Hill. 8 Jacobi *Regis.*

In Curia Wardorum.

Sonday's *Case.*

Swinb. 112. Brigdm. 137.

MErick Sonday being ſeiſed in Fee of an Houſe in *Lam*
beth held in Chief by Knights Service 7 *Aprilis* 158
by his Will in Writing deviſed the ſaid Houſe to *Margar*
his Wife, for Life, *and after her Deceaſe his Son* William
have it, and if his Son William *marry, and have by hi*
Wife any Male Iſſue lawfully begotten of his Body, then hi
Son to have it; if he have no Male Iſſue lawfully begotte
of his Body, then his Son Samuel *to have the Houſe; if* Samue
marry, and have Iſſue Male of his Body lawfully begotte
that then his Son to have the Houſe after his Deceaſe;
no Iſſue Male, then his Son Thomas *to have the Houſe;*
Thomas *marry, having a Male Iſſue of his Body lawfull*
begotten, then his Son to have the Houſe after his Deceaſe
if he have no Iſſue Male, then his Son Richard in li
Manner, & *totidem Verbis*, and ſo to *Daniel totidem Ver*
bis; And then he adds this Clauſe, *And his Will and Mi*
was, that if any of his Sons, or their Heirs Males Iſſue
their Bodies go about at any Time to alienate, or mor
gage the Houſe, that then the next Heir to ent
upo

upon the House and enjoy it: And afterwards *Merick* died, and *William* died without Issue Male, having Issue *Margaret*, (who had the 3 Part of the said House in respect of the Tenure) *Samuel* also died without Issue Male, *Thomas* entred into 2 Parts, and *Trin. 6 Jac.* he and his Wife suffered a common Recovery with single Voucher, which was to the Use of the said *Thomas* and his Heirs, and afterwards 17 *Dec. Thomas* died without Issue Male, and in this Case two Questions were moved, 1. What Estate *Thomas* had. 2. If by the Suffering of the said Recovery, he had forfeited his Estate, and that thereupon the Entry of the said *Richard* was lawful or not.

As to the first it was objected, That when *Merick* devised, that *Thomas* his Son shall have his House, if the Will had not gone further, he should have had but for Life, then when he added, *if* Thomas *my Son marry, having a Male Issue, that then his Son to have the House*, that is an express Devise to the Son that he shall have, and not to himself. But it was answered and resolved, That as well the said *Thomas* as the other Sons have an Estate (*a*) Tail to them severally, and to the Heirs Males of their Bodies; and that for three Reasons. 1. Because he farther saith, *if he hath no Issue Male, his Son* Richard *to have it*, which is as much as to say, if *Thomas* dies without Issue Male, which Words are sufficient to create an Estate-tail in him. 2. The said last Clause, *if any of his Sons, or their Heirs Males Issue of their Bodies go about*, &c. which explains the first Words, that the Male Issue shall be Heir, and take by Descent, the first Words, *that his Son shall have the House after his Decease*, *i.* shall have it as Heir; for the Words of the Will make it manifest, *and if any of their Sons, or their Heirs Males Issue of their Bodies*, &c. also after it is said, *that then the next Heir to enter.* 3. The Thing prohibited proves it also; for as well his Sons as their Heirs Males are prohibited to alien or mortgage, &c. and every Restraint (*b*) implies (and especially in a Will) that the Parties (if the Restraint had not been made) had Power to do that which is prohibited, which is the Reason that he restrains them. And if his Sons should have but an Estate for Life, (*c*) this Clause of Restraint, That if they should alien, &c. that then the next Heir should enter, &c. would be idle, and of none Effect.

(*a*) Bridg. 137. Swinb. 112. Lit. Rep. 8, 259, 347. Moor 128. Cr Jac. 416, 695. Cro. Car. 367, 369. Haid. 149.

(*b*) Bridgm. 137. (*c*) Cr Car. 185. (*d*) 2 Rol. Rep. 468. Swinb. 712. Cr. Jac. 697, 698. Godb. 351. 10 Co. 37. a. 38. b. 39. a. 42. b. 6 Co. 41. a. Hob. 170. Co. Lit. 223. b. 224. a. 2 Brownl. 67. 1 Rol. 418. Cart. 23.

As to the 2 Point, it was resolved by the 2 *Ch. Justices*, *Ch. Baron*, *and the Court of Wards*, That no (*d*) Condition or Limitation, be it by Act executed, or by Limitation of an Use,

Uſe, or by Deviſe in a laſt Will, can bar Tenant in Tail from aliening by (*a*) common Recovery for the Cauſes and Reaſons reported at large in the 6 *Part of my Reports*, in *Sir Anthony Mildmay's Caſe*; and according to thoſe Reſolutions the Caſe was decreed, &c.

(*a*) Car. 23. 1 Rol. 418. 2 Brownl. 67. 10 Co. 37. a. 38. b. 39. a. 42. b. Co. Lit. 223. b. 224. a. Hob. 170. 6 Co. 41. a. Cr. Jac. 697, 698. 2 Rol. Rep. 468. Godb. 351. Swin. 112.

Pasch. 9 Jacobi *Regis.*

In Curia Wardorum.

Quick's *Case.*

QUeen *Elizabeth* Lady, *John Northcote*, and *Thomas Quick* Tenants in Common, of the Manor of *Newton* (being the Mesnalty) held of Queen *in Capite* by Knights Service, and one *Will. Bodley* Tenant peravail of three Acres of Meadow, called *Warram Meadow*, held of the Manor of *N.* by Knights Service. *Thomas Quick*, 34 *El.* infeoffed *Babb* and others of his Moiety of the said Manor, to the Use of himself for his Life, and after to the Use of *John Quick* his Son and Heir apparent in Tail, and afterwards to the Use of the Heirs of *Thomas Quick*; and afterwards *Will. Bodley* of the said three Acres of Meadow, enfeoffed the said *John Quick* and his Heirs, and afterwards *John Quick* five Days before his Death, and being sick, by Collusion betwixt him and his Father, enfeoffed his Father and his Heirs, to the Intent to defraud the said *Joh. Northcote* of the Wardship of *Andrew*, Son and Heir of *John Quick*, being an Infant within Age, and afterwards *John Quick* died; after whose Death *John Northcote* seised the Body of *Andrew Quick*, and afterwards *Thomas Quick* died, after whose Death the Moiety of the said Manor descended to *Andrew Quick*. The Question was, Whether the Wardship of the Body and of the Moiety of the said three Acres of Meadow, belonged to the King, or to the said *John Northcote*. And this Case was argued by Counsel learned on both sides, in *Hillary* and *Easter Terms*: and 2 Questions were moved in this Case.

1. When *J. Quick* Ten't in Tail in Remaind. of the Mesnalty died, his Heir within Age, then accru'd to the K. beginning of

Wardſhip. *ſ.* when Ten't for Life died, and by the Death of *John* accrued to *Northcote* Wardſhip of the Body, in reſpect of the Feoffm. by Colluſion of the ſaid 3 Acres of Meadow, and of the Moiety of the 3 Acres of Meadow, and afterwards when *Tho. Quick* who was Ten't for Life of the Meſnalty died, then was the King's Title, which was begun before, conſummated; and therefore it was argued, that the K.'s Title ſhould be preferred; for now the K.'s Title is by the Deſcent from him in the Remaind. and the Death of the Ten't for Life is but the removing of the Impedim. *Et quando jus Dom' Reg' & ſubdit. inſimul (c) concurrunt, jus Reg' præferri debet.* As in *Dame* Hale's *Caſe*, (*b*) Husband and Wife Joint-ten'ts of a Term for Years, the Husb. in *fcto de ſe*, he ſhall forfeit the Whole, *Plow. Com.* 262. and yet there it ſurvives till Office, but after Office it has Relation, either before, or at leaſt to the Time of the Death. So in the Caſe at Bar altho' the K.'s Title is not full till the Death of the Ten't for Life, yet when he dies, then the K.'s Title is by the Deſcent which accrues together with the Title of *Northcote* by the Death of *Joh. Quick*. *Nota* the Caſe put by *Weſton* in *Dame* Hale's *Caſe* of diſcent to a (*c*) Villain being Ideot, 263. *b. Vide* 44 *E.* 3. 25. *a.* if the K. and a common Perſon join in a Foundat. the K. is Founder. As to that it was anſwered and reſolved, that in this Caſe the Intereſt veſted in *Northcote* ſhall not be deveſted; for the Title of *Northcote* was (*d*) conſummated by the Death of *J. Quick*, but by his *Death the King had but a Poſſibility if *Thomas* ſhould die during his Minority; for if *And. Quick* had come of full Age, during the Life of *Tho. Quick*, he ſhould never be in Ward, altho' he was within Age at the Time of the Deſcent of the Remaind. And *Bingham's Caſe in the 2 Part of my Reports f.* 91. proves, that it is but a Poſſibility: For if after the Deſcent of the Remaind. and before the Death of the Tenant for Life, the Seigniory is granted over, and afterwards the Ten't for Life dies, the Heir of him in the Remaind. within Age, neither the Grantor, nor the Grantee ſhall have the Wardſhip of him. *Vide* 24 *E.* 3. 25. the Caſe of the D. of *Lancaſter*: But the ſaid Point never came in Queſtion, for by the Feoffm. of *J. Quick* of the ſaid 3 Acres to *Thomas*, the Meſnalty as to the ſaid 3 Acres was extinct, becauſe *T. Quick* had the Reverſion of the Meſnalty; ſo that the Reverſion being extinct, no particular Eſtate of the Meſnalty, either for Life or in Tail, can remain. And that was the clear Opinion of the two *Ch. Juſtices* and *Ch. Baron*. *Vide* 3 *H.* 6. 1. 15 *E.* 4. 12. & 40 *E.* 3. 14. the Caſe of Warranty.

(*a*) Hardr. 22. Co. Lit. 30. b. 2 Co. 55. a.

(*b*) Hardr. 24.

(*c*) Hardr. 24. Co. Lit. 30. b.

(*d*) Hardr. 27. * Poſt. 132. a.

Antea 126. b.

2. It was moved, That when the Tenant makes a Feoffment to certain Perſons by Colluſion, that the Lord ought to recover the Land by Writ of *Right of Ward*, before he ſhall have a Writ of *Raviſhment of Ward*: and therewith agree *F. N. B.* 134. *k.* 12 *H.* 4. 13. *b.* 13 *H.* 6. 16. by *Priſot*, and the Statute of 34 *H.* 8. in Caſe of Colluſion gives a Writ of *Right of Ward* for the Body

and Land, and therefore in this Case *Northcote* could not seise the Ward till he had recovered the Land; and then it was objected, That the Title of the King by the Death of *Thomas Quick* is in Possession, and shall be preferred before the Title of *Northcote*, which is only in Action. As to that it was resolved, That the Title of Wardship which accrued to him by the Death of *John Quick*, (altho' it should be in Action) should not be devested by the Death of another Ancestor, *s.* of *Thomas Quick*.

