inter præfat' Petrum Vavaſor armigerum ex una parte, & præd' Andream Windſor, Williel' Vavaſor, Petrum Vavaſor junior', & Johan' Laundere ex altera parte, gerens dat' primo die Februarii anno quinto decimo ſupradicto: Cujus quidem Indenturæ tenor ſequitur in hæc verba. This Indenture made the firſt Day of Febʒuary in the 15 Year of the Reign of our Sovereign Lady Elizabeth by the Gʒace of God Queen of England, France, and Ireland, Defender of the Faith, &c. Between Peter Vavaſor of the Middle-Temple in London Eſquire of the one Party, and Andrew Windſor of the ſame Houſe Eſquire, William Vavaſor of Linton in the County of York Gent. Peter Vavaſor the Younger of Spaldington in the County of York Gentleman, and John Laundere of Staple Inn in Oʒ near London Gentleman on the other Party, Witneſſeth, that it is covenanted, concluded, condeſcended, declared, and fully agreed betwixt the ſaid Parties, and either of the ſaid Parties foʒ him and his and their Heirs, Executoʒs, and Adminiſtratoʒs doth conclude, condeſcend, declare, and agree by theſe Pʒeſents to and with the other, his and their Heirs, Executoʒs, and Adminiſtratoʒs in Manner and Foʒm following: That is to ſay, whereas the ſaid Andr. Will. Pet. the Younger and John have this pʒeſent Term of S. Hill. recovered to them and to their Heirs foʒ ever by Writ of Entre ſur diſſ. in le poſt had and pʒoſecuted againſt the ſaid Peter Vavaſor Eſquire, beforе Sir James Dyer Knt. Richard Harper, Roger Manwood, and Robert Mounſon Juſtices to our ſaid Sovereign Lady the Queens Majeſty of her Court of Common Pleas at Weſtminſter, accoʒding to the uſual Oʒder and Foʒm of Common Recoveries heretofoʒe uſed, the Manoʒ of Spaldington with the Appurtenances and divers other Lands, Tenements, and Hereditaments ſcituate, lying, and being in the Towns, Pariſhes, Hamlets, and Fields of Spaldington, Willytoft, Gripthorpe, Bubwith, Brighton, Southcave, and Replingham in the ſaid County of York, at the Time of the ſaid Recovery had being the Inheritance of the ſaid Peter Vavaſor Eſq; other than ſuch Meſſuages, Lands, Tenements, and Hereditaments as the ſaid Peter Vavaſor Eſq; lately purchaſed of one Henry Johnſon Eſq; by the Names of the Manoʒ of Spaldington, foʒty Meſſuages, 30 Toſts, 30 Gardens, 3 Dovehouſes, one Windmill, 2000 Acres of Land, five Hundʒed Acres of Meadow, two Thouſand Acres of Paſture, five Hundʒed Acres of Wood,

Wood, two Thousand Acres of Moor with the Appurtenances in Spaldington, Bubwith, Brighton, Willitoft, Gripthorpe, Southcave, and Replingham, That the Intent and true Meaning of all the said Parties now is, and at the Time of the said Recovery so had and suffered was, That the said Andrew, William, Peter the Younger, and John, and their Heirs, and the Heirs of every of them, immediatly from and after the said Recovery so had and executed, should and shall stand and be seised of the said Manor and of all other the Lands, Tenements, and Hereditaments, in the said Recovery meant and intended to be comprised, that is to say, of and in the said Manor of Spaldington, with the Appurtenances, and also of and in the Messuages, Tofts, Gardens, Lands, Tenements, and Hereditaments, with the Appurtenances in Spaldington, Willitoft, Gripthorpe, Bubwith, Brighton, Southcave, and Replingham, at the Time of the said Recovery had, being the Inheritance of the said Peter Vavasor Esquire, the Lands, Tenements, and Hereditaments lately purchased by the said Peter Vavasor of Henry Johnson Esquire only excepted as is aforesaid, to the only Uses and Intents hereafter by these Presents set forth and declared, and to none other Uses, Intents, nor Purposes: That is to say, to the Use of the said Peter Vavasor Esquire for Term of his natural Life, without Impeachment of any Manner of Waste, and after the Decease of the said Peter Vavasor Esquire then to the Use and Behoof of the eldest Son lawfully begotten of the said Peter Vavasor Esquire and of the Heirs Males of the Body of the said eldest Son lawfully begotten: And for Default of such Issue Male of the Body of such eldest Son, to the Use of the second Son of the Body of the said Peter Vavasor lawfully begotten, and of the Heirs Males of the Body of the said second Son lawfully begotten, &c. (And so to the ninth Son of the said Peter.) And for Default of such Issue Male of the Body of such ninth Son, to the Use of Edw. Vavasor Brother of the said Peter Vavasor Esq; for Term of his natural Life without Impeachment of any Waste, and after his Decease to the Use of the eldest Son lawfully begotten of the Body of the said Edward and of the Heirs Males of the Body of the said eldest Son lawfully begotten: And for Default of such Issue Male of such eldest

Son, to the Uſe of the ſecond Son of the Body of the ſaid Edward Vavaſor lawfully begotten, and of the Heirs Males of the Body of the ſaid ſecond Son lawfully begotten, &c. (And ſo to the ninth Son of the ſaid Edward.) And for Default of ſuch Iſſue Male of the Body of ſuch ninth Son, to the Uſe of George Vavaſor Brother to the ſaid Peter Vavaſor Eſq; for Term of his natural Life without Impeachment of any Waſte, and after his Deceaſe to the Uſe of the eldeſt Son lawfully begotten of the Body of the ſaid George Vavaſor and of the Heirs Males of the Body of the ſaid eldeſt Son lawfully begotten: And for Default of ſuch Iſſue Male of the Body of the ſaid eldeſt Son, to the Uſe of the ſecond Son of the Body of the ſaid George Vavaſor lawfully begotten, and of the Heirs Males of the Body of the ſaid ſecond Son lawfully begotten, &c. (And ſo to the ninth Son of the ſaid George.) And for Default of ſuch Iſſue Male of the Body of ſuch ninth Son, to the Uſe of Ralph Vavaſor Brother to the ſaid Peter Vavaſor Eſquire for Term of his natural Life without Impeachment of any Waſte, and after his Deceaſe to the Uſe of the eldeſt Son lawfully begotten of the Body of the ſaid Ralph Vavaſor, and of the Heirs Males of the Body of the ſaid eldeſt Son lawfully begotten: And for Default of ſuch Iſſue Male of the Body of ſuch eldeſt Son, to the Uſe of the ſecond Son of the Body of the ſaid Ralph Vavaſor lawfully begotten and of the Heirs Males of the Body of the ſaid ſecond Son lawfully begotten, &c. (And ſo to the ninth Son of the ſaid Ralph.) And for Default of ſuch Iſſue Male of the Body of ſuch ninth Son, to the Uſe of Marmaduke Vavaſor Brother to the ſaid Peter Vavaſor Eſq; for Term of his natural Life without Impeachment of any Waſte, and after his Deceaſe to the Uſe of the eldeſt Son lawfully begotten of the Body of the ſaid Marmaduke Vavaſor, and of the Heirs Males of the Body of the ſaid eldeſt Son lawfully begotten, &c. (And ſo to the ninth Son of the ſaid Marmaduke.) And for Default of ſuch Iſſue Male of the Body of ſuch ninth Son, to the Uſe of Robert Vavaſor Brother to the ſaid Peter Vavaſor Eſq; for Term of his natural Life without Impeachment of any Waſte, and after his Deceaſe to the Uſe of the eldeſt Son lawfully begotten of the Body of the ſaid Ro. Vavaſ. and of the Heirs Males of the Body of the ſaid eldeſt Son lawfully begotten, &c.

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(And ſo to the ninth Son of the ſaid Robert.) And for Default of ſuch Iſſue Male of the Body of ſuch ninth Son, to the Uſe of Thomas Vavaſor Brother of the ſaid Peter Vavaſor Eſq; for Term of his natural Life without Impeachment of any Waſte, and after his Deceaſe, to the Uſe of the eldeſt Son lawfully begotten of the Body of the ſaid Thomas Vavaſor and of the Heirs Males of the Body of the ſaid eldeſt Son lawfully begotten, &c. (And ſo to the ninth Son of the ſaid Thomas. And for Default of ſuch Iſſue Male of the Body of ſuch ninth Son, to the Uſe of Richard Vavaſor Brother to the ſaid Peter Vavaſor Eſq; for Term of his natural Life without Impeachment of any Waſte, and after his Deceaſe, to the Uſe of the eldeſt Son lawfully begotten of the Body of the ſaid Richard Vavaſor and of the Heirs Males of the Body of the ſaid eldeſt Son lawfully begotten, &c. (And ſo to the ninth Son of the ſaid Richard.) And for Default of ſuch Iſſue Male of the Body of ſuch ninth Son, to the Uſe of the Heirs Males of the Body of Sir Peter Vavaſor of Spaldington Knt. lawfully begotten: And for Default of ſuch Iſſue Male, to the Uſe of the right Heirs of the ſaid Richard Vavaſor for ever. Provided, &c.

Et ulterius recognitores prædict' dicunt ſuper ſacramentum ſuum prædict', qd' prædict' ten' cum pertin' in eorum viſu poſit' & in querela prædict' ſpec', & in recuperatione præd' compriſat', ſunt parcella man'iorum t'rarum & ten'torum in indentur' prædict' ſpec' & non alia neq; diverſa; ſed utrum indentura prædict' poſt recuperationem prædict' per præfat' Pet. Vavaſor armiger' in forma prædict' fact' & habit', gerents datum prædict' primo die Februarii, ac primo deliberat' prædicto quinto decimo die Februarii anno quinto decimo ſupradict', poſt recuperationem prædict', exiſten' ad uſus in eadem ſpec', ſit bona & ſufficiens in lege ad ducend' & declarand', Anglice, to lead and declare uſus præd' recuperationis prædictorum tenementorum in viſu' recognit' prædictorum poſit' & in querela prædicta ſpec', cum pertinen', necne, iidem recogn' penitus ignorant, & inde petunt adviſam'tum Juſtic' prædictorum, & Cur hic, &c. Et ſi eiſdem Juſtic' & cur' hic videbitur, quod indentura prædicta per præfatum Petrum Vavaſor armigerum poſt prædictam recuperationem in forma prædicta facta & habita, gerens datum prædicto primo die Februarii, ac primo deliberat' præd' quintodecimo die Februarii ann' quinto decimo ſupradict' poſt recup'aco'em prædict' exiſten' ad uſus in eadem ſpec', ſit bona & ſufficiens in lege ad ducend' & declarand', Anglice,

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to lead and declare uſus recuperationis prædictæ de tenementis prædictis in viſu recognitor' prædictorum poſit' cum pertinentiis & in querela prædicta ſpec', tunc iidem recognitor' dic' ſuper ſacramentum ſuum prædictum, qd' eadem recuperatio de tenementis prædictis in viſu recognitor' prædictorum poſit', cum pertinentiis, & in querela prædict' ſpec', fuit ad eoſdem uſus in eadem barra ipſius Edwardi ſpec' modo & forma prout idem Edwardus in barra ſua prædicta ſuperius allegavit; et quod prædicti Georg. Richard. Coats, Johan', Willielmus, Robert. Thiſſylwood, and Robert. Ward non diſſeiſ. præfat' Thom. Dowman & Eliz. de tenementis prædictis in eorum viſu poſit' in querel' prædicta ſpec', cum pertinentiis, prout iidem Georgius, Richardus Coats, Johannes, Willielmus, Robertus, & Robert. ſuperius allegaverunt. Et ſi videtur eiſdem Juſtic' & Cur' hic, quod indentura prædicta per prædictum Petrum Vavaſor armig' poſt recuperationem prædictam in forma prædicta fact' & habit', gerens dat' prædicto primo die Februarii ac primo deliberat' prædicto quintodecimo die Februarii, anno quintodecimo ſupradicto, poſt recuperationem prædictam, minus ſufficiens in lege exiſtit ad ducend' & declarand', Anglice, to lead and declare uſus recuperationis prædictæ tenementorum prædictorum in viſu recogn' poſit' & in querela prædicta ſpec', tunc iidem recogn' dic' ſuper ſacramentum ſuum prædictum, quod eadem recuperatio tenementorum prædict' non fuit ad eoſd' uſus in eadem barra ipſius Edwardi ſpec' modo & forma prout prædicti Thomas Dowman & Elizab. ſuperius allegaverunt; & quod prædicti Tho. Dowman & Eliz. fuer' ſeiſit' de tenementis prædictis in viſu eorundem recognitor' poſit' & in querela prædicta ſpec', cum pertinentiis, in dominico ſuo ut de feodo in jure prædictæ Eliz. quouſq; prædicti Edwardus Vavaſor, Georgius Vavaſor, Richardus Coats, Johan. Lawſon, Willielmus Muſgrave, Robertus Thiſſylwood, & Robertus Ward ipſos Thomam Dowman & Eliz. inde injuſte & ſine judicio, ſed non vi neque armis, diſſeiſ. Et tunc aſſid' dampna ipſorum Thomæ Dowman & Eliz. occaſione diſſeiſinæ prædict' ltra miſ. & cuſtag' ſua per ipſos circa ſectam ſuam in hac parte appoſit' ad vigint' ſolidos, & pro miſ. & cuſtag' illor' ad decem ſolidos. Et quia Juſticiar' hic ſe adviſare voluunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies datus eſt partibus prædictis coram Juſticiar' hic prædict' apud hoſpitium Juſtic' in Chancery Lane London' uſq; diem Sabbathi proxim' poſt menſ. ſancti Michaelis proxim' futur', &c. de judicio ſuo inde audiendo, eo quod iidem Juſtic' hic inde nondum, &c. Et diverſæ aliæ Continuationes uſq; ad diem Sabbathi proxim' Poſt Craſtinum Animarum, &c. uſque

uſque diem Sabbati proxim' poſt Craſtinum Martini, &c. & uſque diem Mercurii proxim' poſt Octab' Sanct' Trinit', &c. Ad quem diem coram præfato *Roberto Shute* & *Johanne Clench* tunc Juſtic', &c. apud prædictum hoſpic' Juſtic' ven' tam prædict' Thomas Dowman & Eliz. quam prædict' Edward', Georgius, Richardus Coats, Johannes, Willielmus, Robertus, & Robertus per attornatos ſuos prædictos: & quia Juſtic' prædict' hic, &c. dies ulterius dat' partibus prædictis coram Juſtic' dictæ d'næ Regnæ ad aſſiſas in prædicto Com' Ebor' capiend' aſſignat' apud prædict' Caſtrum Ebor' uſque diem Lunæ ſextum diem Auguſti proxim' futur', &c. ante quem diem dicta domina Regina nunc per alias literas ſuas patent' quarum dat' eſt apud Weſtm' anno regni ſui viceſimo quarto, quarum tenor ſequitur in hæc verba, &c. Elizabeth. &c. dilectis & fidelibus ſuis *Johann. Clench* tertio Baroni & *Franciſco Gawdy* uni ſervienc' ſuoru' ad legem, Salutem: Sciatis, &c. (*Et tunc ſequuntur literæ patentes, &c.*) Et quia iidem Juſtic' hic ulterius ſe adviſare volunt de & ſup' præmiſſis priuſquam judicium inde reddant, dies, &c. coram iiſdem *Johann' Clench* & *Franſc' Gawdy* tunc Juſtic', &c. Ad prædict. hoſpitium uſque diem Sabbati proxim' poſt craſtinum animarum, &c. ad quem diem prædicti *Johan. Clench* & *Franciſc. Gawdy* tunc Juſtic' dictæ d'næ Reginæ ad aſſiſas in prædicto Com' Ebor' apud hoſpitium prædict' non venerunt, ſed a dicto hoſpitio ſe retraxer', eo quod ante diem illum propter infectionem aeris & peſtilentiæ mortalis hominum in civitate London' & ſurburbiis ejuſdem ac in civitat' Weſtm' tunc exiſten', termin' Sanct' Mich' qui tunc apud Weſtm' in Com' Middleſex teneretur a Weſtm' prædict' uſque caſtrum d'næ Reginæ, &c. adjornat', & ibidem tent' &c. Poſtea, dicta d'na Regina per alias literas ſuas patentes conſtituit *Johan. Clench* & *Franciſcum Rodes* unum Servien' ſuorum ad legem Juſtic' ad aſſiſas in prædict' com' Ebor', &c. Et dicti Juſtic' virtute dictarum literarum patent' poſtea ſcilicet die Lunæ in quarta ſeptim' Quadrageſimæ an' regni dictæ d'næ Reginæ nunc viceſimo quinto, apud Caſtrum Ebor', vener', coram quibus tunc & ibidem ven' prædicti Thomas Dowman & Elizab. per attornatum ſuum prædictum, & pet' breve de Reattachiament' præfat' Edward', Georg', Richard. Coats, &c. quod ſint coram Juſtic' dominæ Reginæ ad proxim' aſſiſas in prædicto comitatu Ebor' capiend' aſſign' apud prædict' caſtrum Ebor' tenend' auditur' recordum & judicium ſuum de aſſiſ. prædict' quæ fuit in cur' dictæ dominæ Reginæ nunc apud caſtr' prædict', ita quod aſſiſa illa tunc ſit ibi in eod' ſtatu quo fuit in Cur' dictæ d'næ Reginæ nunc cora' præfat' *Johan' Clench* & *Franciſco Gawdy* Juſtic' ad aſſiſas, &c. apud prædictum caſtrum Ebor' prædict' die Lunæ ſexto die Auguſti Anno

