been, then the Prejudgment of the Law is destroy- ed, and they must plead the Patent; for Allowances in B. R. or in Eyre are not pleachable. See Foller v. Mitton. See Kelw. 189, 192. 1 Sid. 103. It will be difficult to maintain this Method of Pleading. In the Case of 17 & 18 Car. 2. Holt said, he remembered, that no Exception was taken to the Manner of the Demand. Adjourned. 1. Ld. Raym. Rep. 427, 428. Hill. 10 W. 3. Foller v. Hexham.

2. Mod. 623 S. C. and by Holt Ch. J. the Conufance &c. for the Lord of the Franchise by himself, his Bailiff, or Attorney, to come into the Superior Court, and produce his Charter of Conufance, 32. The Lord only can take Conufance of Pleas, and neither the Plain- tiff nor Defendant, for he cannot plead it to the Jurisdiction of the Court, but the Lord of the Franchise, by his Bailiff or Attorney, must come in and claim the Franchise; and though the Lord ought to have the Action, yet this Court is not ouit by it, but the Plea remains under the Con- trol of this Court; for Day is given here upon the Roll to the Parties to be in the Inferior Court at a Day certain, and the Parties are command- ed there, and the Tenor of the Record of this Court is sent for the In- ferior Court to proceed, and if Justice is done there, all is well, but the Record is here; and if Justice is not done there, as the Court there does not proceed upon the Day prefixed, or if the Judge miscarries himself &c. or the Plaintiff shall have a Rejummons; and it is the Benefit of the Lords only, that it is considered in this Matter; for Holt Ch. J.
Confiance of Pleas.

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33. But he said, that these jurisdictions were Hardships to the Subject, and allowed by 27 H. 8 cap. 24. rather for their Antiquity than for instance of it any other Reason, and they were detrimental to the Prerogative of the in the Crown, and therefore suitors were always allowed to prevent the Grievances of these interior Jurisdictions. Ibid.

[N. 2] [And How the Process &c. shall be.]

4. When a Court holds Plea upon Conftime of a Plea granted, Br. Executio, the Process against the Party shall be by Captain, as other justices do.

22 Art. 61.

is appurtenant to Cognizio Placitorum; per Thorpe, Baillif, and Bank. — Br. Constable, pl. 38. cites S. C. & S. P. and for the same Reason, and because without that Conftime cannot be made.


5. And they shall award the grand Distress, if the Cause requires Br. Executio, it. 22 Art. 61.


6. And

(N) At what Time it is to be granted.

1. Conftime shall not be granted before the Write is served, as if the Defendant pays in an Aside, that he was not attainted by fifteen Days. Conftime shall not be granted. 13 H. 4. 11.

2. Conftime shall not be granted till the Defendant has made Defence, for if he will not make Defence, the Plaintiff shall take Advantage against him for his Want of Defence. 14 H. 4. 20. Br. Constit. cites S. C.

3. In Trespasses against two, if one makes Default, and the other appears and pleads, and Conftime is demanded, yet it shall not be granted till the other appears, for upon a Bill or Writ, the Court cannot grant Conftime in part. 22 Art. 50. adjudged.

IV. In Formerdon, the Tenant was osoined, and Day given till Offab. Mich. at which Day Conftime of the Plea was granted to the Bailiffs of E. quod Nota, at the second Day, et non patet ibidem, for it was challenged at the first Day. Br. Conftime, pl. 19. cites 11 H. 4. 87.
Conuance of Pleas.

6. And if he comes not, he shall lose his Issues. 22 Aff. 61.

7. And if the Party is convicted, he shall be fined or imprisoned, or shall be in * Misericordia of him to whom Conuance is granted, if the Case requires it, for without these, Conuance would be of no Effect. 22 Aff. 61.

(N. 3) Allowed. In what Cases.

1. In Aulife, the Bailiff of B. demanded Conuance, and the Tenant said in proper Person, that the Tenements were not within the Franchise, and the Aulife came ready to pass upon this Point, Whether it lies within the Franchise or not? and the Tenant at another Day was demanded and came by Bailiff, and because this Issue is between the Bailiff of the Franchise, and the Tenant, out of the Point of Aulife, it was advedted to the Court, that the Bailiff of the Tenant cannot be Party to this Issue, by which the Decision of the Tenants was recorded, and it was demanded of the Bailiff of B. what he has to shew to have Conuance, and he shewed Record Sub pede fictili allowing it in Aulife in another County; and it was laid that it is insufficient; for he might have it granted in one County and not in the other; also the Claimer of Conuance was of all his Tenements within his Fee, and the Record did not make Mention of so large a Claim, but against the Plaintiff the Tenant was by Bailiff, but not against the Bailiff of the Franchise; and they were adjourned into Bank, and there he shewed Charter, and had the Conuance. Br. Conuance, pl. 43. cites 28 Aff. 13.


