

Lord of Leicester and divers other of the Lords to speak in my behalf for the furtherance of the Suit: So in the End the Queen said, I do like well and am right well content that Mark Steward do cease from his Waiting till he shall resolve otherwise, and if his Brother be found fit he shall serve in his Place during the Time of his Absence.

Quæ quidem (a) litera manu proprii ipsius com' Leic' subscriptæ sequitur hæc verba, To my very good Lords the Lord Chancellor, and the Lord Chief Justice of England, and to either of them, A. After my most hearty Commendations to your Lordships, this Wearer Mark Steward hath earnestly besought me to advertise your Lordships of my Knowledge touching her Majesty's Leave for the said Stewards not Attendance in his Office of Serjeantship: Wherein this is very true, that about Michaelmas, as I take it, in the tenth Year of her Majesty's Reign, the Court being then at Windsor, Mark Steward both himself and his Friends, for that he had a Desire to remain in the Country, earnestly travelled with me to be his Dean for the obtaining of her Majesty's good Licence and Favour, that without any Prejudice for not attending he might at his Pleasure so do, and for the Supplying of his Place which he had to serve about the late Lord Keeper of the Great Seal as Serjeant at Arms, he acquainted me with the good Liking and Contentation my said Lord Keeper had to have a Brother of his to attend in his Place, to which also I gave my best Furtherance afterwards: Whereby her Majesty pleased both to grant her favourable Licence to Mark Steward for his Absence, and to allow his Brother to supply his Place, who was accordingly sworn therein, and many Years served the Place. Thus much, being on my own Knowledge to be true, at his humble and earnest Suit, I thought good to advertise your Lordships, and so do bid your L. L. farewell from the Court the xxi. of May 1579. Your L. L. loving friend R. Leic'. Et jur' prædict' ulterius dicunt, quod prædict' Augustinus Steward frater ipsius Marci sexto die Januarii, anno undecimo supra-dict', apud Hampton Court in comit' Middl' per dictam Dominam Reginam admissus ordinat' & constitut' fuit, ad attendend loco & vice ipsius Marci fratris sui super Nichol' Bacon' Milit', ad tunc existen' Domin' custod' magni Sigilli Angliæ, & ad idem officium pro & in loco ac vice ipsius Marci bene & fideliter exequend' & exercend', ad tunc

(a) Godb. 199.  
2 Rol. 685.  
Hob. 213.

& ibid' in præsentia dictæ Dom' Reginæ jurat' fuit, prout per depositione' ipsius Augustini Steward, quæ sequit' in hijs Angl' verbis sequen, quæ comperimus fore veram, 'After Christmas, and befoze Hillary Term in the eleventh Year of her Highness's Reign, on a Sunday or Holiday, her Majesty coming from the Closet at Hampton Court, was moved by the Right Honourable deceased Earl of Pembroke for the instituting of Augustine Steward Serjeant at Arms to attend upon the Lord Keeper; to whom her Majesty answered, My Lord, he is not to have his Brother's Office, but is to be appointed only to attend in his Place for him at such Time as his Brother shall be absent, her Majesty making then Relation of her favourable Licence already granted to Mark Steward, to abide the Country, and to absent himself from her Service at his Pleasure, until he should by her Majesty be called again to his Attendance upon the said Lord Keeper: And then the said Augustine was sworn to attend as is above specified: Prætextu cujus idem Augustinus Steward in absentia ipsius Marci Steward fratris sui præd' offic' servien' ad arma super cancellar' Angl' attendend', abinde usque vicesim' diem Junii an' reg' dictæ Dom' Regin' nunc decimo octavo, usus fuit & exercuit: Sed utrum dict' Dom' Regin' per verba tantum absque scripto sigillat' potest sufficien' in lege licentiam dare eidem Marco Steward ad seipsum absentand' ab exercitio officii sui præd' jur' præd' penitus ignorant, & inde petunt auxilium & advisament' cur' in præmissis, &c. Et si super totam materiam cur' Dom' Regin' hic videbit', qd' dict' Dom' Regin' nunc potest per verba tantum absq; scripto sigillat' sufficien' in lege licentiam dare eidem Marco ad seipsum absentand' ab exercitio officii sui præd', tunc jur' præd' dicunt, qd' dict' Dom' regin' nunc dedit licentiam eidem Marco Steward ad se ipsum absentand' ab exercitio officii sui præd' duran' beneplac' ipsius Marci, donec per eandem Dom' Regin' ei præciperet ad deservien' in officio suo præd', modo & forma prout præd' Marcus superius placitand' allegavit: Et si super totam materiam præd' cur' Dom' Regin' hic videbit', qd' dict' Dom' Regin' nunc non potest per verba tantum absq; scripto sigillat' sufficien' in lege licentiam dare eidem Marco ad seipsum absentand' ab exercitio officii sui præd' tunc jur' prædicti dicunt quod dict' Dom' Regina nunc non dedit licentiam eidem Marco Steward ad seipsum absentand' ab exercitio officii sui prædict' durante beneplacito ipsius Marci, donec per eandem Dom' Regin' ei præciperet ad deservien' in officio suo prædicto. Et quia cur' Dom' Regin' hic de  
judi-

judicio suo inde reddend' nondum advifat', &c. Ideo dies inde dat' est tam præf. Gilberto Gerrard' qui sequit', &c. quam præf. Marc' Steward usq' in Octab' S. Mich. coram Dom' Regina ubicunq; &c. in statu quo nunc, &c. de judicio suo inde audiend', &c. Ad quas quidem Octab. S. Mich. coram Dom' Regin' apud Westm', ven' tam præf. Gilbertus Gerrard' qui sequit', &c. quam præd' Marcus Steward per attorn' suum præd'. Et quia cur' Dom' Regin' hic de judicio inde reddend' nondum advifat', &c. Ideo dies inde dat' est tam præf. Gilberto Gerrard' qui sequit', &c. quam præf. Marco Steward usq; a die S. Martini in 15 dies coram Dom' Regin' ubicunq; &c. in statu quo nunc, &c. de judicio suo inde audiend', &c. ad quam quidem 15. S. Martini, coram dom' Regina apud Westm', ven' tam præf. Gilbertus Gerrard, qui sequitur, &c. quam præd' Marcus Steward per attornat' suum præd': Super quo visis & per curiam hic intellectis omnibus & singulis præmissis maturaque deliberatione inde habita, servient' dictæ Dominæ Reginæ ad legem ac ipsius Reginæ attornat' ad hoc convocat', & præsent', consideratum est, qd' dictum officium dicti servientis ad arma in manib' dict' Dom' Reginæ retent' eidem Marco restituat', & quod præd' Marc' Steward ad exercitiu' & occupation' officii sui præd' a quo amotus fuit, una cum vadiis & feodis inde eidem officio debitis & pertinent', a dicto tempore amotionis suæ ab exercitio officii sui præd' hucusq; percept' & detent', restituat', &c. Salvo semper jure Reginæ si quod, &c.

Contra Regi-  
nam.

Manus Reginæ  
amoveant'.  
pars restituat'  
salvo semper  
jure Reginæ si  
quod, &c.

*Pasch. 10 Jac. Reg. which began Mich. 8 Jac. Rot. 3648.*

*Margaret Podger's Case.*

IN Replevin between *Ralph Bicknel* Plaintiff, and *John Tucker* Defendant, the Plaintiff declared of taking his Cattle viz. Sheep at *Curririvel*, in the County of *Somerset*, in a Place called *Hillfield Close*, the Defendant made Conufance as Bailly to *Margaret Podger*, because the Place where, was the Freeheld of the said *Margaret Podger*, for Damage-feasant, &c. In bar of which Avowry the Plaintiff said, That before the said *Margaret* had any thing in the Place where, one *Thomas Wise* Esq; was seised of the Manor of *Hampenbridge* in the County aforesaid, whereof the Place where was Parcel, and that the Place where was demised, and demisable by Copy of Court-Roll, &c. for one, two, or three Lives; and that within the said Manor, there was, &c. a Custom, *Quod ille vel illa qui vel quæ, primus vel prima nominat' foret in tali Copia*, should have the Lands and Tenements to him only for his Life, and he who was second named should have it only for his Life, *post mortem* of him who was first Tenant, and so of the third after the Death of the second. And that the said *Tho. Wise* Lord of the said Manor, at a Court held 15 Octob. Anno 9 *Eliz.* granted the Place where, &c. to *John Podger* and *Eliz.* and *Mary* his Daughters for their Lives, &c. by which *John* entred, &c. and died, after whose Death *Eliz.* entred, and married the said *Ralph Bicknel*

<sup>1</sup> Brownl. 181

<sup>2</sup> Brownl. 134

153.



*Bicknel* the Pl. by which he entred, and put in his Cattle, &c. and averred the Life of *Eliz.* The Avowant replied and confessed that the said *Tbo.* was seised of the Manor, and that within the said Manor there were such Customs, as the Pl. in Bar of the Avowry had alledged and confessed also the Grant made to *John Podger, Eliz. and Mary, prout, &c.* but further said, That the said *J. Podger* of the Place where, &c. so being seised, the said *Tbo. Wise* Lord of the said Manor, anno 23 *El.* by Deed indented and inrolled in the Chancery, according to the Stat. for 46 l. 13 s. 4 d. bargained and sold to the said *J. Podger*, the Place where, &c. to have and to hold to him and his Heirs; by Force of which, and of the Stat. of transferring of Uses into Possession, the said *J. Podger* was seised of the Place where, &c. in Fee, and the said *John* so seised, the said *T. Wise* Mens<sup>e</sup> *Mich.* anno 23 *El.* levied a Fine com<sup>e</sup> ceo, &c. of the Place where, &c. to the said *John Podger* and his Heirs with Proclam. according to the Stat. of

(a) 4 *H. 7.* and afterwards anno 39 *El. J. Podger* died seised, after whose Death it descended to *Marmaduke Podger* his Son and Heir, who thereof an. 4 *Jac.* levied a Fine to *Collins* and *Northover*, and to the Heirs of *Collins*, which was to the Use of the said *Marmaduke*, and *Margaret* his Wife, and to the Heirs of the said *Marmad.* (but this Fine was not pleaded to be with Proclamations) and afterwards 24 *Junii* an. 8 *Jac.* the said *Marmaduke* died, and *Margaret* survived him, and was thereof seised for the Term of her Life, and afterwards the Pl. entred into the Tenements, and put in his Cattle, &c. and that 10 Years and more after the Death of the said *J. Podger* were past, and that the said *Eliz.* 1 *Nov.* an. 35 *El.* accomplished her Age of 21 Years, and that she was not Covert Baron, nor *Non compos mentis*, nor out of the Realm, nor in Prison, and that the said *Eliz.* after the Death of *J. Podger*, and after her full Age, nor the said *Ralph* and *Eliz.* after their Marriage, within 5 Years did not make any Entry or Claim, &c. by which she was barred of all Right and Claim of and in the Place where, &c. by Force of the said Stat. and averr'd the Life of the said *Margaret*: Upon which the Pl. demurr'd in Law. And in this Case 3 Quest. were moved. 1. If customary Estates granted by Copy, at the Will of the Lord, according to the Custom of the Manor, &c. are within the Stat. of (b) 4 *H. 7. c. 24.* of Fines, to be barr'd by Fine with Proclamation and Non-claim by 5 Years. 2. Admitting that such Estates were within the said Stat. if by the Acceptance of the said Bargain and Sale, they in the Remainder of the Copyhold Estate were put out of Possession of their Remainder, or if their Remainder continued in them. 3. If after the said Bargain and Sale, to *John Podger, Elizab.* in the Remainder might enter.

(a) ÷ *H. 7. c. 24.*

(b) 10 *Co.* 96. a.  
*Co. Lit.* 262. a.  
 326. a. 372. a. b.  
 1 *Leon.* 77. 213.  
 2 *Leon.* 53. 157.  
 3 *Leon.* 10. 221.  
 227.  
 3 *Inst.* 216.  
 1 *Andersf.* 170.  
*Cr. El.* 561.  
*Poph.* 108. 114.  
*Sav.* 85, 88, 106,  
 107.  
*Palmer* 255.  
*Golds.* 171, 172.  
*Plowd.* 360. b.  
 371. b.  
 4 *Co.* 125. b.  
 3 *Co.* 77. b. 78. b.  
 79. a. 86. b. 87. a.  
 b. 88. a. b. 89. a.  
 90. a. 91.  
 7 *Co.* 32. b.  
 5 *Bulstr* 152.  
 2 *Inst.* 519.  
*Dy.* 72. pl. 3. 133  
 pl. 2. 186. pl. 68.  
 215. pl. 53. 224.  
 pl. 28. 254. pl.  
 104, 258. pl. 9.  
 270. pl. 21.  
 2 *Andersf.* 176.  
 13 *Co.* 20.

As to the first it was objected, that such customary Estates are not within the said Act, for divers Reasons. 1. In respect of the Benefit of the Estate; for in the Judgment of the Law, they have but a Ten'cy at Will, which is so weak, that the Makers of the Act of 4 H. 7. never intended to include 'em within the general Words of the Act, no more than the Stat. of W.

2. (a) *de donis conditionalibus* extends to such base Estates granted by Copy at Will, &c. as it was resolved *per totam Curiam* in the last Term, upon Evidence to a Jury in *Trespas*, between (b) *Thornton* and *Lucas* for Lands in *Lambeth*, in the County of *Surry*, which began 9 *Jac. Reg. Rot.* 3129. *Vide Heydon's Case in the 3d Part of my Reports* f. 7. 2dly, it would be very prejudicial to Lords of Manors; for if a Disseisor of Land held by Copy levies a Fine with Proclamation, it would be dangerous to Lords, that they might lose not only their Fines upon Alienations or Descents, and the Benefit of Forfeitures, but also might be in danger of being barred of their Freehold and Inheritance of the Land held by Copy, without any Fault in them. But it was resolved *per totam Curiam*, that Lands held (c) by Copy are within the Words and Intent of the said Act of 4 H. 7. for the Words of the Purview are general, *And the said Proclamation so had and made, the Fine to be a Final End, and conclude as well Privies as Strangers to the same*: And if no Exception had been in the Stat. by the Words aforesaid, all Persons generally would be concluded, as it is held in (d) 19 H. 8. 6. b. § 7. a. Then let us see what Things are saved by the same Act; the Words of the Saving are, *And saving to every Person, &c. such Right, Claim and Interest, &c. so that they pursue their Title, Claim or Interest, within five Years after the Proclamations*: Within which Words and principally this word (e) (*Interest*) a Lease for (f) Years is included, so that if he makes not Entry or Claim within five Years, he shall be barred, as it was resolved in *Saffin's Case in the 5 Part of my Reports*, f. 123, 124. and there the Words of the Preamble of the said Act are well observed. (*That Fines ought to be of greater Strength to avoid Strifes and Debates, and to the Final End and Conclusion, &c.*) and there it is inferred, That great Mischief, Vexation and trouble would ensue, if Leases for Years (which now many Times are made for a great Number of Years, &c.) should not be within the Act; but greater Mischief, Vexation and Trouble would ensue if the said Act should not extend to customary Lands held by Copy, for a great Part of them is granted in Fee-Simple, so that it would be more mischievous, and greater Cause of Contention than the said Case of the Estate for Years. And as to the said Objections, they are answered by the said Resolution of the Case of the Estate for Years, for such Prejudice might be

(a) Cr. Car. 42, 43, 44.  
 Godb. 367, 368.  
 2 Rol. Rep. 383.  
 O Benl. 163,  
 164, 166, 167.  
 1 Rol. Rep.  
 48, 49.  
 3 Co. 2. a. 9. a.  
 Sav. 67.  
 Moor 188, 189.  
 Cr. El. 149,  
 307, 391.  
 1 Leon. 175.  
 Pop. 34, 128.  
 2 Sand. 422.  
 Hard. 433.  
 1 Rol. 838.  
 Lit. sect. 76.  
 Co. Lit. 60. a. b.  
 4 Co. 22. a.  
 (b) 1 Rol. 838.  
 (c) 4 H. 7. c. 24.  
 1 Inst. 517.  
 Winch. 122.  
 2 Brownl. 156.  
 3 Bullst. 152.  
 O Benl. 163.  
 Cr. Car. 45.  
 (d) Br. Fine 1.  
 Br. Tail. 3.  
 (e) 5 Co. 123. b.  
 (f) 2 Inst. 517.  
 Cr. Car. 110.  
 Cr. Jac. 60, 61.  
 Plowd. 374. a.  
 1 Vent. 56.  
 Hard. 400, 413.  
 Carter 82.