regni dictæ d'næ Reginæ nunc viceſimo quarto, quo die Aſſiſa prædict' adjornat' fuit coram iiſdem *Johan. Clench* & *Franciſco Gawdy* tunc Juſtic', &c. a prædict' caſtro Ebor' uſque prædict' hoſpitium Juſtic' in Chancery Lane London' uſque prædict' diem Sabbati proxim' poſt prædict' Craſtinum Animarum tunc proxim' ſequen', &c. Ad quas quidem proxim' Aſſiſas tent' apud caſtrum Ebor' prædict' die Lunæ viceſimo nono die Julii anno regni dictæ d'næ Reginæ nunc viceſimo quinto coram præfat' *Johann. Clench* & *Franciſco Rodes* tunc Juſtic' ad aſſiſas, &c. ven' tam prædict' Thomas Dowman & Eliz. per attornatum ſuum prædict' quam prædict' Edw. Georgius, Ric'us Coats, Johann', Will'us, Robertus & Robertus per prædict' Thomam Hall attornat' ſuum, & Vic' viz. Thomas Wentworth armiger modo mand', quod prædict' Edward' Vavaſor, Geor' Ric'us Coats, Johan', Willielm', Robertus & Robertus, &c. Et ſuper hoc dies dat' eſt eis eſſend' cora' Juſtic' dictæ d'næ Reginæ nunc de banco in banc' apud Weſtm' in Craſtin' Animarum proxim' futur' de audiend' & recipiend' quod eiſdem Juſtic' d'næ Reginæ de p'dict' banco adtunc ibidem conſiderand' videbitur in hac parte, eo quod iidem *Johan. Clench* & *Franciſcus Rodes* Juſtic' ad Aſſiſas, &c. inde nondum, &c. Ac aſſiſa prædict' cum omnibus eam tangent' eiſdem Juſtic' de Banco mittitur, &c. *Sequitur warrant' attornat', & breve de Reſummons in Rotulo, & tenor brevis de Reattach. ſequitur, & retorn' ejuſdem brevis.* Eliz. &c. Vic' Ebor' ſalutem. Reattach. Edw. Vavaſor Armig' Georgium, Richard' Coats, Johann', Willi'um, Robert', & Robertum, vel ballivos ſuos ſi ipſi inventi non fuerint, coram Juſtic' noſtris ad aſſiſas in com' tuo capiend' aſſignat' apud caſtr' Ebor' in com' tuo die Lunæ xxii. die Julii proxim' futur' auditur' record' & judicium ſuum de aſſiſa novæ diſſeiſ. quæ fuit in cur' noſtra apud caſtrum prædictum, quam quidem aſſiſam Thomas Dowman Armig' & Eliz. uxor ejus ibidem arrain' verſ. eos de ſex meſuagiis CCC. acr' terr', C. acr' prat' & ducentis acr' paſtur', cum pertin' in Spaldington, Willitoft, & Southcave, ita quod aſſiſa illa tunc ſit ibi in eodem ſtatu quo fuit in Cur' noſtra coram *Johann. Clench* tertio Barone de Scacc' noſtro & *Franciſco Gawdy* uno ſervien' noſtrorum ad legem, Juſtic' noſtris ad aſſiſas in com' tuo capiendas aſſignatis, apud prædictum Caſtrum Ebor', die Lunæ ſexto die Auguſti proxim' præterit', quo die aſſiſa prædicta certis de cauſis abinde adjornat' fuit, coram iiſdem Juſtic' n'ris, uſq; hoſpitium Juſtic' in Chancery Lane London uſque diem Sabbati proxim' poſt craſtinum animarum tunc proxim' ſequen': Et habeas ibi nomina pleg. & hoc breve. T. *Johann. Clench* apud caſtrum Ebor' xi. die Marcii anno regni noſtri viceſimo quinto. Frankland, Creſſy. Infranominat' Edw. Vavaſor, Geo. Richardus Coats, Johan', Willi'us, Rober-

bertus, & Robert' nihil habent nec aliquis eoru' aliquid habet in balliva mea per quod poſſunt attach', vel aliquis eoru' attach' poteſt, nec habent, nec aliquis eorum habet ballivum vel ballivos, nec ſunt invent' nec aliquis eorum eſt invent' in eadem. Thomas Wentworth armiger vic'. Et modo hic ſcil' apud Weſtm' prædictam ad hunc diem, ſcil't ad prædict' Craſtinum Animarum, ven' tam prædicti Tho. Dowman & Eliz. per prædict' Henricum Creſſy attornat' ſuum, quam prædicti Edwardus Vavaſor, Georgius, Rich' Coats, Johan', Will', Robert' & Robert' per Thomam Algar attorn' ſuum: Et quia Juſtic' de banco hic ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies dat' eſt partibus prædictis hic uſque in octabis ſc'i Hilarii *(& ſic continuatur in octabis ſc'i Hillarii anno ſequente)* Ad quem diem hic ven' tam prædict' Thomas Dowman & Eliz. quam prædicti Edward Vavaſor, Georgius, Richardus Coats, Johann', Will'us, Robert' & Robert' per attornatos ſuos p'dictos: Et ſuper hoc viſis præmiſſis, & per Juſtic' hic plene intellect', videtur eiſde' Juſtic' hic, quod prædicta indentura per præfatum Petrum Vavaſor ar' poſt p'dictam recuperationem in forma prædicta fact' & habit', fuit bona & ſufficiens in lege ad ducend' uſus recuperationis prædictæ de tenementis prædictis cum pertin', ſicq; eadem recuperatio de ten'tis p'dict' cum pertin' in viſu recogn' aſſiſæ prædictæ poſit' & in querela prædicta ſpec', per præfat' Andream Windſor, Willi'um Vavaſor, Petrum Vavaſor junior', & Johannem Laundere ver', prædict' Petrum Vavaſor armigerum in forma p'dicta habit', fuit ad eoſdem uſus in prædicta barra prædict' Edwardi Vavaſor ſuperius ſpec', modo & forma prout idem Edwardus in barra ſua prædicta ſuperius allegavit: Ideo conſiderat' eſt, quod prædicti Thomas Dowman & Eliz. nihil capiant per bre' ſuu' prædict', ſed ſint in miſericordia pro falſo clamore ſuo: Et prædicti Edwardus Vavaſor, Georgius, Ric'us Coats, Johannes, Will'us, Robert' & Robert' eant inde ſine die, &c.

Paſch. 28 Eliz. *which is entred in* Communi Banco inter plac' terræ, *Mich.* 25 & 26 Eliz. *Rot.* 144.

Dowman's *Caſe.*

1 Anderſ. 125. Moor 191.

THomas *Dowman* Eſq; and *Eliz.* his Wife brought an Aſſiſe of *Novel Diſſeiſin* before *John Clench* and *Francis Rodes* Juſtices of Aſſiſe in the County of *York*, againſt *Ed. Vavaſor*, *George Vavaſor*, and others; and complained they were diſſeiſed of their Freehold in *Spaldington*, *Willitoft*, and *Southcave* in the ſame County, &c. and made their Plaint of 6 Houſes, 300 Acres of Land, 100 Acres of Meadow, and 200 Acres of Paſture; And all but the ſaid *Ed. Vavaſor* pleaded, *Nul tort nul diſſeiſin*, and the ſaid *Edward* pleaded, That one *Peter Vavaſor* Eſq; was ſeiſed of the Tenements aforeſaid put in View, and now in Plaint in Fee, againſt whom *Andrew Windſor* Eſq; *William Vavaſor* and others 2 *Jan. an' regni d'næ El.* 15. brought a Writ of Entry in the Poſt of the Tenements aforeſaid, againſt the ſaid *Peter Vavaſor*, returnable *Octob. Hill.* at which Day a Common Recovery was had againſt him with ſingle Voucher, and executed by *Habere facias ſeiſinam* 4 *Feb.* &c. *quæ quidem recuperatio in forma præd' habebat'*, and was to the Uſe of the ſaid *Peter* for his Life without Impeachment of Waſte, and afterwards to the Uſe of his eldeſt Son in Tail, and ſo to 9 Son in Seniority in Tail, and for want of ſuch Iſſue to the Uſe of the ſaid *E. Vavaſor* Brother of the ſaid *Peter* for his Life without Impeachment of Waſte, and afterwards to the Uſe of his eldeſt Son, and to the Heirs Males of his Body and ſo to 9 Son in their Seniority of the like Eſtate; and for want of ſuch Iſſue, to the Uſe of the ſaid *G. Vavaſor*, *Ra. Vavaſor*, *Mar. Vavaſor*, *Rob. Vavaſor*, *Tho. Vavaſor*, and *Rich. Vavaſor*, Brothers of the ſaid *Peter*, to every of them the like Eſtate, with like Remainders to their 9 Iſſue Male, in their Seniority in Tail, and afterwards to the Uſe of the Heirs Males of *P. Vavaſor* Knight, lawfully

Cr. Jac. 512.

begot

begotten, and afterwards to the Uſe of the right Heirs of the ſaid *Rich. Vavaſor*, and alledged the Execution of the Uſes by Force of the Stat. of 27 *H.* 8. and the Death of the ſaid *Peter Vavaſor* without Iſſue, after whoſe Death he entred as in his Remainder, and gave Colour to the Pl's. To which the Pl. replyed and confeſt the Recovery, as the ſaid *E.* had alledged, but further ſaid, That the ſaid Recovery was to the Uſe of the ſaid *Peter* and his Heirs, and that after the Death of *Peter* the Tenements deſcended to the ſaid *Eliz.* Wife of the ſaid *Tho. Dowman*, as Siſter and Heir of the ſaid *Peter*, &c. *Abſq; hoc quod recuperatio prædicta Tenementorum præd', &c. in forma prædicta habita, fuit ad uſus in barra prædict' Edwardi ſuperius ſpecificat', prout, &c.* And thereupon Iſſue was joined, and it was found by the Recognitors of the Aſſiſe, That the ſaid *Peter* being ſeiſed in Fee, ſuffer d the ſaid Recovery of the Tenements aforeſaid, as the ſaid *Ed.* had alledged; and further the Recognitors of the Aſſiſe ſaid, *Quod quædam indentura facta fuit inter præfat' Petrum Vavaſor & præd' Andream Winſor* and others, the Recoverors, of the other Part, *cujus tenor ſequitur in hæc verba*, which Indenture bears Date *primo die Februarii anno 15 El. Reginæ*, and witneſſeth, *That it is covenanted, concluded, condeſcended, declared and fully agreed between the ſaid Parties, and either of the ſaid Parties for himſelf and his and their Heirs doth conclude, condeſcend, declare and agree by theſe Preſents to and with the other, That is to ſay, Whereas the ſaid* Andrew, &c. *have this preſent Term of St.* Hill. *recovered to them and their Heirs by Writ of* Entrie ſur diſſeiſin in le poſt, *againſt the ſaid* Peter Vavaſor, *according to the uſual Order and Form of Common Recoveries heretofore uſed, The Manor of* Spaldington, &c. *That the Intent and true Meaning of all the ſaid Parties now is, and at the Time of the ſaid Recovery had and ſuffer'd, was, That the ſaid Recoverors and their Heirs immediately from and after the Recovery ſo had and executed ſhould and ſhall ſtand and be ſeiſed of the ſaid Manor*, &c. *to the only Uſes and Intents hereafter by theſe Preſents ſet forth and declared, and to no other Uſes, Intents and Purpoſes, That is to ſay*, and declares and expreſſes the ſame Uſes mentioned and alledged in the Bar of the ſaid *E. Vavaſor*, without any Variance. And further the ſaid Recognitors of Aſſiſe found, That the Tenements now put in View were, &c. Parcel of the ſaid Manor of *Spaldington, Sed utrum Indentura præd' poſt recuperationem præd' per præfat Pet. Vavaſor armig' in forma præd' fact' & habit' ger' dat' præd' primo die Februarii ac prim' deliberat' 15 die Februarii anno 15 ſupradict'*

27 H. 8. cap. 10.

ſupradict' poſt recuperationem præd' exiſten' ad uſus in eandem ſpecific' ſit bona & ſufficiens in lege ad ducendos & declarandos uſus præd' recuperationis præd' tenementorum in viſu recognitorum poſit', & in querela præd' ſpecific' necne, iidem recognitores penitus ignorant, & inde petunt adviſamentum Juſtic' & Cur' hic, & ſi videbitur Curiæ, That the ſaid Indenture is good and ſufficient, &c. Then they found that the ſaid Recovery of the Tenements aforeſaid was to the ſame Uſes in the Bar of the ſaid *E. Vavaſor*, as the ſaid *E.* had alledged; and that the other Defendants had done no Wrong nor Diſſeiſin, and if the ſaid Indenture is not good and ſufficient, &c. then they found againſt all the Defendants. And for Difficulty the ſaid Juſtices of Aſſize did adjorn the Parties and the Record before the Juſtices of the Common Pleas, *De audiendo & recipiendo quod eiſdem Juſticiar' Dominæ Reginæ de præd' Banco adtunc & ibid' conſiderand' videbitur in hac parte.* And in this Caſe 2 Queſtions were moved and argued by the Serjeants, at the Bar. ¶ 1. If the ſaid Indenture made after the ſaid Recovery, was ſufficient in Law to direct and declare the Uſes of the ſaid precedent Recovery? ¶ 2. If upon a ſpecial Point in Iſſue upon an *abſque hoc*, the Recognitors of Aſſiſe cou'd give a ſpecial Verdict. ¶ And as to the firſt it was argued, That the ſaid Indenture was not ſufficient to declare and direct the Uſes of the ſaid precedent Recovery, for 5 Reaſons and Cauſes. 1. When a Recovery is ſuffered (it being without Conſideration) immediately after the Recovery the Law adjudges it to be to the Uſe of him who ſuffers the Recovery and his Heirs: Then when the Uſe in the Caſe at Bar was veſted in *Peter Vavaſor* immediately after the Recovery executed, before the ſaid Indentures made, this Uſe ſo veſted can't be deveſted by any Declaration or Agreement ſubſequent, and the Deed indented ſhall not conclude the Heir in this Caſe, becauſe it being ſubſequent, can't by the Law deveſt that which was veſted immediately after the Recovery had. And to this Purpoſe they cited the Books in (a) 39 *Aſſ. p.* 3. & 46 *E.* 3. *Aſſiſe* 357. Where an Infant brought an Aſſiſe againſt *T.* of certain Land, the Defendant ſaid that *J.* Uncle of the Infant, whoſe Heir he is, held the ſaid Land of him by Homage, Eſcuage, and four Marks Rent, and died ſeiſed, and becauſe the Plaintiff was within Age, he ſeiſed the Tenements by Reaſon of Wardſhip: To which the Plaintiff ſaid that the ſaid *J.* held in Socage, &c. To which *T.* the Defendant ſaid, to ſay that you ſhall not be admitted, for the ſaid *J.* your Uncle upon a Debate betwixt us acknowledged to hold the ſame Land of us by ſuch Services by Deed indented; and demanded Judgment, if he ſhall be receiv'd to ſay the Contrary, &c.

(a) Poſtea 10. b. Fitz. Aſſiſe 334.

nd ſhewed the Deed, *&c.* and that Caſe for Difficulty was djourned into this Court, and there it was adjudged that the aid Acknowledgm. or Declaration by Deed indented ſhould ot conclude the Heir of *J.* and the Reaſon of *Thorp* Chief uſtice, who gave the Judgment, was, becauſe by the Deed ndented, other Services could not be granted, which were ot due before, wherefore take the Aſſiſe. So in the Caſe t Bar the Deed indented ſubſequent ſhall not conclude the eir of *Peter Vavaſor*, becauſe it can t deveſt the Uſe, which as by Operation of Law veſted immediately after the Recoery: And they alſo cited 35 *H.* 6. 33. *b. John (a) Crook's* aſe, where the like Acknowledgm. by Deed indented was ade, *&c.* and Eſtoppel pleaded, and it was adjudged, that e Declaration by Deed indented, for the Certainty of the rvices ſhould not bind the Heir of the Tenant, who was arty to the ſaid Deed indented. Secondly, It was objected, hat every Declaration of Uſes upon Recoveries, Fines, *&c.* Lands, Tenements and Hereditaments ought to be * cerin (otherwiſe there will be no Certainty of Inheritances) d this Certainty ought to be chiefly in three, *ſc.* in Perns to whom; in Lands, *&c.* of which; and in Eſtates by hich Uſes ſhall be limited and declared; and if Certainty ils in any of them, the Declaration is not ſufficient. But re in the Caſe at the Bar, there was not any of theſe Cerinties, when the Recovery was ſuffered, and therefore the eclaration ſubſequent inſufficient, *Oportet quod certæ perſonæ, certæ terræ, &c. & certi ſtatus comprehendantur in declaratione uſuum.* The 3 Objection was, That the Limition and Declaration of the Uſes ought to be compleat of ſelf, without any Reference to Indentures or other Wrigs to be made afterwards, for then it is but an imperfect mmunication, and no compleat Declaration: And that it s but a Communication they alledged three Reaſons; That the Uſes were many, and of great Variety of Etes. 2. That it concerned the Eſtabliſhment of his Inheance of a great yearly Value in his Name and Family, d therefore the Intention of the Parties never was to leave to the ſliding and ſlippery Memory of Men, which would loſt in a ſhort Time, and eſpecially when the ſaid *Elizabeth* (one of the Plaintiffs) was his Siſter and Heir, before om he preferred others of his Name and Blood. 3. Seal of the Uſes and Eſtates could not be limited with ſuch ualities and Privileges by word without Deed, as the e limited to the ſaid *Peter Vavaſor*, (and to diſe others) for Life, without (*b*) Impeachment of ſte, which Privilege to be diſpuniſhable of Waſte ne can have by Word without Deed, and therefore the the Words which paſſed betwixt the Parties be-e, or at the Time of the Recovery, were referred to In-

(*a*) Br Eſtop. pel 23 F tz. eſtop 57. 8 Co. 54. a Plowd 136 a b. Hob 31 Co. Lit. 12 a. Poſtea 10. b.

* Poſtea 10 a.