Trin. 9 Jacobi *Regis.*

In Curia Wardorum.

Bewley's *Caſe.*

LEonard Bewley ſeiſed in Fee of an Houſe and certain Lands in *Culgath* in the County of *Cumberland*, died thereof ſeiſed 25 *Jan. an.* 38 *El.* after whoſe Death it was found by Office, that the ſaid Houſe and Lands, with the Manor of *Culgath*, whereof they were Parcel, by the Attainder of Treaſon of *Andrew Hartley* were forfeited to King *E.* 2. and afterwards K. *E.* 2. by his Letters Patent granted the ſaid Manor, whereof, &c. to *Morisby* in Fee, *tenend' de nobis & hæredibus noſtris per ſervitium medietat' feodi unius militis imperpetuum, & reddend' inde nobis & hæred' noſtr' per annum ad Scaccar'* 10 l. *& faciend' cliis Capital' Dom' feodi illius ſi qui fuer', reddit' & ſervitia quæ inde debebantur antequam ad manus noſtras devenerunt, Salvis nobis & hæred' noſtr' feod' militum, & advocationibus eccleſiarum*, &c. and found further the other Points of the Writ: By Office after the Death of *Morisby anno* 22 *E.* 3. it is found, that the Manor of *Culgath*, whereof, &c. is, and before the Attainder of *Hartley* was held of *Robert Nevil* of *Horneby*, *qui illud tenuit de Domino Rege in capite per ſervitium* 16 s. & 8 d. *ad cornagium ſolvend' ad feſtum aſſumption' beatæ Mariæ pro toto anno. Et Juratores præd' ulterius dicunt, quod poſt mortem Chriſtophori de Morisly* 3 *partes dicti manerii tenentur de Dom' Rege per ſervitium militare :* And by an Office found *anno* 29 *E.* 3. and another 48 *E.* 3. and by a Record *anno* 8 *H.* 4. *in computo Collectorum rationabilis auxilii*, &c. and by Office *anno* 17 *H.* 8. and by Office *anno* 38 *H.* 8. it was found (altho' it was not in one and the ſame Manner) that the ſaid Manor of *Culgath* was held of the King *per ſervitium militare.*

Ley de Gards, &c. 4.

And

And it was resolved by the two *Chief Justices*, and the *Chief Baron*, that by the Patent of King *E.* 2. the Tenure of the Mesne should be revived, altho' the King in the first Place had reserved to himself other Services, *s.* Knights Service, where the Mesne before the Attainder held of the King in Socage, as appears by the said Office in 22 *E.* 3. and altho' the King had reserved another Rent, yet because the King for his Honour, and in Advancement of the ancient Right according to Equity and Conscience, expresly intended that the Menalty should be revived (which by the Attainder of the Tenant peravail by Rigour of Law, without the Fault of the Mesne was extinct) the Clause of Revivor of the Mesnalty should be preferred before his Profit; and therefore the Tenant peravail should hold of the Mesne, as he held before the Attainder, and the Restitution of an ancient Right should be preferred. And Sir *J. Molyn's Case* in the *6 Part of my Reports*, *f.* 5. was affirmed for good Law. *Vide* 2 *E.* 3. 33. *seu* 60. *b.* 8 *E.* 3. 283. (*a*) 17 *E.* 3. 59, *b.* 25 *E.* 3. 46. 46 *E.* 3. *Petition* (*b*) 19. 49 *E.* 3. 10. 22 *Ass.* 53. 31 *Ass. p.* 30. 4 *H.* 6. 20 33 *H.* 6. 7. *Nota* upon the said Books a Difference betwixt a Creation of a new Tenure, without any aspect to the ancient Right, for there the first Reservation shall stand; and betwixt a Restitution of an ancient Tenure; for that shall be preferred before the Reservation, which is first in Words. *Nota* a good Difference.

Ley de Gards, &c. 4.

6 Co. 5. b. 6. a.

(*a*) 6 Co. 6. a. 11 Co. 73. b. 74. a. b. 2 Inst. 501.

(*b*) 6 Co. 6. a. Lit Rep. 43. 2 Inst. 501.

Mich. 9 Jacobi *Regis.*

In Curia Wardorum.

Thomas Holt's *Caſe.*

FRancis Holt the Grandfather had Iſſue *Thomas Holt* the Father, his eldeſt Son, and four other Sons, *Thomas* had Iſſue *Francis*; *Francis* the Grandfather being ſeiſed of divers Lands in Fee in the County of *Lancaſter*, Part of which were held of the King by Knights Service *in Capite*, and the reſt held of others, conveyed Part of his Lands held, and of the other Lands not held, to the Uſe of *Thom. Holt* the Father, and *Conſtance* his Wife, yet living, for their Lives, and afterwards to the Uſe of *Francis* the Son, and to the Heirs Males of his Body, with divers Remainders over in Tail, the Remainder to *Francis* the Grandfather for Life with other Remainders in Tail, the Reverſion in Fee to the Right Heirs of *Francis* the Grandfather, and conveyed other Lands held, *&c.* to the Uſe of himſelf for Life, with ſeveral Remainders to other of his younger Sons then living, for their Lives ſeverally, the Remainder to *Thomas* the Father for his Life, the Remainder to *Francis* the Grandfather, and to the Heirs Males of his Body, with divers other Remainders, the Reverſion in Fee to *Francis* the Grandfather and his Heirs; *Francis Holt* the Grandfather died, *Thomas* the Father being of full Age, who tendred his Livery, and died before Livery ſued, or Office found: *Francis* the Son being of full Age, and all this is found by Office, *Francis* the Son continues the Livery, *Conſtance* the Wife of *Thomas* the Father, and the four younger Sons of *Francis* are yet living. And two Queſtions were moved in this Caſe: 1. If the King ſhould have any primer Seiſin in this Caſe in Poſſeſſion. 2. If he ſhould have any primer Seiſin for the Reverſion in Fee (expectant upon the ſaid Eſtates-tail) which deſcended after the Death of the ſaid *Thomas* the Father.

And

And in this case these points (the case being often debated, and good considerat. had) were resolv'd. As to the first 3 points were resolv'd. 1. That by the death of *Tho.* before livery sued, the K. had lost having any primer seisin after the death of *Fra.* the Grandf. as before in (*a*) *Northcote's case*, and in (*b*) *Hale's case in the 8 part of my reports*, and oftentimes it has been resolv'd. And there is a difference betwixt livery or primer seisin, and mean rates, for livery or primer seisin is lost by the death of the Heir, but mean Rates, if any are due, not; for they are absolutely vested in the K. 2. That *Fr.* the son should not sue livery, or pay any primer seisin, because he was out of the stat. of 32 *H.* 8. & 34 *H.* 8. as also it has been often times resolved, because after the death of the grandfath. primer seisin was due by the father, and the son living the father is not within the stat. 3. That where the statutes of 32 & 34 *H.* 8. give the K. primer seisin in case of acts executed, that if the K. has a primer seisin, the stat. is (*c*) satisfied, and he shall not have of others in remaind. or of the younger sons, &c. as the common experience is in the court of wards. Then it was strongly urged, that in this case for as much as a right and interest of primer seisin was vested in the K. altho' afterwards by the act of God by the death of *Th.* the primer seisin by act in law is discharg'd, yet for as much as the K. should have but one primer seisin, that for the land convey'd to the younger sons the K. should not have any primer seisin; but it should be accounted the laches of the K.'s officers, that they did not force *Th.* to sue livery, or have taken security of him to answer it. But it was resolv'd, that the King should have primer seisin for the lands convey'd to the younger sons in this case, because they are within one of the 3 cases in which wardship and primer seisin are given to the K. by the said acts, *s.* advancem. of his wife, preferm. of his children, and paym. of his debts: And the reason and cause of this resolution was, that when the said acts give the K. primer seisin, it is intended of an actual and effectual primer seisin, and not of any which is mathematical and imaginary, for the K. ought always to have the full and and compleat * effect of the thing which is due to him; and therefore if one who is within the said 3 cases dies before livery, so that the K. has lost his primer seisin, and has not the effect of the stat. the K. shall have primer seisin of others who are within one of the said 3 cases, but not of any other who is out of the said 3 cases) and this resolut. is well prov'd by former resolutions and authorities in the like cases; and therefore if the K. has title to present by lapse *hac vice*, and he presents, and his clerk is admitted and instituted, and dies before induction, the (*d*) K. shall present again, for he has not the full and compleat effect of his presentat. as it was resolved by Sir *James Dyer & totam Curiam* in *Giles Case* 18 *El. in Communi Banco*. So if the King marries a daughter whom he has in (*e*) ward, *infra annos nubiles*, and before the age of consent the Husband dies, the King shall have the marriage of the heir again, because the first marriage was

(*a*) 1 nt. 129. b.
(*b*) 8 Co. 172. b
(*c*) 2 Co 93. b. Co. Lit. 78. a.
* 1 Co. 22 a. Lit. Rep. 135.
(*d*) Cr. Jac. 463. 2 Rol. 353, 354. Lit. Rep 135. Dy. 360. pl. 7.
(*e*) Co. Lit. 79 a. Lit. Rep. 135 6 Co. 22 b. Moor 742. Ley Gards. &c. 7.

not compleat, as it is resolved in *Ambrosia Gores's Case in the 6 Part of my Reports, f. 22. b.* and yet in these Cases a common Person shall be barred. In (a) *6 E. 3. 56. a. b.* the Case was such, King *H. 3.* granted the Honour of *S. Wolrey* with the Advowson of *Mixby* thereto appendant, *Rich, Com' C[ornub]' & Reg' Almannorum*, and to the Heirs of his Body, saving the Reversion to the King, which Earl had Issue *Edmund* his Son, and died, *Edmund* his Son *Oclab' Purific' an. 8 E. 1.* levied a Fine of one Acre of Land Parcel of the said Honour, with the Advowson of the said Church of *Mixby*, to the Bishop of *Rochester*, &c. which Alienation was before the Statute *de Donis Conditionalibus* made *anno* 13 *E. 1.* and afterwards the said *Edmund* Earl of *Cornwal* died without Issue. And by the Authority of that Book it appears, that altho' the Alienation was made before the Statute, and *post prolem suscitatam*, the Donees and their Issues *habuerunt potestatem alienandi* to bar the Reversion of common Persons, yet it should not bar the K.'s Reversion, altho' it be with collateral Warranty, if there be not Assets descended, so that the K. may have a full Satisfaction and Recompence, for without Warranty and Recompence it is not such compleat Alienation, because it moved from him who had not a compleat Estate, which should bar the King of his Reversion: And therewith agrees (b) *45 Ass. p. 6.* and yet in the Case of a common Person such bare Alienation before the Statute, without any Warranty, or collateral Warranty, without any Alienation would bar the Donor in such Case. As to 2 it was resolved, and so was it affirmed by the Attorney of the Court of Wards, That the Usage had always been in such Cases, that *Francis* being of full Age at the Death of *Thomas* the Father, the King should not have Primer Seisin of the said seck and fruitless Reversion in the Case at Bar; and the Reason is, because the Words of *Prærogativa Regis c. 3.* are (c) *Rex habebit primam seisinam, &c. capiendo exitus eorundam terrarum & tenementorum donec, &c.* So when no Rent or Profit is reserved, the King can't take *exitus, &c.* in such Case, but if the King's Tenant by Knights Service *in Capite* makes a gift in Tail, rendring a yearly Rent or other Profit to him and his Heirs, and dies, his Heir of full Age, there the K. may take Primer Seisin of the Rent or Profit which descends to the Heir for one Year: And so *Nota* for such a seck and fruitless Reversion the Heir shall be in Ward if he be within Age, but shall not pay Primer Seisin for such fruitless Reversion, if he be of full Age at the Time of the Death of the Ancestor.