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objected in such Case to the Lessor, as well for his Benefit of Forfeiture, &c. as for the Hazard of his Inheritance, as in this Case of Copyhold to the Lord. But if Lessee for Years, or Copyholder by Assent and Covin to bar the Lessor or Ld. of his Inheritance, makes a Feoffm. and levies a Fine with Proclamat. in the same Manner as appears in *Farmer's Case in the 3 Part of my Reports*, f. 77. such Fine shall not (a) bar the Lessor or the Lord for the Reasons there given at large. And the Estate of a Copyholder is not a meer Estate at b) Will, but *secundum consuetudinem Manerii*, which Custom hath fixed and strengthen'd his Estate.

*Nota* Reader a Difference between a Lease for Years, and a Lease for (c) Life, and also betwixt a Grant by Copy, &c. and a Lease for Life by the Com. Law: For if Lessee for Years is ousted, and he in Reversion disseised, and the Disseisor levies a Fine with Proclamations, and 5 Years pass, as well the Lessor as the Lessee is barred by their Non-claim, and the Lessor shall not have 5 Years after the Years expired. So if Copyholder for Life, or in Fee be ousted, and the Lord disseised, and the Disseisor levies a Fine with Proclamat. and 5 Years pass, as well the Lord as the Copyholder is barred, and the Lord in such Case shall not have 5 Years after the Death of the Copyholder for Life. And the Reason of these Differences arises upon the Words of the two Savings in the said Act of 4 H. 7. the first Saving is, *Saving to every Person, &c. such Right, Claim and Interest, &c. so that they pursue their Title, Claim or Interest by way of Action, or lawful Entry within five Years, &c.* The second Saving is, *And saving to all other Persons such Action, Right, Title, &c. as first shall grow, remain or descend, or come to them after the said Fine, &c. by Force of any Gift, &c. or by any other Cause or Matter had or made before the said Fine.* The first Saving extends to those who have present Rights, and may immediately enter or have their Action to recover the Lands, and therefore they are confined to 5 Years after the Fine levied. And the second Saving extends to those who at the Time of the Fine levied, can't immediately have an Action, nor make an Entry, but *in futuro*, and therefore they shall have five Years after that their Action, &c. first accrues. Then when (d) Lessee for Years, or Ten't by Copy, &c. for Life, or in Fee, is ousted, and the Lessor or Lord disseised, the Lessor or the Lord may immediately have *Assise* or other real Action, and recover the Land, and therefore they are within the first Saving, and by Consequence, if they do not pursue their Action within the five Years after the Fine levied, they are barred for ever: And they are not within the second Saving, because the Lessor or Lord has a present Action and Remedy, and therefore he is out of the said second Branch, for the Action, &c. doth not accrue first to him after the Fine.

(a) 2 And. 176.  
Jenk. Cent. 253.  
1 Jon. 35. 317.  
Winch. 116.  
117.  
3 Co. 77. a. b.  
Cary's Rep. 20.  
R2; m. 149.  
2 Bulltr. 139.  
(b) 2 Co. 17. a.  
4 Co. 21 a. 24. b.  
8 Co. 64. a.  
Lit. Sect. 77.  
Co. Lit. 60. b.  
3 Co. 8. a.  
6 Co. 37. h.  
Cr. Car. 45.  
Hedl. 6.  
Moore 60, 61.  
(c) Cr. El. 220,  
254.  
1 Jones 35, 211.  
Moore 71.  
1 Leon. 40.  
Cr. Car. 157.  
Plowd. 373. b.  
27. a.  
Raym. 219.  
3 Co. 73. b.

(d) 1 Jon. 562.

And altho' a (a) Stranger can't of his own Head enter in the Name of him who has right to avoid the Fine without command precedent, or Assent subsequent, within the 5 Years, as it was resolved in the *L. Audley's Case*, *M. 38 & 39 El.* in the K.'s Bench, where the Case was, that the *L. b) Audley* being seised of certain Lands, *an. 6 El.* levied a Fine with Proclamation; and within the 5 Years a meer Stranger, who had not any Right or Interest in the Land comprized within the Fine, made an Entry in the Name of him who had Right within the 5 Years, without any request or command precedent or Assent subsequent within the 5 Years, that this Entry should not avoid the Fine, for the Saving in the said Act has appropriated the Pursuit by way of Action or lawful Entry to him who has Right either by Command precedent or Assent subsequent within the 5 Years, (c) *omnis enim rati habitio retrotrahitur & mandato equiparatur*: And of such Opinion were all the Justices of the *Serjeants Inn* in *Fleetstreet*, as *Popham Ch. Just.* openly reported in Court, against the Opinion in *31 H. 8. Entry Congeable*, *Br. 123. Vide 45 E. 3. Release 28.* (d) Guardian by Nurrure or in Socage may enter in the Name of the Infant who has Right of Entry, and that shall vest the Estate in the Infant, without any Command or Assent, for there is Privy betwixt them. *Vide (e) 10 H. 7. 12. a. (f) 11 Aff. p. 11. & 26 E. 3. 62. b. by Thorpe.* Yet (g) he in the Reversion expectant upon an Estate for Life or Years, or the L. of a Ten't by Copy, &c. may well, within the said Act, enter in the Name of the Ten't for Life, Lessee for Years, or Ten't by Copy, and in his own Right, to save as well their own Freehold and Inheritance, as the said particular Interests, for the Lessor and the Lord are not Strangers, for they are Privies in Estate, and as the Entries of those particular Ten'ts shall avail the Lessor and the L. in such Cases for the Privy of their Estates, so the Entry of the (h) Lessor or the Lord in such Cases in the Names of the particular Ten'ts shall avail them for the Privy of their Estates, and for the Salvation of their several Rights without any Request precedent, or Assent subsequent. For in such Case the Lessor or Lord pursues their Title and Claim which they have to the Inheritance by lawful Entry within the 5 Years, but so doth not he who is a meer Stranger, who has not any Right, because the Saving annexes the Entry to him who has Right, &c. as is aforesaid.

As to the 2d Point, It was resolved *per totam Curiam*: That no Fine nor (i) Warrantry shall bar any Estate in Possession, Reversion or Remainder which is not devested and put to a Right: For he who has the Estate or Interest in him can't be put to his Action, Entry or Claim, for he has that which the Action, Entry or Claim would vest in or give him. 2. When the Lord made the Bargain and Sale by Deed indented and

(a) Cr. El. 132.  
1 Leon. 34.  
Owen 137.  
Moor 222.  
Co. Lit. 206. b.  
258. a.  
(b) Cr. El. 561.  
Moor 450. 457.  
Poph. 108.  
Co. Lit. 245. a.  
258. a.

(c) Co. Lit.  
180. b. 207. a.  
145. a. 278.

(d) Cr. El. 132.  
Moor 22. 2.  
Co. Lit. 206. b.  
1 Leon. 34. 35.  
(e) Br. Seisin  
50.  
(f) Br. Entry  
Congeable 50.  
Br. Seisin 21.  
(g) Carter 35.

(h) Carter 35.

(i) 10 Co. 96. b.  
97. a.  
Co. Lit. 327. b.  
383. b.  
1 And. 37. 38.

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inrolled to *John Podger*, that did not devert the Estate of them in Remainder for divers Reasons. 1. Because the Lord did that which he might do by Law, and the Copyholder accepted that which he well might: 2. The Copyholder was in lawful Possession, and was only passive in this Case, and not active; and by Acceptance he who is in lawful Possession, by Force of a particular Estate, can't devert the Estate of him who has the Freehold or Inheritance. And therefore if Ten't-for Life (a) accepts a Fine of a Stranger, *come cco*, &c. it is a Forfeiture, 1 *H. 7.* but it does not devert the Estate of him in Reversion or Remainder. 3. *J. Podger* the Barginee was in by Force of a Bargain and Sale by Deed indented and inrolled, by Force of the Stat. of 27 *H. 8.* of Inrollments, and an Act of Parliam. never does a Wrong; and thereupon the Ch. Just. put a Case which was adjudged *Trin. 31. El.* in the Exchequer, between the Q. and the Lady (b) *Gresham*, late the Wife of Sir *Tho. Gresham* Kt. which was such, Sir *Tho. Gresham* being seised of the Manor of *Milham, Castleacre, &c.* in the County of *Northfolk* levied a Fine thereof to *A. Stringer* and *Phil. Cely*, *an. 12. El.* to Uses declared by certain Indentures, *sc.* to the Use of himself and the Lady *Anne* his Wife, and their Heirs for so it was in Effect, for there were divers particular mean Estates limited, but they were all either determined, or never came in *esse*) with Power of Revocation, (contained in the said Indentures limited,) that if Sir *T. Gresham* should pay 40 s. to *Stringer* and *Cely*, or to the Heirs of *Stringer*, that then the Fine should be to the Use of Sir *Thomas* and his Heirs; and afterwards the said Sir *Thomas* levied a Fine, *an. 13. El.* to the same Conusees of the Manors of *N. F. &c.* in the Counties of *York, Derby, &c.* to the same Uses declared in another Pair of Indentures with the like Power of Revocation upon Paym. of 40 s. as was contained in the other Indentures *mutatis mutandis*; and afterwards the said *A. Stringer* died; and afterwards the said Sir *Thomas* paid one Sum of 40 s. to *Cely*, and to the Heirs of *A. Stringer*, for Revocation of the Uses raised upon both the Fines; and this Payment was testified by an Instrument in Writing under the Seals of the Parties by good Advice, as Sir *Thomas* was persuaded, and afterwards he raised divers Uses and Estates of divers Manors held in *Capite*: And afterwards Sir *Thomas* died, after whose Death, *viz. Hill. 23. Eliz.* by the Opinion of the Justices it was resolved, That the Uses were not revoked, but that the Revocation was utterly void, because two several Sums of 40 s. ought to have been rendred, and not one Sum of forty Shillings, for they were several Indentures and several Manors, &c. and could not be satisfied with one Sum, wherefore all the said Manors accrued to the

(a) 2 Co. 56. a  
Co. Lit. 252.  
Dv. 128. pl. 79.  
1 Mod. Rep. 117.  
3 Kel. 68. 622.  
1 H. 7. 12. a. b.  
1 Rol. 852.

(b) Moor 251,  
262.  
1 Leon. 89, 90.  
1 Vent. 176.  
Sav. 65.

Lady *Gresham* by Survivor. And afterwards the said Revocation was enacted and adjudged to be good and sufficient in Law, by a private Act of Parliament, made *an. 23 El.* And because the said Sir *Thomas* had by Indentures of Covenants raised new Uses after the said supposed Revocation of divers of the said Lands held *in Capite*, the Lady *Gresham* was called by Process into the Exchequer, to answer a Fine to the Queen for the said (a) Alienation of the said (a) Savil 65. Manors, being held of the Queen *in Capite*, without Licence, because now the said new Uses raised were good, and the Manors passed according to the Limitation of them, forasmuch as now the Revocation was by Authority of Parliament adjudged good. But because at the Time of the Death of the said Sir *Thomas*, which was before the said Act of 23 *El.* the Lady *Gresham* was discharged by Survivor, and every Alienation without Licence, implies a Wrong and a Trespas, and an Act of Parliament, to which the Queen, and all her Subjects are Parties, and give Consent, can't do a Wrong; for this Reason the Lady *Gresham* was discharged of the Fines for the said Alienations, which had upon the Matter their Effence by Means of the said Act of Parliament.

As to the 3 Point which did not tend directly to the Conclusion of the Case) it was resolved, That after the Bargain and Sale *Elizabeth* could not enter, for her Estate was to commence in Possession after the Death of the said *John* by the said Custom: And so if a Copyholder for Life, where the Remainder is over for Life, commits a Forfeiture, he in the Remainder shall not enter, (b) but the Lord, and he shall retain it during the Life of him who committed the Forfeiture, but that shall not (c) destroy the Remainder, without an exprefs Custom in such Case. And Ten't by Copy for Life, where the Remainder is over, may (d) surrender to the Lord, and he in Remainder shall not enter till after his Death, for his Estate is to commence in Possession *post mortem*, and no Incident of the Com. Law belongs to him, unless by Custom. And the Ch. Justice said, That a Surrender of Copyholds is not to be compared to a Surrender at the Common Law; for if a Copyholder in Fee surrenders to the Use of another for Life, no more shall pass from him than shall serve the Estate limited to the Use, and he who made the Surrender shall not pay any Fine for (e) Re-admittance to the Reversion, for that continued al-

(b) 1 Rol. 509.  
2 Rol. 794.  
1 Jones 229.  
1 Saund. 151.  
Carter 238.  
(c) 2 Rol. Rep.  
179.  
1 Rol 509, 568.  
C1 El 598, 879.  
880.  
Moor 49. con.  
Nov 42.  
Yelv. 1.  
(d) 1 Rol. 503.

(e) 1 Rol. 505.

**Margaret Podger's Case. PART IX.**

the mean Estates in the Remainder preserve the Estate of *John Podger* by Copy, from the Lords Incumbrances. *Vide in Wrottesly's Case Plow. Com.* If Tenant for Life grants a Rent-charge to one, and he in Reversion grants a Rent-charge to another, and afterwards Tenant for Life surrenders, the Grantee of the Tenant for Life shall be preferred.

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8 Co. 145. b.

Co. Lit. 338. b.

Cr. Car. 102.

Plowd. 198. a.

*Pasch.*

# Pasch. 10 Jacobi Regis.

## In Communi Banco.

### Meriel Tresham's Case.

**H**elen Brokesby and Anne Vaux Administrators of Henry Vaux Esq; brought an Action of Debt against Meriel Tresham Administratrix of Sir Thomas Tresham Kt. on a Bond of 600*l.* made by the said Sir Thomas to the said Henry Vaux 23 *Maii an.* 25 *Eliz.* which Plea began *Trin.* 9 *Jac. Rot.* 917. The Defendant (a) pleaded, That the said Sir Thomas Tresham, and Francis his Son, 1 *Julii an.* 43 *Reg. El.* before the Barons of the Exchequer *pro justo & vero debito recognover' se debere dictæ nuper Regine C. l. Solvend' in Festo Sancti Mich' Archangeli* next following; And that the said Sir Thomas and Francis his Son 8 *Julii an.* 3 *Reg. Jac.* acknowledged a Recognizance in the Nature of a Statute, before the Lord Anderson Chief Justice of the Bench, to John Brudnel in 800*l.* to be paid at the Feast of St. James next following, *pro justo & vero debito*: And that the said Sir Thomas and Francis his Son, &c. 16 *Decemb. an. Regni dictæ nuper Regine El.* 45. acknowledged another Recognizance in the Nature of a Statute Staple before the said Chief Justice to John Moor Alderman of Lond. in 1000*l.* *solvend' eide' Johani' pro justo & vero debito, solvend' in Festo Natalis Dom' tunc proxim' sequen'*: And that the said Sir Thomas 16 *Sept. an.* 45 *El. Reg.* before the said Ch. Just. acknowledged another Recognizance in the Nature of a Statute Staple to Anne Offeley in 1000*l.* *pro justo & vero debito solvend' in Festo Natal' Dom' proxim' sequen'*: And another Recognizance of such Nature

1 Brownl 51.  
Co. Ent. 151.  
pl. 30.  
Swinb. 330.  
Bridg. 80, 81.

(a) Bridg. 80



Meriel Tresham's Case. PART IX.