(*b*) 11 Co 83 a. b 82. b Co Lit. 220. a. Poſtea 10 b. Moor 317, 327. 2 Inſt 146. 2 Co. 23 a. b. 82. a. 4 Co. 63. a. Dy 10 pl 37. 47 pl. 11 Bridgm. 102. Hob 132. Helt 77. 1 Rol Rep. 182, 183 2 Rol Rep 325. 2 Leon 128. 3 Leon. 225. 4 Leon 71. Co. El. 40. 41. Plowd 135 b. 141 a. 9 H. 6 35 a. Fitz Waſte 39. 1 H 7. 15. a. 21 H 6. 47. a. 20 H 7. 4. a. 22 H. 7. 24. a. 31 a. 1 Bulſtr 136. Perk. ſect 721. 19 H 6 63. b. 10 H 7. 3. a. 16 H 7. 4. b. Poph. 193, 194, 195 8 Co. 76. b. Bl. Waſte 71. Latch. 269

dentures to be made thereof, and ſo but a Communication, and no compleat Agreement: *Quia id perfectum eſt quod ex omnibus ſuis partibus conſtat, & nihil perfectum eſt dum aliquid reſtat agendum.* The 4 Objection was, That the ſaid Indenture was but Directory, and Declaratory of the Uſes of the Recovery, and was not of any Force to raiſe or create any Uſe: Then when the Iſſue is, whether the ſaid Recovery was ſuffered to the ſaid Uſes mention'd in the Bar, the ſaid Indenture ſubſequent might peradventure be good Evidence to perſuade the Recognitors of the Aſſiſe, that the ſaid Recovery was ſuffered to the ſaid Uſes, but of it ſelf being ſubſequent to the Recovery it is not ſufficient in Law to direct the Uſes of the precedent Recovery, unleſs by the Agreement of the Parties the Uſes were ſo declared before, or at the Time of the Recovery, and then the Declarat. precedent, and not that which was ſubſequent, is the Declaration which binds in Law, and the ſubſequent is but Evidence to prove the Precedent: And therefore if the ſaid *Edw. Vavaſor* had pleaded the ſaid Recovery, and pleaded alſo the Indenture ſubſequent to the Effect as the Recognitors have found it, that would be altogether inſufficient, for the Indenture ſubſequent is but the Report and Evidence of a former Thing, *ſc. that the true Meaning of all the ſaid Parties*, &c. *at the Time of the ſaid Recovery*, &c. *was, that the ſaid Recoverers*, &c. and Evidence ſhall never be pleaded, becauſe it tends to prove Matter in Fact; and therefore the Matter in Fact ſhall be pleaded, and if that is denied, the Evidence is to be given to the Jury, and not to the Court. And therefore in 9 *E.* 3. 5. *b.* and 6. *a. John Darcy* brought a *Qua' Imp'* againſt the Biſhop of *Durham*, of a Diſturbance to preſent to the Church of *Simondsbury*, and declared that K. *E.* 1. was ſeiſed of the Manor of *Wreckes* in *Tindale* to which the Advowſon is appendant, and preſented, &c. and made the Deſcent of the Manor to the King that now is, who gave the Manor, with the Fees and Advowſons to the Plaintiff and his Heirs, &c. to which the Def. ſaid, that the Advowſon is not appendant to the Manor, &c. to which the Pl. replied that to this Averment the Def. ſhould not come, for we ſay That one *Ed.* late K. of *Scotland* was ſeiſed of the Manor of *Wreckes*, and of the Advowſon, and preſented to the Church as appendant, and ſhewed how afterwards the Manor came to the Hands of King *Edward* the Grandfather by Forfeiture of *John Baliol*, and ſhewed how afterwards the Kings preſented as appendant to the Manor, wherefore the Plaintiff did not conceive that againſt ſo many Preſentments as appendant that the Defendant ſhould be received to ſay that the Advowſon is not appendant. And Sir *William Herle* who

Poſtea 11 a. b.

gave the Rule, said, the Presentments of which you speak are but Evidence to the Jury that the Advowson is appendant, and Evidence shall not oust the Defend. of his Plea. The 5 and last Objection was, That if these Declarations subsequent should be sufficient in Law to declare the Uses of a precedent Recovery, for as much as they will be restrained to no certain Time, and therefore may be made many Years after, by that Means, Estates, Leases and Interests in and out of the Lands vested in the mean Time would be thereby defeated, which would be full of Mischief and Inconvenience. And the Case of *Arthur* (*a*) *Basset*, which you may see reported by the Lord *Dyer*, 3 & 4 *Ph.* & *Ma.* 136. that Indentures made four Years after a Recovery were held sufficient to declare the Uses of a precedent Recovery, was agreed to be good Law; for in the said Case of *Basset* the Recovery was suffered in 16 *H.* 7. and the Indentures made *anno* 20 *H.* 7. (which was long before the Statute of transferring of Uses into Possession) at which Time an use being but a Thing in Confidence might be directed and altered, according to the Intention of the Parties. And after the Case had been often argued by the Serjeants at the Bar, the Case was argued by the Justices at the Bench. And it was unanimously resolved by all the Justices of the Bench, that the said Indenture (*b*) subsequent was sufficient to direct and declare the Uses of the precedent Recovery against the said *Peter Vavasor* and his Heirs, for so it is concluded and declar'd by Deed indented, that the Intent and true Meaning of all the Parties now is, *and at the Time of the said Recovery was, That the said Recoverers*, &c. *should stand seised*, &c. *to the only Uses and Intents by these presents set forth and declared, and to no other Use, Intent or purpose.* Against which express Affirmation and Declaration by Deed indented, the said *Peter* or his Heirs shall never be admitted or received to say, that no such Uses were declared at the Time of the said Recovery, but that the said Recovery, notwithstanding the said subsequent Declaration shall be construed and adjudged by Force of an Use implied by Operation of Law, to be to the Use of the said *Peter* and his Heirs: But this Declaration by the said Deed indented has this Operation in Law against the said *Peter* and his Heirs, that there was a Present, certain and compleat Agreement and Declaration of the said Uses at the Time of the said Recovery, for so the Indenture expressly purports; and therefore all that has been objected, That the Declaration ought to be precedent, or present and (*c*) certain and compleat, and not as a Communication with Reference to Matter to be put in Writing afterwards was well agreed; but now this Deed indented in Judg-

(*a*) 2 Rol. 782. Jenk. Cent. 212. Dy. 136. pl. 17, &c.

(*b*) Hut. Arg. 46. Moor 192. 2 Rol. Rep. 561. 1 Vent. 368. Postea 11. b. Cr. Jac. 512.

(*c*) Ant. 9. b.

ment of Law, doth import and witneſs againſt the ſaid *Pet. Vavaſor* and his Heirs, foraſmuch as nothing appears to the Contrary, that there was a certain and compleat Declaration of Uſes at the Time of the ſaid Recovery, and this ſtands upon pregnant and apparent Reaſon; for in as much as *Peter* and his Heirs are only to take Advantage for want of Declaration of Uſes, Reaſon requires, that this Declaration of the ſaid *Peter* by his Deed indented ſhould ſtand againſt him and his Heirs: And this Caſe is not like the ſaid Caſes in *a)* 39 *Aſſ.* & 46 *E.* 3. cited before; for in ſuch Caſe, if the Lands were held before in Socage, the Tenant could not create or grant Knights Service, which was not due before; and in the Record the Infant was not made Heir to *J.* But here without Queſtion *Pet. Vavaſor* the Tenant of the Land might at the Time of the Recovery limit what Uſes he would, and *Eliz.* is Heir to *Peter*: And the Reaſons of the Book in *b)* 35 *H.* 6. are, 1. The Heir in ſuch Caſe was not bound, becauſe the Words of the Charter were but by way of Recital: 2. That the Words of the Deed indented were all the Words of the Lord, and not of the Tenant, the Heir of whom ſhould be bound, and that the Brother of the half Blood was not Heir to the Ten't, who was Party to the Deed. But in our Caſe, 1. It is not by way of Recital, but an expreſs Affirmation and Declaration: 2. It is the Acknowledgment and Declaration of the Ten't of the Land it ſelf, and the ſaid *Elizabeth* one of the Plaintiffs is Heir to *Pet. Vavaſor. Vide* 10 *E.* 3. 22. *Rob. de Vale's* Caſe. And as to the Objection which was made, That the ſaid Privilege to be without *c)* Impeachment of Waſte can't be without Deed, &c. To that it was anſwered and reſolved, that if it was admitted that a Deed in ſuch Caſe ſhould be requiſite, yet without Queſtion all the Eſtates limited would be good; altho' it is admitted, that the Clauſe concerning the ſaid Privilege would be void. And therefore if a Man infeoffs one by Parol to the Uſe of *A.* for Life, without Impeachment of Waſte, with divers Remainders over, admitting that the Clauſe of without Impeachment of Waſte in ſuch Caſe ſhould be void; yet the Eſtate for Life, with the Remainders over is well executed. And a *d)* Difference was taken between Indentures precedent, which ſhall direct the Uſes of a ſubſequent Recovery, and Indentures ſubſequent: For when precedent Indentures are made, and afterwards a Recovery follows accordingly, there no Averment can be taken by Parol, that the Recovery was to other Uſes than are declared in the Indenture; for nothing veſts in any till the Recovery is had, and in ſuch Caſe a Declaration by Parol will not control the Declaration by Deed: But againſt an Indenture ſubſequent, declaring the Uſes of a Recovery precedent, there Averment may be taken that other Uſes, than in ſuch Inden-

a) 39 Aſſ. 3. pl. 3. 26 E. 3. Aſſiſe 357. Antea 8. b.

b) 35 H. 6 33. b. Br. Eſtop 23. Fitz Eſtop. 57. 8 Co. 54. a. Plowd. 136 a. b. Hob. 31. Co. Lit. 12. a. Ant. 9. a.

c) Ant. 9. a.

d) 5 Co. 26. Cr. Jac. 29. 1 Brown. 191. 1 Rol. Rep. 42. Palm. 507. Cr El. 218. Bridgm. 113. 2 Co. 76. a.

Indenture are declared, were expreſſed and limited before and at the Time of the Recovery, becauſe by ſuch Limitation, the Uſe and Eſtate was veſted according to ſuch Limitation, which can not be deveſted by any Declaration by Indenture ſubſequent. It was alſo reſolved (as appears before) that the ſaid Declaration ſubſequent by Deed indented ſhould ſtand good againſt the ſaid *Pet. Vavaſor* and his Heirs, for as much as appeareth, there was no other Declaration of any other Uſe: But if after the Recovery had, *Peter Vavaſor* had ſold, or given, or charged the Lands to others, which would be defeated and annulled by the Declaration ſubſequent, there ſuch ſubſequent Declaration of it ſelf ſhould not ſubvert the mean Eſtates, Charges, or Intereſts, unleſs it could otherwiſe be proved, that by the certain and compleat Agreement of the Parties, the Recovery was had to ſuch Uſes, for by Judgment of Law ſuch Declaration ſubſequent ſhall be ſufficient, when no other certain and compleat Declaration or Limitation of any other Uſe, either at the Time, or before the Recovery be made, or any Eſtate or Intereſt mean be veſted: And as when a Common Recovery is ſuffered without Conſideration, it is in Judgment of Law, without any Proof to the Uſe of him who ſuffers the Recovery, if nothing is proved to the Contrary; ſo when ſuch ſubſequent Declaration (as in the Caſe at Bar) is made, it ſhall be ſufficient of it ſelf, without any other Proof of the Declaration of the ſame Uſes, either before, or at the Time of the Recovery, if no other Limitation of Uſe was made, nor any mean Eſtate or Intereſt of any other thereby defeated. And becauſe the Intention of the Parties is the Direction of Uſes, in the Argument of this caſe many Caſes were put, where an Act ſubſequent ſhall declare the Intention of a general Act precedent: As if (*a*) Tenant in Tail has Iſſue two Daughters, and dies, and the Elder enters into the Whole, and afterwards makes a Feoffment thereof with Warranty, this is a lineal Warranty for one Moiety, and a collateral Warranty for the other, for the Feoffment ſubſequent ſhall declare the Intention of the general Entry, that it was only for her ſelf, or otherwiſe it would be a Warranty which commenced by Diſſeiſin for one Moiety, and therewith agreeth *Lit. cap. Gar. f.* 160. So if the Lord comes upon the Tenancy, and takes and drives away an Ox, if he impounds it, the Taking ſhall be adjudged for a Diſtreſs; but if he kills the Ox, this Act ſubſequent ſhall declare his Intention *ab initio*, and ſhall make him a (*b*) Treſpaſſer, and therewith agree 12 *E.* 4. 8. *b.* 28 *H.* 6. 5, *&c.* And as to the (*c*) 4 Reaſon or Objection which was made, that it was but Matter of Evidence tending to prove to what Uſes the Recovery

(*a*) Lit. Sect. 712. Co. Lit. 373. b. Lit. f. 161. a.

(*b*) Perk. Sect. 190, 191. Ct. Jac. 148. 8 Co. 146. b. Fitz. Treſp. 67. Poſt. 22 b. Br. Diſtreſs 82.

(*c*) Ant 9. b.

ty was had, that has been answered before, that in Judgment of Law it is sufficient to declare the Use when nothing appears to the Contrary, as in the Case of Indentures precedent, or when a Recovery is suffered without any Consideration, and without Limitation of any Use: But as to the Point of pleading, it was resolved, that as well in the Case at Bar, as in the Case of an Indenture precedent, and Recovery suffered without Consideration, the usual Form of pleading ought not to be altered, *sc.* to aver that the Recovery was suffered to such Uses, and upon the Evidence the Court ought to direct the Jury according to Law, or that they should find the Truth of the Case, as in the Case at Bar they do. And the Justices in this Case cited a former Resolution in the Point in the Court of Wards, between the same Parties *Hill.* 21 *El.* the whole special Matter as before being found by Office, and transcribed into the same Court, where by Sir *Christ. Wray*, and Sir *James Dyer* Assistants to the said Court, and by the Advice also of other Justices, it was resolved, That the said Indentures subsequent were sufficient to declare the Uses of the Recovery precedent, because nothing appeared to the Contrary. And as to the 5 and last Reason or Objection which was made, it was answered and resolved, That no Mischief or Inconveniency could ensue upon this Construction, as was pretended at the Bar, but great Inconveniency would ensue on the other Side, for the Inheritances of many Subjects in *England* depend upon such Declarations subsequent, or at least upon Indentures which in Truth were delivered after the Recoveries suffered, or Fines levied. And these Resolutions stand with the common Opinion of Men learned in the Law, and common Experience; and the Alteration of such Opinions which concern Assurances of Inheritances would be too dangerous. As to 2 Point, it was objected, That the Jurors could not give their Verdict at large, but in a Writ of Assise, Trespass, or the like, where the general Issue is pleaded, and not when Issue is joined upon a Matter collateral to the Point of the general Issue; for there the Jury ought to find the Issue precisely, without giving their Verdict at large. And they endeavoured to prove it by Reason and by Authorities in Law: For they said that at the Common Law before the Stat. of *W.* 2. *cap.* 30. the Jurors in every Action ought to have given their Verdict directly and precisely, either in the Affirmative, or Negative, according to the Issue joined, and not at large; and this is well proved by the said Stat. *Item, cramentum est, quod Justic' ad Assisas capiendas assign' non compellant Juratores dicere precise si sit disseisin' vel non dum-*

Hart. Argum. 48.
Moor 102.
2 Rol Rep. 362.
1 Vent. 358.
Cro. Jac 512.
Antea 10. a.

2 Inst. 426.
Co. Litt. 227. b.

modo

modo dicere voluerint veritatem facti & petere auxilium Justiciariorum. Which Act as to Actions is taken by Equity, but only to such Actions which are general, and have general Issues, as Assise, Trespass, and the like, and not to Actions which comprehend Certainty, altho' the general Issue be pleaded. It extends also to general Actions, where the general Issue is pleaded, and not when Issue is joined upon a sole and certain Point out of the general Issue; and therefore the Stat. says, *non compellant Juratores dicere precise si sit disseisina vel non*: And that is when *Nul tort nul disseisin* is pleaded, which is the general Issue in an Assise. And the Reason thereof was, because upon the general Issues in Writs, which comprehend no Certainty many and doubtful Matters may be given in Evidence; so that as the Pl. and Def. in such Cases are at Liberty upon the general Issue, to give what Evidence they will, so are the Jurors at Liberty when the Matter is intricate and doubtful in Law, to find the special Matter, & *petere auxilium Justiciariorum.* But when either the Writ is certain, or when the Issue is joined only upon a Point in certain, there they can't be so inveigled and perplexed, as upon a general Writ and general Issue: And this is the Reason that the Stat. shall be taken by Equity, as to Actions which are in equal Mischief, but not as to Issues which differ in Cause and Reason; and therefore in 7 *H.* 4. 11. *a. J. B.* brought an Action of Trespass against *T. de R.* for breaking his Close, digging his Land, *&c.* three Acres of Meadow, and spoiling and carrying away his Grass: The Def. pleaded it was his Freehold, upon which Issue was joined, and the Jury found a special Verdict, *&c.* That the Plaintiff's Ancestors was seised of five Acres of Lands in another County in Fee, and the Defendant's Ancestor of the said three Acres of Meadow in Fee; and an Exchange was made between them by Parol without Deed, *&c.* That the Plaintiff's Ancestor should have the three Acres of Meadow, and the Defendant's Ancestor the said five Acres of Land, by Force whereof each of them entered and continued it all their Life-times, and died seised, after whose Death the Plaintiff entred into both, whereupon the Defendant entred into the Meadow, and was seised four Weeks before the Trespass, and digged, *&c.* and prayed the Opinion of the Justices by the Statute of *W.* 2. *cap.* 30. *Hankford*, you are not now in an Assise, for your Charge is but to say, who was Tenant of the Freehold the Time of the Trespass supposed, so you have nothing to do whether the Entry be congeable or not, wherefore the Jury found for the Defendant, and upon that Judgment was given. By which it appears, that upon the said collateral Issue of his Freehold a special Verdict could not be

Br. Trespass 81. Br. Verdict 10. Postea 14. a.

given, and that this Case was out of the said Act of *W.* 2. c. 30. which Act was cited in the said Book: And in (*a*) Attaint in 8 *E.* 4. 29. The Jurors asked if they might give their Verdict at large, as in Assise, and the Justices said that they could not, (*b*) 9 *H.* 7. 5. *Brian* Ch. Just. held, That in Rescous, which is a Writ conceived upon a special Matter, *s.* the Tenure, Distress and Rescous, the Verdict shall not be given at large, altho' the general Issue is pleaded: So in Debt, which always comprehends Certainty, altho' *nil debet* is pleaded, the Verdict shall not be given at large, because these and the like Writs, which comprehend Certainty, are out of the Mischief of the said Statute. But the Stat. extends to Trespass, because the Writ is as general as the Assise, because the Plaint and Count in 'em are general, for which Reason there the Verdict shall be given at large, and that is by the Stat. but in no special Case where the Matter is specially counted, no Verdict at large. And (*c*) 9 *H.* 7. 13. *b. Fairfax* held, That in no Case where the Issue is joined upon a certain Point, the Verdict shall be at large, but in Trespass, which is a general Writ, if the Def. pleads, *Not guilty*, the Jurors may give their Verdict at large; and so in an Assise upon *Nul tort nul disseisin*, the Jury may give their Verdict at large. So in 23 *H.* 8. *Br. Verdict* 85. the Court of Com. Pleas cannot suffer Verdicts at large in a Writ of Entry in the Nature of an Assise, because it is *Præcipe*, and comprehends Certainty. And in the *Reports* of the L. *Dyer*, now newly printed, *Pas.* 11. *El.* (*d*) 283, 284. in Assise betwixt *Butler* and *Crouch* for Land in the County of *Somerset*, upon an *absq; hoc* Issue was taken upon a Prescription, upon which the Jury gave a special Verdict, and it was resolved by all the Justices of the Com. Pleas *in Cubiculo meo*, (as the Lord *Dyer* reports) that upon this special Issue by an *absque hoc*, and not a general Issue, a precise Verdict ought to be given of the one Part or the other; which was a Resolution in the Point, as it was strongly urged, and over-rules the Point now in Question. But it was resolved by Sir *Ed. Anderson* Ch. Justice, and all the Justices of the Bench, That the special Verdict in the Case at Bar was well found: they held, That in all Pleas, as well of the Crown as in Common Pleas, *s.* Actions real, personal and mixt, and upon all Issues joined, either between the K. and the Party, or between Party and Party, The Jury may find the (*e*) special Matter, which is pertinent, and tends only to the Issue joined, upon which, being doubtful to 'em in Law, they may pray the Opinion of the Court: And this they may do by the Com. Law, which has ordained, that

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Matters in Fact shall be tried by Jurors, and Matters in Law by the Judges: And as *ad* (*a*) *quæstionem facti non respondent Judices, ita ad quæstionem Juris non respondent Jurat'*; but their Duty is to find *veritatem facti*, and to refer the Discussion of the Law to the Justices, and therefore their finding is called (*b*) *Veredict'*, *quasi dict' veritatis*, the Saying of the Truth, and the Determination of the Judges is called *Judicium, quasi Juris dictum, i. e. Ipsa viva vox Juris*, the Saying of the Law, and the Wisdom of the Law was to refer Things to Persons in which they had Knowledge, and were expert, according to the ancient Rule, *Quod* (*c*) *quisque noric in hoc se exerceat*; and therefore the Law will not compel neither the Jurors, who have not Knowledge in the Law, to take upon them the Knowledge of Points in Law, either in Cases which concern Life or Member, or Inheritances, Freeholds, Goods, or Chattels, but leave them to the Consideration of the Judges; nor the Justices of Assise, nor any other Judges, be it in Pleas of the Crown, or Com. Pleas, to give their Opinion of Questions and Doubts in Law upon the sudden; but in such Cases have the Truth of the Case found, and upon Conference and Consideration to adjudge according to the Law in such Cases. And therefore it was resolved, That the said Act of *W.* 2. *c.* (*d*) 30. was but an Affirmance of the Com. Law, and this appears by the Stat. it self, and by Authorities in Law in all Successions of Ages. And as to the Statute, the precedent and subsequent Clauses were considered: The Precedent is, (*e*) *Habeant omnes Justiciarii de Bancis in itineribus Clericos irrotulantes omnia plac' coram eis placitata, sicut antiquitus habere consueverunt*, which Clause appears to be in Affirmance of the Com. Law. The subsequent is, *Et* (*f*) *de cætero non ponant Justiciarii in assisas aut Juratis aliquos Juratores nisi eos qui ad hoc prius sint summoniti*, for at the Com. Law they ought to come in by the Return of the Sheriff. And so the middle Clause touching the Point in Question, that *Justic'*, *&c. non compellant Juratores dicere præcise*, *&c.* was but a Declaration of the Com. Law, as well for the Relief of the Jurors, who upon their Oath shall not be compelled to find at their Peril Things doubtful to them in Law, but also for a good Caveat to Justices of Assise and other Judges, that they do not upon the sudden over-rule Questions in Law, for every Judge ought in giving his Judgment in doubtful Cases to avoid 2 Things, *sc. Præcipitationem, quia ad sententiam properat cito qui judicat: Et morosam cunctationem*, *s.* either when the Law is determined, or to make a Question in Law where none is, to delay the Party, which is in Effect a Denying of Justice.