(a) Co. Lit. 19. a. b. 370. b.

(b) Co. Lit. 19. b. 370. b. 7 Co. 11. a. Calvin's Case. Br. Assets per discent 21. Br. Tail 34. Br. Garranty 68. Br. Garran. 52. Plow. 234. a. 553. b. 10 Co. 96. b. Br. Prærog. 52. Br. ferch pur le Roy 5. * 10 Co. 80. b.

(c) Stanf. Prærog. 11. b. 12. a. b. &c.

Mich

Mich. 9 Jac. *Regis.*

In Curia Wardorum.

Matthew Mene's *Case.*

Matthew Mene the Grandfather being ſeiſed in Fee of divers Meſſuages, Lands, and Tenements in *Kent* of Cuſtom of *Gavelkind*, and of an Houſe held of the King by Knights Service *in Capite*; and the Reſidue of common Perſons in Socage, had Iſſue *Andrew*, who had Iſſue *Matthew*, *Thomas*, *John*, and *Andrew*: *Andrew* the Father died, *Matthew* the Grandfather by his Will in Writing deviſed all his ſaid Lands, *viz.* to *Mat.* eldeſt Son of *Andrew* the Father one Part, and to the Heirs of his Body, and to *Thomas* ſecond Son of *Andrew* the Father another Part, whereof the Houſe held *in Capite* was Parcel of like Eſtate; and to the other Sons of the ſaid *Andrew* the Father, other Parts of the like Eſtate: *Matthew* the Grandfather died ſeiſed of the ſaid Meſſuages, Lands and Tenements, *Matthew* the Son being of the Age of of 15 Years, and all the ſaid Brothers of *Matthew* being alive, and all this was found by Office. And in this Caſe 2 Queſtions were moved. 1. Whether the King ſhould have a 3 Part of the Meſſuage only, and not of the other Lands not held of the King? 2. Admitting he ſhould have a 3 Part of the whole, whether he ſhould have a full 3d Part out of the Part of the eldeſt Son only, or out of the Part of every Brother? And as to the firſt it was ſtrongly urged, that the K. ſhould have but a 3 Part of the Land held, and of the third Part of the Part of the eldeſt Son; and their principal Reaſon was, becauſe if no Will had been made, the King ſhould have but the 3 Part of that which deſcended to the eldeſt Son, and not of the Parts which deſcended to the younger Sons, for where the Stat. of *Prærogativa Regis c.* 1. ſaith, *Dominus Rex habebit Cuſtodiam omnium terrarum eorum qui de ipſo tenent in Capite per ſervitium militare, &c. de quocunque tenu-*

10 Co. 80. b.

Stamf. Prærog. 1, 2.

tenuerunt, &c. it is meant, if the Land descends to the same Heir, to whom the Land held descends, but if any Part descends to another Heir, the King shall not have it, and therewith agree 12 *E.* 4. 18. & *Stamf. prærog.* 8. *b.* And the Statutes enable one to devise 2 Parts of his Lands for the Benefit of his Children, where the King would have all if no Devise was made, but in all Cases where no Will is made the King would have nothing, there the Stat. gave not any Wardship or Primer or Seisin, altho' a Will be made, and thereby the Land devised to his Sons, for that is not within the Purview of the said Acts. To which it was answered and resolved, That it is true if no Will had been declared, the King should not have the Lands held of others in Socage, which descended to younger Sons, but when by the Will (to which he is enabled by the Statutes) he devises them to his Sons, in such Case the Saving in the same Statutes gives the King Wardship and Primer Seisin; and therefore a stronger Case was agreed for Law, Tenements devisable by Custom in *(a) London* came to King *H.* 8. by the Dissolution of Abbies, and afterwards the King by his Letters Patents granted them in Fee to hold by Knight's Service *in Capite*, and the Patentee by his Will devises them for Preferment of his Wife, Advancement of his Children, or Payment of his Debts, and dies, his Heir within Age, the King shall have the 3 Part in Ward: And yet the Devise is good for the whole Land by the Custom, without any Help of the said Statutes of 32 & 34 *H.* 8. And notwithstanding the King in such Case shall have the Wardship of the 3 Part by Force of the said Saving in the said Statutes; and therewith agree 5 *Mar. Dyer* 155. 6 *Eliz. Dallison* 4. *Pasch.* 20 *Eliz.* between * *Barbor* and *E.* his Wife Plaintiffs and *William Long* Defendant, in *Partitione facienda*, Judgment given upon a special Verdict reported by *Bendloes* Serjeant: Wherefore it was resolved, that the K. *a fortiori* in the Case at Bar should have a 3 Part of the Whole.

(a) Dyer 155. pl. 21. Dall. in Kelw. 205. b. 206. a. Dall. in Ath. pl. 9. Dall. 64. pl. 24, 75. pl. 60. Stile 4-6. Moor 70. 1 Anders. 52, 53, 147. Co Lit. 111. b. Benl. in Kel. 214. Benl. in Ath. 32. N. Benl. 317. pl. 300. 5 Co. 35. a. Palm. 543. * Supra in a.

As to the second Point, it was also resolved, that the King should have the 3 Part out of every several Part, so that the Charge should be *(b)* equal, and should not fall upon one only. *Vide* 35 *H.* 8. *Testaments (c) Br.* 19. 4 *E.* 3. *Assise* 178. *Vide* 21 & 22 *Eliz. (d) Dyer* 366. *b.*

(b) 10 Co. 84. b. 8 Co. 173. b. (c) 2 Co. 25. b. 5 Co. 100. a. (d) Dyer 366. pl. 28. 3 Co. 31. b. 1 Leo. 57.

Mich.

Mich. 9 Jacobi *Regis.*

In Curia Wardorum.

Aſcough's *Caſe.*

IT was found by Office, after the Death of *William Aſcough* Eſq; that Sir *Edw. Aſcough* Father of the ſaid *William*, was ſeiſed in Fee-Tail of the Manor of *Darcy*, and of the Manor of *Selby* in *Stallingborough* in the County of *Lincoln*, the Remainder to *Francis* his Brother in Tail, the Remainder to the ſaid Sir *Edward* in Fee, And that the ſaid *William Aſcough* was ſeiſed in Fee of an Houſe, 4 Acres and an half of Land, 9 Acres of Meadow, and 4 Acres and an half of Paſture in *Stallingborough* aforeſaid, and held them of the ſaid Sir *Ed. Aſcough*, as of his Manor of *Darcy*, *ſed per quæ ſervitia Juratores ignorant*; and that the ſaid *William* was alſo ſeiſed in Fee of an Houſe, and 40 Acres of Land, *&c.* in *Owresby* in the ſaid County, and held them of Sir *Thomas Mounſon*, as of his Manor of *Owresby* in the ſame County, and afterwards, upon the Marriage of *William* with *Katharine* the Daughter of *William Henage*, the ſaid Sir *Edward* and *Francis* levied a Fine of the ſaid Manors to the Uſes following, *viz.* of one Part in certain of the Manor of *Darcy*, and of ſome Part in certain of the Manor of *Selby*, to the Uſe of *William* and *Katharine* for their Lives, and to the Heirs Males of the Body of the ſaid *William*, the Remainder to the ſaid Sir *Edward* in Tail, with other Remainders in Tail, the

the Remainder to Sir *Edward* in Fee; and for the Reſidue of the ſaid Manors to the Uſe of Sir *Edward* for the Term of his Life, and afterwards to the Uſe of the ſaid *William* and to the Heirs Males of his Body, with divers Remainders over in Tail, the Remainder to the right Heirs of the ſaid Sir *Edward*; and afterwards the ſaid *William* died, as aforeſaid, ſeiſed, *Edward Aſcough* his Son then being within Age, and that the ſaid Manors of *Darc* and *Selby* are held of the King by Knights Service *in Ca pite*; and that Sir *Ed. Aſcough* the Father, *William* and *Katharine* are yet alive.

And the ſole Point in this Caſe was ſhortly ſuch. The King Lord, Meſne, who held by Knights Service *in Capite*, Tenant peravail in Socage, the Meſne granted the Meſnalty to the Uſe of himſelf for Life, and afterwards to the Uſe of the Tenant peravail in Tail; if in this Caſe the Meſnalty be ſuſpended during the Life of the Meſne, by Force of this Remainder in Tail. And it was reſolved, that a Remainder in Tail, or for Life, expectant upon an Eſtate for Life or in Tail, ſhall never ſuſpend a Meſnalty, Seignory, Rent, *&c.* For altho' the Remainder veſts immediately, yet it can't ſuſpend the preſent Freehold of the Rent during the Life of the firſt Tenant for Life, becauſe the Tenant for Life is Tenant to the Lord or to him in Reverſion as long as he lives, and he ſhall do the Services, and the Avowry ſhall be made upon him, for he is the very Tenant by the Manor; and during his Life the Heir of him in the Remainder in Tail ſhall not be Ward, *&c.* and as a Seigniory, Rent, *&c.* can't be *(a)* ſuſpended in Part and *in eſſe* for Part, in Reſpect of the Land out of which it is iſſuing; ſo a Seigniory, Rent, *&c.* cannot be ſuſpended in Remainder, and *in eſſe* for a particular Eſtate in Poſſeſſion, for then *(b)* Fractions of Eſtates would enſue, and particular Eſtates would be created without Manors or Leſſors, againſt the Rules and Maxims of the Law. But in this Caſe aforeſaid, if the Meſne grants his Meſnalty to one for Life, or in Tail, the Remainder to the Tenant peravail in Fee; there the Meſnalty is extinct, becauſe he has as high an Eſtate in the Inheritance of the Meſnalty as he has in the Tenancy, and there is not any Poſſibility of reviving the Meſnalty. And in the ſame Caſe the Meſnalty is not extinct for the Inheritance, and *in eſſe* for the particular Eſtate for Life, or in Tail, in Poſſeſſion, but the Meſnalty by the Remainder in Fee is extinct for the Whole, for otherwiſe in the ſame Caſe this Abſurdity would enſue, *ſc.* that there would be a Fee-ſimple of the Tenancy peravail, and alſo a Fee-ſimple of the Se-

(a) 1 Ventr. 277.