17 Dec. ann. 2 Reg. Jac. to John Ireland in 1000 l. pro justo & vero debito, solvend' in Festo Natalis Dom' tunc proximi sequen', and pleaded that she had fully administred, & quod ipsa nulla habet bona seu catalla quæ fuerunt ejusdem Thomæ Tresham tempore mortis suæ in manibus suis administrand', nec habuit die impetrationis brevis originalis præd', nec unquam postea, præterquam bona & catalla ad valentiam of the said Debt to the King, and of every of the said Recognizances, and averred that all the said Recognizances remain yet in Force, & quod ipsa nulla alia sive plura habet bona & catalla quæ fuer' præd' Thomæ Tresham tempore mortis suæ in manibus suis administranda præterquam bona & catalla quæ non \*sufficiunt ad satisfaciend' præd' separalia debita eisdem Dom' Regi nunc, Johan' Brudnel, Johan' Moor, Annæ Offley, & Johan' Ireland de eorum debiti' supradict' ac quæ eisdem debiti' obligat' & onerabilia existunt,

• 1 Rol. 922.

(a) 1 Brownl.

51.  
Swinsb. 330.

&c. And the Defendant (a) averred that neither the said Sir Thomas in his Life Time, nor the said Administratrix after his Death had paid the said Debts, &c. The Plaintiffs replied and said, That as to the said Recognizance of 800 l. to the said John Brudnel, that the said Recognizance was made pro securitate solutionis 400 l. &c. and that the Def. after the Death of the said Sir Thomas, paid to the said John Brudnel the said 400 l. of the principal Debt, in full Discharge of the said Recognizance of 800 l. which 400 l. the said J. Brudnel in full Discharge of the said Recogniz. of 800 l. there then (b) received. And as to the said 1000 l. acknowledged to the said J. Moor, that the said Recogniz. was made pro securitate performanceis quarundam

(b) Bridg 80.

(c) Bridg 87, 31.

Jenl. Cent 274.

Ch. Jac 9.

Ch. El. 263.

Moor 762.

1 Rol 925.

1 Rol Rep 275.

Swinsb. 370.

1 Bult 101.

2 Leon 212.

Goldsb. 142.

(d) 1 Brownl.

49.

2 Saund. 49

Moor 705.

1 Jones 91, 92.

(c) convention' in quadam indentura tripartita geren' Dat' 15 Decemb' anno dictæ nuper Regine 45. ex parte ipsius Thomæ performand' & custodiend', which were all performed, and none of them broke. And as to the said Recognizance of 1000 l. to Anne Offeley, that the said Sir Thomas in his Life-time had paid the said 1000 l. to the said Anne, &c. and as to the said 1000 l. acknowledged to J. Ireland, that the said Sir Thomas had also paid them to the said J. Ireland, &c. quodque separales recognitions præd', &c. sic ut præfertur separatim recognite per fraudem & (d) covinam ipsius Meriellæ, & ea intentione ad ipsas Helenam & Annam Vaux de debito suo præd' defraudand' minime exonerat' & non cancellat' adhuc remanent: And further the Plaintiffs said, That the said Meriel the Day of the Writ brought, sc. 14 Febr. anno 6 Jac. Reg. had divers Goods and Chartels, which were of the said Sir Thomas the Day of his Death, in her Hands to be administred, to satisfy the

the

the Pl.'s debt, *præterq' bona & catall' ad valent' præd' 100l. præd' nup' Regin' in forma præd' recognit', &c.* upon which the Def. (a) demur'd in law. And the case was argu'd by the Def.'s and Pl.'s counsel at the bar in several terms; and the Def.'s counsel conceiv'd that the replicat. was insufficient, as well for the manner, as for the matter: concerning the manner for 4 reasons: 1. Because the Pls. in their replicat. have allעד'g'd, that the said recognizance of 800l. to the said *John Brudnel* made, was *pro securitate solutionis 400l. &c.* and so have taken a bare averment against the recognizancé, which is matter of record, for Sir *Thomas* by the said recognizance acknowledges himself to be endebted to the said *J Brudnel* in 800l. to be paid such a day, and the Pls. have allעד'g'd that it was made for surety of the paym. of 400l. but the Pls. ought to have shew'd that there was a defeazance made by deed for the paym. of 400l. &c. for a recogniz. may be defeated by deed in writing, but not by bare agreem. 2. The like exception was taken, because they have allעד'g'd, that the said recogniz. to the said *J. Moor* was made *pro securit' performat' quarund' convention', &c.* 3. If such general pleading should be admitted; yet it ought to have been shewed when the 400l. were to be paid; but now it doth not appear whether he paid it at the day, before the day, or after the day; for replicat. ought to contain convenient (b) certainty; so that it may appear to the court that the Pl. has cause of action. 4. Where they allעד'ge that the recogniz. to the said *J. Moor* was made for perform: of covenants, and that none of the cove'nts were broke, they ought to have traversed, *sc.* that it was not acknowledged, (c) *pro vero & justo debito*, for that was expressly allעד'g'd by the Def. in the bar. As to the matter, the Def.'s counsel conceiv'd the replicat. insufficient for 2 reasons: 1. Because altho' *J. Brudnel* had accepted 400l. in satisfaction of the Stat. of 800l. yet in law the Stat. remains in force, and he might sue execution against the Def. upon it when he would, and therefore, if she should pay debts by specialty before this debt of record, the Def. may be charged by a (d) *Devast'*, and therefore not only her own lands and goods, but her body also will be subject to execution upon the said recogniz. of 800l. And it was said, that this case at bar differs from (e) *Turnor's case*, reported by me in the 8 part of my *Rep. f. 132*. For there *Billet* who had the judgm. not only accepted 60l. in *plenam satisfact' & exonerationem* of the judgm. of 100l. *& obtulit & adhuc offert ad relaxand', &c. vel ad cognoscend' satisfaction' in cur'*, &c. and that the Def. *deceptive & ea intentione ad defraudand' & decipiend' præd' Edw' Turnor, &c. de justo debito suo cogn' satisfact'ionis, &c. distulit & adhuc differt, &c.* but in the case at bar it doth not appear, that the said *John Brudnel* ever offered either to release, or acknowledge satisfaction, &c. for then default had been in the defendant, as it was in *Turnor's Case*, but

(a) Bridg. 81.

(b) Co. Lit.

303. a.

(c) Cr. Jac. 626.

1 Brownl. 50.

(d) Moor 299,

358. 678, 752.

Cr. El. 102, 216,

318, 530, 734.

7. 5, 822.

1 Brownl. 33.

50, 80, 116, 117.

Hob. 167, 266

Noy 69, 129.

2 Brownl. 81,

82, 83.

Golds. 115, 142.

181.

Goldb. 29.

1 Leon. 320.

2 Leon. 188.

1 Rol. 931.

1 Sid. 347, 397,

398, 412.

1 Saund. 216,

217, 218, 307,

308.

2 Saund. 403.

Cr. Car. 519,

603.

Caster 2.

1 Vent. 292.

2 Vent. 360.

Allen 39.

Stile 54, 55.

Yelv. 29, 196,

197, 219, 220:

Cr. Jac. 270,

271.

2 Jones 88, 89,

(e) 1 Jones 91,

92.

in

in this case such default does not appear to be in the Def. 2. the Pls. in their replication aver, that the said recognizances remain not discharged by covin of the Def. &c. to the intent to defraud the Pls. of their Debt; and she alone can't commit covin, for covin ought to be betwixt two, and therewith agrees; 9 H. 6. 19. a. b. where in Debt by the Prior of D. against Hugh Lacy, the Def. pleaded foreign attachment in Lond. at his own suit; the Pl. would have averr'd, that the Plaint which was affirm'd by the said Hugh against the Prior, was to make the Prior lose his debt, and there Prisot Chief Just. said, as to the (a) covin it seems here that it is not to the Purpose, for the said Hugh can't affirm the said plaint by covin of himself alone; for covin ought to be betwixt two, &c. And in P. C. in Talbois's Case, 54. b. it is held, that covin (according to the true definition of it) is a secret assent determined in the hearts of two or more men, to the prejudice of another. And afterwards the case was argued in Pasch. 10 Jac. Reg. by the Justices; and judgment was given for the Pls. And in this case these points were unanimously resolved.

(a) Br. Collu-  
sion 23.

1. That the Def.'s bar was repugnant in it self; for first the Def. pleads, *Quod ipsa plene administravit omnia bona & catalla quæ fuer' præd' Thomæ tempore mortis suæ & qd' ipsa nulla habet bona & catalla quæ fuer' ejusd' Thomæ tempore mortis suæ in manibus suis administrand' nec habuit die impetrationis brevis originalis præd' (b) præterq' bona & catall' ad valentiam* of the debt to the K. and the several debts by the said several recognis. by which she confesses, that she has sufficient in her hands to satisfy them. And afterw. she pleads, *qd' ipsa nulla alia sive plura habet bona seu catall', quæ fuer' præd' Thomæ temp' mortis suæ in manibus suis administrand' præterq' bona & catalla, quæ non sufficiunt ad satisfaciend' præd' separalia debita*, which is meerly, and ex diametro, repugnant to that which he had confessed before.

(b) 1 Roi. 922.  
Swind. 330.

2. It was resolved, that if she had only pleaded, *qd' ipsa non habet, nec die impetration' original' præd' habuit, aliq' bona & catalla quæ fuer' præd' Tho' Tresham, tempore mortis suæ, præterq' bona & catalla non attingentia, ad satisfaciend' debita præd' aut quæ non sufficiunt ad satisfaciend' debita præd'*, or a plea to such effect, that such plea had been (c) insufficient.

(c) 1 Roi. 922.  
Swind. 330.

For the execut. or administrator either ought to plead as the Def. does in this case, sc. that she has not goods or chattels, &c. *præterq' bona & catalla ad valentiam debiti' præd'* and so confesses that she has sufficient to satisfy them; or if the truth be, that she has not assets to satisfy the debts of record, then to confess how much she has, sc. that she has not goods and chattels, &c. *præterq' bona & catalla ad valentiam* of a (d) sum certain, *& non ultra, quæ eisdem debitis obligat' & onerabilia existunt*, but she ought not to say, *præterquam bona & catalla non excedentia, aut quæ non sufficiunt ad satisfaciend' debita prædicta*, for the in-

(d) 1 Sid. 210.  
Hob. 133.  
Doct. p. 61,  
170, 171.  
Cr. Jac. 626,  
V2. 2h. 103.

certainly, for to that the Plaintiff can't reply, whereupon a certain Issue may be taken; for if the Truth of the Case be, that she has Assets to satisfy all the Debts of Record but a Penny, or an Half-penny, or other small Sum, such Plea would be true; and an Executor or Administrator is privy and represents the Person of the Testator or Intestate, and by Indentment of Law has Notice of the Certainty, and certain Value of the Goods, and therefore he ought in that Case to plead certainly as is aforesaid; as well as the Heir when he pleads Detainment of Charters in a Writ of *Dower*, he ought to shew the (a) Certainty, because he is privy; or otherwise it would be in the Case at Bar a Device to bar poor Creditors (an usual Attempt in these Days) of their true and just Debts; and therefore such Innovation in pleading, tending to so dangerous a Consequence, was utterly condemned *una voce per totam Curiam*.

3. It was resolved, That such (b) general Pleading, *sc.* that such Recognizance was made *pro vera solutione, &c.* or *pro performance Conventionum, &c.* because the Creditor who is a Stranger to it, has no Means in Law to know the particular Certainty, was good enough. *Vide Plow. Com. 85. a. b. in Croker's Case*, and *18 H. 8. 1. a. b. &c.* And altho' they do not (c) specify the certain Day of Payment, nor that the lesser Sum was paid before, or upon the Day of Payment, yet the Pleading is good in this Case, for admit that the Payment was after the Day of Payment, yet when the said *John Brudnel* accepted the lesser Sum in *plenam exonerationem* of the said Recognizance of 800*l.* This is a good Ground for the Plaintiffs to aver, that by Fraud of the Defendant, and to the Intent to defraud the Plaintiffs of their Debt, the Recognizance was not discharged nor cancelled: The which the Defendant has now confessed by her Demurrer, but she might have taken Issue upon it, and left it to Trial of the Country upon the Evidence, declaring the Truth of the Case.

4. It was resolved, That altho' they have not alledged special Matter, as in *Turnor's Case*; *sc.* that the Conusee (d) offer'd and was ready to release, or acknowledge Satisfaction; yet it was resolved, that the (e) general Allegation of Fraud in the Case at Bar was sufficient, as it is resolved in *Talbois's Case*, That general Averment of Covin was good, because Covin is so secret, whereof by Intendment another Man can't have Knowledge. And if of the special Manner of Covin which (as it is there held) *ex vi termini*, ought to be betwixt two by Intendment of Law a Stranger can't

(a) Dy. 230. pl. 53.  
Br. Dower 1, 53, 67.  
18 H. 8. 1. a. b.  
9 E. 4. 47. a.  
Anrea 18. a.  
Perk. Sect. 356.  
Plowd 85. a. b.  
2 H. 7. 6. a.  
Fitz Dower 14, 17.  
Godb. 370.  
Co. Lr. 286. b.  
Doct. pl. 150.  
(b) Brownl 51.  
Bridg. 81.  
1 Jones 91, 92.  
Doc. pl. 61, 171.  
Raym. 304.  
(c) Doct. pl. 171.  
(d) 8 Co. 132. b.  
133. a.  
(e) Plowd. 54. b.  
Raym. 304.

can't have Knowledge, *a fortiori* in the Case of Fraud, which may be in the Heart of one only, for if one by Deed makes a fraudulent Gift of his Goods to diverse who know not of it, it is Fraud only in him who makes it; and so it was adjudged in *Turnor's Case*, that Fraud may be in one, or of one Part only. And for as much as the Replication was good, as to the Debt of 800*l.* to *John Brudnel*, and the Def. has confessed in her Bar, that she has Affets to satisfy all the Recognizances, for this Reason the Pls. shall recover their Debt 600*l.* due by the said Bond. And altho' of it self, and

(a) 1 Sid. 21.

*ex vi termini*, (a) *Covina* ought to be betwixt two; yet when it is coupled with Fraud, which may be committed by one only, the Court shall adjudge upon the Matter, and not upon the strict Etymology of the Word; and if the Addition of *Covin* be in vain then the Court ought to adjudge upon the Word, *s.* Fraud, which may be committed by one, &

(b) 7 Co. 27. b.  
Calvin's Case.

*plerumq; dum (b) proprietates verborum attendit sensus veritatis amittitur.* And the Chief Just. said, *quod saepe in Cognitione juris fuit digitus Dei*; for the Def.'s Bar was altogether insufficient; for the Def. has averred, That Sir *Thomas* had not paid the Debts due by the said Recognizances

(c) 1 Brownl. 51.  
Swind. 350.

in his Life, nor his Administrator after his Decease; but (c) has not averr'd, That *Francis* who was jointly bound with him in all the Recognizances had not paid them, whereby the Bar was insufficient. And if the Bar be (d) insufficient

(d) 1 Brownl. 51.  
Co. Lit. 303. b.  
Doct. pl. 69, 70.  
325.

in Matter, and the Writ and Declaration good and the Replication superfluous, without any Matter which impugns or destroys the Action, the Pl. shall have Judgment. as it has been oftentimes ruled and adjudg'd *qd' fuit concessum per tot' Cur'*, and afterwards Judgment was given, and entred for the Pls. and Execution awarded accordingly. *Vide* the 3 (e) Point in *Turnor's Case*, a good Judgment in these Days, where Executors and Administrators contend by Fraud, and subtil and

Cr. Car. 5.  
8 Co. 123. b.  
Palm. 287.  
Cr. Jac. 133.  
Li. Rep. 3-1.  
Godr. 138.  
(e) 8 Co. 133. b

cunning Pleadings and Devices to bar Creditors of their just and true Debts: and observe well the 3 Point resolved in *Turnor's Case*. *Nota* Reader, At the Common Law; if there be Lord, Mesne, and Tenant, and the Mesne truly does his Services to the Lord Paramount, and yet the Lord distrains the Tenant peravail for them, at this Time the Distress is tortious, and the Tenant is not distrained in Default of the Mesne; but in this Case if the Tenant peravail requests the Mesne to take his Cattle out of the

(f) 2 N. B.  
135. b.  
7 H. 2. 12. a.  
Co. Lit. 12. a.