(*a*) 1 Rol. Rep. 132. 2 Bulst. 204, 251, 305, 314. 2 Siderf. 127. Plowd. 114. b. Postea 25. a. 8 Co. 155. a. 11 Co. 10. b. Co. Lit. 125. a. 155. b. 226. a.

(*b*) Co. Lit. 226. a.

(*c*) 8 Co. 130. a. 11 Co. 10. b. 12 Co 66. Co. Lit. 125. a. 13 Co. 11.

(*d*) 2 Inst. 421, 422, 423, &c.

(*e*) 2 Inst. 425.

(*f*) 2 Inst. 426.

And

And for the better Direction of Judges in such Cases, and for the Advancement of Common Right it is enacted by the next Chapter following, *f.* (*a*) *c.* 31. *Cum aliquis placitatur coram aliquibus Justic', proponat exceptionem* (*f.* a Matter which he supposes will serve him in Law) *& petat qd' Justiciarii eam allocent quam si allocare noluerint, & ille exceptionem proposuerit scribat illam exceptionem & petat quod Justiciarii sigillum suu' apponant in Testimonium, Justiciarii apponant sigilla sua, &c.* and this was to prevent Precipitation of Judges in over-ruling, *ex improviso*, Questions in Law: For it is a good Rule in the (*b*) 9 Chapter of *Judges*, Consider, consult, and then give Judgment. *Vide* for the Bill of Exception, (*c*) 9 *Ass. p.* 8. (*d*) 11 *H.* 4. 52. *b.* 65. *b.* 92. *a. b.* 21 *E.* 4. 11. *b. Regist.* 182. *a. b. Book of Entries*, Tit. *Error in the Division of Exception.*

(*a*) Westm. 2. c. 31. 2 Inst. 426, 427, 428.

(*b*) Judg. c. 19. v. 30. in fine.

(*c*) Br. Challenge 97. Br. Error 110. Fitz. Challenge 8.

(*d*) Br Error 50. Fitz. Error 66.

(*e*) Br. Challenge 180. Fitz. Challenge 60.

(*f*) Stamf. Pl. Cor. 15. a. 165. a.

By Authorities in Law touching the 2 Point of the Case now in Question, and 1 of special Verdicts given in Criminal Causes, either in Case of Indictment at the King's Suit, or in Appeal at the Suit of the Party, 3 *E.* 3. *Itinere North.* (*f*) *Coron.* 284. *S.* was indicted of the Death of *N.* and arraigned upon it, and pleaded Not guilty, and the Jury gave a special Verdict to this Effect, That a Contention was moved betwixt them, whereupon the said *N.* now dead struck *S. cum quodam baculo fraxineo in capite, ita quod cecidit, & præd' S. statim cum surrexit fugit in quantum potuit, & præd' N. ipsum secutus fuisset cum præd' baculo ad ipsum interficiend' si potuisset, & ipsum fugavit usq; quendam murum inter duas domus scituatum, ultra quem transire non potuit ullo modo, & cum percepisset præd' N. ipsum velle interfecisse cum præd' baculo, & quod mortem suam propriam evadere non potuisset nisi se defendisset, cepit quendam Pilbach & ipsum N. cum eod repercussit in capite ita qd' statim inde obiit, &c. unde dic qd' præd' S. se defendend' præd' N. interfecit, & non per feloniam aut malitiam præcogitatam, &c.* and this Verdict finding the Matter at large was received, and he had his Pardon of course, and therewith agree 3 *E.* 3. *Coron.* (*g*) 286. 43 (*h*) *Ass. p.* 31. (*i*) 26 *H.* 8. 5. *a.* 44 (*k*) *E.* 3. 44. In an Appeal of Death against *Will. Halbener*, he pleaded Not guilty; and the Jury found a Verdict at large, *f.* That the Deceased struck the Defendant on the Neck, so that he fell to the Ground, and when the Defendant was upon the Ground, the Deceased drew his Knife to have killed the Defendant and the Defendant lying upon the Ground drew his Knife and the Deceased was so hasty to have killed the Defendant that he fell upon the Defendant's Knife, and so killed himself. And it was adjudged, that forasmuch as the Deceased killed himself in the Manner, it was adjudged upon this special Verdict, that the Def. was Not guilty, and his Goods not forfeited. *Fitz. Fitz.* (*l*) *Coron.* 94. and therewith agree (*m*) 44 *Ass. p.*

(*f*) Stamf. Pl. Cor. 15. a. 16 a. 165. a.

(*g*) Stamf. Pl. Cor. 15. a. Br Cor. 122. Fitz. Cor. 226. Br Coroner. Br Coroner 17. Fitz. Coroner 94. Stamf. Pl. Cor. [illegible] 165 a. [illegible]

(*a*) 45 *E.* 3. 20. *a.* In a *Formedon* the Demandant counted of a Gift made to *J. de C.* in Frankmarriage with *Johan* the Donor's Sister, the Tenant pleaded, That the Tenements were given in Fee-simple, and traversed, that he did not give them *modo & forma* as the Writ supposes: And afterwards by *Nisi prius* before *Whichingham* and *Chl're* a Deed was shewed in Evidence that the Donor gave to *J. de C. in liberum maritagium tenementa prad' cum Johan' sorore sua, habend' & tenend' tenementa prad' præd' Johanni & Johannæ, & hæredibus suis imperpetuum; & quia aliqua verba in dicto facto contenta, sunt in liberum maritagium, & aliqua in feodo simplici, Juratores nescium indicare veritatem, & petunt discretionem Justiciariorum superinde:* And upon this Verdict found at length, Judgment was given against the Demandant, because a Fee-simple, and not an Estate in Frankmarriage past by the Deed. By which Judgment it appears, That in a Writ which comprehends Certainty (as in a *Formedon*) a special Verdict may be given. *Vide* 16 *E.* 3. *Verdict* 21. *Vide* 42 *E.* 3. in *Dower*, 47 *E.* 3. 19. *in Præcipe quod reddat*, upon an Issue collateral to the Point of the Writ. 30 *E.* 3. & 9 *H.* 7. 3. *in Rescous*, 41 *E.* 3. 10. *in Accompt.* 40 *E* 3. 2. *in Debt.* 28 *H.* 8. *Dyer* 32. *b. in Debt. Pasch.* 1 & 2 *Phil. & Mar. Dy.* 115. *b. in Covenant. Mich.* 1 & 2 *Eliz. Dyer* 173. *in Attaint.* 2 *El. Dyer* 192. *b. in Debt.* 9 *El. Dyer* 260. *in Debt. Mich.* 10 & 11 *Eliz. Dyer* 279. *b. in Debt.* 13 *El. Dy.* 300. *b. in Ejectione firmæ.* 32 *H.* 8. *Dy.* 47. *in Trespas. Pasch.* 1 & 2 *Phil. & Mar. Dy.* 114. *in Trespas. Plow. Com.* 92. *in Assise of fresh Force brought by the Parson of Honey-Lane.*

(*a*) 45 E. 3. 19. b. 20. a. Br. Frankmarriage 1. Br. Estates 8. Fitz. Tail 14. 10. Co. 117. b.

And *Nota*, Reader, In all Cases when Jurors find the special Matter doubtful in Law pertinent and tending to the Issue which they are to try, there the Court ought to accept it, but when they find Matter at large which is not pertinent, and tending to the Point in Issue, upon which they are to give their Verdict, there the Court out to disallow it, as impertinent to the Issue, and to their Charge. And upon this Difference the Books which have some shew of Contrariety are well reconciled. For Example, in the Case of 7 *H.* 4. 11. *a.* the Issue in (*c*) Trespas, being joined upon the Freehold at the Time of the Trespas, forasmuch as it is found that the Pl. enter'd into the said three Acres of Meadow, upon whom the Def. entred, and was seised by four Weeks before the Tresp. tho' they found an Exchange by Parol of Lands in several Counties which was (*d*) void in Law, so as the Entry of the Pl. was lawful; yet the Issue being joined upon the Freehold at the Time of the Trespas, *Hankford* said to the Jury, in such Case, according to Law, *i.* your Charge was but to say, who was Tenant of the Freehold the Day of the Trespas, so whether the Entry of the Plaintiff be lawful

(*b*) 11 Co. 13. a. Hob. 53. 2 Rol. 701, 702. Hard. 347. Dy. 362. pl. 16. Hutt. 121. Cro. El. 281. Cro. Car. 75, 76, 212. 1 Sid. 96. Plow. 112. b. 114. b.

(*c*) Br. Trespas. 81. Br. Verdict 10. Antea 12. a.

(*d*) 1 Rol. 814. Co. Lit. 252. a. Perk. Sect. 241.

or not, you have nothing do, wherefore the Jury found for the Def. Which Book proves, That the Jurors can't find Matter at large which is not within their Charge, and with which, having regard to the Iſſue joined, they have nothing to do: By which it is ſtrongly implied, That if the ſpecial Matter had been within their Charge, and tending to the Iſſue, with which they had to do, that it ſhould be allowed; and in the ſaid Book of (*a*) 7 *E.* 4. 29. *a.* it doth not appear what was the Iſſue, nor what ſpecial Matter they would have found, and therefore tis to be intended according to the ſaid Difference. And as to the Opinions in (*b*) 9 *H.* 7. in the ſame Caſes there is Difference of Opinions, and therefore they are to be reconciled as aforeſaid. And as to the ſaid Opinion of (*c*) 11 *El.* and in the ſame Caſe there was other clear Matter to arreſt the Judgment, and the Opinion which was conceived in that Point was *in cubiculo*, without open Argument, and therefore if it ſhall not be intended according to the ſaid Difference, it has not any Warrant of any Book ruled in the Point, but againſt all the ſaid Judgments and Authorities in Law in all Succeſſions of Ages; and afterwards Judgment was given in the principal Caſe as follows,

(*a*) Br. Attaint 87. Br. Verdict 58. Fitz. Verdict 10.

(*b*) 9 H. 7. 13. b. Plowd. 92. a. Br. Verdict 83. Antea 12. b.

(*c*) Dyer 283, 284. pl. 33. Antea 12. b.

Ad quem diem venerunt tam præd' Tho. Dowman & Eliz. quam præd' Ed. Vavaſor & Geo. Vavaſor, &c. per attorn' ſuos præd', & ſuper hoc viſis præmiſſis, & per Juiſtic' hut plene intellectis, videtur eiſdem Juſticiariis, quod præd' indentura per præfat' Pet. Vavaſor armigerum poſt præd' recuperationem in forma præd' factam & habitam, fuit bona & ſufficiens in lege ad ducendos & declarandos uſus recuperationis præd' de tenementis præd' cum pertinentiis in viſu poſitis, &c. ſuperius ſpecificatis, & quod recuperatio præd' per præfat' Andream de Windſor, &c. verſus præfat' Pet. Vavaſor armigerum in forma præd' habita, fuit ad eoſdem uſus in præd' barra præd' Edw. Vavaſor ſuperius ſpecificat' modo & forma prout idem Edwardus in barra ſua præd' ſuperius allegavit. Ideo conſideratum eſt, quod præd' Thomas Dowman & Elizabetha nihil capiant per breve ſuum præd', ſed ſint in miſericordia pro falſo clamore ſuo, & quod predicti Defendentes eant inde ſine die. After the ſaid Reſolution in the Court of Wards, *Dowman*, not ſatisfied with it, brought the ſaid Writ of Aſſiſe after the Death of Sir *James Dyer*, Chief Juſtice of the Common Pleas, who was a Judge of profound Knowledge and Judgment in the Laws of the Land, and eſpecially in the Form of good Pleading, and the true Entry of Judgments, &c. and of a great Piety and Sincerity, who from his Heart abhorred all Corruption and Deceit, of a bountiful and generous Diſpoſition, and a Patron

Patron and Encourager of Men learned in the Laws and expert Clerks; of ſingular Diligence and Obſervation, as appears by his Book of *Reports*, all wrote with his own Hand, and of a handſome, reverend, and venerable Countenance and Perſonage. And according to the ſaid Differences it was reſolved *Mich.* 44 & 45 *Eliz.* by the two Chief Juſtices *Popham* and *Anderſon*, and by *Periam* Chief Baron, and *Gawdy* Juſtice, in the Caſe of *John Littleton* Eſq; which was referred to them by the Command of Queen *Elizabeth.* And ſo was it reſolved by all the Juſtices of the Common Pleas, *Termino Mich. anno* 9 *Jacobi Regis*, upon Evidence to a Jury at Bar in the Caſe of Sir *Richard Champernon*, who claimed the whole Inheritance of *Charles* late Earl of *Devon*, That Indentures ſubſequent were ſufficient to direct the Uſes of a Fine precedent againſt the Earl and his Heirs, for the Reaſons and Cauſes, and with the Cautions aforeſaid.

Hill.

Hill. 28 Eliz.

Ann Bedingfield's *Case.*

1 Leon. 284. 4 Leon. 87.

ANN Bedingfield, late Wife of *Edmond Bedingfield* Esq; (Son and Heir of *Henry Bedingfield*, of *Oxborough* in the County of *Norfolk* Kt.) brought a Writ of Dower against *Tho. Bedingfield* Esq; Son and Heir of the said *Edmond*, to be endowed of the Manors of *Oxborough*, *Necton*, and many other Manors, Lands, and Tenements in the County of *Norf.* of a great yearly Value, *&c.* And in this Case divers Points were resolved by the Court of Common Pleas.

1. That where in the said Writ the said *Tho.* cast an Essoin, it was challenged, because by the Statute *de essoniis calumniandis* made 12 *E.* 2. it is enacted, *Quod non jacet essonium in breve de Dote*: But, because the Common (*a*) Essoin has been always allowed in a Writ *de Dote*, therefore the Justices construed the Statute to extend to an Essoin of the King's Service, and not to a Common Essoin, *& eo potius*, because the said Act adds a Reason of the Purview *s. quia videtur deceptio & prorogatio Juris*, and that is properly to be intended of an Essoin of the King's Service, which is a Delay and Prorogation of Right by a Year. *Vide* 4 *E.* 3. 36. *b.* (*b*) 4 *Ass. pl.* 2. *Long* (*c*) 5 *E.* 4. 70. *a.* Then the said *Tho.* purchased a Writ out of the Chance-

(*a*) 1 Rol. 822. Br. Essoin 110. 2 E. 2. 21. b. Noy 144.

(*b*) Br. Essoin 86. Fitz. Essoin 63.

(*c*) Br. Essoin 105.

ry called a Writ of (a) *Circumſpecte agatis*, ſetting forth, that whereas the ſaid *Edm.* was ſeiſed of the Manor of *Necton* in the County of *Norfolk* in Fee, and held it of the Q. in Chief by Knights Service, and died thereof ſeiſed, the ſaid *Tho.* of full Age, *prout per quandam Inquiſition' compert' eſt, &c.* by reaſon whereof the Queen has ſeiſed as well the ſaid Manor, as the Manors of *Oxborough*, *Aſhil*, &c. and becauſe the Q. was bound to reſtore the Tenements, *tam integre, &c.* as they came to her Hands, therefore the Judges were commanded to ſurceaſe *Domina (b) Regina inconſulta*: It was reſolved, That this Writ, which is in Nature of and Aid Prayer of the K. can't extend to any Manors not found in the Office, becauſe the Q. by the Law can't ſeiſe more Manors than are compriſed within the Office. And as to the Manor of *Necton*, which appears by the Writ to be only found in the Office, the Caſe was well debated at the Bar and Bench. And the Tenant's Counſel cited the Books of 8 *E.* 3. 15. 18 *E.* 3. 38. 19 *E.* 3. *Aid de Roy* 64. 39 *E.* 3. 8. 46 *E.* 3. 19. 11 *H.* 4. 39. *b.* 5 *H.* 5. 13. *a.* & 13 *R.* 2. *Brief* 646. 9 *H.* 6. 40. *F. N. B.* 153. *f.* 154. *d.* by which it appears that where the Heir is within Age, and in Ward of the K. and committed over, and is impleaded, or comes in as Vouchee in a Writ of *Dower*, that Aid of the K. ſhall be granted; And altho' in the Caſe at Bar, it appears by the Office mentioned in the Writ, that the Heir was of full Age at the Time of his Anceſtor's Death, yet that will not make any Difference; for the K. when he has primer Seiſin, may as well endow the Wife in Chancery, as where the Heir is within Age, and in his Ward; And that appears by the Stat. *de Prærogativa Regis*, *c.* (c) 4. *Rex aſſignabit viduis poſt mortem virorum ſuorum qui de eo tenuerunt in capite, dotem ſuam quæ eis contingit, &c. licet hæredes fuerint plenæ ætatis, &c.* And upon theſe Authorities and Reaſons the Court gave Day over in the ſame Term to the Demandant, to ſhew Cauſe why the Writ ſhould not be allowed. At which Day the Serjeants of the Demandant's Counſel (a Pleader of the *Inner-Temple* being preſent and alſo of Counſel in the Cauſe) ſhewed Cauſe to the Court why the ſaid Writ ſhould not be allowed. They agreed, that in all the Books Aid was granted of the K. in a Writ of *Dower* brought againſt the Heir, or when the Heir was vouched within Age, and in Ward of the King; and it ought alſo to be confeſſed, that the granting of it, if it was not grantable by Law, was not Error. But it is enacted by the Statute *de Bigamis*, (d) *c.* 3. *de dotibus mulierum ubi aliqui cuſtodes hæreditat' maritorum ſuorum cuſtodias habent ex dono vel conceſſione Regis, ſive cuſtodes rem petitam teneant*,

(a) 1 Leon. 284, 285. 4 Leon. 87. Hard. 428. Vide for this Writ 21 E. 3. 44. 22 E. 3. 13, 14. 31 E. 3. tit. Saver Default 37. 2 R. 3. 13. F. N. B. 153. f. 154. d. & Regiſter, &c.