(b) 1 Co. 45.

niory paramount, and but an Estate for Life, or in Tail of the Mesnalty only; and so a Tenancy in Fee-simple would be only held of a Mesnalty for Life, or in Tail, and a Seigniory in Fee would be issuing out of a Mesnalty for Life or in Tail only, which is impossible, and by no Means can be. *Vide* 3 *H.* 6. 1. 15 *E.* 4. 12.

Nota Reader I conceive, That if the Lord grants his Seigniory for Years, the Remainder to the Tenant peravail for Life, in this Case the Seigniory is suspended, because the Tenant for Life has the Freehold of the Seigniory, and he is Tenant to every *Præcipe* of the Seigniory, as in the Case of *Lit. lib.* 2. *c. Attorn. f.* 128. if (*a*) Land is leased to a Man for Term of Years, the Remainder to another for Term of Life; and afterwards the Lessor grants over the Reversion, and he in the Remainder for Life attorns, it is a good Attornment, and shall bind the Lessee for Years, without any Attornment made by him, for he was Tenant of the Freehold; and at the Common Law the Termor for Years was subject, and under the Power of the Tenant of the Freehold, for he should not (*b*) falsify a Recovery at the Common Law against the Tenant of the Freehold, because he had but a Chattel. And where it is said in this Case, that the Seigniory can't be suspended in Part, and *in esse* for Part, as it is held in 32 *H.* 8. Tit. (*c*) *Extinguishment Br.* 48. that is regularly true, but *habet hæc regula plures fallentias*, all which may be well explained with this Difference between the Act of the Party, and Act in Law, or Act of the 3 Parties: For by Act of the Party, be it rightful or wrongful the whole Seigniory, &c. is suspended, and therefore if the Lord, the Lessor disseises or (*d*) ousts the Tenant or Lessee of any Part, the whole is suspended, as it is held in 11 *E.* 3. *Cessavit* 21. 7 *H.* 6. 26. *a.* 35 *H.* 6. *Avowry* 46. (*e*) 9 *E.* 4. 4. *a.* 4 *H.* 7. 6. *b.* (*f*) 32 *H.* 8. aforesaid. And the Book in 3 *E.* 4. 29. *a.* is misprinted, for there it is said, *quod fuit negatum* by all, where it should be *quod fuit concessum* by all the Justices. *Vide* 9 *E.* 3. 7. The Law is the same, if the Lord takes a Lease of any Part of the Tenancy, the whole Seigniory is suspended, as it is resolved in 32 *H.* 8. before. So if a (*h*) Commoner takes a Lease of any Part of the Land, in which, &c. the whole Common is suspended; and therewith agrees 11 *H.* 6. 22. *a. b.* But in the Case of (*i*) Rent-Service, if the Lord purchases Part of the Tenancy in Fee, Part is extinct, and in *esse* for the Residue. Now, for the other Part of the Difference by Act in Law, a Seigniory may be suspended in Part, and *in esse* for Part; and therefore, (*k*) if the Lord seises the Wardship of the Land of his Tenant by Knights Service, now the Seigniory is suspended, but if the Guardian endows the Wife of the Tenant of the third Part of the Tenancy, now the third Part of the Seigniory is revived, and the Tenant in

(*a*) Co. Lit. 316. b. Lit. Sect. 571. Lit. 129. a. b.

(*b*) F.N.B. 198. c. Cr. El. 284, 718. 6 Co. 57. a. Plowd. 83. b. 7 H. 7. 11. b. 2 Inst. 322. Co. Lit. 46. a. Br. Fauxifier de Recovery 25.

(*c*) 3 Keb. 500, 558. 1 Rol. 938. Co. Lit. 148. b. 1 Ventr. 277.

(*d*) Co. Lit. 148. b. 1 Rol. 938.

(*e*) 3 Co. 22. b. Br. Apportionment 7. Br. Bar 39. Co. Lit. 148. b.

(*f*) 32 H. 8. Br. Extinguishment 48.

(*g*) Co. Lit. 148. b.

(*h*) 1 Anders. 159. 1 Leon. 43, 44. Goldsb. 53. 8 Co. 79 a.

(*i*) Lit. Sect. 222. Co. Lit. 147. b. 148. a.

(*k*) Co. Lit. 148. b. 1 Rol. 939.

(a) 1 Rol. 685. 8 Co. 36. a.
(b) Co. Lit. 148. b.
(c) Co. Lit. 150. a.
(d) Co. Lit. 150. a.
(e) Br. Apportionment. 11. Br. Extinguiſhment. 29. Co. Lit. 148. b.
(f) Co. Lit. 148. b.
(g) Co. Lit. 269. a. b. Doct. pl. 319, 320. Raym. 257.

in dower ſhall be (a) attendant to the guardian for 3 parts of the ſervices, becauſe the tenant in dower is in by act in law, as it is held in 33 *E.* 3. *Dower* (b) 138. and for the ſame Reaſon, if a man (c) ſeiſed of lands in fee takes a wife, and infeoffs another, the feoffee grants a rent-charge to the husband and wife, and to the heirs of the husband, the husband dies, the wife is endowed of the 3 part of the land, out of which the rent is iſſuing, the 3 part of the rent in ſuch caſe which the wife has for life is extinct, and the 2 parts of the rent remain to her, iſſuing out of the other 2 parts, for altho' it is a rent-charge, yet by act in law it ſhall be apportioned, as it is adjudged in *Jurden's caſe*, 5 *E.* 2. (d) *Avowry* 206. *Vide* 30 (e) *Aſſ. p.* 12. where a rent-charge ſhall be ſuſpended in part, and *in eſſe* for part by act in law; and 29 *Aſſ. pl.* 10. If guardian in knights ſervice ſeiſes the land of one daughter and heir within age, the other daughter being of full age, there the ſeigniory is ſuſpended for one moiety, and *in eſſe* for another moiety: So if two (f) coparceners are of a ſeigniory, and one diſſeiſes the ter-tenant, or comes to the land by defeaſible title, the other may diſtrain her for her moiety of the ſeigniory, for the act of her coparcener can't prejudice her in ſuch caſe. And where it is ſaid in the caſe before that where the tenant makes a leaſe for life, or a gift in tail the remainder over in fee, that the tenant for life, or donee in tail is very tenant by the manner to the lord paramount it is true that at the com. law there are (g) four manner of avowries for rents, ſervices, &c. 1. By reaſon of a tenure upon one as upon his very tenant, and that is when the lord has fee in the ſeigniory, and the tenant has Fee in the tenancy, *ut ſuper verum tenentem ſuum*: 2. Upon one as upon his very tenant by the manner, *ut ſuper verum tenentem ſuum in forma præd'*; and that is when the tenant makes a leaſe for life, or a gift in tail, with the remainder in fee, in that caſe, if the lord has fee in the ſeigniory, he ſhall avow upon the tenant for life, or donee in tail, as upon his very tenant by the manner. 3. Upon one as upon his tenant by the manner omitting this word (*very*) and that is when the lord has a particular eſtate in a ſeigniory, as an eſtate in tail, eſtate for life, or leſs intereſt *ſuper tenentem ſuum in forma præd'* ſo ſhall the donor upon the donee, the leſſor upon the leſſee for life, or years. 4. Upon the matter in the land, as within his fee and ſeigniory; as where the ten't by knights ſervice makes a leaſe for life rendring rent, and dies, his heir within age, the guardian ſhall make ſuch avowry upon the leſſee, *ſc. ſi per materiam præd' in terris & tenementis præd' ut infra feodum & dominium ſuum.* And all theſe forms of avowries you will find in your books 20 *H.* 6. 9. 2 *H.* 4. 24. 12 *E.* 2. 26 *H.* 6. *Avow.* 17. 9 *El. Dy.* 257. *a.* 5 *H.* 7. 11. 7 *E.* 4. 24. 20 *E.* *Avowry* 131. 47 *E.* 3. *f. ult'* 38 *H.* 6. 23. But now by the Sta. 21 *H.*

21 *H.* 8. *cap.* 19. The Lord (*a*) may avow the Taking of the Distress within the Tenancy, as in Lands or Tenements within his Fee or Seigniory, without making any Avowry upon a Person certain; but the Lord has Liberty, if he will, to make his Avowry according to the Common Law.

(*a*) Ant. 23. b. 36. a. Co. Lit. 268. b. 269. b.

Hill.

Hill. 9 Jac. *Regis.*

In Curia Wardorum.