3. Upon Failure of Right in a Franchise, and a Refummons sued, the Court of the Franchise shall never afterwards have Conuance of that Plea. Jenk. 34. pl. 66. cites 11 H. 4. 27. Fitzh. Conuance 83.

4. Where the Superior Court is seised of the Plea, Conuance is not grantable. Jenk. 34. pl. 66.

5. Nor is it grantable of a Plea out of the County-Court; for this Court cannot award a Refummons. Jenk. 34. pl. 66.

6. If the King grants Cognitionem Placitudum extra Curiam suam to J. N. and his Heirs, and dies; there the Grant is void, because he did not say Extra Curiam suam & Hered. suorum, but there a Confirmation of the new King will lerne; But Brook says, Quere; For Mirum, where the Grant is void before by the Death of the King who granted. Br. Conuance, pl. 63. cites 2 H. 7. 10.

7. Grant of Conuance of Pleas * before Time of Memory shall not be allowed at this Day, if it has not been allowed before in Eyre. Br. Conuance, pl. 65. cites 21 H. 7. 29.

8. And if it be granted in B. and C. and has been allowed in B. and not in C, it shall not be allowed in C, now, though the Grant be genuine; Quod Nota. Ibid.

9. Though
(N. 4) Allowed. How. And to what Court. And the Effect thereof.

1. The King grants Conufance to A. of Pleas arising within certain Bounds; the King grants to B. the like Conufance within the same Bounds. C brings a Præcipæ quod reddat against D. for Land within those Bounds; both A. and B. claim Conufance; The Demandant and Tenant agree to the Conufance, but the Tenant did not join with either of the Patentees. This Controversie between the Patentees shall not be tried in this Cafe, because of the Delay of the Demandant, which such Trial would occasion; but by all the Counfel, the Conufance in this Cafe shall be granted to him who first demanded it, and the Right of the said Patentees shall be tried in another Action between them. Jenk. 19. pl. 36. cites 20 E. 3. Fitzh. Conufance, 46.

2. Upon Conufance granted, the Original shall not be removed out of the Superior Court, nor shall the Record, but only a Transcript, so that upon a Returnmons, upon a Failure of Justice in the inferior Courses, the Superior Court may proceed; By all the Counfel. Jenk. 31. pl. 61. cites 26 All. 24.

3. At the Nifi Prima of Tenements in W. the Bailiffs of W. said, that the King by Charter, which they shewed, had granted that no Inquest should be taken of Land in W. but within the same Vill, and prayed that they should not take the Inquest contrary to the Charter. Stoul. said, this ought to have been claimed in Bank. For we have no Warrants in the Writ of Nifi Prima to go to W. to take it, but to N. by which they took the Inquest. Br. Conufance, pl. 44. cites 29 All. 13.

4. In Præcipæ quod reddat, the Tenant made Attorney, and after Conufance of Pleas is granted, there the Attorney shall remain in Record in the Franchife, and shall be onfained there, and not the Tenant; and so fee that the entire Record is sent to the Franchife, and not the Original only. Br. Conufance, pl. 64. cites 40 E. 3. 11. and 21 E. 3. 45. accordingly. But contra of that which is in the Franchife, and removed into Bank.

5. Note, by all the Justices, that Conufance of Pleas, or other Thing once allowed, shall bind the King till reversed. Br. Conufance, pl. 54. cites 13 E. 4. 5.

6. Conufance may be demanded by Attorney; Per Curiam. Br. Conufance, the Demand by an Attorney is not good if he has not a Warrant of Attorney in Latin, or Warrant of Attorney in English is not allowable in such Cafe. Sid. 103. Hill. 14 & 15 Car. 2. B. R. Bishop of Ely's Cafe. And the Attorney must have a Warrant in Court, and it is not sufficient for him to sa[y] that it is in his Chamber. Sid. 143. Bishop of Ely's Cafe.
Conufance of Pleas cannot be pleaded by a Defendant, but must be demanded by the Lord of the Franchile, his Bailiff, or Attorney; Per Holt Ch. J. 12 Mod. 666. Hill. 15 W 3. in Cae of Taylors v. Reingolds.

16 H 7, 16. 7. A Charter by which Conufance was demanded bore Tefte in the Time of William the Conqueror, before Time of Memory, and though it had been allowed in C. B. yet because it had not been allowed in Eyre, it was disallowed. Br. Conufans, pl. 51. cites 9 H. 7. 10. [12. a. at the End of pl. 6. the Abbot of Battle's Cae.]

Gilb. New Abr. 560. S. P. in totidem Verbis, and cites the same Cae.

8. No Court can demand Conufance unless it be of Record, because all Courts of Record are the King's, though another may have the Profits of them. Co. Litt. 117. b. So that although the Caeue goes out of the King's Courts at Westminster, yet it goes to another of the King's Courts, to which he has granted the Privilege of determining the Caeues arising within a limited Jurisdiction; but it is below the Dignity of the King's Courts to part with any Caeue to another's Court, such as the County-Court &c. Gilb. Hist. of C. B. 155. and cites 2 Inf. 140.