(b) 1 Leon. 285. 4 Leon. 87. 2 Rol. 398. 1 Rol. Rep. 207.

(c) 1 Leon 285. 4 Leon. 87. Stamf. Prærog. 15. b. 16, 17, &c. Poſtea 17 a.

(d) 1 Leon 285. 4 Leon 87. 2 Inſt. 271. Stamf. Prærog. 16. b.

ant, sive hæredes dictorum tenementorum vocentur ad warrant', si excipiant, qd' sine Rege respond' non possunt, non ideo supersedeatur, quin in loquela præd', prout justum fuerit, procedatur; which Stat. is not vouched or remembred in any of the Books, and is expres in the Point, that in such Cases be the Heir Tenant or Vouchee, *non supersedeatur quin in loquela, &c. procedatur*, which is so well penned, that it extends as well to the said Writ of *Circumspecte agatis*, as to Aid Prayer. And in (*a*) 4 *H.* 7. 1. *a. b.* Tit. *Aid le Roy*, 33. *in Dower* against the Committee of the K. during the Nonage of the Heir, the Def. shewed, how it was found by Office, that the Father of the Husband of the Demandant was seised in Fee of certain Land, and held of the K. and had Issue the Husband, and died; and the Husband entred, and died, his Heir within Age, without any Livery, and all this Matter found by Office, wherefore the K. seised and committed to the Defendant. Judgment if Action? and thereupon was a Demurrer: And it was adjudged that she should be endowed: And there Sir *Tho.* (*b*) *Brian* Chief Justice of *C. B.* who gave the Rule in the Case, said, it appears that Right is in the King, wherefore we will proceed no farther without Aid of the King, wherefore sue to the King: But when (*c*) *Townsend* Justice cited the said Statute *de Bigamis*, which ousts the Party of Aid in that Case, *Brian*, having Consideration of the said Act, alter'd his Opinion, and discharg'd 'em from suing to the King, and awarded, that the Demandant should recover her Dower, *Omnia habere in memoria & in nullo penitus errare, potius est deitatis, quam humanitatis.* And if the said Stat. had not been remembred, the Aid also had been granted in (*d*) 4 *H.* 7. as it had been in the said Books. But to make a full Answer to the Case in Question, *Distinguenda sunt tempora, & concordabunt leges.* The said Stat. *de Bigamis* was enacted at a Parliament held 4 *E.* 1. And the Stat. *de Prærogativa Regis* was made 17 *E.* 2. And before the Statute *de Prærogativa Regis*, the K. when the Heir was of full Age, had but *primam sisinam capiend exitus, &c.* as it is said in the Chapter next before; and in such Case the King is not Guardian, and therefore, can't endow the Wife at the Com. Law. For as a Writ of *Dower* lay against Guardian in Chivalry, during the Minority of the Heir, or the Guardian might endow her without any Suit, during the Minority of the Heir, if he would; but after full Age, although he held over the Land for the Value of the Marriage, no Writ of *Dower* lay against him, nor could he endow the Wife, because after full Age of the Heir he was not Guardian, and none who has but a Chattel (except the Guardian only) can endow the Wife of a Freehold

(*a*) Stamf. Prærog. 16. b. 2 Inst. 271. Hardr. 428.

(*b*) 2 Inst. 271.

(*c*) 2 Inst. 271.

(*d*) 4 H. 7. 1. a. Supra. a.

(*e*) 6 Co. 57. b Co. Lit. 35. a. 38. b. Br. Dower 63. 1 Rol. 681. 9 H. 6. 6. b. 24. b. 47 Ass. 15. per Finchden. F. N. B. 148. a 150. b.

Freehold; neither did a Writ of *Dower*, which is a real Action, lie against him, as appears in 6 *E.* 3. 16. *b.* he ought to be (*a*) Guardian, and named Guardian, and a Writ of *Dower* brought in such Case against the Heir within Age shall abate, for it ought to be brought against the Guardian, and therewith agree 17 *E.* 3. 79. 9 *H.* 6. 6. *b. Vid. Temp. E.* 1. *Dower* (*b*) 863. *Vide* 8 *E.* 3. 63. *a. b. Dower* lies against Guardian within Age, and against the Heir at full Age, (*c*) 46 *E.* 3. 19. 7 *E.* 3. 10. *b.* 9 (*d*) *E.* 4. 31. *b.* and in 8 *E.* 3. 15. *b.* a Woman brought a Writ of *Dower* against *Hen. Bolton* as Guardian in Chivalry, who pleaded, that he had nothing but a Lease for 6 Years, of the Lease of *John Mowbray* Guardian of the Lands; Judgment of the Writ. And there it is held, that the Writ of *Dower* doth not lie against (*e*) him in respect of the Possession, if he be not Guardian, wherefore the Demandant maintained that he was Guardian. 2 *E.* 3. 15. *b.* A Writ of *Dower* brought against Tenant by *Elegit* shall abate. 8 *E.* 2. *Brief* 809. *Dower* was brought against Ten't for * Years, and abated by award, but there *Berisford* saith, it is good against a Guardian, because he answers in the Name of the Heir. So the King when the Heir is of full Age, could not by the Com. Law have endowed the Wife, because he is not Guardian, but has in Effect the Profits of the Land but for a Year, and therefore the Makers of the Stat. *de* (*f*) *Bigamis anno* 4 *E.* 1. if the K. could have endowed the Wife when the Heir was of full Age, they would have ousted delays in such Case as they did, and *a fortiori* than when the Heir was within Age: But at that Time, *s.* 4 *E.* 1. the K. when the Heir was of full Age, could not endow the Wife, but such Power as he has was given him by the Statute *de Prærogativa Regis*, made in 17 *E.* 2. long Time after; which Act *de* (*g*) *Prærogativa Regis*, altho' it gave Power to the K. to endow the Wives, *&c. licet hæredes fuer' ætatis*, yet the Stat. adds, *si viduæ illæ voluerint*; so as the Stat. leaves it to the Election of the Wife, either to be endowed in the Chancery, or at the Com. Law, and by Consequence the Writ of *Dower* (which is favoured in Law, and to be likened to no other *Præcipe*) is not to be stayed by Aid prayer in that Case. Upon which the Court took Advisement and Consideration: And afterwards the Court, for the Reasons and Causes aforesaid, discharged the Tenant from going to the Queen, and gave Day, in the beginning of *Easter*-Term next following, to plead an issuable Plea peremptorily. In which Term the Tenant's Counsel offered to plead Retainment of Charters by the Demandant, *&c.* which was in *Easter*-Term, and *Trinity*-Term following well argued at the Bar and Bench: And upon good Advice and Consideration, these Points were resolved by the Court.

(*a*) Co. Lit. 38. b. 88. Brief 431. 9 H. 5. 4 b.

(*b*) 3 Co. 39. (*c*) 6 Co. 57. b. 20 a. 2 Inst. 20. (*d*) 2. Dow. 94 Br. Brief 486.

(*e*) 6 Co. 57. b. 8 E. 3. 15. b.

* 6 Co. 57 b. 8 E. 3. 15. b.

(*f*) 1 Leon. 285. 4 Leon. 87. 2 Inst. 271. Stanf. Prærog. 16. b. Antea 16. a.

(*g*) Ant. 16. a. Stanf. Prærog. 15. b 16, 17, &c. 1 Leon. 285. 4 Leon. 87.

1 Show. 271. Salk. 252. Comb. 183.

1. The (*a*) Charters ought to concern the Land whereof Dower is demanded, and not other Lands descended to the Heir. *Vide* (*b*) 33 *H.* 6. 51. *a. b.* resolved in the Point (*c*) 22 *H.* 6. 42. *b.* And the Law in this Case well allows that this Rebutter of the Action is a good Plea in a Writ of *Dower* for two Reasons: 1. The Charters are the (*d*) Sinews of the Inheritance of the Husband's Heir, and she is not worthy to demand Dower of her Husband's Inheritance who will wrongfully detain from his Heir (by whom she is to be endowed) the Muniments which might defend the said Inheritance; for Charters are called Muniments, *a muniendo, quia munuunt & defendunt Hæreditatem*, &c. 2. There is a greater Privity when a Wife is endowed of the immediate Estate, which her Husband's Heir has by descent, than when she is endowed by a Stranger, or of another Estate; for if the Wife be endowed of the immediate Estate descended to her Husband's Heir, if she be after impleaded, she shall vouch the Heir, and shall be newly endowed of other Lands which the Heir has; but if the Wife be endowed by the Husband's or Heir's Alienee, if she be impleaded, she shall not vouch the Alience to be newly endowed: And that is the Reason that when a Woman brings a Writ of *Dower* against the Alienee of the Husband, &c. and he vouches the Heir, the Demandant may Witness that the Heir has Lands descended to him in the same County (for the (*e*) Original doth not extend to another County) and pray that she may be endowed of his Estate, and that is for the Benefit of her Voucher to be newly endowed, *vide* in 4 *E.* 3. 36. *b.* and 6 *E.* 3. 11. *a. b.* the Tenant in a Writ of *Dower* vouched the Heir of the Husband; and the Demandant testified that he by Descent, &c. in the same County; and (*f*) Judgment was given against the Heir if he had, and if not against the Tenant. In 6 *E.* 3. 20. *b.* the Wife of a Stranger brought a Writ of *Dower*, and the Tenant vouched the Heir, &c. the Demandant shall not recover against the Heir, because there wants Privity. In 18 *E.* 3. 36. *b.* in *Dower* the Ten't vouched, and the Vouchee vouched the Heir of the Husband of the Demandant; the Demandant testified that the Heir had Assets by descent in the same County, the Demandant shall not recover against the Heir, but against the Tenant only, so there is not immediate Privity betwixt the Demandant and the Heir, for the Demandant shall recover against the Heir only, when the Ten't in Demesn vouches him. *Vide Regul. Judic.* 15. 16 *E.* 3. *Dower* 56. 3 *El. Dy.* (*g*) 202. And this is the Reason that the Heir only shall plead Detainment of Charters, and not a Stranger, as shall be after said. *Vide N. B.* 8 *E.* 50 *E.* 3. 7. *b.* And the Reason which *Newton* gives in (*h*, 22 *H.* 6. 42. *b.* that the Heir shall have the

(*a*) Doct. pl. 150. 1 Rol. 679. Br. Dower 1. 18 H. 8. 1. a. Dy. 37. pl. 42. Plow. 85. a. b. 4 H. 7. 10. a. 9 E. 2. 2. a. 22 H. 6. 16. a.

(*b*) Fitz. Dower 9. Br. Dower 4.

(*c*) Fitz. Dower 6.

(*d*) 1 Co. 1. b. Co Lit. 6. a. 2 Rol. 31. 11 Co. 50. b.

(*e*) Winch. 88.

(*f*) 2 Rol. 751. Cr. Jac. 638. Dy 202. pl. 71. Hutt 71, 72. Winch. 81, 88.

(*g*) Dyer 202. pl. 71.

(*h*) Br. Dower 26. Fitz Dow. 52. Dy. 230. pl. 53. Perk. sect. 357.

Plea of Detainment of Charters, *&c. ſc.* that if the Heir had the Charters of his Land, he might peradventure plead in Bar of her Dower, can't be the Reaſon thereof; for when the Heir has pleaded that he has been always ready, and yet is to render Dower, *&c.* if the Demandant would render to him his Charters, it is a full Confeſſion of the Action, if the Demandant will deliver the Charters, and therefore after the Charters delivered, the Heir ſhall not plead over, but the Demandant ſhall have her Judgment immediately as ſhall hereafter more fully appear.

2. He who pleads this Plea ought to ſhew the (*a*) Certainty of the Charters; whereupon a certain Iſſue may be joined, or that they are in a Cheſt or Box locked or ſealed; which imports ſufficient Certainty, upon which a certain Iſſue may be taken: And in both Caſes an Action of *Detinue* may be grounded and brought by the Heir, 22 *H.* 6. 16. *a.* 2 *H.* 7. 6. *a.* 14 *H.* 6. 4. *a.* 21 *E.* 3. 8. *b.* 18 *H.* 8. 1. *a.*

3. No (*b*) Stranger, altho' he be Tenant of the Land, and has the Evidences conveyed to him, can in a Writ of *Dower* plead Detainment of Charters, but this Plea lies only in Privity, *ſcil.* for the Heir of the Husband, as hath been ſaid. Alſo the Heir in divers Caſes is in Degree of a Stranger, and therefore ſhall not plead Detainment of Evidences, and that he ſhall not do in five Caſes. 1. If the (*c*) Heir has the Land by Purchaſe. 2. If the Heir has (*d*) delivered the Charters to the Wife, he ſhall not plead Detainment of them, for the Wife has them by his own Act, as it is reſolved in 7 *E.* 3. *Dower* 101. 3. If the Heir be not (*e*) immediately vouched, *ſc.* by the Tenant in the Writ of *Dower*, but by his Vouchee, as has been ſaid 18 *E.* 3. 36. *b.* 4. If the Heir comes in as (*f*) Vouchee, having no Land in the County where the Dower is demanded. 5. If he comes in as Tenant by (*g*) Receit, he ſhall not plead Detainment of Charters, as appears in 16 *E.* 3. *Dower* 75. and many other Books; and the Reaſon thereof is manifeſt; if the true Form of pleading in that Caſe be well obſerved; for he who pleads Detainment of Charters in Bar of Dower, ought to plead, that he has been always ready, and yet is to render Dower, if the Demandant would deliver to him his Charters; and Tenant by Receit, or ſuch Vouchee as is aforeſaid, can't plead it, becauſe he can't plead that he has been always ready to render Dower; when the Demandant can't recover againſt the Heir in ſuch Caſes either being Vouchee or received, nor can he render to the

(*a*) Co Lit. 285. b. Doct. pl. 150. Dy 230 pl. 53. R. Dower 67. Plowd. 85. a b. Poſtea 110. a. Fitz. Dower 17.
(*b*) Cr. El. 367. Co. Lit. 39. a. Poſtea 19. a. Doct. pl. 150. 10 Co. 94. b. Dy. 230. pl 52. Perk. ſect. 361. 10 E. 3. 49. Fitz. Dow. 112. Ver. N. B. 9. b.
(*c*) Dy. 230. pl. 52. Doct. pl. 150.
(*d*) Doct. pl. 150.
(*e*) Doct. pl. 150. Dy. 230. pl. 52.
(*f*) Doct. pl. 150.
(*g*) Doct. pl. 22, 151. Dy. 230. pl. 52.

Demandant the Dower which to her by Law belongs. But if a Man is ſeiſed of three Acres in three Towns, *ſ. A. B.* and *C.* in one County, and enfeoffs a Stranger of one Acre with Warranty, and dies, now the Heir may aſſign the Wife one Acre in Satisfaction of her Dower, as well in the Acre whereof the Stranger is enfeoffed, as of the other Acre deſcended to the Heir, for by Courſe of Law ſhe ſhall have Dower againſt the Heir, in Diſcharge of the whole Tenancy, as well that which he ought to warrant, as that which is deſcended to him in the ſame County, in which Caſe the Heir may agree with the Wife, as well out of Court as in Court, for that which by the Law he is bound to do, and being vouched by the Feoffee in a Writ of *Dower*, he ſhall plead it in Bar, as it is adjudged in 33 *E.* 3. *Judgment* 254. & 8 *E.* 3. 69. *a. b. Michael Treweny*'s Caſe; and by the ſame Reaſon in ſuch Caſe, the Heir being Vouchee ſhall plead Detainment of Charters, *&c.* for he may well ſay, that he has been always ready, and yet is to render Dower to the Demandant, in diſcharge of the whole Tenancy in the ſame County; for by the Law, the Demandant ought to be entirely endowed againſt the Heir. And therewith alſo agrees 17 *E.* 3. 58. *b.* where in *Dower* the Tenant vouched the Heir in Ward, the Guardian by the Warranty ſaid, That the Demandant detained from him the Heir, where the Land is held in Knight Service, and if ſhe would render the Heir, he has been always ready, (*nota hoc*) and yet is to render Dower: And there Exception is taken to it, becauſe this Plea lies for none but him who always after we were dowable, could have rendred Dower, and you could not before now render: To which it was anſwered, That we are he againſt whom ſhe ſhall recover, and the Tenants ſhall hold in Peace, and we might always by Law have made Agreement for that which we held, becauſe by the Law ſhe ſhall be ſerved of Dower of that which we hold, ſo that to us in lieu of *Witherman* the Anſwer is given. *Et videtur Curiæ*, That the Guardian Tenant by the Warranty ſhould have ſuch Anſwer, whereupon the Demandant traverſed the Eloinment of the Infant: In 8 *E.* 3. 55. *a* In a Writ of *Dower* the Tenant made Default after Default, wherefore the Demandant prayed Seiſin of the Land, whereupon came one *John*, and ſaith, That the Tenant held for the Term of his Leaſe, the Reverſion to him, and prayed to be received, and was received, and ſaid that he was Heir to the Husband of the Demandant, of whom ſhe demanded Dower, and ſaid that ſhe

Co. Lit. 35. a. Cr. Jac. 688.

Cr. Jac. 688.

Co. Lit. 39. a.