Thoroughgood's *Caſe.*

IT was found by Office in the County of *Cambridge*, 21 *Jan. anno* 36 *Eliz.* by Force of a Writ of *Diem clauſit extremum* after the Death of *Robert Thoroughgood*, that he was ſeiſed in Fee of an Houſe, &c. and divers Lands and Tenements in *Tadlowe* in the County aforeſaid, and that the ſaid Houſe, &c. was held of the King in Chief by Knights Service; and he being thereof ſo ſeiſed, *fecit & ſigillavit in dicto meſſuagio quoddam ſcriptum indentatum, in hæc verba:* To all Chriſtian People, &c. *Robert Thoroughgood* ſendeth greeting, &c. Know ye, that I the ſaid *Robert* for divers good Cauſes, &c. have given, granted, and enfeoffed, and by theſe Preſents do give, grant, enfeoff and confirm to *Henry Hutton* and *Edward Eliot* all that my capital Meſſuage, &c. Lands and Tenements, &c. *Habendum* unto the ſaid *Henry Hutton*, and *Edward Eliot*, and their Heirs, &c. *dat'* 18 *Julii anno* 35 *Eliz. Et ulterius dicunt, quod præd' Robert' jacens in extremis deliberavit in præd' meſſuagio præd'* 18 *Julii ſcriptum præd' indentatum præfatis Henrico Hutton & Edwardo Eliot pro & in nomine ſeiſinæ præd' meſſuagii & omnium reſiduorum terrarum & tenementorum in dicto ſcripto indentato contentorum:* And further found the other Points of the Writ. And upon this Caſe 2 Queſtions were moved; 1. If in this Caſe the Jury have found a ſufficient Delivery of the Indenture, to make it a Deed in Law. 2. If this delivery of the Indenture in the Houſe, in the Name of Seiſin of the Houſe and of the Reſidue of the Lands and Tenements aforeſaid was a ſufficient Livery of Seiſin in Law, or not. As to the Firſt, it was reſolved, that the actual *(a)* Delivery of a Writing ſealed to the Party, without any Word

a) 1 Rol. 22. Co. Lit. 36. a. 49. b. Cr. El. 356, 357. Dall. 104.

is a good delivery; for *in traditionibus scriptorum non quod dictum est, sed quod gestum est inspicitur*: But here he saith, *I deliver this writing to you*, which clearly is sufficient, altho' he doth not say, as (*a*) his deed or as his act. And therefore if *A.* makes a writing to *B.* and seals it, and delivers it to *B.* as an * escrow, to take effect as his deed when certain conditions are perform'd, it has been adjudg'd to be immediately his deed, for the law respects the delivery to the party himself, and rejects the words which will make the express delivery to the party upon the matter no delivery. And therefore in *Mich.* 12 *H.* 8. *Rot.* (*b*) 751. *in Banco*, *Anne Quilter* late wife of *John Quilter*, and others, executors of the will of the said *John Quilter*, brought an action of *Debt* against *Ed. Cobham* on a bond, &c. the def. pleaded that he deliver'd the bond to the testator as a schedule, upon condition if the pl. made indentures between the def. *ex una parte, & præfat' Testator' ex altera parte, de certis conditionib', convent' & agreament' inter eas' partes adtunc concord', &c. pro adnullatione præd' script' oblig', &c. ante festum Mich' Archang' deliberand' qd' extunc præd' script' obligator' in omni suo robore staret, sin aliter, vacua foret: Et id' defendens dicit qd' præd' testat' non fecit aliquam indent': &c. & sic id' defendens dicit, qd' script' præd' in forma præd' deliberat' dictis indent' inter eas' partes minime confectis non est factum suum, & hoc, &c.* Judgm. if action? And thereupon the pl. demurr'd in law, and it was resolv'd that the said delivery was good in law, altho' the condition was not perform'd, and the pl's had judgm. to recover. And (*c*) *Tr.* 13 *H.* 8. *rot.* 405. *in Banco*, between *T. Bodenham* esq; pl. and *Edw. Marmion* clerk def. in *Debt* on a bond the like plea pleaded, and a demurrer upon it, and judgm. given for the pl. which judgments (upon search which I commanded to be made) I have seen. And therewith agrees the report of 19 (*d*) *H.* 8. 8. *a.* and takes the difference when it is so delivered to the party himself, and when to a stranger, as it was there agreed. 35 *Ass. p.* 6. (*e*) a writing may take effect by actual delivery to the party himself without any words: And as a writing may take effect by actual delivery without words, so it may take effect by words without actual delivery: As if a writing is sealed, and it lies in a window, or upon a (*f*) table, and the obligor saith to the obligee, see there's the writing, take it as my deed, and he takes it accordingly, it is a good delivery in law: In the same manner as if one (*g*) makes a Charter of feoffment, and within the view of his land, saith to another, see you the land enter into it and enjoy it according to the form and effect of this charter, and the feoffee enters, it amounts to a good livery of seisin of the land: And if words in such case shall amount to a livery of seisin, by which a freehold shall pass, *a fortiori* words shall amount to a delivery

(*a*) Dall. 104. 2 Rol. 24.
* Cr. El. 520, 835, 836, 884. Co. Lit 36. a. 2 Rol. 26, 27. Moor 642, 696, 697. Noy 6, 50. Cr. Jac. 85, 86. Stile 251. Hob. 2, 6.
(*b*) 2 Rol. 26.
(*c*) 2 Rol. 26.
(*d*) 2 Rol. 26.
(*e*) Co. Lit. 49. b. 36. a. 2 Rol. 24. Cr. El. 7, 356. Dall. 104.
(*f*) Cr. El. 122, 356. Owen 95. Co. Lit. 36. a. 1 Leon. 140. 2 Rol. 24.
(*g*) 2 Rol. 6, 7. Co. Lit. 48. b. Palm. 434.

of a deed; wherefore it was concluded *a fortiori* in the case at bar, when *Rob. Thoroughgood* delivered the writing to the parties, saying, *Here I deliver you this (a) writing*, it is a good delivery thereof to take effect as a deed: *Vide* 33 *Ass.* 2. 33 *E.* 3. *Assise* 367. 43 *E.* 3. 28. 13 *H.* 4. 8. 8 *H.* 6. 26. 9 *H.* 6. 37 & 59. *Vide* 4 *H* 6. 5. If the obligor delivers the bond to the obligee to redeliver to him, the obligee may detain the bond for ever, and these words to redeliver to him are void. *Vide* 29 *H.* 8. 34 & 35 (*b*, *Dyer*, & *Trin.* 43 *El.* between (*c*) *Hawksston* and *Catcher* in *B. R.* where some opinions *ex improviso* were conceived, that the obligor might deliver a bond as an escrow to the obligee; but believe you the said judgments given upon demurrer in law in the point: Wherefore as to the first point it was clearly resolved, that the said writing sealed took effect as a deed by the delivery aforesaid.

(*a*) 2 Rol. 24.

(*b*) Dy. 34, 35. pl. 25. Cr. El 835. 2 Rol. 27.

(*c*) Cr. El. 835, 836. 2 Rol. 27. Noy 50. Co. Lit. 36 a.

As to the 2d point, first it was clearly resolv'd, that the (*d*) delivery of the deed upon the land, doth not amount to a livery, for it has another effect, *sc.* to take effect as a deed, as it is resolved in *Sharp's case an.* 42 *El. in Com' Banco reported by me in the 6 part of my reports f.* 26. *and there it is well agreed*, that to every livery of seisin there is requisite, either an act which the law adjudges livery, or apt words which amount to it, and there the case of 43 *E.* 3. *Feoffments* & (*e*) *Faits* 51. is cited, which is to this effect: In *Assise* the recognitors found a special verdict, *sc.* that the Pl. was seised of land in fee, and the ten't drew and engrossed a charter of Feoffment of the land in view, &c. in the name of the pl. to the ten't himself and his heirs, and the ten't delivered the charter to the pl. and pray'd him to deliver seisin in the same land, and the pl. would not deliver seisin, but he delivered back the charter to the ten't upon the land, and the ten't kept himself in, and if the delivery of the charter upon the land was a sufficient livery of seisin, was the question, and there *Kirton* justice said, if the plaint. had spoke in this manner, when he delivered the charter to the ten't, Sir I deliver to you this charter in the name of seisin of all the lands and tenements contained in the charter, it had been a good delivery of seisin, but so he doth not do in this case, wherefore the court awarded that the pl. should recover seisin. And it was resolved, that altho' most properly livery of seisin is made by delivery of a twig or (*f*) turf of the land it self, whereof livery of seisin is to be given; and so it is good to be observed, yet a delivery of a turf or twig growing upon other land; of a piece of gold or silver, or other thing upon the land in the name of seisin, is sufficient, for the turf or twig which grows upon the land, when it is severed is not parcel of the land, and when the feoffor is upon the land, his words without any act are sufficient to make livery of seisin; as if he saith, I deliver seisin of the land to you in the name of all the land contained in this deed; or, enter you into this land, and take seisin

(*d*) Moor 458. Co. Lit. 48. a. 56 b. 57. a. Owen 22. 6 Co. 26. b. Cr. Jac. 80.

(*e*) Palmer 434. 6 Co. 26. b.

(*f*) Co. Lit. 48. a. 6 Co. 26. a. Poph. 49. Perk. 43. a.

of it in the Name of all the Land contained in this Deed, or ſuch other Words, without any Ceremony or Act done; and that is the Reaſon that the Delivery of any Thing upon the Land in the Name of Seiſin is ſufficient, becauſe his Words alone without any Thing were ſufficient; for if words alone out of the Land which is within the View are ſufficient in Law, *a fortiori* when they are ſpoke upon the Land it ſelf; and yet it is not wiſely done to omit uſual Ceremonies and Acts in ſuch Caſes, for they imprint a better Remembrance of the Thing which is done, becauſe they are ſubject to ſight, than Words alone, which are only heard, and which eaſily and uſually ſlip out of Memory: Wherefore it was reſolved, That the Delivery of the Deed upon the Land in the Name of Seiſin was ſufficient in Law. And the ſaid Caſe of *Sharp* was affirmed for good Law in this Caſe. 3. It was reſolved, That this Delivery of the Writing amounted to two ſeveral Acts at one and the ſame inſtant, *viz.* to deliver the Writing as a Deed, and to deliver Seiſin of the Land according to the Deed.

Paſch. 10 Jacobi *Regis.*

In Curia Wardorum.

Beaumont's *Caſe.*

1 Jones 393, 394. Cr. Jac. 476, 477. 2 Inſt. 681, 682.

SIR *Humphry Foſter* ſeiſed in Fee of the Scite of the Monaſtery of *Gracedieu*, and other Lands in Queſtion, gave them to *John Beaumont* and *Elizabeth* his Wife, and to the Heirs of their two Bodies begotten, the Remainder in Fee to *John Beaumont*; *an.* 6 *E.* 6. *John Beaumont* levied a Fine *come ceo* to King *E.* 6. his Heirs and Succeſſors with Proclamations, King *E.* 6. *anno* 7. granted the ſaid Scite, &c. by his Letters Patent to *Francis* Earl of *Huntington* and his Heirs, *John Beaumont* died, after whoſe Death *Elizabeth* within five Years entred claiming her Eſtate, the ſaid *Francis* E. of *Huntington* died, *Henry* his Son and Heir *an.* 16 *El.* by Indenture reciting the ſaid Gift by Sir *Hump. Foſter* to the ſaid *John* and *Elizabeth* his Wife in ſpecial Tail, and that *Elizabeth* was then ſeiſed in her Demeſne as of Fee-Tail, by Force of the ſaid Gift, ratified, allowed and confirmed to the ſaid *Elizabeth* her Eſtate, *Habendum* the Lands to her and to the Heirs of the Body of the ſaid *J. Beaumont* deceaſed, and of the ſaid *Elizabeth*. The ſaid *Elizabeth* died ſeiſed, having Iſſue *Fra. Beaumont* one of the Juſtices of the Com. Pleas, Son and Heir of both their Bodies. *Francis Beaumont* entred into the ſaid Scite, &c. and took the Profits, &c. and afterwards accepted a Fine with Proclamations *ſur Conuſan. de droit tantum* of two Strangers, with a Render for ninety nine Years after the Death of the ſaid *Francis*, if *Ann*