Pound, and put in his own (f) Cattle in lieu of them; or if the Tenant has replevied his own Cattle, and request

requests the Mesne to join and acquit him, and he refuses, by this Matter *ex post facto*, the Law will adjudge that the Tenant peravail was distrained in Default of the Mesne, and if in a Writ of Mesne, the Mesne (a) should plead not distrained in his Default, it should be found against him, otherwise the Tenant peravail will be in no Default, and will have Wrong, and yet will be without Remedy: And it is all one to the Tenant, if the Distress be wrongful or rightful, if he shall not have any Redress. *Vide* \* 39 *E.* 4. 34. a. 17 *E.* 3. 15. § 44. a. 7 (b) *H.* 4. 18. a. b. 12 (c) *E.* 4. 2. a. 13 (d) *E.* 4. 6. a. b. *F. N. B.* (e) 136. By which it appears, That Judges in all Ages have endeavored to put the Rule of *W. 2.* † in Execution, (f) *Curia Domini Regis non debet deficere conquerentibus in Justitia exhibenda. Justitia est suum cuique tribuere.*

(a) Ant. 22, 23.  
 \* 9 Co. 23. a.  
 (b) Br. Reple. 14.  
 Br. Mesne 4.  
 (c) Br. Joinder  
 in Action 67.  
 9 Co. 23. a.  
 (d) Br. Mesne. 24.  
 Br. Replev. 42.  
 (e) F. N. B. 136. h.  
 † *W. 2.* cap. 24.  
 2 Inst. 405, 406.  
 (f) Co. Lit.  
 74. a.  
 9 Co. 88. b.  
 2 Inst. 405, 408.

## Trin. 10 Jac. Regis.

## Robert Marys's Case.

Godb. 185.

1 Brownl. 197

2 Brownl. 55,  
146.

*Edward Crogate* brought an Acton on the Case against *Robert Marys*, and declared, That *William Winter Gent.* was seised in Fee of the Manor of *Townbarningham*, whereof an House and 2 Acres, and 2 Rods of Land in *Townbarningham* are, &c. Parcel, and demised and demisable by Copy, &c. in Fee, for Life, or Years. And whereas the said *William* and all those whose Estate he has in the said Manor with the Appurtenances, *pro tenentibus Custumaris suis præd' messuagii 2 acr' & 2 Rod' terra cum pertinent' habuerunt & a toto tempore cuius contrarii memoria hominum non existit, habere consueverunt communiam pastur' in quadam pecia pastur' cont' per estimationem septem acras vocat' Townbarningham Common, jacent' in Townbarningham præd' pro omnibus equis & vaccis suis levant' & cubant', &c. quolibet an' omni tempore anni tanquam ad præd' messuag, &c. pertin'* and convey'd a Grant by Copy of Court-Roll of the said Manor of the said House and Land with the Appurtenances to the Plaintiff and his Heirs, according to the Custom of the Manor, by Force of which he entred, and was and yet is seised of the said Messuage and Land with the Appurtenances, & *præd' Robertus machinans & intendens ipsum Edw. de communia pastur' sua præd' in præd' pecia pastur' continent' per estimationem 7 acr' vocat' Townbarningham Common, habend' minus juste impedire & de proficuo suo inde totaliter deprivare, primo die Mai, an' regn' Dom' Reg' nunc Angl' 7 equos, boves & vacas suas in præd' peciam pasturæ, cont' per estimat' 7 acr' voc' Townbarningham Common, posuit & herbam ibid' crescent' cum equis bobus, & vaccis suis depastus fuit, conculcavit, & consumpsit, with Continuance a præd' primo die Mai an' septimo*

*Septim' suprad' usq; fest' S. Mich' Arch' tunc proxim' sequen' per qd' idem Edw. existens per tot' idem tempus tenens customari- us præd' messuag' & 2 acr' & 2 rod' terræ cum pertin' commu- niam pastur' suam præd' pro equis, bobus & vaccis suis, in tam amplo & beneficiali modo prout ipse præantea habuit, &c. per tempus illud habere non potuit, sed proficuum suum inde per tot' idem tempus amisit ad damn', &c. 401.* The Def. pleaded, *Non culp'*, and the Jury found, *quod quoad positionem equorum, bo- vium, & vaccarum ipsius Rob. Marys in infra script' peciam pastur' vocat' Townbarningham Common, interius per præd' Rob' fieri supposit' dicunt super sacram' suum quod præd' Rob' Marys non est inde culpabil', prout, &c. & quoad depastur', conculation' & consumption' herbæ infra script' in infra scrip' pecia pastur' vocat' Townbarningham Com. infra scrip' equis, bobus, & vaccis per tempus infra script' Furator' præd' dicunt super sacram' suum, qd' præd' Rob' Marys est inde culp' & assid' damna, &c.* And this plea began *Hill. 7 Jac. Reg. rot. 336.* and was oftentimes debated by the Serjeants at bar, and by the Just. at the bench: And it was argued *ex partis Def.* that the wrong found by the jury is not the wrong whereof the Pl. in his action on the case has complain'd; for he has complain'd of a misfea- sance, and they have found a nonfeasance, which is against the Pl. for he has declar'd that the Def. *posuit averia sua, &c.* which is a wrong and a misfeasance, and the jury have found, *quod non posuit, &c.* but that his cattle have depastured, &c. which ought to be by (a) escape, which is a nonfeasance, and many (a) Godb. 185. cases were put on this ground.

But as to that it was resolved, that the action notwithstanding that was well maintainable; for the Judges in finding of verd. rather respect the substance (b) than the circumstance; and therefore in the case which concerns the life of a man, which is more favour'd than any thing in the world, Judges regard the substance, and not the circumstance: as if *A. B. and C.* are in- dicted for killing *J. S.* and that *A.* struck him, &c. and the o- thers were present, abetting, &c. And the jury find, that *A.* did not strike him, but that *B.* struck him, and that the other 2 were present abetting, &c. this (c) is a good verd. for it is but cir- cumst. who struck him, for in law it is the stroke of them all. 2. It was well observed, that the declarat. is, that the Def. put in his cattle *1 Maii, &c.* and that *a præd' 1 Maii* they continued there till the feast of *S. Mich.* now the jury have found, *quoad positio- nem non culp' prout, &c.* which is the first day of *May*: but the Jury have found *quoad depast' concular', &c. per tempus infra content', sc. a primo die Maii usq; fest' S. Mich.* they found him guilty, *prout*: So that the Jury have found the continuance, &c. in the same manner, and for the same time as the Pl. has alled- ged; and the Pl. is a stranger to it, and therefore come the Def.'s cattle by escape, or otherwise, the consumption of the grass, and the destruction of his common, that is the substance and the cause of the action: And so it was adjudg'd, *Hill. 5 Jac. in this court, as it after appears. \* 2.* It was objected

(b) 2 Rol. 704.  
Cr. Jac. 136.  
Hob. 73, 249.  
Yelv. 148.  
1 Brownl. 213,  
214.

(c) Antea 67.b.  
Hale's Pl. Cor.  
265.

\* Post. 113. b.



that one commoner shall not have an action for consumption of the grass, &c. for then every other com'ner might have an action for the same cause, and so actions for small causes would be multiplied, which the law will not permit; and for that *William's Case in the 5 part of my Rep. f 72. b.* of a common, (b) chapel, or church an action on the case doth not lie for nonfeasance of divine service, nor for a com. nuisance done in the \*highway. *Vide. c) 27 H. 8. 26. a. 27. a. & (d) 5 F. 4. 2. &c.* where the law denies an action to any one in particular, for avoiding infinite actions in small causes.

To which it was answered and resolv'd, that notwithstanding this object. the (e) action lies for divers reasons. 1. It is evident that a com'ner may take the cattle of a stranger (f) damage-feasant, as it is held in *24 E. 3. 42. a. 46 F. 2. 23. b. 15 H. 7. 2. c. b. & 12. b.* which proves that it is a wrong and damage done to him, and it would be a great mischief if the com'ner should not have an action, for then all the feed might be taken, and eat by many sheep and other cattle, and with strong hand there detained, till all the grass is consum'd, and likewise with strong hand driven out, so that the com'ners could not take them damage-feasant, or the cattle after the grass consum'd might escape out, and then by the argument which has been made, the com'ner shall have no remedy; and then the (g) lord, or other great man might at their pleasure deprive those, who have com in their wastes, of their com. there. 2. If the com'ner has a free hold in his com. and the lord or others will feed or consume all the grass in the land where the com. is to be taken, the com'ner shall have *essise*; and by (h) consequ. the com'ner in the case at bar having com. but at will by copy, shall have an action on the case: As if a man has com. of estovers in the wood of another in fee, or for life, and the owner of the wood, or any other sells all the (i) wood, he who ought to have the estovers shall have *essise*, for it is a disseisin of his com. *F. N. B. 58, 59.* and if he has but a term in the estovers, he shall have an action on the case. *Hill. 5 Jac. in Com. Banco, Edw. Buttolph* brought an action on the case against *Rob. Kipping* and others, and declared, that *Hen. Gawdy* Kt. was seised of an house and 100 acres of land in *Sorwood* in *Norfol.* and that the said Sir *Henry* from time whereof, &c. had used for him and his tenants of the said house and land to cut and take brakes in a piece of heath called *Caronhill* in *Sorwood* aforesaid, for their fuel to be spent in the said house, and to the said house appertaining; and so being thereof seised demised the said house and land with the appurtenan. for term of years, &c. by force of which he entred, and was thereof possessed, the Defs. *premissorum non ignari* cut down, and carried away 5 loads of brakes in the said place, *per qd'* the Pl. could not have brakes for his fuel in so ample and beneficial manner as before, and as of right he ought, &c. The Defendant pleaded not guilty, and it was found by verdict for the Defendant, and he had Judgment accordingly!

- (a) 1 Brownl. 297.  
2 Brownl. 127, 148  
1 Sid. 32.  
2 Sid. 174.  
2 Jones 157.  
Co. Lit. 55 a  
(b) Lit Rep. 2 Brownl. 127  
Cr. El. 662.  
\* Br. Nuisance 1, 29.  
Br. Chimin 1  
Br. Action for the Case 6, 95.  
Co. Lit. 55. a.  
5 E. 4. 2. b  
27 H. 8. 27. 2.  
5 Co. 73. 4.  
Cr. Jac. 246.  
Noy 120.  
2 Rol. Rep. 26  
2 Jones 157.  
Cr. El. 664.  
2 Brownl. 147  
(c) 27 H. 8. 27. 2  
(d) 5 E. 4. 2. b  
(e) Cr. El. 199.  
Hob. 43.  
(f) 2 Brownl. 148.  
1 Rol. 405.  
Yelv. 130.  
Geddb. 185.  
(g) Yelv. 130.  
(h) 1 Brownl. 197.  
Cr. El. 199, 466  
845.  
(i) 1 Brownl. 197.  
2 Brownl. 149.

3. For (a) every feeding by the cattle of a stranger, the commoner shall not have an *Affise* nor an action on the case, as his case is, but the feeding ought to be such *per quod* the commoner, &c. common of pasture, &c. for his cattle, &c. *habere non potuit, sed proficuum suum inde per totum id tempus amisit, &c.* So that if the trespass be so small, that he has not any loss, but sufficient in ample manner remains for him, the commoner shall not take 'em damage-feas. nor have any Action for it; but the ten' of the land may in such case have an action. And therefore, if my servant is beat, the (b) master shall not have an action for this battery, unless the battery is so great that by reason thereof he loses the service of his servant, but the (c) servant himself for every small battery shall have an action; and the reason of the difference is, that the master has not any damage by the personal beating of his servant, but by reason of a *per quod*, viz. *per quod servitium, &c. amisit*; so that the original act is not the cause of his action, but the consequent upon it, viz. the loss of his service is the cause of his action; for be the battery greater or less, if the master doth not lose the service of his servant, he shall have an action. So in the case at bar, the lord of the soil shall have an action for trespass done in the waste or common, as an immediate trespass to him, be it greater or less, but the commoner shall not have an action but by (d) consequence, viz. if the trespass be such, *per quod proficuum commune sita, &c. amisit*, or that he could not have his common in so beneficial manner as he had before. 4. In this case it doth not judicially appear to the court, that any other has common there but the Pl. himself, and therefore the colour of multiplicat. of sutes is not to be resembled to this case: And it is true for a nuisance in the (e) highway, without special damage, none shall have a private action, for it is not *damnum privatum*, but *damnum commune* and therefore it ought to be only punished and reformed at the K.'s sute; for a publick nuisance shall not be reformed at the sute of a private party; for the damage is not private, but publick: But *privatum damnum sive nocumentum* shall be reformed by the action of the private party griev'd, and *commune nocumentum* at the sute of the King who is the head of the whole commonwealth: But a trespass done to many commoners is *privatum*, and not *commune nocumentum*: and so it is adjudged in 27 *Aff. p. 6. a.* presentment was in a set, that J. N. had enclosed such lands, which ought to lie in common for all the inhabitants of the town, &c. *ad commune nocumentum inhabitant' ville prad'* and this presentm. was adjudged void: For it is a private wrong to the particular inhabitants of this particular town, and no publick common nuisance. And the Ch. Justice in his argument in this case cited 2 judgments in the point in this court, *Trin. 41 Eliz. 101. 1536.* John (f) Holland Esquire, brought an action on the case against Thomas Lovell Esquire, and others Defendants, and declared that the Plaintiff was seised of the manor of C. &c.

(a) 1 Brownl. 197.

(b) 1 Brownl. 197.

2 Brownl. 148.

(c) 2 Brownl. 148.

(d) 1 Brownl. 197.

(e) Co. Lit. 56. a.

5 Co. 73. a.

Moo1 180.

C. Jac. 446.

Noy 120.

2 Rol Rep. 262

Jones 157.

Ct. El. 664.

2 Brownl 147.

27 H. 8. 27. a.

Br. Action sur

le Case 6.

Br. Chm'in 1.

Br. Nuisance 1.

5 E. 4. 2. b.

Br. Action sur

le Case 93.

B. Nuisance 29.

(f) 2 Brownl.

148

10 Ert 14

pl. 12.

Robert Marys's Case. PART IX.

kill in *Larlingford*, in *Norfolk*, and prescribed to have Common for 400 Sheep in a Place called the Plains in *Larlingford*, as belonging to the said Manor, the Defendants *premissorum non ignari*, with their Sheep did eat the Grass growing in the said Place called the Plains, *per quod* the Pl. could not enjoy his Common there in so ample and beneficial Manner as he had before, and as of right he ought to have, to his Damage of 40*l.* The Defendants pleaded Not guilty, and it was tried by *Nisi prius* before Sir *John Popham* Ch. Justice of *England* and found for the Pl. and he had Judgment and Execution. *Hill. 5 Jac. Rot. 1427. in Communi Banco. Norf. George (a) England* brought an Action on the Case against this *Edw. Crogate*, and declared that the Bp. of *Norwich* was seised in the Right of his Bishoprick of the Manor of *Turgarton* in *Norfolk*, and that the Pl. was a Copyholder of a Tenement Parcel of the Manor, and prescribed in the Bishop, &c. to have Common for the Copyholders of the said Tenement, for all Horses, Cows and Hogs in a Piece of Pasture in *Basingham*, called *Basingham Common*, &c. at all Times of the Year, as to the said Tenement belonging, the Defendant *premissorum non ignarus*, put his Horses and Cows into the said Piece of Pasture called *B.* *per quod* the Pl. could not have Common there in as ample and beneficial Manner as he had used before, &c. The Def. was to the putting in of his Cattle pleaded Not guilty, which Issue was found for the Def. and as to the Eating of the Grass he pleaded, That the said Piece of Pasture called *Basingham Common*, adjoined to another Pasture called *Barningham Common*, in which the Def. had Right of Common, and that these two Commons lay open the one to the other, and claimed to have Common in *Basingham Common* for cause of Vicinage, upon which Common for cause of Vicinage Issue was joined, and found for the Pl. Whereupon Judgment was given, and Execution awarded. In which Case both the Points which now in the Case at Bar were in Question were adjudged. 1. Altho' the Pl. declared that the Def. put in his Cattle, &c. and it be found that he did not put them in, but that they came in by (b) Escape, yet the Pl. should have Judgment, for the Eating of the Grass is the Substance. c) 2. It was adjudged, That the Commoner in this Case should have an Action on his Case.