She detained two Charters touching his Inheritance, and shewed what, &c. and said that if she would render him his Charters, he should be ready to render her Dower, &c. and because Tenant by receit can't Render her Demand, and he is a Stranger, this Plea doth not lie in his Mouth: And thereupon Seisin of the Land was awarded to the Wife.

And so note two good Differences, 1. (*a*) Between the Heir being immediate Vouchee, having Assets in the same County, and when he is vouched by a Vouchee, or when the Heir has nothing but in a foreign County; for in the first Case he may plead always ready, &c. to render Dower, and in the other two not. (*b*) 2. Between the Heir having Land in the same County, when he is immediately vouched, and when he is Tenant by Receit, for in Case of Receit the Judgment shall be given against the Tenant, and not against the Heir, so that the Plea lies not in his Mouth, s. that he is yet ready to render Dower, for he can't render to the Demandant her Demand. *Vide* 7 *E.* 3. *Dower* 101. 6 *El. Dy.* 230. *Vide* 7 *E.* 2. *Dower* 150. 11 *H.* 3. *ibid.* 187. 45 *H.* 5. *ib.* 174. 14 *H.* 4. 30. 36 *H.* 6. 7. 41 *E.* 3. 11. 6 *E.* 3. 45.

(*a*) Doct. pl. 151.

(*b*) Doct. pl. 151.

4. In a Writ of *Dower* against (*e*) Guardian in Chivalry, he shall not plead Detainment of Charters, for he can't conclude his Plea, and if the Demandant will deliver him the Charters, &c. for the Charters which concern the Inheritance of the Heir shall not be delivered to the Guardian, as it is adjudged in 10 *E.* 3. 49. *a.* But the (*d*) Guardian in a Writ of *Dower* may plead Detainment of the Heir by the Demandant, and that he has been always ready, &c. *ut supra*, for the Ward belongs to him; and if the Demand. detains the Ward, and doth not render him to the Guardian unmarried; or if she renders to him being married, she shall lose her Dower, and therewith agree 8 *E.* 3. 70. 7 *E.* 3. 57. *a.* 22 *H.* 6. 16. *a.* 2 *H.* 7. 6. *a.* 17 *E.* 3. 58. *b.* 16 *E.* 2. *Dower* 144. *Vide* what manner of Charters or Evidences the Demandant in *Dower* ought to detain, that the Heir may plead, &c. 41 *E.* 3. 11. *a. b.* 6 *E.* 3. 45. *b.* &c. And so all the Books in all these Points are well agreed. And when (in the Case at Bar) the Tenant perceived that if he should plead such Plea, that the Demandant might deliver the Charters in (*e*) Court, and pray Judgment upon his Confession immediately, as appears in 10 *E.* 3. 49. *a.* 21 *E.* 3. 8. *b.* 9 *E.* 4. 47. *a.* &c. He waived his Plea touching these Matters. And in *Trinity-*

(*c*) Doct. pl. 151. 10 Co. 94 b. Co. Litt. 39. a. Dy. 230. pl. 52.

(*d*) Doct. pl. 151. Co. Lit. 39. a.

(*e*) Doct. pl. 151.

Term, when the Demandant expected that he would have confeſſed the Action; he pleaded, *Ne unques accouple in loyal matrimony*: Whereupon it was written to the Biſhop of *Norwich*, who certified, *Quod infranominati Edmund & Anna legitimo matrimonio copulati fuerunt*. To which Certificate, being ſhort and direct to the Point, no Exception was ever taken: Whereupon the Demandant had Judgment, and divers Manors Parcel of the Demand aſſigned for Dower, which the Demandant leaſed to divers Perſons named by the Tenant, in Conſideration of 1000 Marks Fine, and 500 *li.* Rent *per Annum*.

CASE

CASE OF AVOWRY.

IN the Case of---in the King's Bench, this Point was principally moved and debated, that is to say; if there is Lord and Tenant by Fealty and Rent, and the Ten't makes a Lease for Years, and the Lessor has done Fealty, and paid the Rent continually, and yet the Lord distrains the Cattle of the Lessee for the Rent, when in Truth none is in arrear, and avows upon a meer Stranger who never had any Thing, as upon his very Tenant for the Arrearages of the Rent, if the Lessee shall be without Remedy in this Case. And the Opinion of *Prisot*, (a) 34 *H.* 6. 46. was objected, where he holds, That if there is Lord, Mesne and Tenant, and the Lord avows upon a Stranger, and not upon the Mesne, the Tenant is without Remedy: And so if a Termor brings a Replevin, and he avows upon other than the Lessor, the Termor is without Remedy: And that the common Opinion of all our Books is, That a (b) Stranger to the Avowry shall not plead nothing in arrear, or a Tenure by lesser Services, or any other Plea, but only (c) out of his Fee, or a Thing which tantamounts, 17 *E.* 3. 14. *b.* 15. *a.* 34 *E.* 3. *Avowry* 247. 38 *E.* 3. *Avowry* 61. 39 *E.* 3. 34. *a. b.* 43 *E.* 3. 13. *a.* 2 *H.* 6. 1. *a. b.* & 54. 34 *H.* 6. 21. *a. b.* 35 *H.* 6. 51. *a. b.* 37 *H.* 6. 23. 38 *H.* 6. 23. *b.* 7 *E.* 4. 10. 13 *E.* 4. 6. *b.* 14 *H.* 8. 4. 26 *H.* 8. 6. *a. b.* & 22 *H.* 6. 2. *b.* it is said, That it is a Position in Law, That a Stranger to the Avowry shall not plead, but out of his Fee, &c. It was also objected, That Lessee for Years could not pray in Aid of his Lessor, and so make him Party to plead, because the Lessor is a Stranger to the Avowry, and the Lessee might plead as much as the Lessor himself might, and that is, out of his Fee. And so are the Books in

(a) Postea 22. a. b. Fitz. Avow. 25. Br. Avow 15. Br. Aid 16.

(b) Doct. pl. 340.

(c) Co. Lit. 1. b.

Co. Lit. 311.

* 3 Co. 155. * 18 *E.* 3. 7. *a.* 17 *E.* 3. 9. *b.* 34 *E.* 3. *Avowry* 258. 3 *E.* 2. *Aid* 161. 3 Cro. 165. (*a*) *Aid* 151. 6 *E.* 4. 3. *a.* 12 *E.* 4. 5. *a.* 5 *H.* 5. 5. *a. b.* 2 *H.* 7. 10. *b.* 8 *H.* 7. 8. *b. &c.* unless the Lessee makes his Lessor privy in Estate to him, upon whom the Avowry was made. *Vide* 3 *E.* 2. *Avowry* 186.

Yet it was resolved, That the Lessee for Years shall be by Law relieved in this Case; and for the better Understanding of the Law in this Case, two Differences in Law were observed. First, (as hath been said) a (*b*) Stranger to the Avowry shall plead nothing, but out of his Fee, or a Thing which tantamounts, and that is true as to the Pleading of any Matter in Bar of the Avowry; but the right Tenant, altho' he is a Stranger to the Avowry, yet being made Party he shall plead Matter in Abatement of the Avowry, as shall appear. Another Difference is, when the Lessee for Years, or for Life, shall have Aid of one who is a Stranger to the Avowry, and when not; for upon a (*c*) general Allegation, that such a Stranger was seised in Fee and leased to him for Life or Years, he shall not have Aid, as the Books before cited prove, because it would be in vain in such Case to grant Aid, when the Lessee may plead out of his Fee as well as his Lessor; but upon special Matter discloséd, he shall have Aid of his Lessor, who is very Tenant. And therefore if the Lessee in such case alledges, that his Lessor was, and (*d*) yet is seised of the Tenancy in his Demesne, as of Fee, and held it of the Lord by the Services, *&c.* of which Services the Lord has been, and yet is seised by the Hands of the Lessor, as by the Hands of his very Tenant, and that the Tenant has leased the Land to him, and that the Lord, to charge the Plaintiff unjustly, has avowed upon one, who has nothing in the Tenancy; and thereupon he prays in Aid of his Lessor; in this Case, upon this special Matter, he shall have Aid, because without his Lessor he can't plead this Matter in Abatement of the Avowry, nor shall the Lord be compelled to avow upon the Lessor: And by this special Matter there appears true Privity in Estate and Seigniory betwixt the true Tenant and the Lord, so that there wants no Privity in this Case, nor will the Law esteem him who is true Tenant in Law to be a Stranger to the Lord; and the false Avowry of the Lord upon the Stranger who is not Ten't shall not hurt the Lessee against the Truth of the Case, *quia veritas nihil veretur nisi abscondi.* And the Law will never suffer a Falsity to suppress Truth. And this is well proved by the Books cited before; as, taking one for Example, in the said Book of 18 *E.*

(*a*) 3.

(a) 3. 7. *a.* the Case was such, *A.* brought a *Replevin* against *William Weylond*, who avowed for Rent-service upon the Issue in Tail, the Pl. shewed, That a Stranger to the Avowry leased to him for Life, and pray'd in Aid of him, and was ousted of the Aid because the Lessor could not plead more than the Lessee, because they are both Strangers; but there upon special Matter pleaded he shall have Aid of him, to the End that both may join in a Plea of Abatement of the Avowry, which the Lessee himself alone shall not plead: For the Lessee to have Aid may say, That the Donor before the Stat. infeoffed the Donee in Fee to hold of him, and that the Lessor is Assignee of the Feoffee and has tendred the Services, and compelled the Lord to avow upon him. To which Sir *Rich. Wilby* Chief Just. who gave the Rule, said, Plead then this Matter if you will have Aid. Which Case proves both the Differences, *f.* That a Stranger to the Avowshall compel the Avowant to avow upon him: Which is as much as to say, That he shall abate the Avowry made upon him who has nothing, and compel the Lord to avow upon him who is his right and true Tenant. 2. That upon such special Matter which tends to drive the Lord to avow upon his very Tenant, he shall have Aid of a Stranger to the Avowry: And the Law requires, That the Lord shall always avow upon him who is his Tenant in Right and in Law, and to do it the Lord shall be compelled by special Pleading, and therewith agrees *Littleton cap. Releases f.* 106. if the Tenant is disseised, and the Lord takes the Cattle of the Disseisee, and he sues a Replevin, and the Lord avows upon the Disseisor who is Tenant in Possession, the Disseisee by Pleading of the special Matter shall abate the Lord's Avowry upon the Disseisor, and (*b*) compel him to avow upon him, because the Disseisee is Tenant to him in Right and in Law. *Vide* (*c*) 20 *H.* 6 9. *b.* by *Newton*, (*d*) 48 *E.* 3. 8. by *Fitz. a fortiori*, in the principal Case, when the Lord avows upon one who has nothing, upon the special Matter shewed the Lessor shall join in Aid to the Lessee, and shall abate the Avowry made upon him who has nothing, and compel the Lord to avow upon his Tenant in Right and in Law; and therewith agrees 4 *E.* 3. 50 *b.* 51. *a. Hugh de Luche* brought a *Replevin* of his Cattle against *W. de Striglond*, who avowed upon three Sisters, as Daughters and Heirs of *Alice Sager*, by Reason that they held of him certain Tenements by Homage, Fealty, and Escuage, and by the Services of 10*s. per Annum*, &c. and for Homage Arrear he avowed: To which the Plaintiff said, True it is, that *Alice Sager* held of you the said Tenements by Fealty, and 5*d. per Annum* for all Services, which *Alice* did enfeoff us of the same Tenements, and we have oftentimes tendred our

(a) 1 Rol. 165. Fitz. Aid. 139.

(b) Lit. 107. b. Lit. Sect. 454. Co. Lit. 268. a. 3 Co. 23. b. 35. a. Post. 21. b.

(c) Co. Lit. 268. a.

(d) 48 E. 3. 8. b. per Finchden, Br. Avowry 31. Fitz. Avowry 83. Postea 21. b

our Fealty, Judgment, if you can avow upon other than upon us, or for more Services than, &c. To which Plea in Abatement of the Avowry Exception was taken, because the Pl. was a Stranger to the Avowry: To which it was answer'd and resolv'd, That the Pl. was privy enough, because he was Tenant of the Land and had rendred the Services: And there it is expresly said, That the Issue of this Avowry could not be taken on the Right of the Services, but abate the Avowry, and compel the Lord to avow upon the Pl. and then might they plead to the Right of the Services. (*a*) 48 *E.* 3. 8. *b* by *Finchden*, & 16 *E.* 3. *Avowry* 90. *acc.* *Vide* 39 *E.* 3. 34. *a. b.* & (*b*) 10 *H.* 6. 26. *b.* 31 *E.* 3. *Avowry* 111. *a fortiori* when the Lord shall avow upon one who has nothing in the Land, he who is the very Tenant, and by whose Hands the Lord has received the Services, shall compel him (as *Littl.* (*c*) saith) to avow upon him. *Vide* 9 *H.* 5. 15. *a.* and in 34 *E.* 3. *Avowry* 258. the Pl. was ousted of Aid, because he did not shew the special Matter to give him cause of Aid. And in this Point the Law is curious; for altho' the Lord avows upon the right Person, yet if he doth not convey to him his true Title to the Land, his Avowry shall abate; and therefore if a Man avows upon one as Heir to his Mother, where he is Heir to his Father, this Avowry shall abate. 13 *E.* 3. *Avowry* 102. & 11 *H.* 4. 54. 10 *H.* 4. *Avowry* 193. 3 *E.* 3. 69. *Vide* 27 *E.* 3. 88. *a.* So if in *Replevin* the Def. avows upon the Pl. as upon his very Tenant, the Pl. in Abatement of the Avowry may say, That he has nothing but for Term of Life of the Lease of *W.* the Reversion now to his Son and Heir, and pray in Aid of him, to the Intent to compel the Lord to avow upon him who is his Tenant in Law; and therewith agrees 3 *H.* 6. 12, 13. & *Fitz.* in abridging the Case, Tit. *Aid* 57. saith, that this Plea goes in Abatement of the Avowry; and for this Cause by the Rule of the Book he had Aid of a Stranger to the Avowry. *Vide* 15 *E* 3. *Aid* 33. Tenant in Dower had Aid of the Heir in Reversion, who was a Stranger to the Avowry. And the great Wisdom and Policy of the Law was well observed, which has fully provided for the Remedy of this Case; For in Avowry for Rent-service, &c. the Pl. being Tenant for Years, or for Life, shall have Aid of his Lessor before Issue joined, because without him the Lessee can't plead, as appears in (*d*) 2 *H.* 5. 1. 7 *E.* 4. 23. *a.* 6 *E.* 4. 3. *a.* 21 *E.* 3. 12. *b.* 13 *El. Dy.* (*e*) 229. to the End the rightful and very Tenant joining with him, may abate the feigned Avowry made upon him who has nothing, or upon one who is not rightful Ten't, and compel the Lord to avow upon him who is Tenant in Law: And it would be a great Absurdity, and Defect in the Common Law, if the false and feigned Avowry

(*a*) Antea 21. a. Br. Avowry 31. Fitz. Avowry 83.
(*b*) Br. Avowry 117.
(*c*) Antea 21. a.
(*d*) Fitz. Joinder in Aid 7.
(*e*) Dyer 289. pl. 59.

Avowry upon him who has nothing should charge the Termor with Arrearages of Rent where none were due, and *Lex Angliæ non patitur absurdum:* And if any such Defect had been in the Law, as was objected, the Makers of the Act of (*a*) 21 *H.* 8. *c.* 19. would have provided a Remedy as well for the Tenant, and all Lessees and other Strangers to the Avowry against the Lords, as they did for the Lords against the Tenants and their Lessees, as appears by the Preamble, and not to have bound the Tenants, Lessees, *&c.* and left the Lords at Liberty. And it was said at the Bar, that in some Case the Lord was left to the Com. Law, and could not avow within the said Act of 21 *H.* 8. and that is, when the Lord comes to distrain, and (*b*) sees the Cattle upon the Tenancy, and the Tenant drives them off into other Land not held, and the Lord freshly follows them and distrains them there, as he well may, as it is held in 44 *E.* 4. 20. *b.* 6 *R.* 2. *Rescous* 11. 11 *H.* 7. 4. *a.* 21 *H.* 7. 40. *a.* 34 *H.* 6. 18. *b.* 16 *E.* 4. 10. *a. b.* That this Case is out of the said Stat. because the Purview is, *If the Lord distrein upon the same Manors, Lands or Tenements,* &c. *that the Lord of whom the same Lands, Tenements, or Hereditaments have been so holden, may avow as within his Fee and Seigniory,* and the Distress is taken in Lands not held of him, nor in his Fee and Seigniory, and therefore this Case is out of the said Act. But it was resolv'd, that this Case is within the Purview of the said Act; for, 1. it is cleerly within the Mischief within the Preamble, and the Act is made to suppress Fraud: 2. upon the Matter the Distress is taken upon the Land held, for the Lord can't distrain out of his Fee, but the View of the Lord and his fresh Suit makes the Distress to be in Judgment of Law taken within his Fee, or a Thing which tantamounts; and as *Thorp* saith in 44 *E.* 3. 20. *b.* the Taking shall always refer to the first Place, and it would be inconvenient that the Act of the Tenant himself, (against whom the Act was made) should make the good Act of little or no Effect. But *Nota* Reader, If one comes to distrain for (*c*) Damage-feasant, and sees the Cattle, and the Owner drives them off, he can't distrain them Damage-feasant, but is put to his Action of Trespass. 16 *E.* 4. 10. *b.* & 2 *E.* 2. *Avowry* 182. For there the Cattle ought to be Damage-feasant at the Time of the Distress, and so a Difference.

(*a*) Co. Lit. 268. b.

(*b*) Co. Lit. 161. a. 268. b. 2 Inst. 131. 33 H. 6. 53. a. Br. Distress 13, 83, 91, 100. Plowd. 38. a. Fitz. Distress 2. Fitz. Rescous 13. Br. Avowry 13, in Fine.

(*c*) Plowd. 38. a. Co. Lit. 161. a.