ſhi

his wife should so long live, the proclamations past, *Fr. Beaumont* having issue Sir *Hen. Beaumont* his elder son, and *J.* his younger son, dy'd Sir *H.* being in ward to Q. *E'.* attained to his full Age *an.* 45 *El.* and before livery, by indenture 2 *Jacobi* covenanted upon good consideration to stand seised to the use of himself and the heirs males of his body, and afterwards to the use of *J. Beaumont* his brother and the heirs males of his body, with divers remainders over; Sir *Henry* died without issue male, having issue *Barbara*, who now is of tender years, and in ward to the K. The question was, whether the said scite and land belong'd to *Barbara*, or to the said *J. Beaumont*: And in this case 2 points were moved and argued by counsel on both parts, *viz.* in the terms of *Trin. Mich.* & *Hill.* by *Coventry*, *Tho. Crew*, and *G. Crooke* on the K's part, and by *Finch*, *Walter*, and *Harris* serjeant on the part of the heir male: And the first point was, if by the fine levied with proclamations, and the death of *J. Beaumont*, the wife had but an estate for life dispunishable of waste, as ten't in tail after possibility of issue extinct? The 2 admitting she had an estate tail, what is wrought by the said confirm. if thereby the issue in tail shall inherit or not? As to the first it was objected, that by the fine levied by the (*a*) husband, the estate-tail was barred, because the issue ought to make himself heir of both their bodies, as it is adjudged in 18 *El.* 351. *b.* So, and for the same reason, if one donee is (*b*) attainted of treason, the estate-tail is extinct, as it is expressly held in 16 *El. Dyer* 332. *b.* and therewith agrees (*c*) 5 *H.* 7. 32. *b.* by *Brian* ch. just. of the bench, from thence it follows, that the wife can't be seised of an estate-tail, because the estate-tail by fine was barred and extinct; and therefore for necessity of reason, the estate of the wife shall be (*d*) chang'd into an estate for life dispunishable of waste: And it was resembled to the case in 7 *H.* 4. 16. *b.* husband and wife ten'ts in special tail are (*e*) divorced (which is intended of a divorce which dissolves the marriage *ab initio*, and the husband and wife *a vinculo matrimonii*) the donees have but an estate for their lives, because the estate-tail is determined and extinct: It was also urged, that if the wife should have an estate in tail, then she might (*f*) suffer a recovery, or levy a fine, and so bar the conusee of her husb. or prevent the K. of his forfeiture for treason, which would be against the resolutions aforesaid reported by the L. *Dyer*. Then if the estate is converted into an estate for life dispunishable of waste (*g* in the nature of a ten't in tail after possibility of issue extinct, *sequitur* that the confirmat. enlarges her estate, and makes *Barbara* daughter of Sir *Henry* inheritable to the Land.

But admitting for the argument of the second point, That the said *Elizabeth* had an estate in special tail, the reversion expectant to the said *Henry* Earl of

(*a*) & Co. 72. a. b. Dy. 351. pl. 24. 2 Inst. 681. Hob. 257, 333. 1 Leon. 84, 157. Moor 147. 1 Brownl. 140. Dall. in Kelw. 205. pl. 7. Dall. in Ash. pl. 7. Dall 50 pl. 16. 1 Ander 39. pl. 101. Godb. 312. N Benl 225 pl. 257. Benl. in Ash pl 27 Benl. in Kelw 213. pl. 27. 2 Rol. Rep. 321. Moor 28. pl. 90, 114. pl. 256. Cr. Car. 478. 1 Jones 40. 1 Rol. Rep. 424. 1 Co. 87. b. Lit. Rep. 291.

(*b*) Hob. 257. 8 Co. 72. a. b. Moor 147. 1 And. 39. pl. 102. Raym. 6, 7. Godb. 312, 325. 2 Rol. Rep. 321. Moor 114. pl. 256. Dy. 332. pl. 27. Hob. 346. Cr. Car. 478. 1 Brownl. 139, 140. 1 Jones 40.

(*c*) 2 Inst. 681. Godb. 312. 5 H. 7. 33. a.

(*d*) 2 Inst. 682.

(*e*) Post. 141. a. 2 Inst. 682. Br. Tail 9, Br Estate 11. Br. Deraignm. & Devorce 13.

(*f*) Post. 142. b. Hob. 259. 1 Leon. 157. 1 Rol. Rep 424. 2 Rol. Rep. 427. Winch. 43.

(*g*) 11 Co. 80 a. Dr. & Stud. lib. 2. cap. 1. Lit. sect. 34. 12 H. 4. 3. b. 4. a 10 H 6. 1. b. 45. E 3. 25. a 18 E. 3. 32. b. 11 H. 4 14 b. 15. a. 11 H. 6 1. b. 2 Rol. 826, 828. 1 Rol. Rep. 100, 179, 184. West Symb. 180. b. 6 Co. 41. a. 2 Inst. 302, 306. 4 Co. 63. a. Co. Lit. 27. b. F. N. B. 58. p. 39 H. 3. 16. a. b.

of *Huntingden* to take effect in poſſeſſion (in reſpect of the ſaid fine levied by the husband) immediately after the death of the ſaid *Elizabeth*, then the 2 point is, if againſt the ſaid confirmation made by him who has the reverſion in fee expectant as is aforeſaid, he ſhall enter into the land after the death of *Elizabeth*, or if the confirmation to *Elizabeth* in tail *ut ſupra*, makes the iſſues of the ſaid *John* and *Elizabeth* inheritable; and it was ſtrongly urged, that the Iſſues ſhould be inheritable by the ſaid confirmat. for 2 reaſons, one, in reſpect of the eſtate of him who has made the confirm. by way of extraction of a new eſtate out of the reverſion; the other, in reſpect of the eſtate of him to whom the confirmation is made, by way of incorporat. and alterat. of the quality of the eſtate: As to the firſt, the ſaid Earl has the entire reverſion in fee, out of which he may raiſe and create as many eſtates in tail one after the other, as he will, and therefore when he confirms the eſtate of the wife, to have and to hold to her and to the heirs of the body of the ſaid *John* and *Elizabeth*, thereby the E. has excluded himſelf and his heirs by expreſs words, ſo long as the ſaid *John* and *Elizabeth* have heirs of their bodies to claim the land: As if a feme (*a*) covert be ten't for term of her life, the reverſion over in fee, if he in reverſion confirms the eſtate of the husband and wife, to have and to hold to them for term of their lives, in that caſe the husb. ſhall have an Eſtate for life after the death of his wife, for it would be againſt reaſon, that he who has the reverſion in fee, out of which he may derive as many eſtates for lives as he will, ſhould enter into the land after the death of the wife, during the life of the husb. againſt his own confirmat. when the husb. had ſuch eſtate upon which the confirmat. might enure, by way of extraction of a new eſtate out of the reverſion; and therewith agree *Lit. ſ.* 120, 121. *b.* & (*b*) 17 *E.* 3. 68. *b.* So in the caſe at bar, it would be againſt reaſon that the E. who made the confirmat. after the death of *Elizabeth* ſhould enter into the land, againſt the limitation of his own c nfirmation, *viz.* ſo long as the ſaid *John* and *Elizabeth* have heirs of their bodies. Secondly, in reſpect of the eſtate of the ſaid *Elizabeth*, for this confirmation alters the quality of her eſtate, and thereby incorporates a new quality in the eſtate; for where the E. after the death of *Elizabeth*, might have entred and excluded all the heirs in tail, now by this confirmation he has added this enlarging quality, to make all the heirs in tail inheritable. And that a Confirmation may alter or add to the quality of the eſtate in land appears in our books; and therefore, if the leſſor confirms the eſtate of his leſſee for life, and adds this clauſe, without (*c*) impeachment of waſte, it is good. So if the

(*a*) Plowd. 21. b. 160 a. Cr. Car. 478. Lit. ſect. 595. Co. Lit. 299. a. b. Cr. El. 163. Keiw. 129. a.

(*b*) Co. Lit. 299. b. Fitz. Confirm. 9.

(*c*) 2 Co. 23. a. 72. a. 82. a. 11 Co. 82. b. 83. b. 1 Rol. Rep. 182. 2 Rol. Rep. 325. Moor 13, 317, 327. 2 Inſt. 146. Hob. 132. Popham 193, 194, 195. 4 Co. 63 a. Latch. 269, 270. Bridgm. 102. Dyer 47. pl. 11. Plowd. 132. b. Cr. Jac. 216. 2 Rol. 835. 9 Co. 9. a. Hetl. 77. Co. Lit. 220. a. 19 H. 6. 62. b. 4 E. 4. 36. a.

the lord paramount confirms the estate of the mesne with clause of acquittal, it is good, *6 E. 3. 7. 19 H. 6. 63. b. F. N. B. 136. Vide 4 E. 4. 35. (a) Isabel de Upsey's case.* So a confirmat. may alter the quality of the estate of the land; as if the estate of the feoffee is upon condit. the feoffor may confirm his estate absolute, and so alter the quality of the estate of the land, *f.* from *(b)* conditional into absolute, * *7 H. 6, 7. b.* and *Mayowe's case in the 1 part of my reports f. 146.* So in *49 E. 3. 7. a. b.* If the lord of *(c)* ancient demesne confirms the estate of the ten't, to hold by certain services *ad communem legem*, altho' the estate of the ten't is not changed, nor any transmutat. of the possession, yet the quality of his estate is changed, for the ten't shall not be afterwards impleaded by petit writ of *right close*, and the land by the confirmat. is discharged from the customs of the manor. So in the case at bar, altho' the estate of *Elizabeth* is not changed, nor any transmutat. of possession had, yet the quality of the estate of the said *Elizabeth* is changed, by incorporating of a quality to the estate of the said *Elizabeth*, *f.* that the heirs in tail shall inherit.