(a) 2 Brownl.  
1-9.  
Co. Ent. 2 pl. 8.  
Ant. 112. a.

(b) Godb. 135.

(c) Ant. 112. c.

## Copia Record' Convictionis Carliell & al'.

### *The Lord Sanchar's Case.*

Inquisitio capt. ad sessionem pacis Domini Regis tent. pro  
 civitat. London apud Guildhall in civitat. London præd.  
 die Mercurii vicefimo feptimo die Maii ann. regni Domini  
 nostri Jacobi Dei grat. Angl. Franc. & Hiberniæ Regis fidei  
 defenf. &c. decimo, & Scotiæ quadragesimo quinto, coram  
 Jacobo Pemberton mil. majore civitat. London præd. Steph.  
 Bane milite, Johanne Garrard milite, Thoma Bennet mil.  
 Thoma Lowe milite, Henrico Rowe milite, & *Henrico*  
*Montague* milite, uno servien' Dom. Regis ad legem ac re-  
 datore dictæ civitatis, justic. dicti Dom. Regis ad pacem  
 civitate præd. conservand. necnon ad divers. felon. transgr.  
 alia malefacta in eadem civitate perpetrat. audiend. &  
 terminand. assignat. per sac'm Will'mi Palmer, Johan. Pem-  
 erton, Ed. Bishop, Joh. Harrison, Will'mi Erbury, Thom.  
 Scholson, Humf. Waterfon, Joh. Woodall, Zach. Healing,  
 Joh. Downes, Thomæ Eagles, Thomæ Dennys, Richardi  
 Taylor, Meredith Broughton, & Radulphi Hanson, pro-  
 curum & legal. hominum (de corpore civitat. prædict. qui  
 sunt super sac'm suum prædict. quod Robert. Carliell  
 nuper de London Yeoman, & Jacobus Irweng nuper de Lon-  
 don præd. Yeoman, Deum præ oculis suis non habent', sed di-  
 abolie.

*The Lord Sanchar's Case.* PART IX.

abolic. instigatione mot. & seduct. undecimo die Maii anno regni Domini nostri Jacobi Dei gratia Angliæ, Franciæ, & Hiberniæ Regis, fidei defensoris, &c. decimo, & Scotiæ quadragesimo quinto, apud London præd. videlicet, in paroch. Sancti Dunstani in occident. in warda de Farringdon extra London præd. vi & armis, &c. felonice ex malitiis suis præcogitat. in & super quendam Johannem Turner adtunc & ibidem in pace Dei, & dicti Dom. Regis existen. insult. & affraiam fecerunt, & præd' Robert. Cariell quoddam torment., Anglice, vocat. a Pistol valor. quinque solid. adtunc & ibidem onerat. cum pulvere bombardico, & glandine plumbea, Anglice, *charg'd with Gunpowder and one Leaden Bullet*, quod quidem torment. idem Robert. Cariell, in manu sua dextra adtunc & ibidem habuit & tenuit in & super præfat' Johannem Turner adtunc & ibidem felonice, voluntar. & ex malicia sua præcogitat. sagittavit & exoneravit, Anglice, *did it set off and discharge*, & præd. Robert. Cariell cum glandine plumbea præd. e tormento prædicto adtunc & ibid. emiss. præfatum Johannem Turner in & super sinistram partem pectoris ipsius Johan. Turner prope sinistram mamill' ipsius Johannis Turner adtunc & ibidem felonice percussit, dans eidem Johanni Turner adtunc & ibidem cum glandine plumbea præd' e tormento præd. adtunc & ibid. emiss. in & super præd. sinistram partem pectoris ipsius Johannis Turner prope præd. sinistram mamill' ipsius Johannis Turner unam plagam mortalem latitud. dimid. unius pollicis & profundit. quinq; pollicium, de qua quid' plaga mortali, præd. Johan. Turner apud London præd. in paroch. & ward. prædict. intant. obiit. Et quod Jacobus Irweng felonice, & ex malicia sua præcogitat. adtunc & ibid. fuit præsens, auxilians, assistens, abettans, confortans, & manutenens præfatum Robertum Cariell ad felon. & murdr. præd. in forma præd. felonice faciend. & perpetrand. & sic jur. præd. super factum suum præd. dicunt quod prædict. Robertus Cariell, & Jacobus Irweng præfat. Johannem Turner apud London præd. in parochia & Warda præd. modo & forma præd. felon. voluntarie, & ex malitiis suis præcogitat. interfecer. & murderaverunt contra pacem dicti Domini Regis nunc coron. & dignitat. suas, &c. Et postea, scilicet, ad deliberation. gaol. Domini Regis de Newgate tent. pro civitat. London prædict. apud le Justice Hall scituat. in the Old Watly in parochia Sancti Sepulchri in warda de Farringdon extra London prædict. vicesimo tertio die Junii anno regni dicti Dom. nostri Jacobi. Dei grat. Regis Angliæ, Franc. & Hibern. decimo & Scotiæ quadragesimo quinto, coram Jacobo Pemberton

milite, majore civitat. London præd. reverendo in Christo  
 patre Johan. episcop. London, *Thoma Fleming* mil. Capital.  
 Justic. dict. Dom. Regis ad placita coram ipso Rege tenend.  
 assign. *Edward. Coke* mil. Capital. Justic. dicti Domini Reg.  
 de Banco, *Laurent. Tanfield* milit. Capital. Baron. Scaccar.  
 dicti Dom. Reg. *Christ. Yelverton* milit. uno justic. dicti  
 Domini Regis, ad placita coram ipso Rege tenend. assign.  
*Dav. Williams* milit. alter. justic. dict. Dom. Regis, ad pla-  
 cita coram Rege tenend. assign. *Job. Croke* milit. alter.  
 justic. dicti Dom. Reg. ad placita cor. ipso Rege tenend. af-  
 sign. *Steph. Soane* milit. *Joh. Garrard* milit. *Tho. Bennet*  
 milit. *Baptisto Hicks* milit. *Francisco Bacon* milit. solici-  
 tatore Dom. Regis general' *Henrico Mountague* milit. uno  
 fervient. Dom. Regis ad legem, ac recordatore dictæ civita-  
 tis London, ac aliis sociis suis justic. dicti Dom. Regis, ad  
 gaolam suam præd. de prison. in eadem existen. deliberand.,  
 assign. præd. *Rob. Carliell*, & *Jacobus Irweng*, sub custodia  
*Edw. Barkham* & *Georgii Smythes*, vicecom. civitat. præd.  
 ad barr. ibidem ducti in propriis personis suis vener. & sepa-  
 ratim allocuti qualit. se de feloniam & murdro præd. acquie-  
 tare vellent, idem *Rob. Carliell* dicit quod ipse non potest  
 dedicere quin ipse est culp. de felon. & murdro præd. ei in  
 forma prædict. imposit. & felon. & murdr. præd. express.  
 cogn. & se inde pon. in gratiam Dom. Regis. Et prædict.  
*Jacob. Irweng* dic. quod ipse de felon. & murdro præd. ei in  
 forma præd. imposit. in nullo est culpabil. & inde de bono &  
 malo pon. se super patriam. Ideo immediat. ven. inde jurat.  
 &c. Et jurat. jurat. illius per præd. vic. civitat. præd. ad hoc  
 impanellat. exact. scil't, *Humf. Slanie*, *Will. Morgane*, *Ro-  
 landus Healing*, *Hugo Hamerslie*, *Hen. Colthurst*, *Will'mus  
 Hicks*, *Will. Hayes*, *Rich. Bridger*, *Will'mus Wilde*, *Johan.  
 Palmer*, *Salomon Greene*, & *Rich. Rud*, ven. qui ad ve-  
 ritat. de & super præmiss. dicto *Jacobo Irweng*, imposit. di-  
 cend. elect. triat, & jurat. dicunt super sacr'm suum præd.  
 qd. præd. *Jacobus Irweng* est culpabilis de felon. & murdr.  
 præd. sibi in form. præd. imposit. modo & forma prout per  
 indictament. præd. vers. eum supponit; & qd. ipse tempore  
 felon. & murdr. prædict. in forma præd. commiss. seu unquam  
 postea null. habuit bona seu catall. terr. aut tenement. ad notic.  
 jurat. præd': Super quo iidem *Rob. Carliell* & *Jac. Irweng*  
 separatim allocut. si quid pro se huer. vel dicere sciver.  
 quare cur. præd. ad judicium & executionem de eis & eorum  
 altero super præmiss. proced. non debeat, qui nihil dixerunt  
 præterquam ut prius dixerunt, super quo adtunc, & ibidem

*The Lord Sanchar's Case.* PART IX.

consideratum est per eosdem justic. quod prædict. Robert. Carliell & Jacobus Irweng ad gaolam de Newgate prædict. unde venerunt reducantur, & eorum alter reducatur, & qd. abinde ducantur & eorum alter ducatur usque ad locum executionis & ibidem suspendantur & alter eorum suspendatur quousque, &c.

*Per Indictamenta Trin. 10 Jacobi Regis,*

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*Copia*

## *Copia Indictamenti Roberti Creighton Armig'.*

### *The Lord Sanchar's Case.*

*Middl.* JUR' præsentant pro Dom' Rege super sac' m suum  
 qd' cum Rob' Carliell nuper de Lond' Yeoman,  
 & Jacob' Irweng nuper de Lond' præd' Yeoman, Deum præ  
 oculis suis non habentes, sed instigatione diabolica seduct',  
 undecimo die Maii anno regni Domini nostri Jacobi, Dei  
 grat' Angl', Franc', & Hiberniæ Regis, fidei defensor', &c.  
 decimo, & Scotiæ xlv. apud London, videl't, in parochia  
 Sancti Dunstani in occident', in warda de Farringdon extra  
 London præd', &c. vi & armis, &c. felonice ac ex maliciis  
 suis præcogitat', in & super quendam Johan' Turner ad-  
 tunc & ibidem in pace Dei & dicti Domini Regis existen',  
 insultum & affraiam fecer', & præd' Robertus Carliell quod-  
 dam tormentum, Anglice vocat' a Pistol, valor' quincque  
 solidorum adtunc & ibid' onerat' cum pulvere bombardico,  
 & glandine plumbea, Anglice, charged with Gunpowder  
 and one Leaden Bullet, quod quidem torment' idem Ro-  
 bertus Carliell in manu sua dextra adtunc & ibid' habuit &  
 tenuit in & super præfat' Johan' Turner adtunc & ibid' felo-  
 nice, voluntarie, & ex malicia sua præcogitat', sagittavit, &  
 exoneravit, Anglice, did shoot off and discharge, & præd' Ro.  
 Carliell cum glandine plumbea præd', e torment' præd' adtunc  
 & ibid' emiss. præfatum Joh' Turner in & super sinistram  
 partem pector' ipsius Joh' Turner prope sinistram mamillam  
 ipsius Joh' Turner adtunc & ibid' felonice percussit, dans  
 eidem Jo. Turner adtunc & ib' cum glandine plumbea præd'  
 e torment' præd' adtunc & ib'm emiss. in & super præd' fini-  
 stram partem pector' ipsius Jo. Turner unam plagam mortal'  
 latitud' dimid' unius pollic' & profunditat' quinq; pollic' de  
 qua quid' plaga mortali præd' J. Turner apud Lond' præd', in  
 paroch' & ward' præd', instant' obiit: Et præd' Jac. Irweng, fe-  
 lonice



*The Lord Sanchar's Case.* PART IX.

lonice, & ex malicia sua præcogitat', adtunc & ib'm fuit præfens, auxilians, assistens, abbettans, confortans, & manutenens, præfat' Robert' Carliell ad felon' & murdr' præd' in form' præd' felonice faciend' & perpetrand': Et sic prædict' Robert' Carliel & Jacobus Irweng præfat' Johan' Turner apud Lond' præd', in paroch' & ward' præd', modo & forma præd', felon', voluntar', ac ex maliciis suis præcogit' interfecerunt & murdraverunt, contra pacem dicti Dom' Reg' nunc, coron' & dignitat' suas: Quidam Robert' Creighton super de paroch' Sanctæ Margaret' in Westm' in com' Middl' armig', Deum præ oculis suis non habens, sed instigatione diabolica seduct' ante felon' & murdr' præd', per præfat' Rob. Carliell & Jacob. Irweng modo & forma præd' fact' & perpetrat', scil't, decimo die Maii, an' regni dicti Domini nostri Jacobi, Dei grat' Angl', Franc', & Hibern', Regis decimo, & Scotiæ xlv. præd' Robert' Carliell apud prædict' paroch' Sanctæ Margaret in Westm' præd', in com' Middl' præd', ad felon' & murdr' præd', modo & forma præd' faciend' & perpetrand', malicios. felonice, voluntar', & ex malicia sua præcogitata, incitavit, movit, abbettavit, consuluit, & procuravit, contr' pacem dicti Domini Regis nunc, coron' & dignitat' suas, &c.

*Per Indictamenta Trin. 10 Jacobi Regis.*

## Trin. 10 Jacobi.

### *The Lord Sanchar's Case.*

**R**obert Creighton, Lord Sanchar, a Baron of Scotland, of his Malice prepenſe at *Westminster* in the County of *Middlesex* incited and procured *Robert Carliell* to kill *John Turner*, who accordingly associating himself with one *James Irweng*, the 11 of *May* now last past, killed the said *John Turner* within the City of *London*. And the King in his Zeal to Justice in this Case, immediately sent for the two Chief Justices, and Chief Baron, and commanded there should be speedy Proceeding against the Lord *Sanchar*, according to Law. To which the Justices answered, That the Lord *Sanchar* was but an Accessory in this Case, and therefore he (a) could not by Law be convicted before the Principal is attainted; but if the Principal could be apprehended, then both might be attainted with more Expedition than could be, if the Principal should be attainted by Utlagary: Then it was asked how the Lord *Sanchar* being an ancient Baron of *Scotland* should be tried: And it was answered by them, That none within this Realm of *England* is accounted (b) a Peer of the Realm, but he who is a Lord of the Parliament of *England*; for every Subject either is a Lord of the Parliam. or one of the Com'ns, and the *L. Sanchar* was not a Lord of the Parliam. within this Kingd. and therefore should be tried by the Commons of the Realm,

Wilson's Hist.  
59, 60.

(a) 4 Co. 43. b

(b) Co. Lit. 16. b.  
7 Co. 15. a.  
Calvin's Case.  
2 Inst. 48.  
3 Inst. 30.

viz. Knights, Esquires, or others of the Commons; and therewith agree our Books, as well ancient as others, (a) 11 E. 3. Brief 473. 8 R. 2. (b) *Process pl. ult.* (c) 20 E. 4. 6. a. b. 20 El. (d) 360. Then the King asked in what Court, after the Principal is attainted, the Lord *Sanchar* should be tried. And the Justices answered, that forasmuch as the Procurement was in *Middlesex*, it was most convenient to try him in the King's Bench. And thereupon the King resolved that he should not be committed to the Tower, but to the Prison of the King's Bench, where he might be, if Occasion required, sooner and easier examined than if he should be committed to the Tower: And the King commanded the said Justices that all Things should be prepared for the legal Proceeding; and that he would endeavour to cause not only the Principal, but others also who might discover the Truth of the Fact, to be apprehended. And thereupon the said Chief Justices conferred with the other Justices of the King's Bench before whom the Lord *Sanchar* should be tried. And before them divers Questions were moved concerning the legal Proceeding in this Case.