And as to the other Case which *Prisot* puts, *f.* If there is Lord, Mesne, and Tenant, and the Lord avows upon a Stranger, and not upon the Mesne, the Tenant is without Remedy; and it was urged, that it was good Law, for the Ten't upon any special Pleading, as in the Case of the Lessee, can't

Antea 20.

can't have Aid of the Mesne, because he is Tenant in Fee-simple, and the Mesne can't join with him, because he is a Stranger to the Avowry, for the Mesne shall never join with the Tenant, but when the Avowry is made upon the Mesne: And both these Points are resolved in (*a*) 13 *E.* 4. 6 *a.b.* and in other Books, 31 *E.* 3. *Joinder in Aid* 14. 17 *E.* 3. 15. *a. b.* the Abbot of *Furney*'s Case, and there is a Defect observed in the Com. Law in such Case, which is prayed to be amended and reformed by the Justices, as in other Cases to avoid Mischief they have done. *Vide* 39 *E.* 3. 34. *a.b.* And it was resolved and well agreed, That the Opinion of (*b*) *Prisot* in this Case is good Law to the End that *Prisot* intended, for it is true, that *Prisot* intended that the Tenant is without Remedy either to plead any Plea, or to plead nothing in Arrear, &c. because he is a Stranger to the Avowry; or by special Pleading to pray in Aid of the Mesne, for as hath been said, he is Tenant in Fee-simple, and can't pray in Aid, and the Mesne can't join with him, because the Lord has not avowed upon the Mesne; and therefore as to these three Ways, the Tenant, as *Prisot* intended is without Remedy, and his Opinion as to these is well warranted by the Authority of the said Books, but that the Common Law has left the Tenant without any Remedy in such Case, it appears fully and commonly to the Contrary in our Books. And therefore, when there is Lord, Mesne, and Tenant, and the Mesne pays the Rent and doth the Services due to the Lord, and yet the Lord (*c*) distrains the Tenant peravail for them, and impounds his Cattle, in that Case the Tenant may immediately resort to his Mesne, and tell him the Case, and pray him to acquit him: Now the Law has given Power to the (*d*) Mesne to go to the Pound, and take the Cattle of the Tenant peravail out of the Pound and deliver them to him, and put his own Cattle in the Pound in lieu of them, and sue a (*e*) Replevin and so make himself Party, and then if the Lord will avow upon the Stranger, he may shew the Truth of the Matter, and abate any feigned Avowry made upon the Stranger, and compel the Lord to avow upon him, who is his true Tenant in Law; and altho' not distreined in his Default, is a good Plea in a Writ of *Mesne*, yet if the Mesne will not do it upon (*f*) Request, the Tenant upon the Matter is distrained in his Default, and therefore he shall have a Writ of *Mesne* and recover his Damage, as it is held in (*g*) 7 *H.* 4. 18. *a.b.* 4 *E.* 3. 35. 15 *E.* 3. *Joinder in Aid* 15. 17 *E.* 3. 44. *b.* (*h*) 34 *H.* 6. 47. *a. b.* 13 *E.* 4. 6. *a.b.* & *F. N. B.* 136. *h.* And if the Lord will not suffer the Mesne in such Case to take the Cattle of the Tenant out of the Pound, he is a (*i*) Trespassor *ab initio*; for he doth not use them according to the Nature

(*a*) Br. Mesne 24. Post. 23. a 111 a. Br. Replevin 42.

(*b*) Postea 20. a.

(*c*) 2 Rol. 125. F. N. B. 136 H. Co. Lit. 100. a.

(*d*) Postea 110 b. 111. a. Co. Lit. 100. a.

(*e*) Co. Lit. 145. b.

(*f*) Post. 111 a.

(*g*) Co. Lit. 100. a. Br. Mesne 4. 2 Rol. 125. Br. Replevin 14.

(*h*) 2 Rol. 430. Br. Replevin 54. Co. Lit. 100. a.

(*i*) Perk. Sect. 190, 191. Cr. Jac. 148. Fitz. Trespass 67. Antea 11. a. 8 Co. 146. b.

ture of a Distress, and therewith agrees (*a*) 13 *E.* 4. 6. *a. b.* But let the Tenant look to it, that in such Case he sues not a *Replevin* of his Goods, and has Deliverance of them, for that shall be accounted his own folly that he doth not make requeſt to the Mesne *ut supra*, for then if the Lord shall avow upon a Stranger, the Tenant is without Remedy by his own Default; but in such Case after the Tenant has deliverance of his Cattle by *Replevin*, if the Lord avows upon the Mesne, there the Tenant may requeſt the Mesne to join with him to plead in his discharge, and if the Mesne will not, the Tenant may have a Writ of (*b*) *Mesne* against him, and recover his Damages: For now by Matter *ex post facto*, he is distreined in his Default, as it is held in 39 *E.* 3. 34. *a. b.* where the Case was, That *Henry Percy* was Lord Paramount, *Gilbert Umfrevill* Earl of *Angus*, Mesne, and a Tenant peravail, of divers Manors, *s.* 10 Towns, *&c.* the said Lord paramount distrained the Tenant peravail, the Tenant pleaded a Releaſe by Deed of the said Lord Paramount to the Mesne, to hold by leſſer Services; *& non potuit*, because he was a Stranger to the Avowry: And there it was held, That the Tenant in such Case is at no Mischief, for he might have required the Mesne upon whom the Avowry was made to have joined with him in Answer, and if he had come, they two might have joined in the Plea which the Tenant now pleads, and if the Mesne would not have joined with the Tenant, he might have against him a Writ of *Mesne* and therein recovered his Damages against him; and if the Tenant dôth not requeſt the Mesne, it shall be accounted his own Folly, which are Word for Word the Words of the Book: And therewith agree 17 *E.* 3. 15. *a. b.* and 12 *E.* 4. 2. *a.* 7 *E.* 4. 19 *b.* And it is to be obſerved, that in such Case, the Mesne ought to join (*d*) *gratis*, for there is no Proceſs of Law to compel him to appear, as in the Case of Aid Prayer, but only upon the Tenant's Requeſt he ought to appear *gratis*, and therewith agrees 7 *E.* 4. 19. *b. Vide* 34 *H.* 6. 46. *a.* And so may the Leſſor upon whom an Avowry is made, join *gratis* with the Leſſee, the Plaintiff in the *Replevin*, and therewith agree 45 *E.* 3. 7. *a. b.* & 39 *H.* 6. 7. *b.*

Laſtly, in the principal Case, if the Leſſee (or if the Tenant peravail in the Case of the Mesnalty) is preſent when the Lord or his Bailiff comes to distrain, if (*e*) nothing is in Arrear, he may well make Reſcous, and so relieve himself, as it was reſolved in *Bevil's Case*, *in the fourth Part of my Reports*, *f.* 8. *Vide* 2 *H.* 4. 22. *b.* 8 *H.* 4. 1. *a.* 4 *E.* 6. *Br. Distreſs* 75. *By the Juſtices*, 31 *E.* 3. *Reſcous* 17. 39 *E.* 3. 45. 39 *H.* 6. 7. *a. F. N. B.* 102. 27 *Aſſ.* 51. *and* 28 *Aſſ. p.* 50. So that the Leſſee, or Tenant peravail, has a certain Proviſion by the Law to relieve himself in the Cases aforesaid, unleſs by his Laches or misdoing he

(*a*) Antea 22. b. Br. Mesne 24. Br. Replevin 42. Post. 111. a.

(*b*) Co Lit. 100. a.

(*c*) Doctrin. placit. 165.

(*d*) Doctrin. placit. 320.

(*e*) Co. Lit. 47. b. 160. b. 1 Rol. 673. 4 Co. 11. b. Br. Distreſs 75. F.N.B. 102. E.

prejudices himself. And forasmuch as notwithstanding the Statute of 21 *H.* 8. *cap.* 19. the Lord may at this Day avow upon one Person certain, as upon his very Tenant, according to the Com. Law, (for the said Stat. enacts *That the Lord*, &c. (*a*) *may avow*, &c. *as in Lands within his Fee and Seigniory*, which doth not toll the Common Law, but gives a Liberty to the Lord to pursue the one or the other) I have thought necessary to report this Case, whereby all the Books are well reconciled, the Doubts well resolved, and no Absurdity of Mischief permitted, or not remedied, by the Common Law.

(*a*) Co. Lit. 268. b. Postea 36. a.

Mich. 33 & 34 Eliz.

The Case of the Abbot of Strata Mercella.

IN a *Quo warranto* against *Owen Vaughan* for using these Liberties and Franchises amongst others, without Warrant, that is to say, To have Waifs, Strays, Goods of Felons, &c. in *Llanihangel* in the County of *Montgomery*; as to Waifs and Strays, the Defendant claimed them by Prescription, and as to Goods of Felons he pleaded, *Quod Johan' nuper Abbas de Strata Mercella licite (a) habuit & gavisus fuit infra Llanihangel præd' bona & catalla felonum, & ad usum suum proprium disposuit, usque 4 diem Febr. Anno 27 H. 8.* And pleaded the Statute of 27 *H.* 8. by which all Monasteries under the yearly Value of 200 *l.* were given to the King, in as large and ample Manner as the Abbots, &c. then had, or ought to have them; and that the said Abbey of *Strata Mercella*, and the Possessions thereof, were under the yearly Value of 200 *l.* and pleaded also the Statute of 32 *H.* 8. *cap.* 20. by which it is enacted, *That all Liberties, Privileges, and Franchises, and temporal Jurisdictions which the late Owners of the said Abbies*, &c. *have used and exercised lawfully*, &c. *within three Months before the said Act of* 27 *H.* 8. *shall by the said Act of* 32. *be revived, and shall be really and actually in the King, his Heirs and Successors*; by Force whereof K. *H.* 8. was seised of the said Franchises, *s.* to have Felons Goods within *Llanihangel* aforesaid in his Demesne as of Fee in the Right of his Crown, and so seised, and being also seised of the Manor

Moor 297. Co. Ent. 540. nu. 7. 2 Rol. 61, 62.

(a) Palm. 83.

27 H. 8. c. 27.

Manor of *Tallerthege* in *Llanihangel*, &c. in the said County, (late Parcel of the Possessions of the said Abbey of *Strata Mercella)* granted by his Let. Patent *anno* 37 *H.* 8. the said Manor to Sir *Arthur Darcy* Kt. in Fee, with general Words, (a) 10 Co. 65. a. that is to say, (a) *tot, talia, tanta, hujusmodi, eadem & consimilia, libertates, francheſias, privilegia, juriſdictiones*, &c. *quot, qualia, quanta, & quæ dictus nuper Abbas*, &c. *habuit, tenuit, ſive gaviſus fuit infra*, &c. By Force whereof the said *Arthur Darcy* was seised as well of the Manor aforesaid, as of the Liberties, &c. aforesaid in Fee; and so seised of the said Manor enfeoffed the Def. in Fee (for altho' there were divers mean Conveyances, this was the Case in Substance) and then he made a Conclusion for all his Plea, *viz. Et eo warranto clamat libertates, francheſias, & privilegia præd' tanquam ad Manerium præd' ſpectan' & pertinent'*. And upon this Plea, as to the Goods and Chattels of Felons, the Queen's Counsel demurred in Law. And it was argued on the Part of the Queen, That the Defendant's Claim to have the Goods and Chattels of Felons was insufficient for 2 Reasons; 1. Because he doth not shew, That the Abbot had (b) 2 Inst. 281. Co. Lit. 114. a. Stamf. Prærog. 50. a. 46 E. 3. 16. b. 1 H. 7. 23 b. 2 Roll. 270. Br. Coron. 129. 9 H 7. 11. b. 20. a. 21 H. 7. 33. b. Fitz. Prescription 27. 8 H. 4. 2. a. 3 Inst. 55, 227. Kelw. 152. b. Postea 27. Br. Estray 13. the Goods of (b) Felons by Charter within *Llanihangel*; for by Prescription, or any Usage, he could not have them, for altho' he shall not be compelled to shew the Charter in Court, or to plead an Exemplification of it, because the Charter was made to a Stranger, yet he ought to have pleaded That the Abbot had the said Franchise by Charter. 2. That the Substance of the Plea wants Trial, for the Effect of his Plea is, *Quod præd' nuper Abbas licite habuit & gaviſus fuit infra*, &c. *bona & catalla felonum*, &c. And these two Points were often argued at the Bar in divers several Terms; and the Effect of the Arguments on the Queen's Part, as to the first, was, That the Abbot could not have Felons Goods by Prescription or any Usage, but by Charter, *quod fuit conceſſum per totam Curiam. Vide* the Authorities, and the Reasons and Causes thereof in *Foxley's Case, in the* 5 *Part of my Reports f.* 109. *b.* & 110. *a.* whence it was inferred, that the Defendant ought to have pleaded in certain, That such King granted to some of the Predecessors of the said Abbot, &c. or to the said Abbot himself, to have Felons Goods within the Town of *Llanihangel*, &c. and not *quod præd' Abbas habuit & gaviſus fuit*, &c. and especially in a *Quo warranto*, in which the Defendant ought to shew a full and perfect Title to himself. As to the Second, it was ob- (c) Postea 30 b. 31. a. jected, That the Plea was insufficient, because every Plea ought to be (c) triable, either by the Country, if it contains Matter of Fact, or by the Justices, if it contains Matter in Law, or by the Record it self, if it consists

ſiſts of Matter of Record, *Pl. Com.* 231. *a. b.* But this Plea is not triable by the Country for two Reaſons. 1. Becauſe the Subſtance of the Iſſue conſiſts of Matter of Record; for without Matter of Record the Abbot could not have them, which can't be tried by the Country, but the Law attributes ſo much Honour and Credit to them, that they ſhall be tried only by (*a*) themſelves, and not by the Country. *Vide* (*a*) 37 *H.* 6. 21. *Pl. Com.* 7. & 23. 8 *El.* 242. & Hind's *Caſe in the* 4 *Part of my Reports f.* 71. 2. Matters in Law are not triable by the Country, no more then Matters in Fact by the Juſtices, *quia ſicut* (*b*) *ad quæſtionem Facti non reſpondent Judices, ita ad quæſtionem Juris non reſpondent Juratores.* But in this Caſe the Def. has comprehended in his Plea, *qd' præd' nuper Abbas &c. cuſtumabat habuit, &c.* which tends to Matter in Law which is not enquirable by the Country; and yet the Def. has not ſhewed his Caſe in ſo certain and ſpecial a Manner, that the Court can judge whether the Abbot by the Law had Felons Goods or not; and therefore it is agreed in (*c*) 22 *E.* 4. 40. *b.* the Lord *Liſle*'s Caſe, a Man was bound in a Bond, and the Condit. was That if he came to *B.* ſuch a Day, and there ſhewed the Obligee or his Counſel a ſufficient Diſcharge of an Annuity of 40 *s.* which he claimed out of two Houſes, *&c.* that then, *&c.* And in Debt on this Bond the Def. pleaded, That he came to *B.* at the Day aforeſaid, and there offered to ſhew the Plaintiff's Counſel a ſufficient Diſcharge thereof, and they refuſed, upon which the Pl. demur'd in Law. And, after long Argument it was adjudged, That the Plea was inſufficient, for his Plea ought to have alledged what manner of (*d*) Diſcharge he offered to ſhew, *viz.* a Releaſe, or Unity of Poſſeſſion, or other Matter of Diſcharge, upon which the Court might judge if it was ſufficient or not, for the Country ſhall not enquire of it, but ought to be adjudged by the Court, which the Judges can't do, if the ſpecial Matter be not ſhewed to them; but if the Iſſue be taken, that the Obligor came not there, that ſhall be tried by the Country, for that is matter in Fact, of which the Court has not Conuſance, and all this appears in the ſaid Book. *Vide Pl. Com.* (*e*) 112. Amy Townſend's *Caſe*, & (*f*) 159. *b.* in the *Lady* Hale's *Caſe*, *&c.*

(*a*) 4 Co. 71. a. b.
(*a*) Co. Lit. 117 b. 260. a. Poſtea 31 a.
(*b*) Co. Lit. 125. a. 155 b. 226 a. 303. b.
2 Bulſt 204. 251. 305, 314. 1 Sid. 127. Plow. 114 b. 1 Rol Rep 132 Ant. 13 a. 8 Co. 155. a. 10 Co 10. b
(*c*) Plowd. 76. Br. Condit. 183. Ho. 107. 1 Leon. 72.
(*d*) Cr. El 914.
(*e*) Plow. 114 b.
(*f*) Plow 259. b.

And as to the Objection which may be made, That it will be miſchievous to the Subject to compel him to ſhew, or to plead the Charters made to Abbots, Priors, *&c.* as well for the (*g*) infinite Search for them, as for the Impoſſibility to get them, many of them being loſt, or defaced, or poſſeſſed by one only; to that it was anſwered, That there is not any ſuch Miſchief, either for the Incertainty, or for the Impoſſibility, for although the Charters are loſt, yet they

(*g*) 2 Co. 48. a. 11 Co. 14. b. Hob. 298. Bugdin 34 Poſtea 26 b.

are enrolled of Record, of which every one may have an Exemplification; or if such Inrolment can't be found, yet Allowances in Eyre (as by the Law ought to be) are of Record of all such Franchises, by which it appears by Force of these Charters such Franchises were allowed. Against which it was argued on the Defendant's Part, That the Plea was sufficient, upon which Judgment ought to be given for the Defendant: And that the whole Consideration of this Case chiefly consists upon the true Construction of the said Statute (*a*) of (*a*) 32 *H.* 8. and therefore the final Intention of the Act and the Purview thereof are to be considered: The Intention of the Act was to advance these Possessions as well in Valuation as Estimation, to revive actually and really such Privileges, Liberties, Franchises, and Temporal Jurisdictions which the late Owners of the Abbies had, *&c.* then it is to be considered, what Privileges, Liberties, Franchises and Jurisdictions were extinct in the Crown by the Accession of the said Possessions to it. And as to that, it is to be known, that when the King grants any Privileges, Liberties, Franchises *&c.* which were Privileges, Liberties or Franchises in his own Hands, as Parcel of the Flowers of his Crown, as (*b*) *Bona & catalla Felonum, Fugitivorum, Utlagatorum, &c. bona & catalla waviata, extrahur', deodanda, wreccum Maris, &c.* within such Possessions, there if they come again to the K. they are merged in the Crown, and he has 'em again *Jure Coronæ*: And if the Wreck, or Goods waifed, Estrays *&c.* were appendant before to Possessions, now the Appendancy is extinct, and the King is seised of them *in Jure Coronæ*. But (*c*) when a Privilege, Liberty, Franchise or Jurisdiction was at the Beginning erected and created by the King, and was not any such Flower before in the Garland of the Crown, there, by the Acceffion of them again to the Crown they are not extinct, nor the Appendancy of them severed from the Possessions; as if a (*d*) Fair, Market, Hundred, Leet, Park, Warren, *& similia*, are Appendants to Manors, or in Gross, and afterwards they come back to the King, they remain as they were before *in esse* not merged in the Crown, for they were at first created and newly erected by the King, and were not *in esse* before, and Time and Usage has made them appendant. Which Difference was agreed *per totam Curiam*, and this appears in our Books, as for the first Part of the Difference (*e*) 6 E. 3. 32. *a. John Darcy's* Case, the Case of Forfeiture of War, & 30 *H.* 8. *Dyer* (*f*) 44. 43. *E.* 3. 32. 43 *Ass.* 10. 1 & 2 *Ph. & Mar. Dyer* (*g*) 108. and for the second Part of the Difference, 11 *H.* 4. 5. *a.* & 15 *E.* 4. 7. the Case of the Market, 4 *E.* 3. 42. the Case of the Hundred

(*a*) 32 H. 8. c. 20.