As to the first point, it was answered and resolved, that the *(d)* wife after the death of her husband had an estate in special tail; and for the better understanding of the true reason thereof, let us see, by what law the estate of the wife shall be altered and changed to an estate for life, and first, it was resolved, that it was not by the com. law, for at the com. law, if lands had been given to husb. and wife, and to the heirs of their two bodies, and after issue the husb. had alienated and died, this alienat. had not barred neither the wife, nor the issue in tail, because the husband alone had not *potestatem alienandi*, for as much as he had an undivided estate jointly with his wife, and therewith agree *12 H. 4. (e) Formedon 15. 21 E. 3. 45.* and by the Stat. of *W. 2. de donis conditionalibus*, it is enacted, that a fine levied by ten't in tail *ipso jure sit nullus*. As to the case *an. 16 El. Reg'* of treason whereof the husband is *(f)* attainted, it must be known, that such bar and forfeiture is made by the Stat. *(g* of *26 H. 8. c. 13.* by which it is enacted, That every offender convicted of high Treason, *&c.* shall lose and forfeit to the King, his heirs and successors, all such lands, *&c.* whereof any such offender shall have any estate of inheritance: But in the same act there is a saving to every person (other than the offenders, their heirs and successors,) all rights, titles, interests, *&c.* So that it appears, that the estate of the wife, if she survives her husband, is saved by this act, and that the bar by the Statute is only as to the issues in tail, and not as to the wife, and the reason of the resolution that the heir is disabled in such case is, because he ought in his lineal conveyance to make himself heir as well to the father as to the mother by the opinions of *Catlyn*, *Wray*, *Saund-*

(a) 4 E. 4. 36 a.
(b) 1 Co. 147. b. Poph. 51. Co. Lit. 300. a. Postea 142. a.
* Postea 142. a.
(c) 1 Rol. 324. Fitz. ancient Demesne 42. Br. antient Demesne 8. Postea 142. a.
(d) Cr. Car. 478 Cr. Jac. 68) 1 Co. 87. b. Hob. 257, 259. 1 Jon. 375. Godb. 317, 325. Dy. 351. pl. 24. N. Benl. 225. pl. 257. 1 Ander. 39. pl. 101 Benl. in Ash. pl. 27. Benl. in Kelw. 205. pl. 7. 213 b. pl. 17. Dall. 50. pl. 16. Winch 43.
(e) Ant. 26 b.
(f) Dy. 332. pl. 27. Hob. 257, 346. Cr. Car. 478. 8 Co. 72. a. b. Moor 147. 1 Ander. 39. pl. 102. Raym. 6, 7. 2 Rol. Rep. 321. Godb. 312, 325. 1 Jones 40. Moor 114 pl. 256. 1 Brownl. 139, 140.
(g) 3 Co. 10 b. 1 Rol. Rep. 162. 2 Rol. Rep. 314, 315, 318, 319, 320, 321, 323, 324, 325, 340, 374, 416, 418, 420, 501, 503, 507, 508. 1 Jones 70, 71, 75, 76, 77, 80. 1 Co. 24. a. 7 Co. 33. a. 34. b 12 Co 6. 3 Inst. 19. 4 Inst. 42 2 And. 34. Palm. 439. Hetl. 151, 157. Co. Lit. 372. b. 392. b. Dy. 332. pl 27 343. pl. 56 Co. Ent. 422 a. Plow. 552. b. Godb. 300, 303, 307, 308, 309, 311, 313, 315, 321, 322, 323, 234. Hob. 334, 339, 340, 341, 343, 344, 346, 347. 438. 1 Leon. 21 Cr. Car. 428.

(a) Dy. 351. pl. 24. 8 Co. 72. a. b. 2 Inſt. 681. Hob. 257, 333. Moor 147. 1 Brownl. 142. Dall. in Kelw. 205. pl. 7. Dal. in Aſh. pl. 7. Dall. 50. pl. 16. 1 Anderſ. 39. pl. 101. Godb. 312. N. Benl. 225. pl. 257. Benl. in Aſh. pl. 27. Benl. in Kelw. 213. pl. 27. 2 Rol. Rep. 321. Moor 28. pl. 90, 114. pl. 256 Cr. Car. 478. 3 Jones 40. 1 Leon. 84, 157. 1 Co. 87. b. 1 Rol. Rep 424. Lit. Rep. 291. (b) 3 Co. 77 b. 86 b. 87. a. b. 88 a. b. 89. a. 90. a. b. 91. a. 9 Co. 105. b. 13 Co. 20. Savil 85, 88, 106, 107. 1 Anderſ. 170. 2 Anderſ 176. Co. Lit. 262 a. 326. a. 372. a. (c) 10 Co. 50. a. Moor 115, 146. 1 Anderſ. 46. Savil 85, 88. 1 Bulſt. 33. Co Lit. 237. a. Goldsb. 11. 3 Co. 51. a. Hob. 257, 258. 7 Co. 32. a. b. 11 Co 75. a. 1 Leon. 244. 2 Leon. 62, 224. 3 Leon. 10 (d) Supra in a. (e) 1 Rol. 878. Cr. El. 513. 514. Hob. 258. 2 And. 44. 45. Moor 455. Cr. Car. 478, 479.

ders and *Dyer*. And as to the ſaid caſe (a) of the fine with proclamation in 18 *Reg. El.* levied by the husb. alone, the bar is made by the Stat. of 4 *H.* 7. *c.* 24. & (c) 32 *H.* 8. *c.* 36. and in the Stat. of 4 *H.* 7. there is a ſaving for the wife, if ſhe brings her action or lawful entry within 5 years after ſhe ſhall be uncovert, as ſhe did in this caſe, and by the Statute of 32 *H.* 8. the fine levied with proclamat. of lands intailed to him who levies the fine, or any of his anceſtors, ſhall be a ſufficient bar againſt the ſaid perſon and his heirs claiming only by force of any ſuch intail, and againſt other perſons claiming only to their uſe, or to the uſe of any manner of heir of their body, in which caſe there needs not any ſaving for ſtrangers, for the purview of the act is ſpecial, and *ſecundum quid, viz.* againſt the heirs in tail, and others claiming to their uſe; and therefore *diſtinguendum eſt*, that the fine with proclamations levied by the husb. or the attainder of the husb. of high treaſon is a bar to the eſtate tail, *quoad* the iſſues in tail, but not *quoad* the Wife, but that ſhe ſurviving ſhall be ſeiſed of an eſtate tail, which eſtate is ſaved to her by all the ſaid acts: and that is proved by the ſaid book of (d) 18 *Eliz.* for there the husb. being jointly ſeiſed with his wife in ſpecial tail, levied a fine with proclamations, to the uſe of himſelf and his heirs (which fine is a bar to the iſſues in tail) and afterwards the husb. deviſed the land to the wife for life, and died, there the wife entred and waived the eſtate-tail, claiming for life by force of the deviſe, which proves, that if ſhe had not waived the eſtate-tail, that ſhe ſhould have had it, and not an eſtate for life, as has been ſuppoſed by the other ſide. And in the indenture of confirmat. which was made in *an.* 16 *Reg. Eliz.* it is recited, that the ſaid *Elizabeth* had an eſtate-tail, by which it appears that the law was ſo taken at that time. And as to that which was objected, that the ſaid *Elizabeth* could not have an eſtate-tail, becauſe as to the iſſues in tail the eſtate-tail is barred, alſo it was asked, to what end ſhould ſhe have an eſtate-tail, when it can't deſcend? It was anſwered and reſolved, that one may have an eſtate-tail, and yet all the iſſues in tail ſhall be barred to inherit, as in the caſe of Sir *George* (e) *Brown in the* 3 *part of my reports f.* 50. *b.* 51. *a. b.* Sir *Richard Bridges* ſeiſed of certain land in fee, did thereof infeoff *Winſcombe* and others, upon condit. that they ſhould give it back to him and his wife, and to the heirs of their two bodies begotten, the remainder to the right heirs of Sir *Richard*, which was done accordingly; they had iſſue *Anthony Bridges*, Sir *Richard* died, *Anthony Bridges* in the life of his mother levied a fine with proclamations to Sir *G. Brown* in fee, the wife living, the ſaid *Anthony* made a leaſe for 3 lives, which was not warranted by the ſtat. of 32 *H.* 8. *c.* 28 and there it is reſolv'd, that the ſaid fine levied by the ſaid

Anthony

Anthony, ſhould bar the eſtate-tail, yet there it is clearly admitted, that the wife remained ten't in tail; for there the queſtion was, if the ſaid diſcontinuance for lives without warranty was within the ſtat. of (*a*) 11 *H.* 7. but if the eſtate of the wife had been changed to an eſtate for life, then without queſtion the ſaid leaſe for 3 lives had been a forfeiture by the com. law, and all the argument upon the ſtat. of 11 *H.* 7. had been in vain, and to no purpoſe, and in ſuch caſe the wife had an eſtate-tail reſtrained from alienations by the ſtat. of 11 *H.* 7. and not deſcendible to her iſſues. So in (*b*) *Archer's caſe* 20 *El. Reg. in the 3 part of my reports f.* 90. If the ſon of the tenant in tail in the life of the father levies a fine with proclamations, this after the death of the father (*c*) ſhall bar the eſtate-tail, and yet without queſtion the father remains ten't in tail, altho' the eſtate-tail doth not deſcend. So if lands are given to an (*d*) alien and the heirs of his body, he has an eſtate-tail, and yet ſuch eſtate after his death is not deſcendible to his iſſue. And if a diſſeiſor makes a gift in tail, the donee makes a feoffm. to *A.* and afterwards levies a fine with proclamat. to *B.* who has nothing, this fine ſhall bar the iſſues in tail, becauſe the iſſues in tail being privies ſhall not plead *Quod partes finis nihil habuerunt*, but ſhall not bar the diſſeiſee by nonclaim, becauſe the fine as to him was void: So as in ſuch caſe *quoad* the heirs in tail the fine ſhall bind, but not *quoad* the diſſeiſee, who is a ſtranger: *Pari ratione* in the caſe at bar, this (*e*) fine levied by the huſband, as to the iſſues in tail ſhall be a bar, but not as to the wife, who is a ſtranger to it. Husb. and wife are ten'ts in ſpecial tail, the reverſion to the donor, they have iſſue, the husb. levies a fine with proclamations to a ſtranger, and dies, the wife enters, the wife has deveſted the whole eſtate out of the conuſee, and reveſted the eſtate-tail in her, the immediate reverſion to the donor, and left nothing but a poſſibility in the conuſee: *Ergo*, the eſtate of the wife is not changed into an eſtate for life, for then if error is in the fine, the iſſue in tail ſhould have a writ of *error* upon the ſtat. of (*f*) 9 *R.* 2. in the life of the wife, and ſo the iſſue in tail would have an eſtate in the land in the life of the donee, which would be abſurd; for he has not any eſtate by purchaſe, and living the donee he can have nothing by deſcent. As to the caſe of 7 *H.* 4. 16. *b.* where after (*g*) divorce the eſtate of the donees is changed to an eſtate for their lives, that is not like the caſe at bar for divers reaſons. 1. There the eſtate-tail is diſſolved *ab initio*, and the iſſue made baſtard; but in the caſe at bar the eſtate-tail is barred, and not diſſolved or determined, but has continuance as long as the wife lives, or the heirs in tail remain.