1. Upon the Statute of (e) 2 E. 6. c. 24. by which it is enacted, as to this Point, in this Manner. *And further be it enacted by the Authority aforesaid, That where any Murder or Felony hereafter shall be committed or done in one County, and another Person or more shall be Accessory or Accessories by any Manner of wise to any such Murder or Felony in another County, that then an Indictment found or taken against such Accessory, or Accessories, upon the Circumstance of such Matter before the Justices of the Peace, or other Justices or Commissioners, to inquire of Felonies, where such Offence of Accessory or Accessories in any Manner of wise shall be committed or done, shall be as good and effectual in Law, as if the principal Offence had been committed or done, within the same County where such Indictment shall be found. And that the Justices of Goal-delivery, or Oyer and Terminer, or two of them, of or in such County where the Offence of any such Accessory shall be hereafter committed and done, upon Suit to them made, shall write to the Custos Rotulorum, or Keepers of the Records, where such Principal shall be hereafter attainted, or convicted, to certify them whether such Principal be attainted, convicted or otherwise discharged of such principal Felony, who upon such Writing to them or any of them directed, shall make sufficient Certificate in Writing, under their Seal or Seals, to the said Justices, whether such Principal be attainted, convicted, or otherwise discharged, or not. And after they*

(a) 7 Co. 15. b.  
16 a.  
Calvin's Case.  
(b) Fitz. Pro-  
cess 224.  
7 Co. 15. b.  
Calvin's Case.  
(c) 7 Co. 15. b.  
Calvin's Case.  
Fr N sine de  
D. 2111 49.  
(d) 7 Co. 15. b.  
22  
Calvin's Case.  
Fr sine de  
Co. Lit. 20. d.

(e) 2 E. 6. c. 24.  
§ Ind. 115.

that so shall have the Custody of such Records, do certify that such Principal is attained, convicted, or otherwise discharged of such Offence by the Law, that then the Justices of Gaol-delivery, or of Oyer and Terminer, or other there authorized, shall proceed upon every such Accessory, in the County or Counties where such Accessory, or Accessories became Accessory, in such Manner and Form as if both the said principal Offence and Accessory had been committed and done in the said County where the Offence of the Accessory was or shall be committed or done. And that every such Accessory, and other Offenders above expressed, shall answer upon their Arraignments, and receive such Trial, Judgment, Order and Execution, and suffer such Forfeitures, Pains and Penalties, as is used in other Cases of Felony: Any Law or Custom to the Contrary heretofore used in any wise notwithstanding. And upon this Statute divers (a) (a) 3 Inst. 48, 49.

Questions were moved. 1. If the Indictment in the County of *Middlesex* of the Accessory should recite, that the Principal was indicted before Commissioners of Oyer and Terminer in the City of *London*, (as in Truth he was) or if the Indictment should recite *in facto*, that the Principal committed the Murder in *Lond. &c.* And it was resolv'd, that the Indictm. in *Middlesex* should recite *de facto*, that the Principal committed the Murder in *Lond.* for the Recital, that the Principal is indicted of Murder in *Lond.* is no direct Affirm. that the Principal committed the Murder; for the Indictment is but an Accusation, and in lieu of the King's Declaration, which may be true or false; and this agrees with former Precedents: And accordingly the Indictment was drawn, upon which the Accessory was convicted, as appears before by the Indictment it self. The second Question moved upon the Stat. was, If the (b) Justices of the King's Bench are within these Words, Justices of Gaol-delivery, or Oyer and Terminer. And it was objected, that the K.'s Bench is the highest Court of Ordinary Justice in criminal Causes within the Realm, and paramount the Authority of Justices of Gaol-delivery, and Commissioners of Oyer and Terminer; and as it is held in 27 *Aff. 1.* is (c) more than the Oyer; for they shall examine the Errors of the Justices in Oyer, Gaol-delivery, and Oyer and Terminer, and therefore in as much as the Justices of the King's Bench are paramount and superiors over all the others, they can't be concluded within their Inferiors, *viz.* Justices of Gaol-delivery, or of Oyer and Terminer. Also the Justices of the King's Bench have a distinct and supreme Court, and the Justices of Gaol-delivery, and Oyer and Terminer

(b) 3 Inst. 103.  
3 Mar. Br. Oyer  
and Termin. 8.  
4 Inst. 73.  
Cawley 66.  
Postea 118. b.

(c) Stanf. Cor.  
35. a.  
4 Inst. 73.  
Fitz. Assise 246.  
Br. Escape 21.  
Br. Jurisdiction. 66.  
Postea 118. b.  
Bi. Judges, Justices, &c. 16.

Terminer, other distinct and subordinate courts. And therefore it was adjudg'd *Hill. 30 El. Reg.* in the K.'s Bench that where *R. (a) Smith* was indicted of forgery of a false deed at the sessions of *b) peace* in the county of *Oxf.* and the Stat of *5 El c 14.* which inflicts the punishment and upon which act the indictment was grounded, provides that the indictment shall be taken before Just. of assise, and Just. of oyer and termin. and altho' the Just of peace by their commission have power to hear and determine felonies, trespasss, &c. and have an express clause *ad audiendum & terminandum*, so that they are as it was urged Just. of oyer and termin. yet it was resolv'd *per tot' cur'*, that because there was a commissi. of *oyer and terminer* known distinctly by that name, and the commissi. of the peace known distinctly by another name, that the said indictment was not well taken, and therefore was quashed. But it was resolv'd, that the (c) Just. of the K.'s Bench are the sovereign just. of gaol-deliv. and of *oyer and termin.* and therefore they are included within the said words: And therefore it is held in *7 E 4. 18. a. & 4 H. 7. 18.* that if an indictment of forcible entry be removed into the K.'s Bench, the Just. of the K.'s (d) Bench shall award restitution, and yet the Stat. of *8 H. 6. c 9.* speaks only of Just. of the peace, but the reason is, because they have the sovereign and supreme autho'ry in such cases And according to this resolution, the Just. of the K.'s bench wrote according to the said act to the Just. of gaol delivery in *London*, before whom the principal was, &c. who certified the record, &c. as appears before at large

3. It was moved, if the *L. Sanchar* could not in term-time be indicted, arraigned, and convicted at *Neug.* before commissioners of (e) *oyer and termin.* for the county of *Middlesex* and it was resolv'd he could not; for the K.'s Bench, as has been said, is (f) more than Eyre, and therefore in (g) term-time no commissi. of *oyer and termin.* or gaol deliv. by the common law, can sit in the same county where the K.'s Bench sits, for (h) *in presentia majoris cessat potest' minoris*, and therewith agrees *27 Ass p. 1.* But *Cartiell* and *Irwing* were indicted and attainted in *Lothd.* where the murder was committed, before just. of *oyer and termin.* in the (i) term-time, because in another county than where the K.'s Bench sits. 4. It was mov'd if the *L. Sanchar* being indicted in the K.'s Bench, if there must be (k) 15 days for the return of the *re fac'* for if 15 days are requisite, he can't be arraigned this term, and it was resolv'd not, because the offence was committed in *Middlesex* where the court sits; but if the indictment had been taken in any other county, and removed thither, there ought to be fifteen days, &c. and therewith agree the Precedents, and the continual usage of the same court

5. It was resolv'd, that for as much as there was not any direct

(a) Cro El 87,  
697.  
3 Init 103  
Cawl 258 259.  
(b) Cr El 601,  
697  
Cawl 258 259  
Savil 1.  
H P. C 103

(c) H P C 163  
Cawley 66  
3 Init 103  
Antea 118 a  
3 Mar Br Over  
& Terminer 8  
4 Init 73  
(d) Kelw 159,  
20  
Dy. 87 pl 6  
11 Co 5, a b.  
6c. a  
1 Rul Rep 92.  
Br forc. &c. En-  
tre 27  
Dall 25 pl 8  
Dall in Kelw.  
20. pl 2  
Dall n Ath pl 2  
Fiz En re 7.  
Br Restitut 11  
Dall Just c 314  
Jenk Cent 157,  
221.  
(e) H P C 156.  
3 Init 27  
4 Init -  
(f) Statu Cor.  
37 a.  
4 Init 73.  
Fiz Aff're 226  
B. Escape 21  
Br Jusisdiction  
66. 27. Ass pl 1  
Br Judge, Ju-  
stices, &c 10  
Antea 118 a  
(g) 10 Co 73 b  
3 Init 27  
(h) 10 Co 73 b  
2 Init 26, 166  
(i) Post 121 a  
(k) 2 Init 500,  
568  
H P C 157.  
Co. Lit. 12- b.

direct proof, that *James Irweng* was commanded or procured by the Lord *Sanchar* to commit the murder, but that he associated himself to *Rob. Carliell* who was procured by him, that the (a) best way is to indict the Lord *Sanchar*, as accessory to *Rob. Carliell* only, for indictments which concern the Life of men ought to be framed as near the truth as may be, & *eo potius*, because they are to be found by the oath of the grand inquest, which finding is called (b) *veredictum, quasi dictum veritatis*, and yet it was resolved, that if one is indicted as accessory to (c) two, and he is found accessory to one, the verdict is good. *Vide* the Stat. of *W. I. c. (d) 14.* by which it is enacted, *that none be outlawed upon appeal of commandment, force, aid, or receipt, until he that is appealed of the deed be attainted, so that one like law be used therein thro' the realm*; which is but an affirmance of the com. law; for there can't be an accessory, unless there be a principal, no more than there can be a shadow, unless there be a body. But this word *appeal* has 2 significations in law, one general, and that is taken for an accusation generally, and *accusatio est duplex*, either by inquisition, *i.* by indictment, and that is at the suit and in the name of the K. or by the party, and in his name, as in appeal by writ or bill, or by appeal, *i.* accusation of an approver, and therewith agree all our books, and *Stamf. l. 2. de 'Plac' cor' c. 52. f. 142. b.* where he saith, after the confession of the crime the felon may appeal, *f.* accuse others coadjutors with him to do the felony, and in this particular sense for accusation of the party it is oftner taken. And as there are 2 manner of accusations, so there are two manner of attainders of felony, *f.* by judgment given, *f.* one at the King's suit, and the other at the suit of the Party, and both these attainders are in 2 manners, one after appearance, and the other upon default after appearance, 2 ways, *f.* either by verdict, or confession, and at the suit of the party a third way, *f.* by battle, upon default by process of *outlawry*, where judgment is given by the (e) coroners, or by those whom an act of parliam. and custom have enabled. And in the Stat. of *W. (f) 1.* these words *upon appeal of commandment*, &c. are to be intended of an accusation generally, *f.* by indictment. as by writ or bill, &c. and these words *until he that is appealed of the deed be attainted*, are meant of all manner of attainders, either at the K.'s suit, or at the suit of the party, and either upon appearance or upon default. And afterwards in the same act provision is made for the appeal of the party, which implies that the word *appeal* shall be taken in the general sense. 6. It was resolved that if the principal is (g) erroneously attainted, either for error in the process, or because the principal being out of the realm, &c. is outlawed, or that he was in prison at the time of the outlawry, &c. yet the accessory shall be attainted, for the attainder against the

(a) 2 Inst. 183.

(b) Co. Lit. 226. a.

(c) 2 Inst. 183. H. P. C. 265.

(d) 2 Inst. 182, 183.

3 Inst. 138.

(e) 4 Co. 32. b. Co. Lit. 288 b. Cr. El 50.

(f) W. 1. c. 14. 2 Inst. 182, 183. 184.

(g) Ant. 68. a. b. 2 K. 3 21. b.

the principal stands till it is reversed; and therewith agrees  
 the resolution of all the Justices in the King's  
 Bench: And in 18 E. 4. 9. *b.* the *(b)* principal was erroneously  
 outlawed for felony, and the accessory taken, indicted, ar-  
 raigned, convicted, attainted, and hanged, and afterwards the  
 principal reverteth the outlawry, and was indicted and arraign-  
 ed of the said Felony, and found not guilty, by which he was  
 acquitted, and all this appears in the said book. Then it will  
 be demanded, that forasmuch as there can't be an accessory,  
 unless there is a principal, and in this case there is no princi-  
 pal, how the heir of the accessory shall be restored to the  
 land which his father had forfeited by the said unjust attain-  
 der? To that it is to be answer'd, that the heir may enter or  
 have his action, for now upon the matter by act in law the  
 attainder against his father is without any writ of error utter-  
 ly annulled, for by the reversal of the attainder against the  
 principal, the attainder against the accessory, which depends  
 upon the attainder of the principal, *ipso facto* is utterly de-  
 feated and annulled, and this notably appears in an ancient  
 book, in the time of E. 1. Tit. *Mortdaunceft.* 46. where the  
 case is, *A.* was indicted of felony, and *B.* of the receipt of *A.*  
*A.* eluded himself (and is outlaw'd) *B.* was taken, and put  
 himself upon inquest and found guilty, for which *B.* was at-  
 tainted, and hanged, and the Lord entred, as into his escheat,  
 and afterw. *A.* came, and reversed the outlawry, and pleaded  
 to the Felony, and was found not guilty, by which he was ac-  
 quitted; whereupon the heir of *B.* brought a *(c)* *Mortdan-*  
*cester* against the lord by escheat, who came and shewed all  
 this matter, and there was a demurr. upon it; and it was a-  
 warder'd that the heir of *B.* should recover seisin of the land,  
 for if *B.* was now alive, he should go quit by the acquittal  
 of *A.* because he could not be receiver of a felon, when *A.* is  
 no felon, and all this appears in the said book. *Vide* 4 E. 3. 36.  
*b. in Dover* 43 E. 3. 3. *a. in Assise & Reidis.* 8 H. 4. 4. 11 H. 4. 4.  
 4 E. 4. 20. 6 E. 4. 9. 13 E. 4. 4. 9 H. 6. 38. *b.* 8 H. 7. 10. & *vide* the  
 case of sentence *(d)* of deprivation of one, and presentm. in-  
 stitution, and induction of another, and after by relation of a  
 general pardon *ipso facto* all are restored without appeal, or  
 new presentat. admission, or institution, *qd' vide* *(e)* *Dy. Nota*  
 reader, to oust all quest. to what gaol offenders shall be com-  
 mitted, it is enacted by the Stat. of *(f)* 5 H. 4. c. 10. that none  
 shall be imprisoned by any just. of peace, but only in the com.  
 gaol, saving to lords and others, who have gaols, their fran-  
 chises in that case. By which it appears, how just. of peace  
 offend who commit felons, &c. to either of the counters in  
*Lond.* and other prisons, which are not com. gaols. But for-  
 asmuch as several persons have earnestly desired to know the  
 circumstances as well of the proceeding as of the fact it self,  
 I will comply with their request.

(a) Ant. 68. b.  
 2 R. 2. 21. b.  
 (b) Br. Cor. 165.

(c) H.P.C. 270.  
 1 Rol. 777.