(*b*) 1 Mod. Rep. 232. Cr. El. 592. Moor 472. 1 Anders. 87. Palm. 78 Argument in quo Warranto 123.

(*c*) Argument in quo Warranto 123.

(*d*) 1 Anders. 87. Moor 474. Palm. 78.

(*e*) 10 Co. 64. b.

(*f*) Dy. 44. pl. 32.

(*g*) Dy. 108. pl. 30.

dred, 10 *H.* 7. 21. the Caſe of the Earldom: All which Privileges, Liberties, Franchiſes, and Spiritual Juriſdictions of the firſt Quality (which were the ancient Revenues and Flowers of the Crown) being merged in the Crown, are now by this Act (*a*) revived again actually and really in the King, his Heirs and Succeſſors: For as to thoſe of the later Part of the Difference, there needs no Act of Parliament to revive them, for they were not extinct. So that the Patentee in ſuch Caſe of Felons Goods, ſhall have them as the ſame Franchiſe which is *in eſſe* in the Crown. And therefore it was obſerved, that the ſaid general Words uſual in Patents, *tot, talia, &c. eadem & conſimilia, quot, qualia, quanta, & quæ, &c. dictus nuper Abbas habuit, &c.* have ſeveral and diſtinct Significations; for by Force of this Word *eadem*, the Franchiſes themſelves as Hereditaments *in eſſe* in the Crown ſhall paſs, and by Force of (*b*) *talia & conſimilia, &c.* the Patentee ſhall have the like to them the Abbot had, for thoſe themſelves the King can't grant, becauſe they were merged in the Crown. And it was well agreed, That if the King by his Letters Patent grants to *J. S.* and his Heirs, *Catalla felonum* within his Manor of *D.* and afterwards *J. S.* grants to the King his Heirs and Succeſſors, the Manor with the ſaid Franchiſe, and afterwards the King by his Letters Patent grants to *J. N.* and his Heirs, the ſaid Manor, and further grants to him and his Heirs within the ſaid Manor, *tot, talia, tanta, eadem & conſimilia privilegia, libertates, & franchefias, quot, qualia, quanta, & quæ* the ſaid *J. S.* had; in that Caſe in a *Quo Warranto J. N.* ought not to plead in ſuch general manner as the Defendant now has done; but ought to plead in (*c*) ſpecial the firſt Charter made of the ſaid Felons Goods, and the Regrant, *&c. quod fuit conceſſum per totam Curiam.* But it was ſtrongly urged by the Defendant's Counſel, that by (*d*) Force of the ſaid Act of 32 *H.* 8. the Defendant might aver, *quod Johannes nuper Abbas de Strata Mercella licite habuit & gavisus fuit infra Llanihangel bona & catalla Felonum*, for therein the Defendant in his Plea has purſued the Words of the ſaid Act, which are, *That all Privileges*, &c. *which the ſaid Owners of the ſaid Abbies*, &c. *have uſed and exerciſed lawfully within three Months before the ſaid Act of* (*e*) 27 H. 8. *ſhall be by Force of the ſaid Act of* 32 H. 8. (*f*) *revived, &c.* for the Defendant has pleaded, That the ſaid late Abbot, *&c.* lawfully has uſed and exerciſed to have the Goods and Chattels of Felons, till the ſaid 4th Day of *February Anno* 27 *H.* 8. and this was compared to divers other Statutes, as to *Vernon's Caſe in the* 4 *Part of my Reports f.* 3. *a.* where the Statute of 27 *H.* 8. *c.* 10. which ſpeaks *for the Jointure of the Wife*, gives Averment, that

(*a*) Cr. Jac. 242.

(*b*) 1 Jones 347.

(*c*) Godb. 398.

(*d*) 2 Co. 48. b. Cr. Car. 543. Hob. 300. Bridgm. 142.

(*e*) 27 H. 8. c. 27.

(*f*) Cr. Jac. 242.

an Estate upon another express Condition, may be averr'd *for the Jointure of the Wife*: And so upon the Stat. of Usury, (*a*) 13 *El.* and upon the Stat. of (*b*) 23 *H.* 6. upon Bonds taken by Sheriffs and the like. And where it is objected, that this Issue is not triable, it was answered, That it shall be tried by the Country, for (*licite*) is concluded within the other Words, *s. habuit & gavisus fuit*, for (if *licite* had been omitted) in the Sense of the Stat. it had been implied) as the Stat. of *Glouc.* *c.* 3. which saith, whereof no Fine is (*c*) levied in the K.'s Court, is as much as to say, whereof no Fine is lawfully levied in the King's Court. So 11 *H.* 4. 80. upon the Stat. of *W.* 2. *c.* 5. *Si Episcopus Eccles. conferat*, is as much as to say, *Si Episcopus Eccles.* (*d*) *legitimo modo conferat*, and in the Stat. of *W.* 2. *de Donis conditionalibus*, the Words *ad dona prius facta non extenditur*, are to be intended of Gifts (*e*) lawfully, and in due manner made by the Donees, before the Stat. *Pl. Com. in the Ld.* Barkley's *Case*; and therewith agrees 12 *H.* 4. *Formedon* (*f*) 15. And the Stat. of (*g*) 1 *E.* 4. *c.* 2. which enacts, that all manner of Indictments taken in Torns or Leets shall be deliver'd to the Justices of Peace at the next Sessions, &c. and that they shall proceed upon them, extends only by Construction of Law to proceedings upon lawful and sufficient Indictments, and makes no insufficient (*h*) Indictment good, as it is held in 4 *E.* 4. 31. *a. b.* And that is the fundamental and directory Reason of the Com. Law, for the Com. Law saith, That no Conspiracy lies when the Party was indicted, but altho' he be indicted, if the Indictment be not sufficient in Law, the Party shall have his Writ of (*i*) *Conspiracy*, for when the Com. Law speaks generally, it is to be intended in a good and lawful Sense. So it was concluded, That if this word *licite* had not been added, it had been implied, and by Consequence the Addition of it shall not make an Alteration of the Trial, for (*k*) *expressio eorum quæ tacite insunt nihil operatur*: And because the Def. ought to pursue the Stat. in his Plea, and not to omit this word *licite*, and that if it had been omitted in the Statute, it had been implied, for this Reason it was concluded, that this Issue shall be triable by the Country. And it was said, that the Stat. of 32 *H.* 8. has great Reason to direct such summary course of Averment for the Impossibility and (*l*) Infiniteness of Search, many of the said Religious Houses being founded before Time of Memory, and their Charters of Franchises also made before Time of Memory, and some by general, obscure, ambiguous and obsolete Words; and altho such Franchises have been allowed in Eyre, yet the Allowance in Eyre of it self only is not pleadable, and perhaps such Allowances being of so great Antiquity, have been by Casualty, or Length of Time,

quod

(*a*) 3 Co. 80. a. 13 El. c. 8.
(*b*) 23 H. 6. c. 10.
(*c*) Lit. sect. 731. Co. Lit. 381. b.
(*d*) Co. Lit. 381. b.
(*e*) Plow. 246. b.
(*f*) Co. Lit. 381. b. Pottea 120 a. Plow 246. b.
(*g*) 2 Inst. 190, 191. Stanf. Cor. 85. b. 86. a. b. 5 Co. 112. b.
(*h*) Co. Lit. 381. b. Rast. Sheriff 27. Br. Presentm. in Court 16. Br. Parliam. 53. Fitz. Tourn de Viscount 3 5 Co. 112. b. Stanf. Cor. 87. a. b
(*i*) F. N. B. 114. d. 1 Bulstr. 151.
(*k*) 1 Mod. Rep. 190. Hob. 170. 10 Co. 39. a. Lit. Rep. 111. Hard. 92. 1 Rol. Rep 310. 2 Rol. Rep. 393. Palm. 433, 437. 4 Co. 73. b. 5 Co. 11. a. 8 Co. 56. b. 145. a. 11 Co. 60. a. Co. Lit. 191. a. 205. a. 2 Inst. 365. 2 Saun. 351. 2 Bulstr. 131. Latch. 25.
(*l*) Ant. 25. a. 2 Co. 48. a. 11 Co. 14. b. Hob 298. Bridgm. 54.

quod eſt edax rerum, defaced or loſt; and for theſe Reaſons, and for avoiding of Incertainty of Queſtions and Sutes, and for raiſing the Value of theſe Poſſeſſions, the Stat. of (*a*) 32 *H.* 8. has altered the manner of Pleading which the Common Law would have required. And upon this Caſe great doubt was conceived by *Popham* Ch. Juſtice, *Gawdy*, and the Court, and it depended in Argument and Adviſement, as a Caſe of great Conſequence till *Hill.* 39 *El.* in which Term 3 other Matters were moved againſt the Defendant's claim. 1. Becauſe it doth not appear by the Defend.'s claim what Eſtate the ſaid Abbot had in the ſaid Franchiſes, but generally, (*b*) *qd' licite habuit & gaviſus fuit, &c.* and perhaps he had them but by Leaſe for Years, or for Life, *&c.* and the Stat. of 32 *H.* 8. doth not give the K. more than the Abbot had, and the Stat. of 32 *H.* 8. doth not revive more than was extinct; and by the Letters Patent of 37 *H.* 8. the Def. has pleaded a Grant of the ſaid Franchiſes as Franchiſes revived by the Act, and *in eſſe* at the Time of the Grant. The 2 Objection was, That when the Def. has claimed *bona & catalla waviata & extrahuras*, by Preſcription appendant to the ſaid Manor, *& bona & catalla felonum* by Force of the ſaid Act of 32 *H.* 8. and Poſſeſſion of the ſaid Abbot, the Def. concludes his claim to all, *& eo warranto clamat libertates Franchefias, & privilegia præd' tanquam ad Manerium præd' ſpectant & pertinent'* whereas *bona & catalla felonum* without Queſtion can't be appendart, or appurtenant to the ſaid Manor, becauſe they lie not in Preſcription, and the Claim without the Concluſion of *eo warranto*, had been inſufficient, and it is all one to have no Concluſion, and an inſufficient Concluſion. *Vide* 22 *H.* 6. 53. *a. b.* 36 *H.* 6. 17. 37 *H.* 6. 39 *H.* 6. Laſtly, it was objected, That the Def. in his claim has conveyed the ſaid Manor to himſelf by Feoffment, which is pleaded without Deed, and has not conveyed to himſelf any Title to the ſaid Franchiſes, which can't paſs without Deed, and then without Queſtion Judgment ought to be given againſt him, for he has no Title, and the Franchiſes, if any were, remain with the Feoffor.

(*a*) 32 H. 8. c. 20.

(*b*) Cr. El. 57, 87.

As to the firſt of theſe 3 Objections, It was anſwer'd, 1. That a General having and enjoying of them, ſhall be intended of a having and enjoying in Fee-ſimple, and that a particular Eſtate or Intereſt ſhall not be preſumed, if it be not ſpecially ſhewed, and therefore *prima facie* it ſhall be intended a Fee-ſimple. 2. That the Def. in this Caſe has purſued the Words of the Stat. but it was granted, that the Pleading had been clearer, if the Defendant had alledged, That the ſaid Abbot was ſeiſed of them in Fee till the ſaid Act of 27 *H.* 8. and in the End taken the Averment according to the Statute. But the Court did not give Judgment upon that Point. As to the 2 the Court gave no Reſolution, for ſome

Cr. El. 57, 87.

Cr. El. 87.

27 H. 8. c 27.

said it should be taken good *reddendo singula singulis*, and some held the Contrary. But it was resolved *per totam Curiam*, That if the *(a)* Q. grants the Manor of *D.* to *J. S.* and his Heirs, and within the same Manor to have Waifs, Estrays, *bona & catalla felonum, &c. dicto Manerio spectan' & pertin'*, that in a Grant these Words *dict' manerio spectan. & pertin'* do not refer to Felons Goods, or other Franchises which lie in Point of Charter, which can by no Usage nor Time be appendant or appurtenant to a Manor, but they shall pass altho' they were never demised or used with the Manor. But the Doubt was conceived in the Case at Bar when it was by way of Pleading. *Vide* Justice *(b)* Windham's *Case, in the 5 Part of my Reports.* But as to the last Objection, it was resolved *per totam Curiam*, without any Question, That forasmuch as the Defendant has not conveyed to himself any Title to the said Felons Goods, *&c.* that for 'em Judgment should be given against him, and so it was.

(a) Palm. 77, 78. 2 Rol. 192.

(b) 5 Co. 7. b. 8. a.

Nota Reader upon the Arguments of this Case, 4 Things are worthy Consideration. 1. What ancient Franchises ought to have Allowance, and what not. 2. How one in a *Quo Warranto* may claim Franchises, which lie in Point of Charter, without shewing or pleading a Charter, and where he shall be compelled to plead a Charter. 3. When one claims such Franchises by the said general Words *de tot, talia, eadem, & consimilia privilegia, &c.* as such a one had, *&c.* what Estate he to whom the Reference is made, ought to have in the Franchises. 4. Something is necessary to be said of the manner of Trials allowed by the Com. Law; for beside the 3 mentioned in the said Arguments, there are many other.

(c) 2 Inst. 281. Co. Lit. 114. a. 2 Rol. 270. Stanf. Prærog. 50. 46 E. 3. 16. b. 1 H. 7. 25. b. Br. Coron. 129. Br. Estray 13. 9 H. 7. 11. b. 21 H. 7. 33. b. Fitz. Prescript. 27. 8 H. 4. 2. a. 3 Inst. 55, 227. Kelw. 150. b. 5 Co. 9. b. 10. a. 9 H. 7. 20. a. Ant. 24. b.

As to the first, it is to be known, That every Franchise, Liberty or Privilege, either lies in Point of Charter, and can't be claimed by Prescription, as *bona & catalla (c) felonum, &c.* or in Prescription and Usage in *pais*, without the Help of any Charter, as Wreck, Waif, Estrays, *&c.* Of Franchises which lie in Point of Charter, either they are before Time of Memory, or within Time of Memory, *s.* from the Time of *R.* 1. *Lit. (d)* 38. *Regist.* 158. 20 *H.* 6. 3. *a.* 34 *H.* 6. 36. *a. b.* 5 *E.* 3. 50, 51. 6 *E.* 3. 18. 8 *El.* *(e) Dyer* 245. If they were granted before Time of Memory, as many of the Charters and Grants to Abbots, Priors, and other such religious Corporations are, they are granted either by special Words, as they seldom or never were, or by general, old, obscure, ambiguous, and obsolete Words; as in 30 (f) *Ass.* 31 K. *Will.* the Conqueror granted to the Abbot of *Battaile*,

(d) Lit. Sect. 170. f. 38. a. b. Co. Lit. 113. b. 114. a. (e) Dy. 245. pl. 67. (f) Br. Conusance 46. Br. Patent 105.

taile, qd' habeat (a) Curiam suam regalem; 34 *Ass.* 14. The Conqueror granted to the Abbot of *Glassenbury, omnem regiam (b) potestatem.* 14 *H.* 6. 12. K. *H.* 2. founded the House of S. *Bartholomew*, and granted that they should be as free in their Church as the K. in his (c) Crown. 10 *H.* 7. 13. *b.* 14. *a.* in ancient Times the K. granted (*d*) *omnia jura sua regalia*: The K. *Canutus*, and *Ed. the Confessor* granted to the Abbot of *Bury, qd' nulla secularis persona, aut minister Reg' in aliquo se intromittat in burgo sancti* Edmundi, *aut hominib' in eo manentib' nisi Abbas & Convent' & eorum Ministri*, and many others which I have seen: And be such (*e.* Grants of Franchises special or general, certain or obscure; *&c.* yet forasmuch as they are made before Time of Memory, and so of themselves they are not any Record pleadable, they ought to have the Aid and Support of some other matter of Record, within Time of Memory, as (*f*) Allowance before Justices in Eyre, or before the Justices of the K.'s Bench, which is more than an Eyre, either in Case before the Justices of the Com. Pleas, or before the Barons of the Exchequ. or by Force of a Confirmat. by Charter of Record of some K. within Time of Memory, and shall not be now allowed, but for such Part of the Grant which so has been (*g*) allow'd and confirm'd, altho' it be all in one and the same Patent. But Usage only, which is but Matter in Fact, will not support a Record before Time of Memory in such Case, and therewith agree 26 *Ass.* 24. 30 *Ass.* 31. 34 *Ass.* 14. 1 *H.* 4. 3. 2 *E.* 4. 22. 21 *H.* 7. 29. 9 *H.* 12. 10 *H.* 7. 14. *a.* 16 *H.* 7. 16. 20 *H.* 7. 7. 8 *H.* 8. *Keilway* 189, 190. *Vide* 8 *E.* 3. 18. 17 *E.* 3. 11. 12 *H.* 4. 23. 8 *H.* 6. 4. 28 *Ass.* 1. And when such ancient grant is general, obscure or ambiguous, it shall not be now (*h*) interpreted as a Charter made at this Day; but it shall be construed as the Law was taken at the Time when such ancient Charter was made, and according to the ancient Allowance on Record. 33 *H.* 6. 22. 10 *H.* 7. 13. *b.* & 14. *a.* 16 *H.* 7. 9. 12 *H.* 4. 12. 14 *H.* 6. 12. *a.* 35 *H.* 6. 54. 9 *H.* 7. 11. 6 *E.* 3. 54, 55, 7 *E.* 3. 40, 41. 18 *E.* 3. *Comusans* 39. 54 *Ass.* 14. 40 *Ass.* 21. But if the Charters were granted within Time of Memory, then they are pleadable, without shewing any Allowance or Confirmation, as by the Books aforesaid appears. Of Franchises which may be claim'd by Prescription, as Wreck, Waif, Stray, *&c.* as they may be originally claimed by Usage, which is a Matter in *pais*, so Usage may support them without the Aid of any Record, either of Creation, Allowance or Confirmation; and therewith agree the Books aforesaid.

As to the second it is true, that it is said in 6 *E.* 3. 55. & 8 *E.* 3. 10 & 11. and commonly in other Books, That the (*i*) *Quo Warranto* for Franchise is in the Nature of the King's Writ of Right in such Case, and that the Defendant in it ought to make a sufficient Title against the King; and let us see how this Title shall be made.

(*a*) Br. Conusance 46. Br. Patent 105.
(*b*) Br. Conus. 20, 48. 12 H. 4. 12 b.
(*c*) 14 H. 6. 11. b.
(*d*) Br. Patent 110.
(*e*) 2 Rol. 268, 269.
(*f*) Cr. Jac. 313. 1 Jones 291, 292. 2 Inst. 281. 2 Bulstr. 296.
(*g*) Post. 34. a.
(*h*) Co. Lit. 8. b. 94. b. 10 H. 7. 13. b. 14. a. Br. Pat. 110. Palm 91. Cr. El 633, 905. Latch. 47. 2 Inst. 2, 282, 336. Davis, 16. b.
(*i*) Cr. El. 129.