As to the 2 point, it was anſwer'd and reſolv'd that the confirmation (*h*) *nihil operatur*: And 1. It was admitted, that if

(*a*) 11 H. 7. c. 20. 3 Co. 50. b. 51. b. 4 Co. 3. b. 5 Co. 80. a. 10. Co. 37. a. Winch. 43. 1 Leon. 261. 2 Leon. 168. 3 Leon 78. Cr. El. 2, 24, 513, 514. Godb. 6. Moor 93, 250, 455. 2 Anderſ. 31, 44, 57. 1 Rol. 878. Cr. Jac. 174, 474, 624. Cr. Car. 244. 1 Jones 13, 254. Co. Lit. 326. b. 365. b. Hob. 166, 341. Brid. 136.

(*b*) Hob. 258, 333. 3 Co. 90. a. b. Cr. Car. 435. 1 Jones 33, 37, 39, 40, 81. 2 Rol. Rep. 374. Winch. 110.

(*c*) 10 Co. 50. a. Godb 316. Cr. Car. 435. 3 Co. 50. a. 1 Jones 33. 1 Leon. 244. 2 Leon. 36. 3 Leon. 211, 221 Goldsb. 107. Hob. 333. Cr. El. 122, 610. Hut. 84.

(*d*) 2 Rol. Rep. 321.

(*e*) 8 Co. 72. a. b. Dyer 351. pl. 24. 2 Inſt. 681. Hob. 257, 333. Moor 147. 1 Brownl. 140. 1 Leon. 84, 157. Dall. in Kelw. 205. pl. 7. Dall. in Aſh. pl. 7. Dall. 50. pl. 16. 1 Anderſ. 39. pl 101. Godb. 312. N. Benl. 225. pl. 257. Benl. in Aſh. pl. 27. Bent. in Kelw. 213. pl. 27. 2 Rol. Rep. 321. Moor 28. pl. 90, 114. pl. 256. 1 Jones 40. Cr. Car. 478.

(*f*) 9 R. 2. c. 3. 3 Co. 4. a. Owen 149. Br. Tail 9.

(*g*) *Antea* 139 a. 2 *Inſt.* 682.

(*h*) Cr. Car. 477, 478. cont Hob. 257.

1 Co 87 b. 1 Rol. Rep. 424. Witch. 43. Lit. Rep. 291. 4 Inſt. 51. Dyer 2. pl. 5. 90 pl. 5. Bridgm. 71. Cr. El. 285, 8 N.B. 99. e. 2 Bulſt. 15. 10 Co. 44. b. Palm 251, 253. Br. Eſtate 13. B. Deraignment & Divo ce 13. Co Lit. 22. a

the Reverſion or Remainder in Fee had been in a Stranger, and not in *John Beaumont*, then let us ſee when *Elizabeth* entred and was ſeiſed in Tail, what Eſtate was left in the Conuſee; and it was reſolved that no Part of the Eſtate-tail was left in him, for the Wife was ſeiſed of the whole Eſtate-Tail, and no Part of the Reverſion remained in the Conuſee, for that was reveſted in him to whom the Reverſion or Remainder did appertain, and from thence it follows, that nothing remained in the Conuſee in ſuch Caſe, but only a (*a*) Poſſibility to have the Land after the Death of the Wife (who had the whole Eſtate-Tail) ſo long as the Iſſues in Tail remained, if any were alive at the Time of the Death of the Wife; and without Queſtion ſuch Poſſibility ſhall not paſs by the ſaid Confirmation. Then when *J. Beaumont* had the Remainder in Fee, the Confirmation made by the Heir of the Conuſee could paſs nothing in reſpect of the Poſſibility which was gained by the Fine during the Continuance of the Eſtate-Tail, but it ought to be extracted from the Rem'r in Fee, and that it could not be in this Caſe for divers Reaſons: 1. The old Eſtate-Tail as to the Iſſues is barred and can't deſcend, but the Wife is ſeiſed of the intire old Eſtate, and no new Eſtate is created by the Confirmation, but only the old Eſtate confirmed, *ergo* it can't deſcend. 2. A Confirmation can't add a deſcendible Quality to him who is diſabled to take by Deſcent; as if Lord and Tenant be of a Carve of Land, and the Ten't has Iſſue, and is attainted of Felony, and the King Pardons him, and afterwards the Lord confirms the Eſtate of the Tenant, and the Tenant dies, The Lord ſhall have the Land againſt his own Confirmation, for the Confirmation can't add to the Eſtate of the Tenant a Quality deſcendible to him who was diſabled to take the Land by Deſcent: So in the caſe at Bar, the Confirmation of the Earl to *Elizabeth* can't add a Quality deſcendible to the Iſſue in Tail, who was diſabled by the Fine to take by Deſcent. 3. If this Confirmation in this Caſe, ſhould add to the Eſtate of the Wife a deſcendible Quality, that in Effect as to this Point would repeal two Acts of Parliament, *viz.* the Act of 4 *H.* 7. and 32 *H.* 8. by which, as appears before, the Eſtate-Tail is barred as to the (*b*) Iſſues, and the Iſſues diſabled to claim the Land by Force of the ſaid Eſtate-Tail, *Sed pacta privata juri publico derogare non poſſunt*, and theſe Statutes are *jura publica*, for they are two of the principal Pillars of the Law. 4. In the ſaid Caſe of Sir *George Brown*, after that *Anthony* had levied a Fine to him in the Life of his Mother, ſuppoſe Sir *George* had confirmed the Eſtate of the Mother, yet after the Death of the Mother the

(*a*) Hob. 257. Cr. Car. 477.

(*b*) 8 Co. 72. a. b. Dyer 351. pl 24. 2 Inſt. 681. Hob. 237, 335. Antea 139 a. Moor 28. pl. 90. 114. pl. 256. 1 Brownl. 140 Moor 147. Dall in Keiw. 205. pl. 7. Dall. in Aſh. pl. 7. Dall. 50. pl. 16. 1 And. 39. pl. 101. Godb. 312. N. Benl. 225. pl. 257. Benl. in Aſh. pl. 27. Benl. in K-lw. 213. b. pl. 27. 2 Rol. Rep 321. 1 Jones 40 Cr. Car. 478. 1 Co. 87 b. 1 Leon. 84, 157. 1 Rol. Rep. 424. Lit. Rep. 291.

the Land should not descend to *Anthony*, for the Confirmation doth not increase the Estate of the Wife, but she hath her old Estate, and as it hath been said, the said Earl by his Confirmat. can't add a descendible Quality. 5. The Law is, if Ten't in (*a*) Dower grants over her Estate, yet for Waste done the Action shall be brought against Ten't in Dower, and Damages shall be recovered against her, and it is a descendible Quality to the Heirs of him in Reversion: In that Case to oust and take away that Charge of the Tenant in Dower, he in the Reversion by his Deed confirms her Estate, to have and to hold to her for Term of her Life, and dies, and afterwards she grants over her Estate, and for Waste done by the Assignee, the Heir brings an Action of *Waste* against the Ten't in Dower, who pleads this Confirm. to her to have and to hold the Land for Term of her Life; in this Case, notwithstanding this Confirm. the Action shall be maintainable against her, for the Confirmat. doth not enlarge her Estate, and therefore it can't take away this descendible Quality to the Heirs to have an Action of *Waste* against her after her Assignm. made of her Estate, and so is the Book adjudged in 38 *E.* 3. 23, *a. b.* a principal Case: *Pari ratione*, in the Case at Bar, for as much as the Confirmat. doth not enlarge the Estate of *Elizabeth*, it can't add a descendible Quality. 6. (*b*) *Quælibet confirmatio aut est perficiens, crescens, aut diminuens*: *Perficiens*, as in *Mayowe's Case in the first Part of my Reports f.* 146, 147. If Feoffee upon Condit. makes a Feoffm. over, and the Feoffor confirms his Estate to him and to his Heirs, *ista est confirmatio perficiens*, for it doth not make Transmut. of the Estate, but it corroborates and perfects the Estate, and makes it simple and absolute, where it was before conditional; and therewith agrees (*c*) 7 *H.* 6, 7. *b.* cited before. So if the Disseisee confirms the Estate of the Disseisor, or his Feoffee, it perfects and corrobates his Estate, for where it was defeasible before, it makes the Estate indefeasible. 2. *Confirmatio crescens*, *f.* when it enlarges the Estate of him to whom the Confirmat. is made; as to an Estate at Will to encrease it for Years, *&c.* to an Estate for Years, to encrease it for Life, to an Estate for Life, to increase it to an Estate in Tail, *&c.* or to an Estate in Tail, to increase it in Fee. But in the Case at Bar, *prædict. confirmatio non fuit crescens*, for it did not enlarge the Estate of the Wife, for she had as high an Estate in Point of Estate by the first Gift, as she had by the Confirmat. 3. *Diminuens*, as where the Lord confirms the Estate of his Tenant who held by Knight's Service, to hold in Socage, or to hold by less Rent, or for Tenant in (*d*) ancient Demesne to hold at the Common Law, for thereby the Customs of the Manor are diminished; but upon a Confirmation to the Tenant the Lord can't reserve new Services; as an Hawk for Rent, or Rent for an Hawk,

(*a*) Co. Lit. 44. a. 273. a. 316. a. 2 Rol. 828. 3 Co. 23. b. 30 E. 3. 16. a. b. F. N. B. 55. c. 56. f. Cr. El. 358. Fitz. Waste 122. 2 Inst. 301. 11 H. 4. 19. a. Br. Waste 66. Regist. 72. a. Cr. Car. 430. 40 E. 3. 33. b. Fitz. Waste 67.

(*b*) Co. Lit. 295. b.

(*c*) Ant. 140. a.

(*d*) Ant. 140. a. 1 Rol. 324. Fitz. ancient Demesne 42. Br. ancient Demesne 8. 49 E. 3. 7. a. b.

& ſic de ſimilibus. And the Confirmation in the Caſe at Bar, is neither *perficiens*, *creſcens*, *nec diminuens*; for the ſaid *Elizabeth* had as perfect and large an Eſtate before the Confirmation, as ſhe had after.

And as to that which was objected, That if the Wife ſhould have an Eſtate-Tail; that ſhe had Power to levy a Fine, or ſuffer a Recovery, *&c.* To that it was anſwered, That if the Wife had not ſuch Power, the Reaſon is, That ſhe can't bar that which was utterly barred before by the Priority of her Husband's Act: But this Point was not then in Queſtion.

Antea 139. a.

Caſuum

Caſuum iſtius libri ſeries.

Caſes in the Court of Wards.

F I N I S.