(d) 6 Co 13. b.  
 14 a.  
 3 inst. 238.  
 Hob. 82, 293  
 Cr. El. 41, 789  
 Moor 132.  
 Owen. 87.  
 Latch. 22, 121.  
 1 Sid. 164, 168.  
 Pal n. 412.  
 (e) Dy. 235.  
 pi 12  
 6 Co. 13 b,  
 (f) 2 Brownl.  
 41.  
 2 Inst. 23.  
 Cro. El. 830

**R**obert Creighton, Baron of *Sanchar* a Scotchman, about five Years ago play'd at Foils with *John Turnor* a Fencing-Master, and it happen'd that *Turnor* in playing struck out the Baron's Eye with his Foil; upon which the Baron, finding himself impatient under so great an Affront, and not able to bear the Loss of his Eye without having his Revenge, resolv'd to procure some Body to kill *Turnor*, and among his other Servants he prevail'd upon *Gilbert Gray* and *Robert Carliell* Scotchmen, two of his Followers, to shoot *Turnor* upon the first Opportunity that should offer: These two then undertook to accomplish this Design, and industriously endeavour'd to execute it; but the ninth Day of *May* last, *Gray* repenting of a Purpose and Act so barbarous, vile and bloody, being touched with the Motion of the Holy Ghost, resolv'd to proceed no farther, which the Baron of *Sanchar* being inform'd of, and that *Gray* slacken'd in his Promise, *Robert Carliell* (as is aforesaid) undertook to execute what he had promis'd; who the eleventh of *May* following associating himself with *James Irweng* a Scotchman of the Frontiers, about seven o' Clock in the Evening came to an House in the Friars, which *Turnor* us'd to frequent as he came from his School which was near that Place; and finding *Turnor* there they saluted one another, and *Turnor* with one of his Friends sat at the Door, asking them to drink, but *Carliell* and *Irweng* turning about to cock the Pistol came back immediately, and *Carliell* drawing it from under his Coat discharged it upon *Turnor*, and gave him a mortal Wound near the left Pap; so that *Turnor* after having said these Words (Lord have Mercy upon me, I am killed) immediately fell down: Whereupon *Carliell* and *Irweng* fled; *Carliell* to the Town and *Irweng* towards the River, but mistaking his Way, and entring into a Court where they sold Wood, which was no Thoroughfare, he was taken. *Carliell* likewise fled and so did also the Baron of *Sanchar*. The ordinary Officers of Justice did



did their utmost, but could not take them: For in Fact (as appeared afterwards) *Carliell* fled into *Scotland*, and *Gray* towards the Sea thinking to go to *Sweden*, and *Sanchar* hid himself in *England*.

The Impediments of Justice, Difficulties of Law, and Impossibilities of legal Proceeding to take *Carliell* the Principal, which were in this Case, are remarkable and worthy Consideration. The Cure and Remedy of the Whole ought to be only and wholly attributed to the great Care of his most excellent Majesty, and to his perpetual Love and Zeal for Justice, as will clearly appear by what follows.

The Impediments of Justice were two.

1. The Truth of this Fact touching the Baron of *Sanchar* could not appear, because it consisted only in the Words of his Mouth by Incitation and Procurement, but by *Gray* and *Carliell* who were fled; or by himself, and he was likewise gone.

2. It was not as yet known whither they were fled, and it could not be found out by all the Search and Diligence which was used by the Officers and Magistrates of Justice.

The Difficulties of Law are manifest by the foregoing Resolutions.

Impossibilities of legal Proceeding.

1. It was impossible by legal Process to apprehend the Body of *Carliell* being in *Scotland*.

It was impossible also to proceed against the Baron of *Sanchar* (who was but an Accessory) before the Principal was attainted a Thing which would have required a very long Proceeding, if he had not been taken.

Now therefore let us behold here the Love and Zeal which his Majesty always had for Justice, who being informed by some of his principal Judges, with whom he had consulted touching the Nature of this present Case, and finding, if this Fact should be left to the ordinary Proceeding of the Law, *Carliell* the  
Assassin

Assassin could not be taken, and that no ordinary Power had been able to find *Gray* the Witness, nor *Sanchar* the Author; Lo! The King by Proclamation gives Authority to any Person whatsoever to apprehend these three, with a Promise of great Reward.

Upon this the Baron of *Sanchar*, well knowing that the Principal Assassin and the Witness were fled, surrendered himself, and denied that he incited or procured the Fact: Wherefore his Majesty sent Post to the Sea Ports (the Gates of the Kingdom) as also into *Scotland* and other Places of his Dominions, where his admirable Prudence had Hopes of finding them. And the Lord so crowned his royal Thoughts, and gave such a Blessing to his Zeal for Justice, that some of his Couriers took *Gray* at the Port of *Harwich* ready to imbarck for *Sweden*, and *Carliell* in *Scotland*, thinking to cross the Sea for his greater Safety. *Gray* then, being by his Majesty's Command examined, confest the whole Truth of the Fact against the Baron of *Sanchar*: Who likewise by his Majesty's Direction being confronted with *Gray*, and particularly examined touching certain Articles special and pertinent Sayings by his Majesty himself, confest by Writing under his own Hand, that he had incited and procured this Assassination, and being press't thereupon by the Questions he discovered a long and inveterate Malice which he had had with all the Occasions and material Circumstances of this Murder.

His Majesty having Regard to that which the Holy Ghost admonishes us of (*quia non profertur cito contra Malos sententia, absque Timore ullo filii hominum perpetrant Mala*) gave Orders two Days after, that *Carliell* the Principal should be brought to *London*, that he and *James Irweng* (in full Term, a Thing not usual) might be carried before the Justices at *Newgate*, and attainted and convicted, and a few Days after the Baron of *Sanchar* was likewise attainted and convicted at the K.'s Bench in full Term, and in a short Time after

Ecclesiast. 8.

11.  
Antea 1. 2. 3.

## The Lord Sanchar's Case. PART IX

(a); Inf. 1; to accomplish his Majesty's Zeal for Justice, the Baron *Sanchar* was (a) hanged publicly in Term-Time at the Palace of *Westminster*, according to the Judgment and Sentence which he had before received.

I have reported this Case with all the Circumstances, because this Example has not its Parallel: For altho' 'tis true, that the late Queen *Mary* is very famous on Account of the exemplary Justice which she caused to be executed upon Baron *Sturton* for the barbarous Murder of *Harquil*; yet this present Example of the Baron of *Sanchar* very much surpasses that of the Baron of *Sturton*, and that for many Considerations.

1. Because the Baron of *Sturton* was taken by the ordinary Course of the Law, even within the Kingdom, but the principal in this Case could not be taken by any common Power, but by Means of his Majesty's royal and absolute Power only.
2. The Baron of *Sturton*'s Offence was very apparent, and without any Difficulty of Law: On the contrary this of *Sanchar* was thereof (as appears) very full, but by his Majesty's Command all these Difficulties with the Conference and grave Consideration of his principal Judges after Search of Cases precedent, were resolved and cleared up, and notwithstanding the Impediments, Difficulties and Impossibilities in legal Proceeding greater Expedition was used in this Case than in that. In short, the Accomplishment of the Whole, the Clearing up the Truth of the Fact in the Case of the Baron of *Sanchar*, must be attributed to the great Wisdom, Power and Vigilance of his Majesty, as appears by that which has been thereof said before.

The Baron of *Sanchar* was a Man of a very ancient and noble Family in *Scotland*, he was a Man of great Courage and Wit, endowed with many excellent Gifts as well natural as acquired, the Eloquence of his Discourse with the Civility and Discretion of his Behaviour when he came before and went from the Judges, compelled the People (who honoured him on Account of his more Virtue

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Virtues, and those for his sake) to bewail his Fall with great Grief, (altho' the Occasion of it was this base and barbarous Affassination premeditated for five Years together with a Malice bloody and inveterate) this extraordinary Affection of the People, was (as he himself confessed) a very great Consolation to him in his last Troubles and Afflictions. But at last their Compassion abated, because they perceived he died a true Catholick.

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R 2

CASES

# CASES

IN THE

*Court of Wards.*

*Trin. 7 Jacobi Regis.*

*In Curia Wardorum.*

*Anthony Lowe's Case.*

*Anthony Lowe* held 59 Acres, and a Rood of Land in *Alderwasley*, of the Manor of *Alderwasley*, by Knights Service, and Sute of Court to *Bewraper*, *de tribus septimanis in tres septimanas*, of which Manor of *Bewraper* the Manor of *Alderwasley* was Parcel; the said Manors of *Bewraper* and *Alderwasley* were Parcel of the Earldom, and afterwards of the Dutchy of *Lancaster*, which Manors were held of the King by Knights Service *in Capite* before they came to the Crown. The Dutchy of *Lancaster* together with the said Manors came afterwards to the Crown by Descent: The said *Anthony* held also a Place where a capital Messuage was situate, and half an Acre of Land in *Alderwasley* held of the Manor of *Alderwasley* by Socage Tenure, and Fealty and Rent, amongst other Lands: *H. 8.* by Letters Patent under the Dutchy Seal dated 22 *Junii* anno 15 granted to the said *Anthony Lowe* and his Heirs Ancestors to the Plaintiff, whose Heir he is, the aforesaid Rent, and further ratified, remised, released and confirmed *statum præd' Anthonii in terris & tenementis præd' Habend' & tenend' præd' Anthonio & heredibus suis, de nobis heredib' & successorib' nostris per fidelit'*

*tem tantum pro omni servitio seculari, exactione & demand.*  
 And the said *Ant. Lowe* so seised of the said 59 Acres, &c. and of the Place where the capital Messuage was seised, 22 *Martii* an. 19 *H. 8.* the K. granted the said Manor of *Alderwasley*, and all Lands, Tenements, Rents, Reversions, and Services in *Alderwasley* and *Apsleyham* Parcel of the Duchy of *Lancaster* to *Ant. Lowe* Ancestor of the Pl. whose Heir he is, and his Heirs, to hold the said Manor, Lands, Tenements, Rents; Reversions and Services of the K. his Heirs and Successors, by the yearly Rent of 26 *l.* 10 *s.* and Fealty only for all Services, Exactions and Demands: And the said Grant was executed by Livery and Seisin: All which Premises are Parcel of the Duchy of *Lancaster*, and out of the County Palatine of *Lancaster*. And it was objected, That when the K. granted his Seigniority to his Ten't, to have to him and his Heirs, by that the ancient Tenure is extinct, and then the Law will create a Tenure *in Capite* by the Knight's Service, for the best shall be taken for the King as if the King grants Lands to another, without a Reservation or Mention (a) of any Tenure, the Law will create a Tenure *in Capite* by Knights Service for that is the best for the K. and so if the K. grants Lands (b) *absque aliquo inde reddendo*, the Law will create the like Tenure, and therewith agrees 33 *H. 6. 7. a.* for of Necessity all Land ought to be held of some Person. 2. When the King has extinguished the Services which are Parcel of the Manor of *A.* then the Tenancy shall be held as the Manor of *A.* was held, and that was a Tenure *in Capite*, and the Act of 1 *H. 4.* and divers other Acts, have divided the Possessions of the Duchy from the Crown.

But it was resolv'd, That the Tenure of the said 59 Acres, and Tost and half Acre should be held by (c) Fealty only; and as to the said Objections it was answered, That when the K. grants or releases the Services to the Ten't and his Heirs, it can't extinguish the Tenure in all for Necessity of Tenure, and the K. can't by his Charter alter the Law, but it shall be (d) expounded as near the K.'s Intent as may be, and that is to extinguish all the Services, but that only which is an inseparable incident to every Tenure, and that is Fealty; For that the King may do by the Law, and *id Rex potest quod de jure potest. Vide 8 H. 7. casu ultimo.*

And as to the Cases which have been put out of the Book in (e) 33 *H. 6.* they were agreed and affirmed for good Law; but a Difference was taken when Land passes from the King by his Grant, and in his Grant (f) no Tenure is reserved, or when a Cause is added *absque aliquo inde reddendo*, there the Law will create a Tenure best for the King: But when the Land passes from a Subject, and the Law

(a) 6 Co. 6. b.  
 29 H. 8.  
 Br. Livery 57.  
 2 Rol. 502.  
 Postea 123. b.  
 Ley de Gard's,  
 &c. 3:  
 Plowd. 240. b.  
 Br N. C. 113.  
 (b) Post. 123. b.  
 2 Rol. 502.  
 6 Co. 6. b.  
 Ley de Gard's,  
 &c. 3.  
 (c) Co. Lit. 98. a.  
 Ley de Gard's,  
 &c.  
 (d) 1 Co. 49. a.  
 6 Co. 6. a. 7. a.  
 56. a.  
 8 Co. 77. a. 56.  
 a. b. 1656. b.  
 9 Co. 30. a.  
 10 Co 67. b.  
 11 Co 11. a.  
 2 Inst. 496, 497.  
 2 Rol. 200.  
 3 Bullst 6.  
 Kelw. 175. a.  
 198. a.  
 2 Sid. 147.  
 3 Leon. 243  
 Plow. 32. a.  
 126. a. 143. b.  
 Har. 500.  
 2 Inst. grant 29,  
 B. Exemp. 9.  
 Co. lit. 98. a.  
 (e) 33 H. 6. 2.  
 (f) 2 Rol. 502.

(a) Co. Lit. 98. a.  
 (b) 11. 11. 11.  
 13  
 C. Lit. 98. a.

for Necessity changes one Tenure to another, there the Law, which is *equissimus iudex*, will create a Tenure as (a) near the Freedom of the first Tenure as may be: As if a Bishop or (b) other Man of the Church held certain Land of the King in Frankalmoigne, and at the Common Law had in- feoffed another and his Heirs of the same Land, in this Case the Feoffee shall hold by Fealty only, for that is as near the Freedom of the Tenure in Frankalmoigne as may be, and so was it resolved in *Lowe's Case*.

And the Reasons and Causes of this Difference is, because in the first Case the Land moves from the King, and therefore shall be Subject to such Tenure as the Law will create; but when Ten't in Frankalmoigne enfeoffs another, there the Feoffee is in by a Subject, and not by the King, for in such case the King departs with nothing. Also in this later Case the Law doth not create any Tenure originally, as it doth in the first Case, but only changes one Tenure into another, *f.* a Tenure in Frankalmoigne into a Tenure by Fealty only.

(c) 7r Tenure  
 3.  
 37 H. 6, 7. a.  
 6 C. 6. b.  
 27 d. 8.  
 Br. Livery 57.  
 2 R. 4. 502.  
 Ant. 123. a.  
 Ley 'e Gardes,  
 &c. 3.  
 Plov. 240. b.  
 Br. N. Ca. 112.  
 (d) 2 Rol. 5. 2,  
 515.  
 33 H. 6, 7. a.  
 6 C. 6. b.  
 Ley 'e Gardes,  
 &c. 3.  
 Br. Tenure 2.  
 Art. 123. a.  
 (e) 2 Co. 25. b.  
 5 C. 100. a.  
 8 Co. 152. a.  
 Co. Lit. 10. a.  
 22. a. 165. a.  
 172. 2. 271. b.  
 (f) Lit. Rep.  
 29.  
 (g) Co. Lit.  
 69. 1. 82. b.  
 2 R. 5. 506.  
 7 Co. 33. d.

And it was resolved, That when the King grants any Land (c) without Reservation of any Tenure, or (d) *absq;* *aliquo inde reddendo*, or the like, there the Land by Operation of Law shall be held of the K. *in Capite* by Knights Service, according to the Rate and Proportion of Land which belongs to a Knight's Fee, and so of more more, and of less less; for the Act of Law respects Equity, and will never charge any one with more or less than in Equity and Reason he owes: (e) *Ipse etenim leges cupiunt ut iure regantur*. And the Case at Bar is stronger, because the King upon the Grant of the Services, limits the Tenure to be by Fealty only, (f) for all Services, Exactions and Demands. And the Justices took no Regard of the Tenure before the Crown and Dutchy were united in one and the same Person, for as long as they remain in one Person, the ancient Tenures of the Crown *dormiunt perpetuo somno*, for the King can't hold of himself.

Note Reader, there are many and divers Opinions of the Content (g) of a Knight's Fee; some say, that a Hide or a Carve of Land contains 100 Acres, and that eight Hides or 800 Acres of Land make a Knight's Fee: And others hold, that 680 Acres of Land make it. Others say, *Quod bovata terre continet 15 acres, & 8 bovata faciunt carucatam terre*, by which account a Carve of Land contains one hundred and twenty Acres, and divers other Opinions are concerning these Matters. But I conceive, That a Knight's Fee, or Hide, or Carve, or Yard, or Oxgang

of Land, doth not contain any certain Number of Acres : but a Knight's Fee is properly to be (a) estimated according to the Quality, and not according to the Quantity, i. by the Value, and not by the Content ; and therefore it is true, *quod Doctissimus Cambden in sua Britannia. p. 126. asserit, viz. \* Subsequenti etate ex censu ut colligitur facti fuer' Equites, &c.* and Antiquity thought that (b) 20 l. of Land was sufficient to maintain the Degree of a Knight, as it appears in the ancient Treatise *De modo tenendi Parliamentum tempore Regis Edwardi filii Regis Etheldredi ;* where it appears *Quod Comitatus, (viz. an Earldom) constat ex (c) viginti feodis unius militis, quolibet feodo computato ad viginti libratas ; Baronia constat ex (d) 13 feodis, & 3 parte unius feodi militis, secundum computationem predicti unum feodum militis constat ex terris ad valentiam (e) 20 l.* which Antiquity I cite, because it concurs with the Act of Parliament *anno 1 E. 2. de militibus*, by which Act (f) *census militaris* the Estate of a Knight is measured by the Value of 20 l. of Land *per ann.* and not by any certain Content of Acres : And therewith agrees the Statute of *W. 1. c. (g) 35. & F. N. B. 82.* where 20 l. of Land in Socage is put in Equipage with a Knight's Fee, and that is the most reasonable Estimation, for one Acre may be better than many others, so that he who (b) had 680 Acres, or 800 Acres of some barren Land had not a sufficient Revenue to maintain the Degree of a Knight ; and he who had a less Number of Acres of some Land, had a living *in diebus illis* sufficient for the Maintenance of a Knight. So Antiquity thought that (i) 400 Marks of Land *per ann.* was a Competent living of a Baron ; and 400 l. *per ann. ad sustinendum nomen & onus* (k) of an Earl ; and of late Time 800 Marks *per ann.* of a Marquess, and 800 l. *per ann.* of a Duke : So that their annual Revenue was estimated by the Value, and not by the Content. (m) And a Carve of Land *Carucata terra*, or a Hide of Land, *Hida terræ*, (which is all one) is not of any certain Content, but as much as a Plough can plough in a Year, and therewith agrees *Lambard, verbo Hyde.* And a Carve of Land may (n) contain an House, Wood, Meadow, and Pasture, because by them the Ploughmen and the Beasts of the Plough are maintained : And therewith agree, *Temp. E. 1. (o) Tit. Brief 160. 4 E. 3. 47. Plo. Com. in Hill and Grange's Case 168. Vide 6 E. 3. 42. & 39 H. 6. 8. a.* And *venerabilis Beda* calls a Plough-Land *familiam*, because it contains necessary Things for the Maintenance of a Family. And (p) *Prisor* well said in 35 *H. 6. 29.* That a Plough may plough more Land in a Year in some Country than in another

(a) 2 Rol. 506. Co. Lit. 69. a.  
 \* Co. Lit. 86. a.  
 (b) Co. Lit. 83. b.  
 (c) Co. Lit. 83. b. 69. a.  
 Ley de Gardes, &c. 5.  
 (d) Co. Lit. 83. b. 69. a.  
 L. y de Gardes, &c. 5.  
 (e) Co. Lit. 69. a. 83. b.  
 Ley de Gardes, &c. 5.  
 (f) Co. Lit. 69. a.  
 (g) Co. Lit. 69. a.  
 (h) Co. Lit. 69. a.  
 (i) Co. Lit. 69. a.  
 (k) Co. Lit. 69. a.  
 (l) Co. Lit. 69. a.  
 Ley de Gardes, &c. 5.  
 \* Co. Lit. 69. a.  
 Ley de Gardes, &c. 5.  
 (m) Co. Lit. 69. a.  
 (n) Co. Lit. 69. a.  
 (o) Co. Lit. 69. a.  
 (p) Co. Lit. 69. a.



- ther Country, and therefore it stands with Reason that a  
 (a) Carvé of Land should be less in one Place than in another, 41 E. 3. *Fine* 40. & 13 E. 3. *Fine* 67. A Fine shall not be received *de* (b) *una virgata terræ*, for the Incertainty; *Vide* 39 H. 6. 8. But an Acre of Land is certain by the Statute (c) *de terris mensurandis*. (d) *Nota* also Reader, That every Carvé of Land was of ancient Time of the yearly Value of five Nobles *per ann.* and that was the Living of a Sokeman or Yeoman, & *ex* (e) *duodecim carucatis constabit unum feodum militis*, which amounts to 20 *l.* *per ann.* and this you may see *Termino Paschæ anno 5 E. 1. coram Rogero de* (f) *Seyton & sociis suis Justiciariis apud Westm' Ebor' rot. 10. Radulphus de Normanville petens in brevi de medio queritur contra Luciam de Kyme quod cum ipse teneat de ipsa duas caretatas terræ in Coningston per homagium & servitium militare, unde duodecim carucata terræ faciunt unum feodum militis pro omni servitio, ipsa distrinxit ipsum ad faciendum scctam ad curiam suam de Thornton in Craven, &c.* And it is to be observed that the (g) Relief of a Knight and of all superiors who are Nobles, is the 4 Part of their Revenue *per ann.* as of a Knight 5 *l.* which is the 4 Part of 20 *l.* So *una Baronia constat ex 13 feodis militum, & de 3 parte unius feodi militis*, which amount to 400 Marks, and therefore his Relief is the 4 Part of it, *sc.* 100 Marks; and an Earldom consists of 20 Knights Fees, which amount to 400 *l.* and therefore his Relief is 100 *l.* and this appears by the Statute of *Magna Charta, chap. 2.* and by the Equity of that Statute, forasmuch as a Marquesdom which consists of the Revenues of two Baronies, which amount to 800 Marks, he shall pay according to just Proportion for his Relief 200 Marks; and because a Dukedom consists of the Revenues of two Earldoms, *sc.* 800 *l.* *per ann.* a Duke shall pay 200 *l.* for Relief, which is also the 4 Part of his Revenue, and therewith agree the Records of the Exchequer. *Nota* Reader, at the Time of the making of the Statute of *Magna Charta, f. 9 H. 3.* there was not any Duke, Marques or Viscount in *England*, (and therefore the Statute does not make Mention of them and (i) the eldest Son of King *E. 3.* called the Black Prince, was the first Duke in *England* after the Conquest, and Robert Earl of (k) *Oxford*, in the Reign of *R. 2.* was the first Marques. *sic enim inter ordines Angliæ in sua Britannia restatur Cambden, ubi supra. Et titulus (l) Marchionis scrius ad nos devenit, nec ante R. 2. tempora cuiquam delatus, ille enim Robertum Vere Oxoniæ comitem delicias suas primum Marchionem Dubliniæ designavit; merumque erat honoris nomen. Hæc ille.* And before the Reign of *K. H. 6.* there was not any (m) Viscount, *sic enim idem Author ubi supra*
- (a) Co. Lit. 69. a.  
 (b) Co. Lit. 69. a.  
 (c) Co. Lit. 69. a.  
 (d) Co. Lit. 69. a.  
 (e) Co. Lit. 69. a.  
 (f) Co. Lit. 69. a.  
 (g) 2 Rol. 515, 516.  
 Co. Lit. 69. b. 82. b.  
 7 Co 33, b. 34. a.  
 (h) Co. Lit. 69. b.  
 (i) Co. Lit. 69. b.  
 (k) Co. Lit. 69. b.  
 (l) Co. Lit. 69. b.  
 (m) Co. Lit. 5. b.

**PART IX. Anthony Löwe's Case:**

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*pra* afferit. (a) *Post comites, Vicecomites ordine sequuntur,* (a) Co. Lit.  
*Vicounts nos vocamus; hac vetus officii sed nova dignitatis* 69. b.  
*appellatio, & H. 6. tempore ad nos primum audita. Hæc* (b) Co. Lit.  
*ille. Et Dominus de (b) Bello monte* was the first Viscount 69. b.  
created by King H. 6. *Vide Cassianeum in gloria mundi,*  
*parte 4. consider' 55.* That this Dignity of Viscount is of  
great Antiquity in other Realms.

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*Hill.*

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*Hill. 8 Jac. Regis.*

*In Curia Wardorum.*

*Floyer's Case.*

Cr. Jac. 294  
295.

*Anthony Floyer* and *Anne* his Wife were seised in their Demesne as of Fee, in the Right of the said *Anne* of the 4 Part of the Manor of *Burdoceston*, *alias Burston*, held by Knights Service *in Capite*, and *Anno 36 Eliz.* levied a Fine thereof to *Cribbe* and *Radway*, and to the Heirs of *Cribbe*, and the Conusees granted and render'd the said 4 Part to the said *Anthony* and *Anne*, and to the Heirs of the said *Anthony* on the Body of the said *Anne* lawfully begotten, and for want of such Issue to the Use of the right Heirs of the said *Anthony*: And afterwards the said *Anthony* and *Anne Anno 2 Jac. Regis* levied a Fine *comerco*, &c. of the said 4 Part to *Wadham* and *Manwaring*, to the Use of the said *Anthony* and *Anne*, for the Term of their two lives, and afterwards to the Use of *Anthony* their eldest Son in Tail, and afterwards to the Use of *William* their second Son in Tail, and afterwards to the Use of *John* their third Son in Tail; and afterwards to the Use of the Heirs of the Body of the said *Anthony* and *Anne*, and for want of such Issue to the Use of the right Heirs of the said *Anne*: And afterwards *Anthony* the Father died, *Anthony* his Son being within Age, *s.* of the Age of fourteen Years, the said *Anne* being yet alive. And the Question was, if the K. in this Case should have the Wardship of the Body of *Anthony* the Son, and of the 3 Part of the said 4 Part, or any of them; and it was argued on the King's Part, That the King in this Case had two Titles

to the Wardship of the Body; and ought also to have the third Part of the fourth Part of the Manor. And the first Title to the Body was by the Proviso, in the End of the Stat. of 32 H. 8. c. 1. For by the said first Fine the fourth Part was rendred to *Anthony* the Father and *Anne*, and to the Heirs of *Anthony* of the Body of *Anne*; and altho' the Stat. saith; *Where two or more Persons now hold, or hereafter shall hold any Manors, Lands, Tenements, or Hereditaments of the King by Knight Service jointly to them, and to the Heirs of one of them, and he that hath the Inheritance thereof dieth, his Heir being within Age, that in every such Case the King shall have the Ward and Marriage of the Body of such Heir so being within Age, the Life of the Freeholder or Freeholders, &c. notwithstanding.* Yet if two are seised to them, and to the Heirs of the Body of one, and he who has the Estate-tail dies, his Heir within Age, he shall be in Ward, for that is in equal Degree, *qd' fuit quoad hoc concessum per tot' Cur'*. Vide 7 El. Dyer 237. & 35 H. 8. 54. (a) Sir *David Owen's Case*. And it was said, that altho' the Husband and Wife have altered the Estate before the Death of *Anth.* the Father, yet forasmuch as they have not conveyed the Land but to the Use of themselves and their Issues, it shall not toll the Interest which the King had by the first Fine, by Force of the said Act. The 2<sup>d</sup> Title which the King had to the Ward of the Body, was upon the second Fine, for by the second Fine the Use is limited to the Wife for her Life, which is directly within the said Act of 32 H. 8. and also of the Act of 34 H. 8. and for this Reason also the King should have the Wardship of the third Part of the said fourth Part of the Manor.

Cr. Jac. 40.

Cr. Jac. 40.

Dy. 237. pl. 30.

(a) Dyer 54 55. pl. 1, 2, 3, 4.

As to the first Point upon the Statute of 32 H. 8. it was answered and resolved, that forasmuch as the Estate limited by the Render of the first Fine did not continue till the Death of *Anthony* the Father, this Case was out of the said Proviso, for the Words thereof are *And he that hath the Inheritance thereof dieth, &c.* So that he ought to have the Inheritance (either in Fee-simple, or in Tail) at the Time of his Death. But in this Case *Anthony* the Father had but an Estate for Life in Possession, and altho' the second Conveyance was but a voluntary Conveyance for the establishing of the Land upon his Issues; yet forasmuch as thereby the said *Anthony* had not any Estate of Inheritance at the Time of his Death, it is out of the said Proviso; for as the first was voluntary for the Advancement of the Husband and his Issues, so was the second voluntary also.

32 H. 8. c. 1.

As to the second, it was resolved, that altho' by the second Fine,

Fine, the Estate which the Wife had by the first Fine was barred and altered, and now she has the Estate by the second Fine, out of the Estate which the Husband had by the first Fine, yet it is out of the Stat. of 32 & 34 H. 8. for the Words of the Stat. are *to and for the Advancement of his Wife*; and it was resolved that the Estate which the Wife had by the Limitation of the Use upon the second Fine was not any (a) Advancement of the Wife; for it is no more than she had by the first Fine, for by both she had an Estate for Life; and the first Estate for Life by the first Fine can't be an Advancement of the Wife by the Husband, for the Land was the Inheritance of the Wife, and moved from her; and upon the second Fine, if no Estate had been limited, the Law would have reserved to her such Estate in the Use as she had in the Land, as it is agreed in *Colgate* and (b) *Blythe's Case*, in the 1 Part of my Reports; and therefore it is not any more Advancement to her than she had before; and therefore it is out of the said Statutes.

It was also resolved, that forasmuch as the Estate of the Wife was out of the Statutes, no (c) Wardship either of the Body or of the Land could accrue to the King in respect of the Estates in Remainder limited to the Sons, &c. during the Wife's Life, for the Wife was Tenant to the King during her Life, and the Advancement of the Sons in Remainder when the Estate for Life is out of the Statute, shall not give the King Wardship either of the Body or of the Land. But if a Man has a Reversion in Fee expectant upon an Estate for Life, held of the King by Knight's Service, if he conveys this Reversion to the Use of his Wife, or his Children, &c. and dies, that shall give Cause of Wardship of the Body during the Life of the Tenant for Life, there the Tenant for Life is not the King's Tenant, but he in Reversion. And it was said, if a Man holds of the King by Knights Service, and makes a Lease for Life, the Remainder to two, and to the Heirs of one of them, and he who has the Fee dies, living the Tenant for Life, this is within the Letter of the said Proviso of the Act of 32 H. 8. For the Words are, *Where 2 or more hold, &c. any Manors, Lands, Tenements, or Hereditaments jointly to them, and to the Heirs of one of them, and he that hath the Inheritance thereof dieth, &c.* and this Remaind. is an Hereditam. and is held of the K. But during the Life of the Ten't for Life, it is not immediately held of the K. and therefore in such Case the Heir of him who has the Fee shall not be in Ward. And *Hill. 25 El.* in the Court of Wards, *Wray* Chief Just. said, that it was resolved by the 2 Chief Justices, and the Court of Wards, That if the Heir of him who has the Fee is of full Age, and the Heir dies, living the Tenant for Life, his Heir within Age, that he shall not be in Ward for his Body within this Proviso, for the Words of the

(a) Palm. 214.  
Cr. Jac. 625.  
Hob. 51.  
Cr. Jac. 295.

(b) 1 Co. 127. a. b.  
Golds. 67, 68,  
69, 70.  
1 Anderf. 164.  
Moor 196, 197.  
2 Anderf. 78.  
4 Leon. 88, 89,  
90.  
Co. Entr. 603.  
pl. 18.  
2 Co. 56. b.  
58. b.  
Palm. 214.  
Godb. 180.  
(c) Cr. Jac. 295.  
Moor 177.

Age, And he that hath the Inheritance thereof dieth,  
&c. his Heir within Age, that in every such Case; so that  
his Heir at the Time of his Death ought to be within Age,  
which is to be intended of the immediate Heir, and not of  
the mediate Heir. Vide 2 Eliz. Dyer 172. in Lane's Case. 2 Co. 76. b.

Co. Lit. 78. a.  
Palmer 214.  
Dy. 172. pl. 12.  
2 Co. 76. b.

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Hill.